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Directorate-General Internal Policies

**Policy Department C**

**Citizens Rights and Constitutional Affairs**

**Conditions des ressortissants de pays tiers retenus dans des centres (camps de détention, centres ouverts, ainsi que des zones de transit), avec une attention particulière portée aux services et moyens en faveur des personnes aux besoins spécifiques au sein des 25 États membres de l'Union Européenne.**

**Rapport de visite en Allemagne**

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et  
Association nationale PRO ASYL

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# **I General framework conditions for migrants and asylum seekers in Germany**

## **1. 1 General Introduction**

### *1.1 Short history of the legislative framework*

Immigration policy in Germany has seen significant changes over the past several years and remains a major and contentious issue. The most recent major legislative changes culminated in the “Zuwanderungsgesetz (“Immigration Law”)”, which went into effect in January 2005. The “Zuwanderungsgesetz” represented a complete overhaul of Germany’s immigration laws, addressing everything from immigration for employment purposes to asylum and refugee law and including changes to the major immigration-related laws. The Zuwanderungsgesetz basically consists of:

- 1) the Residence Act (“Aufenthaltsgesetz” AufenthG, replacing the former “Ausländergesetz” = foreigners’ law)
- 2) Act on Asylum Procedures (“Asylverfahrensgesetz” AsylVfG)
- 3) Act on Benefits for Asylum Seekers (“Asylbewerberleistungsgesetz” AsylbLG)
- 4) the Freedom of Movement Act for European Citizens (“Freizügigkeitsgesetz”)
- 5) the Federal Act on Displaced Persons (“Bundesvertriebenengesetz”)
- 6) the Nationality Act (“Staatsangehörigkeitsrecht”)
- 7) further laws and directives concerning labour permits, integration measures, social rights, etc. – these vary significantly among the 16 Bundesländer

German immigration law is also extremely complex, all the more so through its administration through the 16 regional Bundesländer. This system of regional administration grants the Bundesländer significant discretion over a variety of substantive policy and regulatory matters. Thus, for example, access to housing or conditions of welfare benefits for asylum seekers can vary from one region to another.

Amendments to the Immigration Law currently moving through the German Legislature attempt to implement those EU Directives related to asylum and migration law that are currently outstanding<sup>1</sup>. The Bundestag adopted the package of amendments to the “Zuwanderungsgesetz”, known collectively as the “EU Implementation Law”<sup>2</sup>, on 14 of June 2007. The Bundesrat adopted the Implementation Law on 6 of July 2007. The new law will enter into force on 15 of July 2007.

Although the purpose of the amendments is to implement the EU Directives and thereby conform German law to EU mandates, the Implementation Law fails to explicitly implement many provisions of the various directives. In particular, Germany declined to implement the vast majority of the provisions in the Directive on Reception Conditions for Asylum Seekers (hereinafter “Reception Directive”) (2003/9/EG of 27 January 2003). The Reception Directive is particularly important for those vulnerable asylum seekers and refugees who are the subject of this study, and thus receives significant attention in this report.

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<sup>1</sup> Around the same time that Germany was rewriting its immigration laws, the move to harmonize member states’ asylum and migration laws at the European level was intensifying. As part of this harmonization movement, the EU has passed numerous directives, the majority of which set minimum standards to which member states must conform their national laws, if not already in compliance. The directives provide lengthy time frames for member states to bring their national laws into compliance. If a member state fails to implement a particular directive within the mandatory timeframe, then the EU Directive becomes directly applicable, but only to the extent that it confers individual rights that are sufficiently concrete to be legally cognizable. Absent actively incorporating the Directives’ minimum standards into states’ national laws, however, substantial portions remain practically unenforceable.

<sup>2</sup> Bundestag Drucksache 16/5621, available at <http://dip.bundestag.de/btd/16/056/1605621.pdf>

With the exception of a provision improving access to information, Germany viewed any changes to national law regulating reception conditions as unnecessary. However, the Reception Directive provisions governing treatment of particularly vulnerable persons represent clear and significant improvements over and above German law. Article 15 and 17 of the Reception Directive require member states to establish screening mechanisms that would identify persons with special needs and then meet those needs, including minors, persons with disabilities, single parents, pregnant women, seniors, traumatized persons and victims of torture, rape or other physical or sexual violence.

The Reception Directive places particular emphasis on protecting minors (Art. 18) and victims of torture, rape and other violent acts (Art. 20). In drafting the Implementation Law, German lawmakers declined to include the required guarantees for minors and torture victims because they view current German law as adequate. However, current German law does not entitle minors or torture victims to the services and benefits they need. Rather, access to such services is discretionary. For example, local asylum officials may provide extra services if the asylum seeker's health would be in danger (§ 6 AsylbLG).<sup>3</sup>

Additionally, the Implementation Law fails to incorporate the Reception Directive's requirement that member states provide victims of human trafficking with any necessary medical care, including mental health treatment or therapy. The Directive entitles victims of human trafficking to such treatment (Directive 2004/81/EG vom 29. April 2004).

Finally, the German migration status known as "tolerated" bears mentioning due to the large numbers of particularly vulnerable persons with tolerated status who are obliged to live in communal housing facilities in Germany. Tolerated status is essentially equivalent to a temporary stay of removal for rejected asylum seekers, usually very short term, i.e., three to six months. For example, prior to 1999, most Afghani refugees in Germany who had fled the Taliban were only given tolerated status. However, in Germany the phenomenon known as "Kettenduldung" ("chain toleration"), whereby the asylum office perpetually renews the toleration status, often for 5, 10 or 15 years, effectively permits refugees to stay quasi-permanently in Germany, but in a sort of legal no-man's land. They may be physically present, but may do practically nothing else. Many refugees with tolerated status are also required to live in communal housing facilities or reception centres, with all the restrictions on freedom of movement such centres entail. Finally, a very large number of refugees with tolerated status qualify as particularly vulnerable.

There are 174.980 persons in Germany who have tolerated status (reference date: 31.12.2006).<sup>4</sup> In November 2006, the sixteen regional Bundesländer agreed on a compromise regulation<sup>5</sup> that would supposedly deal with the problem of chain toleration by legalizing refugees who had fully integrated into German society and were self-sufficient. The Implementation Law also includes a slightly more generous legalization measure.<sup>6</sup>

Overall both regulations have the same requirements: Families have to have lived in Germany for more than 6 years, single individuals more than 8 years. Further requirements include:

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<sup>3</sup> For further details: [http://www.unhcr.de/fileadmin/unhcr\\_data/pdfs/rechtsinformationen/536.pdf](http://www.unhcr.de/fileadmin/unhcr_data/pdfs/rechtsinformationen/536.pdf), November 2005

<sup>4</sup> Bundestagsdrucksache 16/3446

<sup>5</sup>

[http://www.stmi.bayern.de/imperia/md/content/stmi/buergerundstaat/auslaenderrecht/internet\\_stmi\\_imk\\_\\_bn\\_top6\\_ia6.pdf](http://www.stmi.bayern.de/imperia/md/content/stmi/buergerundstaat/auslaenderrecht/internet_stmi_imk__bn_top6_ia6.pdf)

<sup>6</sup> § 104a, §104b AufenthG of the Implementation Law

economic independence, minimum German language skills, adequate housing space, no serious criminal convictions, no connection to extremist or terrorist organisations, and the ability do demonstrate that one did not previously evade removal.<sup>7</sup> Eligibility for a prolonged residence permit is contingent on economic independence.<sup>8</sup> There is no exception for elderly or chronically ill persons who have developed deep ties to the community but whose capacity for economic independence is limited.<sup>9</sup> However most experts estimate that the compromise regulation and new law together would legalize less than half of those with long-term tolerated status.<sup>10</sup>

## ***1.2 Geographic Situation and Migration Routes***

The expansion of the European Union and the implementation of the Dublin II regulation significantly altered the landscape of asylum and migration in Germany. Dublin II lays out criteria to determine which EU member state is responsible for reviewing and making a decision on an asylum application. Under Dublin II, the member state responsible for conducting the asylum procedure is almost always the member state through which the asylum seeker first entered Europe. Surrounded by EU member states, Germany is thus fairly well insulated from receiving refugees, though many continue to travel over land through member states on Germany's eastern border. If an asylum seeker enters Germany, Germany first assesses whether another member state should be responsible for conducting the asylum procedure. Under changes to be made by the Implementation Law, Germany may now detain asylum seekers when there is reason to believe that another member state may be responsible for reviewing the asylum application.<sup>11</sup>

Under the Dublin Regulation, the Federal Office for Migration and Refugees (BAMF) has 3 months time to ask the respective transit neighbour state to "take charge" of a refugee.<sup>12</sup> Germany has up to 11 months to execute the removal to the EU member state, including the initial 3 months to request the return. The Dublin II Regulation provides a sovereignty clause under which member states may abstain from seeking to transfer an asylum seeker and conduct the asylum procedure themselves. (Chapter IV, Art. 3(2).) However, Germany rarely exercises the sovereignty clause. Furthermore, the draft Implementation Law eliminates the already limited expedited proceedings for judicial review of decisions to transfer an asylum seeker to another member state under the Dublin regulation, leaving asylum seekers with no way to challenge potentially illegal transfers.<sup>13</sup>

The countries sending the greatest numbers of refugees to Germany have remained fairly constant over the past several years. The ten most important countries of origin in order of the number of asylum seekers in Germany in 2007 were Serbia and Iraq, Turkey, Vietnam, the Russian Federation, Lebanon, Syria, Iran, India and Nigeria.<sup>14</sup> Overall, however, the total number of asylum seekers has dropped dramatically from 116.367 in 1997 to just 21.029 in 2006.<sup>15</sup>

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7 § 104a Abs. 1 AufenthG of the Implementation Law

8 § 104a Abs. 1 Satz 2 AufenthG of the Implementation Law

9 § 104 a Abs. 6 Nr. 5 AufenthG of the Implementation Law

10 See statistics at [http://wiki.bleiberechtsbuero.de/index.php/Statistik\\_des\\_IMK-Beschluss](http://wiki.bleiberechtsbuero.de/index.php/Statistik_des_IMK-Beschluss)

11 § 15 Abs. 5 AufenthG of the Implementation Law

12 The "take charge" request is distinct from the "take back" request. A "take back" request applies when an individual has already lodged an asylum application in another member state, while a "take charge" request applies when a member state in which an asylum application was lodged believes that another member state is responsible even though an asylum application was not lodged in that other member state, i.e., there is reason to believe the individual traveled through the other member state or has family in the other member state. See Articles 16-20, Council Regulation (EC) No. 343/2003 of 18 February 2003.

13 §§ 34a, 27a, 26a Asylverfahrensgesetz of the Implementation Law

14 Source : Amnesty International, *asyl-info* 3/2007, based on statistics of the BAMF

15 [http://www.bamf.de/nn\\_564242/SharedDocs/Anlagen/DE/DasBAMF/Downloads/Statistik/statistik-auflage14-4-aktuell-asyl,templateId=raw,property=publicationFile.pdf/statistik-auflage14-4-aktuell-asyl.pdf](http://www.bamf.de/nn_564242/SharedDocs/Anlagen/DE/DasBAMF/Downloads/Statistik/statistik-auflage14-4-aktuell-asyl,templateId=raw,property=publicationFile.pdf/statistik-auflage14-4-aktuell-asyl.pdf)

### *1.3 Consideration of vulnerable third country nationals in German national law*

German national legislation takes particularly vulnerable groups of refugees into explicit account in a variety of laws, treaties and regulations. A few of the most relevant are<sup>16</sup>:

#### 1.3.1 Unaccompanied Minors

Germany signed the UN Convention on the rights of the child, with the reservation that it retained the authority to treat foreign minors differently than national minors. Unaccompanied minors<sup>17</sup> under 16 years of age are entitled to be accompanied by a guardian in their asylum matters<sup>18</sup> and may apply for special youth benefits, such as special housing or counselling, from the youth welfare department.<sup>19</sup> It is the responsibility of the guardian or youth welfare department to make arrangements for the unaccompanied minor's shelter and care upon return to the country of transit or origin.

There are special regulations for unaccompanied minors who are 16 years old or older. They have to pursue their asylum application without a representative, (§ 12 AsylVfG), as well any other applications under the immigration law (§ 80 AufenthG). Finally, unaccompanied minors who are 16 years old or older can be removed. (§ 80 AufenthG.)

NGOs pledge for an amended access of unaccompanied minors and unaccompanied adolescents (aged 16 years and elder) to pedagogic services. The ongoing discussion about a national action programme for children and youth (NAP) may open this field of discussion.”

#### 1.3.2 Family Unity

The right of family unity is guaranteed as a fundamental right under Art. 6 of the German constitution. However, foreigners do not have the same protection of family unity as German nationals. Issues of family unity among refugees and immigrants appear in a variety of contexts in German asylum- and immigration law.

Asylum Procedure: Being a family in an asylum procedure has three main legal implications:

- Separated families living in different reception centers have the right to be reunified after 3 months and live together in a accommodation center (§ 51 (1) AsylVf).
- If parents of a minor child apply for asylum this automatically counts as an application for the minor (§ 14a AsylVfG).
- If one member of a family is recognized as a refugee all other members of the (nuclear) family are also given refugee status, § 26 AsylVfG.
- 

Immigration Law: Recognized Refugees and non-citizens with a permanent residence permit have a right to family reunification (§§ 30, 32 AufenthG). However, the Implementation Law introduced new restrictions on the right to family reunification. Spouses not living in Germany have a right to move to Germany if they demonstrate that they already have German language skills.<sup>20</sup> Asylum seekers only have the possibility to reunify with family members who are still in their home country under the Dublin II regulation. Foreigners with tolerated status do not have a right to family reunification at all.

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<sup>16</sup> Vulnerable groups who are not taken into consideration by specific directives or paragraphs are not mentioned in this list.

<sup>17</sup> The German Association for Unaccompanied Minors (BUMF) reported that 636 unaccompanied minors sought asylum in 2004, 331 in 2005. Data are not yet available for 2006

<sup>18</sup> See §§ 12 & 14(3) AsylVfG; § 80 AufenthG.

<sup>19</sup> See § 42 SGB VIII (social law/youth welfare).

<sup>20</sup> new § 30 AufenthG

Removal procedure: The German immigration law does not recognize family unity during removal procedures. According to German Jurisprudence neither Art. 6 Basic Law nor Art. 8 of the European Human Rights Convention apply if a non-citizen is already in removal proceedings. As a result, families are often separated during removal procedures in Germany. Thus, for example, if the police arrive at a home unannounced to carry out a removal but only find some family members, they will deport those family members and attempt to deport the remaining family members some other time.

### 1.3.3 Detention and Removal

There are no explicit federal regulations restricting detention or removal for persons suffering from psychological or physical illness or disability, or the elderly (persons 65 years and older), although it is possible to seek an exception under § 60a (2) AufenthG/Residence Act. Individual Bundesländer may or may not have their own regulations restricting detention based on age, disability or illness. With respect to the removal of physically and psychologically vulnerable refugees, the decisive question for authorities regarding removal is whether the person is able to travel and whether the trip itself would be life-threatening.

### 1.3.4 Pregnant women and young mothers

§ 3 and 4 AsylbLG governs access to medical and psychological care for pregnant women and newborn children. Furthermore, pregnant women and young mothers and their children are protected from removal or detention beginning two months before the due date through the fourth month after birth.

## ***1.4 Number and types of centres***

The type of housing facilities in Germany vary widely from region to region because the individual Bundesländer are responsible for housing refugees (§ 44 AsylVfG). Additionally, in many Bundesländer, non-citizens with toleration status are increasingly required to live in communal reception centres, a change from several years ago. The Bundesländer are also increasingly moving away from de-centralized, individual housing and towards larger, communal housing centers. Several Bundesländer have merged several different types of centres into large multi-purpose, “integrated” complexes, e.g., the Eisenhuettenstadt complex includes an initial reception center, a Family Home and a detention center.

1.4.1 The transit zones at airports in Germany are defined as extra-territorial areas, a legal fiction that permits the use of expedited asylum proceedings. The federal police (Ministry of the Interior) and the municipality of the respective Bundesland share control of the access to this area. The municipality is responsible for housing asylum seekers during their “airport asylum procedure” (§ 18a AsylVfG). The airport procedure is unique in that it subjects asylum seekers to an expedited decision process in which asylum seekers’ legal and procedural rights are extremely limited. Upon arrival in an airport transit zone, the federal police conduct an initial interview. If the individual indicates an interest in seeking asylum, the police are supposed to forward the application to the asylum officials immediately.<sup>21</sup> The asylum office must decide within 48 hours whether to permit the asylum seeker to formally enter Germany so that the application can be reviewed in greater detail or whether to deny the application as manifestly unfounded. If the Asylum Office fails to reach a decision within 48 hours, the asylum seeker must be permitted to formally enter Germany.

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<sup>21</sup> The police usually forward asylum applications to the asylum office without incident. Occasionally, however, the police refuse to forward the application on the grounds that the individual arrived from a safe third country. In at least one recent instance, the police initially refused to forward the asylum application of two Iraqi refugees on the grounds that they came through Jordan. They eventually relented under pressure from advocates.

If the asylum application is rejected as manifestly unfounded, the asylum seeker remains detained in the airport detention center. Asylum seekers have very limited appeal rights; the grounds of review are extremely narrow, there is generally no opportunity to submit evidence or have an in-person hearing, and the court must make a decision within 14 days. If the court rejects the appeal (usually the case) the asylum seeker generally remains detained until removal is possible. In practice, persons are often detained at the airport detention centre for months.

There are three airport transit zones in Germany: Frankfurt/Main (most important in terms of the number of asylum seekers who arrive and are returned), Berlin and Munich. The responsibility for the transit zone in Frankfurt lies with the Social Ministry of the Bundesland Hessen and the national police.

1.4.2 Initial Reception Centres (20): During the first six weeks of the asylum procedure, but in any event no longer than three months, refugees must live in an initial reception centre (Erstaufnahmeeinrichtung) (§ 47 AsylVfG). The government of the respective Bundesland (Ministry of the Interior) is responsible for the administration and financing of the initial reception centres. In the last few years, the Bundesländer have increasingly integrated initial reception centres into larger multi-purpose centres that also function as community accommodation and/or an open detention centres.

The Federal Office for Migration and Refugees BAMF with 24 satellite offices throughout Germany is responsible for the asylum procedures, including the applications for subsidiary protection. About ten satellite offices of the Federal Office for Migration and Refugees (BAMF) are located in the same building or at least on the same grounds as the initial reception centres.

1.4.3 Community accommodations (ca. 900): The number of community accommodations has declined continuously since 2003/04. The most recent unofficial estimates count about 900 centres of this type<sup>22</sup> for which the social ministries and the municipalities have administrative and financial responsibility, including access to clothing, food, pocket money, school, etc. (§ 53 AsylVfG). Some Bundesländer facilitate access to private housing. Others house asylum seekers and aliens without a permanent residence permit in communal centres of varying capacities (from 20 persons up to 1.600 residents). These centres often serve the dual purpose of initial reception centre and open detention centre. There are no official centralised statistics regarding the number of centres or detainees.

1.4.4 Removal (Open detention) centres (6): Individuals who are subject to removal orders are generally prohibited from leaving the region or municipality in which they are housed (§ 61 (1) AufenthG). Additionally, German law permits the Bundesländer (Ministry of the Interior) to construct “removal centres” (roughly equivalent to open detention centres) to house persons with removal orders (§ 61 (2) AufenthG). The point of “removal centres” (as opposed to regular detention pending removal) is to encourage persons to depart voluntarily. Indeed, Bundesland Bayern freely admits that the objective of its removal centre is to motivate refugees to leave voluntarily in exchange for financial support for returning or some vocational training. The purpose of the centres is to demonstrate to refugees and non-citizens that they have no prospects in Germany, and should therefore return home. As the responsible in charge of removals in the Bundesland Rheinland-Pfalz explained in 2002, removal centres encourage departure by filling residents with feelings of desperation and disorientation.<sup>23</sup>

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<sup>22</sup> Tobias Pieper, November 2006

<sup>23</sup> Martini-Emden, „Problemstellung und Intention des Modellversuchs einer Landesunterkunft für Ausreisepflichtige in Rheinland-Pfalz“, S. 3, see <http://mitglied.lycos.de/respublica/index.php?link=Grundlagen/Rheinlandpfalz/Modellversuch.html>

Rather than leaving the country voluntarily many refugees chose to live illegally instead. In 2001 in Niedersachsen<sup>24</sup> and in Rheinland-Pfalz<sup>25</sup> more than half of the persons living in these removal centres left them to live illegally. Only a very low percentage left Germany voluntarily or were ultimately removed (in Rheinland-Pfalz 5,7 %, in Niedersachsen 11%).

1.4.5 Closed detention centres (ca. 32): It is equally difficult to estimate the number of closed detention centres because responsibility lies with the various federal Ministries of Justice in each Bundesland. There is no centralised list of detention centres. Additionally, some Bundesländer maintain separate detention centres purely for removal purposes while others detain aliens alongside convicted criminals in regular prisons in Germany. Detention pending removal may be ordered for up to 18 months, and is generally ordered in 3 or 6 month increments (§ 61 AufenthG).

## **2. General Statistics**

Since the year 2005, the Federal Office for Migration and Refugees has been responsible for maintaining the “centralised foreigners statistics” (Ausländerzentralregister) in Germany.

### ***2.1 Population of Immigrants***

The number of immigrants (including asylum seekers, other European Union citizens and periodic immigrant workers) decreased from 685.259 persons in 2001 to 602.182 persons in 2004<sup>26</sup>. These figures also include (late) re-settlers with German origin whose number has been continuously declining in the last years: After a peak in 1958 (132.228) there was another peak in 1990 (397.073), and has since declined to 35.522 in 2005.

In 2006, about 9% of the population living in Germany were third country nationals.

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<sup>24</sup> Report of the Ministry of the Interior of Bundesland Niedersachsen: Removal Centres in Niedersachsen (Braunschweig and Oldenburg) – Determining Identity and Obtaining Travel Documents for Persons whose Nationality is Unknown (Bericht des Niedersächsischen Innenministeriums: Ausreiseeinrichtungen in Niedersachsen (Braunschweig und Oldenburg) - Identitätsklärung und Beschaffung von Heimreisedokumenten für Ausländer mit ungeklärter Staatsangehörigkeit), 9 September 2001, at 1 f. Excerpts of the report are available to the public via the Niedersachsen Refugee council at [www.nds-fluerat.org](http://www.nds-fluerat.org)., under the topic "Zahlen Niedersachsen" (Niedersachsen Numbers).

<sup>25</sup> Statistics for Rheinland-Pfalz available from the Asylum Working Group of Rheinland-Pfalz, at <http://www.asyl-rlp.org/archiv/presseerk1200302.html>.

<sup>26</sup> Migration report, Federal Office for Migration and Refugees BAMF, 2006, p.12, calculation based on figures of the Statistical Office (Statistisches Bundesamt)

**table 1: Third country nationals in Germany by legal status as of 31 December 2006**

Legal Status	Population
Total	6 751 002
Among them:	
Title according to the foreigners law (1990)	
total	2 877 623
- limited permit of stay	651 118
- unlimited permit of stay	2 226 505
Title according to the new Act of Immigration (2004)	
- limited permit of stay	1 137 867
Especially for:	
- vocational training	137 227
- job licence	72 096
- humanitarian, political reasons	150 411
- family reasons	615 839
- special permits of stay	66 709
Unlimited residence permit	555 334
others	
- applying for permit of stay	59 820
- no necessity of application for permit of stay	112 905
Freedom of Movement Act for EU-Citizens	
- limited title	347 724
- unlimited title	1 008 818
toleration	165 084
Permit of stay	40 757
Without permit of stay	445 070

source: Ausländerzentralregister/BAMF 2007

## **2.2 Number of first asylum requests 2000-2006**

In 2006, Germany had the lowest number of asylum seekers since 1983 (21.029 persons) and the lowest recognition rate of claims based on Art.16a (1) Basic Law (1,3 %). The peak in 2001 reflects large numbers of refugees from the war in the former Yugoslavia. The sudden fall of the of positive asylum decisions from 2001 to 2002 (see table 3 in 2.3) was largely a result of Germany's decision to freeze decisions on asylum applications from Afghani refugees following U.S. military intervention in Afghanistan.

**table 2: Number of first asylum demands 2001-2006**

year	total	Europe	Australia, Oceania, America	Africa	Asia	unclear
2001	88.287	29.473	272	11.893	45.622	1.027
2002	71.127	25.631	190	11.768	32.746	792
2003	50.563	18.156	150	9.997	21.856	404
2004	35.607	13.175	142	8.043	13.950	297
2005	28.914	11.712	115	5.278	11.310	499
2006	21.029	7.447	359	3.855	8.997	371

Source : amnesty international, asyl-info 3/2007, based on statistics of BAMF

As mentioned above (chapter 1.4.2) the Federal Office for Migration and Refugees BAMF is the central registry point for asylum seekers in Germany. Social criteria like gender, age, and marital status are collected, but these criteria are no longer taken into consideration in the reports on subsidiary protection.

Since the year 2001, when the BAMF reported 1.075 first asylum of Unaccompanied Minors, only in 2003 there was an interruption of the strong decline to 331 reported cases in 2005 (873 in 2002, 977 in 2003 and 636 in 2004, see BAMF EE-Brief 11/2005). The Federal Association for Unaccompanied Minors BUMF interprets these figures as the impact of the German National's Police controls already at the airport of the countries of origin, according to bilateral agreements. Most of the unaccompanied minors in 2000 to 2002 came from Afghanistan. In 2003 to 2004 the majority of the minor asylum seekers arrived from Vietnam. Most of the applications of this population were rejected. But 9, 3 % received protection on subsidiary grounds (§ 60 (2) – (7) AufenthG).

There is no data regarding the number of asylum seekers who are victims of human trafficking as defined by the European directive.<sup>27</sup>

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<sup>27</sup> But see the expert research: Prof. Dr. Friedrich Heckmann, Matthias Neske und Stefan Rühl, europäisches forum für migrationsstudien (efms), Bamberg, "Menschenschmuggel"  
[http://www.bamf.de/clin\\_043/nn\\_566316/SharedDocs/Anlagen/DE/Migration/Downloads/ZuwanderungsratExpertisen/exp-heckmann-zuwanderungsrat,templateId=raw,property=publicationFile.pdf/exp-heckmann-zuwanderungsrat.pdf](http://www.bamf.de/clin_043/nn_566316/SharedDocs/Anlagen/DE/Migration/Downloads/ZuwanderungsratExpertisen/exp-heckmann-zuwanderungsrat,templateId=raw,property=publicationFile.pdf/exp-heckmann-zuwanderungsrat.pdf)

### 2.3 Recognised refugees

table 3: Number of recognised refugees in the years 2001-2006

year	Art. 16 a Basic Law = Political Refugee and Family Asylum		§ 60 (1) Residence Act (AufenthG) (=refugee status according to Geneva Convention)		§ 60 (2)-(7) Residence Act (AufenthG) (subsidiary protection, suspension of removal)		Total	
	approval rate %	persons	approval rate %	persons	approval rate %	persons	approval rate %	persons
2001	7,0	5.716	20,9	17.003	4,1	3.383	32,0	26.102
2002	2,7	2.379	4,8	4.130	1,8	1.598	9,3	8.107
2003	2,2	1.534	2,4	1.602	2,3	1.576	6,9	4.703
2004	2,3	960	2,7	1.107	2,3	964	7,3	2.931
2005	1,3	411	6,7	2.053	2,2	657	10,2	3.121
2006	1,3	251	5,5	1.097	3,1	603	9,9	1.951

Source : amnesty international, asyl-info 3/2007, based on statistics of the Federal Office for Migration and Refugees

### 2.4 Number of places provided in open accommodation centres for asylum seekers

There are no official statistics – neither regionally nor nationally – about the number of people living in open accommodation centres. As previously mentioned, of the use of open accommodation centres has declined continuously over the past several years following reforms of the housing and accommodation of aliens. Open accommodation centres are not reserved for asylum seekers. A large percentage of persons with tolerated status must live in these centres. Bayern, for example, requires every person with tolerated status to live in open accommodation centres. In other Bundesländer, it depends on whether the person with tolerated status has a job (an extremely difficult hurdle, given the limitations on work permits for persons with tolerated status). Finally, some Bundesländer delegate the decision to local municipalities and communities.

At the end of last year, a preview edition of a dissertation from the University Berlin published an estimate of the number of persons living in open accommodation centres.<sup>28</sup> The author based his estimate on the statistics on social benefits received by non-citizens in Germany in combination with residence limitations and compared to residence or asylum titles. According to this model, as of 31 December 2005, some 236.000 persons lived in about 900 open accommodation centres, 209.000 of whom were entitled to social benefits.

### 2.5 Number of persons living illegally in Germany (estimation)

Over the past several years, the existence of “irregular” or “illegal” non-citizens has received increased public attention, both in connection with poverty studies as well as with economic sectors in Germany that are dependent on cheap, migrant labor. The number of individuals living illegally in Germany is estimated at anywhere from half a million to over one million<sup>29</sup>.

<sup>28</sup> Tobias Pieper, November 2006

<sup>29</sup> Bast, April 2006, p. 26/27 and p.21 quoting Schönwälder/Vogel/Sciortino 2004 <http://www.wz-berlin.de/zkd/aki/files/aki-illegalitätsbericht.pdf>

Although tolerated status is not technically considered a form of legal residency, it is nonetheless distinct from those non-citizens living in Germany without any documentation at all. Persons with tolerated status have very limited access to medical treatment and social benefits or access to legal labour market, while the rights of undocumented persons are even more restricted. Living in the legal no-man's land of illegal status is particularly onerous for vulnerable persons who lack access to a variety of important medical and mental health services. Many persons living without any status at all may decline to seek critical medical care out of fear they will be deported. Even in medical emergencies (and for pregnant women in the situation of delivery), non-citizens without any legal status risk being reported by doctors or nurses, though medical treatment does not automatically oblige medical staff to reveal the patient's identity.

This problem also arises for undocumented children if they are attending public schools. Public services – as schools - are obliged to inform public offices of their knowledge of an individual's undocumented status.<sup>30</sup> As a result very often undocumented persons do not send their children to school or avoid seeking medical treatment. Undocumented persons are also vulnerable to exploitation in the labour market, as anyone seeking to enforce his or her rights – e.g. sue for a wage entitlement – risks removal.

The German Immigration Law does not provide a standardised opportunity to legalise an illegal entry or illegal residence in Germany. Whereas persons with tolerated status do have the opportunity to get a stay permit under the amnesty regulations of 2006 and 2007, there is no public discussion of legalizing undocumented persons in Germany.

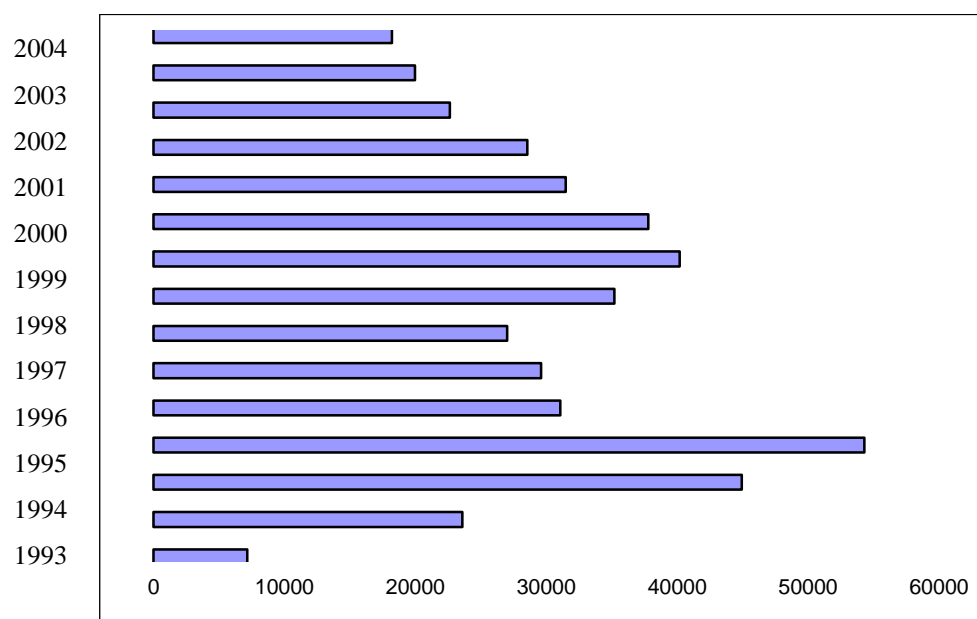
## ***2.6 Number of aliens accused of illegal stay in Germany***

Under constant threat of removal, most undocumented immigrants try to avoid any contact with German officials. As a result, any estimate of the numbers of illegal residents in Germany is just that, a rough estimate. Nevertheless, the number of interceptions at the border and the number of arrests inside Germany for illegal presence give an indication of the trends in illegal migration. These indicators cannot provide accurate estimates of the number of illegal immigrants in Germany, but rather provide limited insight into the long terms.

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<sup>30</sup> § 87 AufenthG

graphic 1: Interceptions at the border of illegal entry attempts from 1990 to 2004



Source : BAMF, Migrationsbericht 2005, p. 160

#### Arrests for illegal presence inside Germany

In 2004, Germany registered a total of 81.040 arrests for illegal presence (including at the border). Almost 73.000 of these were for violations of the Foreigners' Law or Asylum Procedures Law. After subtracting the 18.215 arrests at the border, one is left with approximately 63.000 arrests that took place inside Germany. This number can be viewed as a certain floor, representing the minimum number of undocumented persons in Germany in 2004. The number of arrests for illegal presence has consistently fallen since 1998. Between 2002 and 2003, the number of arrests fell by 14,5 %, and then by another 15,8 % the following year.<sup>31</sup>

#### **2.7 Number of detained persons**

There is no centralised documentation available. From time to time, associations and political parties address the (regional) parliament in order to receive some figures, but there is no valid, consistent data available. An estimation by Pieper (Nov 2006) calculated a capacity for 2.846 persons in closed detention centres/cells, among them 254 women, as of the year 2005.

A request to parliament in 2004 (<http://www.interkultureller-rat.de/Themen/Abschiebehaft/LaenderstatistikAbschiebehaft04-05-Endf.pdf>) reported figures showing that the number of persons detained does not decrease like it may be expected regarding the decreasing number of asylum seekers. So most of the detained non-citizens presumably have lived in Germany for some time already.

<sup>31</sup> BAMF, Migrationsbericht 2005, p. 92

The system of reporting figures about detained non-citizens vary between the Bundesländer and there is no common denominator or reference allowing a general statistics about detention arrest in Germany. The most important aspect certainly is the fact that detention of minors is frequent (sometimes even minors younger than 16 years). For the majority of detained persons the duration of arrest does not exceed 3 months though the situation varies between the Bundesländer. The regular detention seems to prepare the removal and the execution of the removal order in the delay according to § 62 (5) Residence Act. Most of the detention centres report suicides or suicide tentative.

**2.8 Number of refoulement/non admission at the border, of removal and expulsion, and of readmission according to Dublin Convention/Dublin Regulation**

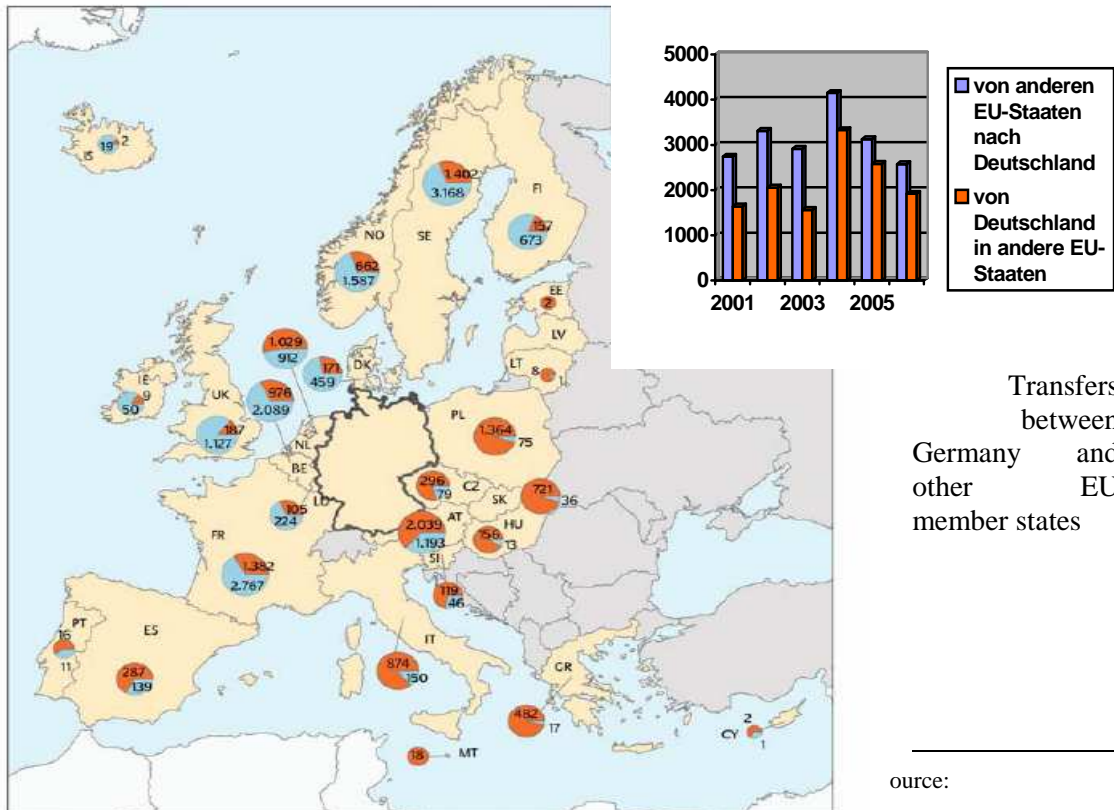
table 4	2001	2002	2003	2004	2005	2006
total32	27.051	26.286	23.944	21.970	16.865*	19.252
Refoulement/non-admission	no details available					713
Removal to border (airport only)						3.807
Expulsion/air						13.898
Expulsion/land						829
Expulsion sea						5

Source: amnesty international asyl-info 5/2007, 4/2006, 4/2005

\* for 2.000 cases violence was reported, 298 expulsions had to be stopped because of the refugees' resistance and in 94 cases, medical reasons led to an interruption or stop of the expulsion.

In 2004, according to the European Decree Nr. 343/2003 (Dublin II) Germany made 6.536 requests to other member states for re-admission under Dublin II, 2.765 of which were accepted. In contrast, there were 7.463 re-admission requests from Dublin Members to Germany, 2.681 of which were accepted. The following graphic shows the sum of re-admission requests in 2004 and 2005, requests from Germany are in orange, requests to Germany are in blue.

graphic 2:



Transfers between Germany and other EU member states

ource:

(Source : BAMF, Migrationsbericht, 2005)

### **3. Asylum System and Immigration System**

#### ***3.1 Asylum system (legal framework and application practice)***

##### 3.1.1 Asylum Procedure

There are two kinds of asylum procedures: the airport asylum procedure and the regular asylum procedure.

##### 3.1.1.1 Asylum procedure at the airport (§ 18a AsylVfG)

Asylum seekers entering the country by air are subject to expedited proceedings, known as the airport procedure (§ 18a Asylum Procedure Act (*AsylVfG*)). These expedited asylum proceedings essentially try to decide which asylum claims are worthy of further review and attempt to screen out those claims that are “manifestly unfounded”. As such, the airport procedure severely limits asylum seekers’ rights to submit evidence regarding their claim, to appear before a judicial officer or otherwise receive a thorough review of their claim. Within 48 hours, the Asylum Office must determine whether the claim is “manifestly unfounded,” in which case the asylum seeker is denied permission to enter Germany. If the Asylum Office cannot make a decision within 48 hours or if it determines the claim is worthy of closer review, the individual is permitted to enter Germany and begins the regular asylum procedure.

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.

Asylum seekers’ whose applications are rejected as "manifestly unfounded" are entitled to legal advice regarding appeal options. The Federal Government (*Bund*) covers the counselling costs, but asylum seekers must pay the cost of any representation that may result. Asylum seekers may appeal the Asylum Office’s decision to refuse permission to enter Germany, but must do so within three days. Timely appeal temporarily stays removal until the judge issues a decision. If the court either grants the appeal or fails to issue a decision on the urgent application (*Eilantrag*) within 14 days, the asylum seeker is allowed to enter Germany and is then subject to the regular asylum procedure. (The responsible judge at the Administrative Court generally makes a decision without hearing the asylum seeker in person.) If the court rejects the application, the foreigner is returned as soon as the police manage to arrange travel documents.

Asylum seekers who have been rejected in the urgent procedure and who cannot be returned immediately (usually because they lack travel documents) may choose to enter Germany, but will be detained pending their removal in a regular detention centre or jail. Alternatively, rejected asylum seekers may sign a "voluntary agreement" (*Freiwilligkeits-erklärung*) and stay in the airport's transit area until the police obtain travel documents or until it becomes evident that removal will not be possible. Most rejected asylum seekers remain detained in the airport detention centre for at least three months, many for longer. Those asylum seekers who remain in the transit area are - unlike those who are taken into removal custody - not brought before the magistrate. Despite the fact that they are actually in custody, the legality of their detention is not reviewed regularly by an independent judicial officer. Moreover, upon

eventually entering Germany, the individual will almost always be detained for at least another three months in a regular detention centre and the full 18 months of removal detention may still apply because German law does not consider detention at the airport to be actual “detention”. Thus, an individual could be detained for 3 to 6 months at the airport detention centre, to be followed by another 18 months in a regular jail. The draft Implementation Law extends by 30 days the time that a rejected asylum seeker may remain detained without any judicial review at all. (§ 14 (3) S. 3 AsylVfG, § 15 (5) AufenthG/Residence Act.)

### 3.1.1.2 *Regular asylum procedure* (§§ 18-23 AsylVfG)

Once a third country national applies for asylum at the police or at the Federal Office for Migration and Refugees, he or she is transferred to an administrative reception centre according to a federal distribution system (§§ 45,46 AsylVfG). The asylum seeker is obliged to live in this centre for at least the first 6 weeks of his/her asylum procedure (§ 47 AsylVfG). The distribution system assigns the asylum seeker to a particular Bundesland, in which she or he will have to reside during the next months or years of his/her asylum procedure (§§ 55-60 AsylVfG) (see also chapter 1.3.2 family unity).

The Police, the Migration Office, the Government of the respective Bundesland and the Federal Office for Migration and Refugees are charged with establishing the asylum seeker’s identity and determining whether she or he first passed through a safe third country (§§ 16, 18, 26 a AsylVfG). The Federal Office for Migration and Refugees is responsible for the asylum interview itself (§ 25 AsylVfG). The asylum seeker is obliged to co-operate with the authorities (§ 15 AsylVfG), especially in submitting documents (identity cards, etc.), personal belongings (e.g.) and money (if the amount exceeds 125 €, § 7 AsylBewLG, Act on Benefits for Asylum Seekers).

The Federal Office for Migration and Refugees informs the asylum seeker in the official language of his region of origin or his mother tongue about the asylum procedure itself and about his/her duties and rights. The asylum seeker will receive a notice of the date for the interview a few days ahead of time. It is possible to take along a translator at one’s own cost (§ 17 AsylVfG), to request that the interview and the translation be completed by a woman if there are gender-specific asylum reasons, and to ask to be accompanied by a third person as social support. Only minors younger than 16 years of age have the right to be accompanied by a guardian (§ 12 AsylVfG). Medical evidence supporting claims of trauma, torture or (chronic) illness must be submitted to the Office as soon as possible. The Federal Office does not provide financial support for medical exams or other costs associated with collecting medical evidence.

The interview usually takes place in the first days/weeks after arrival in the reception centre (§ 25 (4) AsylVfG). A few days or weeks, sometimes months, after the interview, the Federal Office for Migration and Refugees sends the minutes of the interview to the asylum seeker in German (§25 (7) AsylVfG). No written translation is provided. The asylum seeker may inform the Office in a written form about corrections if necessary.

The Federal Office for Migration and Refugees notifies the asylum seeker of its decision in the official language of his/her country of origin. (§31 AsylVfG.) The notice includes information about the right to appeal a negative decision. (§§ 74 AsylVfG.) A decision is often reached while the asylum seeker still is accommodated in the initial reception centre, not to exceed 3 months. If a decision is not reached within three months, the asylum seeker will be transferred to an open/integrated accommodation centre to await a decision. Asylum seekers may request to be placed in a specific town or region, or even outside the particular Bundesland, if the asylum seeker requires care or accommodation unavailable elsewhere, e.g., regular medical or psychological care or special services for children (§ 51 AsylVfG).

If the Office for Migration and Refugees rejects the asylum application as unfounded, the asylum seeker is ordered to leave the country (§§ 34-38 AsylVfG). The asylum seeker can appeal the decision to the Administrative Court (Verwaltungsgericht), but must do so within two weeks (§ 74 AsylVfG). If the Administrative Court rejects the appeal as either manifestly inadmissible or manifestly unfounded, no further appeals are possible. If the Administrative Court rejects the appeal as merely inadmissible or unfounded, then the asylum seeker may appeal with a lawyer to the Administrative Court of Appeals (Oberverwaltungsgericht) (§ 78 AsylVfG). However, the Administrative Court of Appeals will only agree to review claims that raise fundamental disputed questions of law or where the Administrative Court departed from established precedent. The asylum seeker may seek review of a decision from the Administrative Court of Appeals by the Highest Federal Administrative Court (Bundesverwaltungsgericht) if the case presents a dispute over a pure question of law. The process of appealing through the Administrative Courts can take years.

The Federal Office for Migration and Refugees informs the Asylum Officers (Ausländerbehörde) about its decision (§ 40 AsylVfG). The Regional Migration Office will then take the necessary steps (see below “persons in irregular situation”) and prepare the transfer to an accommodation centre or start removal proceedings.

### 3.1.2 Rights of asylum seekers during the asylum procedure

- residence: First time asylum seekers are granted a “preliminary” residence permit that is good for 12 months or until their application has been decided, whichever comes first (§ 55 AsylVfG). If a decision on the asylum application is not made within 12 months, the preliminary residence permit can be extended.
- 
- employment (§ 61 AsylVfG): Asylum seekers are prohibited from working for the first 12 months of their stay in Germany. Limited community work is available for 1 €/hour, (§ 5 AsylbLG.) The outright ban on employment is lifted after a period of 12 months, but even then, access to a work permit for non-citizens without permanent residence (asylum seekers, persons with tolerated status, etc.) is extremely limited (some would say practically impossible). In order to apply for a work permit, an asylum seeker or refugee with tolerated status must first demonstrate that he or she has a job offer. However, the application for a work permit will only be granted if no German citizen or no other immigrant with a more permanent residence status could be available to accept the job. The process of determining whether a German citizen or other more preferred immigrant is available can take months, by which point the job offer has generally been withdrawn or filled by someone else.
- health: The public health department must screen asylum seekers for infectious disease within the first several days of arrival (§ 62 AsylVfG). This is mostly done without detailed and/or comprehensive information about the checks made (e.g. testing for HIV). Non-citizens with a preliminary residence permit are entitled to basic medical care. (§§ 1,3-4 & 6 AsylbLG.) Medical or psychological treatment is limited to instances of severe pain or acute illness (§§ 3 & 4 AsylbLG). Any costs for medical or psychological expertise required by the Federal Office for Migration and Refugees, for example, to support claims of trauma, must be covered by the refugee, as well as travel costs and other incidental expenses. (See expert interview with BAFF, annexe 2 (1)).
- housing: §§ 44-53 AsylVfG define the responsibilities and obligations of the regional administration to provide accommodation for asylum seekers. If the asylum seeker came to Germany with more than 125 €, the amount will be registered and kept by the respective Länder-Office in order to cover the costs of housing the asylum seeker during his/her asylum procedure. The Länder-Office does not usually provide a bill.
- income: As mentioned above, asylum seekers are prohibited from working, during the first 12 months of their asylum procedure. It is possible to apply for a “1€-job” and add this income to the 40 € of pocket money provided according to individual Länder decrees. In

some of the Bundesländer, the asylum seekers receive either money or credits for shopping. In most Bundesländer (Bayern, Baden-Württemberg) food is delivered pre-packaged.

### 3.1.3 Accommodation system for asylum seekers and vulnerable persons

The individual Bundesländer are responsible for regulating accommodation conditions, and often devolve that authority to the municipalities, making it impossible to give a general overview regarding accommodation conditions across Germany. There is a chance that families or single parents with young children, young adults and persons with medical or psychological needs may have those needs met in bigger towns and in better equipped centres, but there is no generally applicable rule or right to such accommodation. Mostly, decisions depend on the attentiveness of the authorities and the presence of committed social services or NGOs.

### ***3.2 Subsidiary Protection***

Persons who do not fall within the formal definition of a refugee under the Geneva Convention may nonetheless receive subsidiary protection. An individual is entitled to subsidiary protection if he or she faces a concrete threat of torture, capital punishment or other inhumane or degrading treatment or threat to his or her existence in his or her home country (§ 60 (2), (5) AufenthG). Subsidiary protection can also be granted if the person faces a serious risk to their life, health or liberty (§ 60 (7) AufenthG/Residence Act). This threat to life or health includes threats arising from inadequate treatment options in the country of origin, which makes temporary protection especially important for particularly vulnerable persons. However, German law limits subsidiary protection to persons who can demonstrate an individualized threat. Individuals facing threat to life or health are generally not entitled to protection if the same threat is widely shared by others in the same situation (§ 60 (7) AufenthG). This limitation violates the minimum standards of Art. 15c of the Qualification Directive of the EU.

### ***3.3 Humanitarian residence permits***

§ 23 a AufenthG allows the German states (Länder) to set up hardship commissions which may petition the supreme authority at state level in individual cases of special humanitarian concern. The supreme authority may then order that a residence permit be issued, even if the usual requirements for such a permit are not met. Such commissions may be called upon only when a non-citizen is legally required to leave the country after having exhausted all appeals and has not committed any serious crimes. The further requirements or reasons for exclusion are specified by ordinance of the respective state.

A humanitarian residence permit can also be granted if the obligation to leave the country cannot be fulfilled within 18 months (§ 25 (5) AufenthG). However, permits may not be granted if it is possible to leave the country voluntarily or in case of misconduct on the part of the non-citizen (e.g. attempt to disguise true identity).

### ***3.4 Suspension of Removal***

According to § 60a (2) AufenthG, the removal of a non-citizen shall be suspended for as long as removal is impossible in fact or in law and no residence permit is granted. This is done by issuing a temporary suspension of removal. A temporary suspension of removal is not a residence permit; it does not remove the non-citizen's obligation to leave the country, but merely postpones its enforcement. The non-citizen is only provided with a tolerated status. Whereas the legal intent was initially to provide tolerated status only for a specified period of time, in practice people often live with a tolerated status for years (so called chain-tolerations).

Grounds for suspending removal can include severe health problems which preclude travelling. Sometimes removal is suspended because of family reasons, e.g. families members are tolerated if one member of the family can not be deported because of illness. The removal is also suspended as a matter of fact if the home country refuses to take the persons back.

#### **4. Protection of vulnerable migrants**

As mentioned above, access to protection and services under national law are rather limited, and depend on the length of stay in Germany and the type of residence permit. In general, the Act on Social Benefits for Asylum Seekers applies to refugees during their first 36 months in Germany (§ 2 AsylbLG). Individual access to medical care and social benefits further depends on individual circumstances and regional rules and regulations. Moreover vulnerable migrants who must depend on social benefits are often practically excluded from acquiring a long term or permanent residence permit because the Residence Act conditions entitlement to such favored residence status on social and economic integration, i.e., on economic independence from social benefits.

Even when vulnerable refugees and migrants are legally entitled to social services, they won't receive them if no one knows they need such services. Thus, a second key issue in Germany is the difficulty of identifying vulnerable non-citizens in the first place. Pregnancy and single parenthood are obviously easy to identify. Trauma and torture victims, on the other hand, may never reveal such painful experiences. The question then becomes, what systems and screening mechanisms are in place in Germany that identify particularly vulnerable refugees or that offer them access to the kind of confidential relationships (lawyers, social workers, etc.) where they may feel secure enough to self-identify. Access to confidential professional relationships is especially important for traumatized persons and torture victims.

## **II. Summary of the study's framework and the survey in Germany**

### **1. Short description of the activities of the partner organisation**

Pro Asyl facilitated the investigations of addresses and contacts in the 16 Bundesländer and involved its regional Refugee Councils in assisting in the selection of the centres. The supervisor was able to obtain additional information in the course of contacting the diverse authorities whose permission to visit the selected centres was a necessary prerequisite. The two colleagues of Pro Asyl, Marei Pelzer (permanent staff) and Joanne Werdel (legal fellow) were constantly available for further questions and recommendations in preparation of the visits. They also assisted in the collection of relevant literature and edited the country report. Bernd Mesovic (permanent staff Pro Asyl) reviewed the final version of the country report.

Apart from numerous calls and e-mail contact, often on a daily basis, two sessions were held at Pro Asyl: 21 of April in order to discuss and negotiate the terms of Pro Asyl's co-operation that Karl Kopp (charged with EU-matters at Pro Asyl) had principally agreed upon in advance. Another session to prepare the interviews and the visits was held on 30 of May.

For capacity reasons, Pro Asyl and the supervisor arranged the visits to the centres as follows: Joanne Werdel and Marei Pelzer visited the closed detention centre in Eisenhüttenstadt, and conducted an expert interview in the closed detention centre in Büren, Joanne Werdel and Irmtraud Lechner went together to the accommodation centre in Tübingen, Irmtraud Lechner and a member of the Refugee Council in Niedersachsen visited the integrated centre in Bramsche and Irmtraud Lechner conducted the interviews at Frankfurt airport and at the administrative detention and accommodation centre at Nostorf-Horst near Hamburg.

### **2. Short description of the procedure of the study with general impressions of the supervisor, main difficulties**

Due to the diverse responsibilities in the German federal system, it took a substantial amount of time to arrange the visits, each of which generally required permission from multiple different authorities at several levels. The authorities at the open reception center in Neumünster ultimately refused the request for a visit, despite having the opportunity to review the questionnaires in advance. The centre at Neumünster had been selected for a visit partly because the regional authorities recently had begun requiring all non-citizens without a permanent residence permit to live in the open reception. There had also been some information about severe incidents recently.

This particular study took place at the same time that another scientific study on the application of all EU directives in Germany had also started (University of Constance, Prof. Hailbronner). As this investigation consists of fairly comprehensive questionnaires for each EU directive, some responsible authorities felt overtaxed, but it presented no problems for the STEPS survey.

In general, the contact with authorities was good and often frank. With the exception of the officials at Neumünster, who outright refused to allow STEPS to visit, most officials were supportive. However, representatives from the regional Ministries of the Interior insisted on participating in the interviews with the administrators of the transit zone at the Frankfurt airport and in the integrated detention and departure centre in Bramsche.

### **3. Explication of the selection of the centres according to the given criteria, of the selection of vulnerable persons, the selection of NGOs and expert interview partners**

The list in annexe 4 (excel file apart) explains the selection of the centres according to the pre-defined criteria (capacities, geographic situation, events, recommendations).

#### ***3.1 The transit zone at the Frankfurt airport :***

It is the most important entry point for third country's nationals arriving via air in Germany. Situated in a wing of a recently<sup>33</sup> constructed building that also houses the national police (in a separate wing) and the Federal Office for Migration and Refugees, the Airport Detention Centre<sup>34</sup> and the detained refugees live in the same building as administrative and social staff offices. Both administrative and social staff described their working relationship as cooperative and cited the close proximity as a key reason that made them participate both at the interview QA.

In addition to official staff, there is also an independent onsite social services program operated jointly by Caritas and the Association of Protestant Churches. This independent social services program provides legal advice and advice concerning the protection of vulnerable persons. The person responsible for this independent social service was the interview partner for QC.

Two of four proposed vulnerable persons (according to the given criteria) – were unavailable because they had to go to hospital, one mother to accompany her small child and a pregnant woman because of her pregnancy. A fifth minor refugee had arrived the evening before and an interview for the study seemed unreasonable for psychological reasons. Ultimately, STEPS interviewed a minor refugee who had already been detained for three months and was facing the prospect of having his detention extended. At the time, he was waiting for his lawyer to contest his detention and the removal order. The fact that he has a lawyer is thanks to the attentiveness of the independent social service.<sup>35</sup>

The second interview partner was the husband of the pregnant woman who had been hospitalised that very day. He was interviewed in the presence of the independent social worker who served as a translator. There were no other vulnerable persons to be interviewed according to the information given by the official and the independent social service.

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33 In 2002, the Bundesland Hessen constructed the current building on the airport grounds, replacing the ancient stock hall where refugees used to be detained during their airport asylum procedure.

34 German law officially refers to the Detention Centre at the Frankfurt International Airport as a "Transit Zone", possibly to underscore the legal fiction that the detention centre is outside of Germany and that therefore the same legal protections do not apply to refugees who enter by air. The so-called "transit zone" is, however, very much a detention center. It is a short bus ride away from the actual airport, but still on the airport grounds, and accessible via public transportation. It was built solely for the purpose of detaining persons who arrive by air and who are subject to the expedited airport asylum procedure. Detainees in the airport "transit zone", while they may be able to move about freely inside the building and the small internal courtyard, are nevertheless under lock and key 24 hours a day, seven days a week and many are detained there for months. The building is guarded by the federal police and anyone seeking to enter or leave must physically pass through the guards' station.

35 As previously explained, persons in the expedited airport procedure have a right to meet with a lawyer at state expense, but only after their asylum application has initially been rejected and they are facing a 3-day appeal deadline. Refugees must pay for the cost of any resulting representation themselves. Minors are generally the exception, and receive court-appointed counsel at state expense. However, even counsel appointed to represent a minor detained in the airport detention centre (the independent social service and the minor himself said that the minor chose the airport detention center as alternative to juvenile prison).

### ***3.2 The Integrated Administrative Detention and Return Centre Bramsche :***

Situated in the Northern part of Germany outside a small town on the grounds of a former military station, defines itself as pilot project, designed to encourage third country nationals with a negative asylum decision to return to their country and to assist them in returning. The success of the project is measured by the number of people housed there – the centre has a capacity of 550 - and the number of people who have returned to their country of origin. Counselling regarding eligibility for subsidiary protection or other opportunities for integration – some persons have been living in the centre for years – is not a priority. Nevertheless, there is an extensive school and language program available, especially for children who may also attend public schools if their skills correspond to the required qualification (which is the case for 34% of the pupils having attended a first language and training course in school rooms situated in the centre itself). The centre offers vocational training courses for adolescents and adults who may also apply for a stay in the centre in preparation for their voluntary return to their country of origin. The centre has been regularly criticised by refugee councils and local groups since its existence.

There is no independent social or medical service, so the head of the social service of the centre itself was the interview partner for QC. Twice a week, a NGO project offers legal information.

Overall, the centre's staff seemed intent on perpetually delaying the interviews with refugees by insisting on touring the numerous training facilities in the centre, despite the fact that the supervisor asked for contacts several times in advance of the visit. It was thanks to a member of the Council Refugee Niedersachsen that an interview with a chronically ill woman, mother of two nearly adult girls, took place, although the centre's team tried to prevent it by saying that the woman's case was not representative as she was preparing to be transferred to a open accommodation due to her poor health.

Two other women were interviewed as proposed by the centre's social service: single women, who were a victim of domestic violence, and a minor girl, living with her family (6 children) and parents in the centre after having passed her first months in Germany alone with two more sisters and their uncle. The parents and further sisters joined them in Germany some months ago.

All interviews took place in the presence of two different social workers, the first obviously as control in presence of the social worker being responsible<sup>36</sup> for the woman's case, the two others in a frank atmosphere and considered to be a psychological help as the social worker was the reference person for the refugees.

There was no chance to interview men with special needs or signs of vulnerability (like aggression and drug abuse, mentioned by the staff) as the centre's team insisted that there were no vulnerable men and the only one whose case had been discussed previously ostensibly had left the centre for the day. Another family whose mother recently had given birth had apparently left the centre to visit some relatives. An opportunity to interview this family was only offered very late in the afternoon after the family had left the centre.

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<sup>36</sup> The system of "responsibility" of one person as housekeeper for each accommodation unit and of one social worker for the refugee family is similar to the concept of an open protected housing for people in social or psychological need.

### **3.3 The closed removal detention Center Eisenhüttenstadt**

(Sometimes referred to as a “departure center”) is only one building in a multi-building complex designed to house migrants and asylum seekers from their arrival through their eventual removal. A few hundred feet away from the detention center is a “family home” that houses asylum seekers whose claims are still pending, as well as the spouses and children of some detainees. There is also an initial reception center that houses asylum seekers upon their arrival. The complex is located in Eisenhüttenstadt, a small city with a population of approximately 25,000 just across from the Polish border.

The detention center was clean and orderly, but there is no avoiding the fact that it is a detention center. Barbed wire surrounds the building. Inside, the building is divided into four sections. During the day, detainees may move freely inside their section of the building, but no where else. Detainees are allowed approximately an hour to an hour and a half of time outdoors each day, maximum two hours. Each section is allowed outdoors at different times. Additionally, men and women may not be outdoors at the same time. The detention center has space for 108 persons. At the time of our visit, however, there were only 18 individuals detained in the center.

Although we interviewed three detainees, only one individual formally met the study’s definition of a particularly vulnerable person. According to the detention center staff, there were no other particularly vulnerable individuals housed in the detention center at that time. The following issues arose in the interviews and conversations with detainees and staff.

Social support services: There is no regularly accessible, on-site social service for detainees. There are three “social workers”<sup>37</sup> or social support staff who work in the “Family Home.” The social support staff member with whom the interviewers spoke is one of the three staff members assigned to the Home, but is frequently called to the detention center to assist with translation (she speaks English and French) and with other issues. Detainees who get to know her through these visits sometimes request her presence, and she also assists in arranging visits between spouses and children when one family member is detained and the remaining family members are kept in the Home. The social support staff do not, however, have regular access to the detention center, nor is there any type of social support program that does. For purposes of the interview, this meant that many questions were unanswerable, since the interviewee simply did not have enough regular contact with detainees to respond knowledgeably.

**Separated Families:** According to discussions with the staff of the detention center, it is the regular practice of Bundesland Brandenburg (federal state of Brandenburg) to detain one adult family member, usually the father, while housing the spouse and children in the “Family Home” in order to prevent the entire family from absconding. The Family Home is an open facility approximately several hundred feet away from the detention center. The spouse and children housed in the Family Home may visit up to twice a day for two hours at a time. In single parent families, where there is only one parent available to detain, the child is cared for by a youth home, meaning that the children of single parents are often completely separated from their only family. The only “vulnerable” person interviewed in Eisenhüttenstadt was, in fact, a single mother whose 15 year old daughter is being housed in a youth home approximately 45 kilometres away. She is able to visit her mother twice a week for two hours each time.

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<sup>37</sup> The staff serving as social workers are employed by the same private firm (BOSS) that provides security services for the detention center and not necessarily formally trained as social workers. Therefore, we use the term social support staff in this report. This is not intended as a commentary on the abilities or commitment of the social service staff. Indeed, the staff member with whom we spoke seemed very kind and concerned about the welfare of the detainees. Rather, it merely reflects the reality that the term “social worker” implies a certain level and type of training that may or may not be a requirement for social support staff employed by BOSS.

Access to Legal Advice and Assistance: Access to legal aid remains a contentious and disputed issue in the Eisenhüttenstadt detention center. The Brandenburg Ministry of the Interior offers one hour of free legal advice to every resident. Through an agreement with the local lawyers' association of Frankfurt Oder, a lawyer is available twice a week to provide one hour of legal advice. Detainees must register in advance in order to secure translation services, which are also provided by the detention center.

A number of issues regarding the adequacy of and access to legal aid at the detention center came up during the visit. Flyers were posted in multiple languages announcing the availability of the one hour's worth of free legal advice, along with a sign-up sheet for detainees to indicate their interest. However, at least one detainee interviewed indicated that he or she had been unaware of the availability of free legal aid, raising questions about the effectiveness of posting flyers as an outreach tool and whether detainees are orally informed of their right to legal advice.

The adequacy of the limited amount of legal aid offered (one hour of free advice) was also a topic of conversation during the visit. The Brandenburg Ministry of the Interior currently prohibits any other organisations or persons from offering legal counselling on the grounds that the arrangement with the lawyers' association is sufficient. Of course, if a detainee already has a lawyer or retains a lawyer during his or her stay, the lawyer is naturally permitted to visit. Indeed, detainees may receive visits from virtually anyone, provided the visitor registers himself or herself and knows the name of the detainee he or she wishes to visit. What the Ministry of the Interior does not permit, however, is the existence of additional on-site legal advice offered on a regular basis that would be open to any detainee. Indeed, the Diakonie has sought permission to provide regular legal counselling, at no cost, in addition to the service already offered by the local lawyers' association. As of the writing of this report, Brandenburg Ministry of the Interior continues to deny permission to provide such services.

As a result, detainees are practically limited to no more than one hour of legal advice. According to staff of the detention center and the Ministry of the Interior, if a detainee opts to take advantage of the existing option for legal advice, at the end of the hour the lawyer decides whether further legal action is warranted (for which the detainee would naturally have to pay). It is unclear which potential issues the hour of legal advice covers, but it is presumably limited to asylum and residency issues and the legality of detention. The interviewers have no reason to question the competence and independence of the lawyers currently providing legal advice. However, the limited time allotted (one hour) and the requirement that detainees pay for any additional services makes genuine legal representation a practical impossibility for most detainees. Particularly in light of the Diakonie's unique access to a network of specialized asylum lawyers, the interviewers remain puzzled at the Ministry's continued refusal of their offer to provide additional legal services beyond merely one hour and at no cost.

Access to Work and Recreational Activities: Detainees are limited to approximately one to one and a half hours of outdoor access per day. Officially, detainees are limited to up to two hours a day, but the detainees interviewed all reported being limited to either one or one and a half hours a day. Each detainee interviewed listed this limited amount of outdoor time as inadequate and in need of improvement. Additionally, access to recreational activities and paid work is extremely limited. The staff of the detention center also identified the lack of work opportunities as a problem. However, the weak economy in Eisenhüttenstadt makes it virtually impossible to secure employment opportunities for detainees. Detainees' opportunities to occupy themselves are extremely limited. There are two activity rooms. One room has a television, Playstation and a Kicker game. The other has a ping pong table and an exercise bike that appears to be 15 or 20 years old. Each cell also contains a television. Outdoors is a small soccer field and a volleyball net.

### ***3.4 The administrative reception and accommodation centre at Nostorf-Horst***

is situated 70 km outside of Hamburg and 7 km away from the next town, in Bundesland Mecklenburg-Vorpommern, in the same complex as the Federal Agency for Migration and Refugees BAMF. The geographic situation of the centre - like so many other so-called “jungle centres” far outside of towns or cities – limits access to translating and independent medical, psychological and legal services for financial and logistic reasons. The BAMF satellite office in Nostorf-Horst does not provide a specially skilled protection officer for the asylum interview with women having suffered gender-specific persecution and violence. Asylum seekers insisting in being interviewed by a specially skilled personnel of BAMF have to travel alone to the next satellite office to have their interview there.

The centre is unique in that it serves two separate Bundesländer which might be considered to be a pilot project, looking at the continuously decreasing numbers of asylum seekers succeeding to immigrate and pass a regular asylum procedure in open and de-centralised accommodation.<sup>38</sup>

The centre is also unique in that many of its “residents” are permitted to live outside the centre. It has a theoretical capacity of 650 places, with about 200 residents, among them about 120 refugees who have their official residence at the centre, but profit of their liberty of movement between two administrative districts and come to the centre regularly, however.

The remaining 80 residents who physically live at the centre tend to be more vulnerable and to require more services. The system of allowing refugees who are able to live on their own to do so, thus frees up staff time to meet the needs of more vulnerable refugees who live in the centre. The administrative director of the centre is also the director of the local migration office (situated in the same building with the BAMF). He described the history of the centre, which replaced the former national police headquarters of the former German Democratic Republic right at the former checkpoint. The breakdown of the local economy after reunification originally heightened animosity and aggression towards non-citizens. The tensions have dissipated over the years and the atmosphere today is at least neutral. Sometimes there is even friendly contact between local neighbours and refugees, which is fostered and encouraged by the head of the centre and the social service. The security service and the fence (without barbed wire) is justified as a security measure for the refugees. The centre’s location - 7 km outside the next town – was also chosen for security purposes; at the time of its construction in the early 90ies, an asylum accommodation centre had been burned down in the centre of Rostock.

Nevertheless, the geographic situation reinforces the social isolation especially of refugees who get a transfer from the reception centre to the accommodation centre inside the location itself. The centre originally served as reception centre for the first 3 months only, but the responsibility was recently widened – for economic and capacity reasons – to an accommodation centre. The long distance between the centre and Hamburg is especially disadvantageous for those originally registered in Hamburg, but obliged to live in the centre in Mecklenburg-Vorpommern.

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<sup>38</sup> The economic aspect of fusing centres and co-operating between several Bundesländer should not be left beside in the discussion of the reception and living conditions of third country’s nationals. The economic pressure to fill the capacities reinforces the trend of detaining asylum seekers for the whole period of time of their asylum procedure (no access to accommodation centre or even private housing, but staying in the first reception centre with limited access to integration opportunities and services). The second consequence of the economic pressure is the fact that migrants and refugees with toleration who do not fulfill all the conditions of social and economic integration are obliged to return in such integrative detention centres, leaving a private housing or accommodation centre.

Malteser Hilfswerk has provided social services under contract with the Bundesländer for years. It accompanies refugees to their asylum procedure and provides some legal information and advice. The language skills of the social staff are not sufficient to communicate with all refugees. There are strict disciplinary rules, including the requirement that the detainees clean the centre themselves. There is no other occupation opportunity at Nostorf-Horst and surroundings, so cleaning and taking care of children is the only way for refugees to make some money legally (1,05 € per hour according to the Act on Social Benefits for Asylum Seekers). The social service, which is available 24 hours a day, maintains very close contact with the refugees. The refugees who were interviewed appreciated this contact and support. But the fact that the social service's staff controls the rooms and has access to the rooms of the detainees even while they are absent, restricts intimacy and the feeling of being autonomous.

The accommodation centre does not provide education or services for children. Therefore, families with children, particularly school-age children, are transferred to more appropriate facilities as soon as possible.

The asylum seekers receive legal information about their situation at the moment of their reception, by viewing a UNHCR video on asylum in the waiting hall. There is an independent counselling project "fairness", offering information about the asylum procedure and supporting the asylum seekers in their contacts with the offices and agencies.

A medical doctor and two nurses are available every working day. The health statistics report a wide range of medical care, especially pre- and postnatal care for women.

The very morning of the visits, a woman came by taxi and gave birth to a girl practically in the waiting hall before emergency medical services could even come and take her to hospital. According to the information of the staff and confirmed by the "fairness" project team, it seems to be a regular event that pregnant non-citizen women who have lived somewhere in Germany for some time come to the centre some weeks or days before giving birth<sup>39</sup>. The same is said to be true by the centre's staff for refugees with health problems who stay in the centre until their needs have been met. (One of the men proposed for an interview had disappeared the day before, having lived in the centre for some months after an orthopaedic-surgical intervention.)

One of the four interview partners was a single young mother, having lived in Germany for nearly three years in a city about 300 km away from the centre. She came to the centre shortly before the birth of her first child, asked for asylum (without a real perspective of a positive answer as her country of origin is considered to be a safe country), received a middle-term toleration as her baby's father is German citizen. The toleration status prevents her of ever profiting of a humanitarian protection title. She has lived in the centre for nearly 9 months, suffering from the long distance between her and the baby's father without perspective of being transferred to a centre closer to him (they are not married) and especially hard is the fact that she has no job opportunity and no professional perspective despite she has good German language skills.

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<sup>39</sup> It is a regular procedure that a father with German citizenship will declare fatherhood, entitling the new-born to the German citizenship if the mother can prove her identity, thus the mother receives a limited permit of stay (1-3 years). It may be due to a real family background, but it is also reported in other centres that this procedure is part of a human trafficking, the (mostly African) mothers being obliged or forced to prostitution before and after the birth of the child in Germany.

Two phenomena concerning the interviews with refugees were significant for the staff's situation -and seem to be typical for these types of centre **in general**:

The social staff was particularly committed to “protecting” detained refugees in their first period of time in Germany. The risk of an over-protection found its expression in the situation with a single women in need of psychiatric help (borderline symptoms), but refusing to accept a treatment. We started to interview her (a professional woman translator, in presence of the social worker to whom the woman holds a good contact), but had to stop it after a few minutes as she started to refuse to talk in her original language and to misinterpret the interview situation in a neurotic way. The social service had already proposed a psychiatric institution to her some days ago as her auto-aggressive behaviour turned to a generally aggressive behaviour especially towards men. As she insists in staying in the centre, her will is respected, but it seems that no psychologist has ever been contacted<sup>40</sup>.

Two interview partners were proposed as being “**presumably vulnerable**” (a family with minors<sup>41</sup> (trauma) and a couple (supposed to have suffered psychological violence), the interviews demanded a translator (with an independent translation service).

Refugees being grateful for the service and the situation in the camp, committing themselves to social services or cleaning services often are considered to be “real” refugees and having been victim of severe events. Lacking the opportunity of a sort of social client's history (anamnesis), soft criteria of vulnerability like trauma or victim of violence remain undetected or at least not detected in a professional way.

### ***3.5 Open Accommodation Centre in Tübingen***

As the tendency to centralise and integrate different types of detention centres is quite recent, the opportunity to include an open accommodation centre in the study seemed to be important for two reasons. First, the Bundesland Baden-Württemberg is second only to Nordrhein-Westfalen in the number of first-time asylum applications (3.293 demands in 2006, Nordrhein-Westfalen with 4.909 in 2006<sup>42</sup>). Second, Baden-Württemberg delegates broad responsibility to its various municipalities in accommodating asylum seekers and refugees and municipalities have significant flexibility and autonomy in implementing those responsibilities. Thus, the visit to the accommodation centre in Tübingen provided an opportunity to compare a smaller scale municipal system with the larger accommodation systems managed at the Bundesland level.

The accommodation centre is one of two remaining centres of the municipality of Tübingen, housing 140 refugees in total. The administration and social service runs a team of experienced and personally committed persons in the municipal department of public security and social services with long-term vocational experience in the application of asylum and migration law. 82 detainees, the majority single men, live in two houses at the suburban edge of Tübingen.

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<sup>40</sup> One week later, the woman was transferred in a bigger town to an open accommodation centre with a very good social service; it was the accommodation centre of her choice, recommended by the independent project “fairness”

<sup>41</sup> The couple was very glad to benefit from the presence of a translator to express their urgent wish that their children should attend a primary school in order to prevent them from loosing a second school year in consequence of the flight of their country. Apparently there had been no chance of successful communication between the social service and the family despite numerous contacts before.

<sup>42</sup> The efforts to receive more data and information about the situation in Nordrhein-Westfalen and eventually to have access to an accommodation or detention centre in this Bundesland got stuck at a certain point, when the person responsible denied her responsibility due to a chronic lack of time. Some aspects may be taken into consideration in the interview with the administrative head of the closed detention centre in Büren.

The town is known for its academic and politically engaged population. There are a variety of “friendship-networks” for aliens offering counselling and/or language courses for asylum seekers or tolerated refugees who otherwise have no access to integration and language courses. The NGO networks, churches and the municipal administration have maintained regular contact with each other for years. Finally, the centre’s administrators reported that the close proximity to the University in Tübingen enables a wide range of services for vulnerable refugees that may be unavailable to accommodation centres in other Bundesländer

The two houses are in an acceptable shape, but cleaning is reportedly a problem. The refugees share the same washrooms and kitchen and are responsible for cleaning their own rooms. Refugees may also volunteer to clean the communal facilities (showers, bathrooms, etc.) in exchange for €1 per hour (the maximum amount permitted by German law). Currently, two families live in one house, most of the single men in the other. Conflicts and police controls are routine. A housekeeper is present on working days and keeps in contact with the head of the social service via mobile phone if nobody from the social staff is present in the centre’s office. For most of the accommodated persons, the accommodation centre will be their home for the indefinite future, marked by enforced unemployment and no access to any other integrative measures into social or economic life in Germany.

There was a strong interest in participating in the interviews as the refugees initially thought we would be able to offer help or support. Even when it became clear that they would not benefit from the interviews in any material way, they nevertheless wanted to participate. Most refugees saw the interviews as an opportunity to educate the European Parliament and others about their needs and situation. The most frequent and forceful complaints were also echoed by the social services staff and the administration, who see the daily effects of Germany’s policy of discouraging integration. Refugees living with a “toleration” status or awaiting a final decision on their asylum application – often for years – lack any control over any aspect of their lives or any chance to plan for their future. A literal purgatory, refugees living in the accommodation center are prohibited from working or participating in training programs. They may not leave the Tübingen area without permission.

Symbolically monetary regulations about provision of food and hygiene material (the refugees can choose from a list of articles whose value is defined in points) are viewed as humiliating because the goods are not available in sufficient quantity or quality.<sup>43</sup> Refugees receive €40 per month, with which they save for clothes (the centre distributes clothes twice a year – once in winter and once in summer), transport to town (most take a bicycle because they cannot afford the bus), telephone cards, and sometimes visits to friends outside the limited residence area. These visits are allowed three times a year and refugees must pay a 10 € administration fee just to apply for permission to leave. Thus refugees are doomed to sit around all day, despite wanting to work or engage in some productive activity, desperately wishing they were independent of public benefits.

To a one, all the refugees interviewed said they felt like they were living in a prison. The social work staff echoed these criticisms of Germany’s non-integration policy, saying: “It is like you take someone to school, but he is not allowed to attend lessons”.

One single man, suffering from visible psychological stress symptoms, wished to be interviewed in the presence of a social worker. Two more interview partners, single men having suffered violence in their countries of origin, answered our questions in German,

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<sup>43</sup> It should be noted that good intentions lie behind the point system. The centre’s administrators (the municipality of Tübingen) are prohibited from providing refugees with cash to purchase their own food and clothing and instead are required to provide meal packets and other goods directly. Thus, the point system attempted to introduce some modicum of choice for refugees into a system over which the local administrators in Tübingen also had no choice.

which they studied in the language courses offered by a local NGO, virtually the only activity available other than watching television. The predominant subject of our discussions and interviews was the heavy psychological toll resulting from the long period of uncertainty about the future inside or outside Germany and the lack of access to work or any sort of activities that provide a sense of humanity, purpose or self-sufficiency. The rhythm of this life makes it difficult after years of toleration to suddenly find access to the German job market if a work permit is ever granted. Independent of the refugees living in the two accommodation centres, the social service reported several cases of (attempted) suicide of refugees (family members and single persons) who had lived under these conditions for years. Obviously, the stress of such a situation can exacerbate trauma symptoms or other conditions of vulnerable refugees.

#### **4. Estimation of the conformity of the national and international law and the care for vulnerable persons**

As the second amendment to the national law has just been implemented after years of discussions – and accompanied by a one-voice criticism from the side of NGOs and UNHCR, it seems reasonable to refer to the new legal conditions when estimating the conformity of national and international law with special regards to the care for vulnerable persons.

The estimation can be summarised in the main following aspects:

1) Detention for re-admission had been one option of the actual Act on Asylum Procedures when refugees immigrated via airports without legal entitlement (airport asylum procedure § 18 a AsylVfG, see chapter 3.1.1.1). The second amendment is generalising these options and allows detention during the asylum procedure in order to clarify the responsibility of the respective country according to Dublin II convention (§ 15 Abs. 5 AufenthG-E, § 14 Abs. 3 Satz 3 AsylVerfG-E). Furthermore, there will be no more option for appeal against this detention order for detained asylum seekers – which deprives unaccompanied minors, separated family members and other vulnerable groups of their voice and their access to a lawyer or at least legal support. The new law does not respect international laws defending detention during the asylum procedure.

2) The European Reception Directive is not respected concerning vulnerable groups nor are there defined any minimum standards for asylum seekers during their asylum procedure. Access to treatment is not granted for people in need. The rights of unaccompanied minors as defined in various European directives are not explicitly mentioned, but the duty to accept x-ray procedures in order to estimate the correct age is re-introduced into German law (§ 49 Abs. 6 AufenthG-E).

3) Financial sanctions and imprisonment as sanctions of the non-respect of the residence duty of refugees during their asylum procedure and living with a toleration (the obligation to stay in the immediate administrative surrounding of the centre or housing, §§ 85 Nr 2 and 86 AsylVerfG) are not conform with the European Reception Directive.

4) The European Qualification Directive foresees that refugees with subsidiary protection are entitled to a permit of stay. This entitlement has not been and will not be granted in German law, there will be only an option for a permit of stay (§ 25 Abs. 3 AufenthG-E).

5) The European Qualification Directive being more generous than the German immigration law will be only part of a reference in the second amendment of the German law, but there will be no concrete definition of the prerequisites for subsidiary protection (§ 60 AufenthG-E).

## **5. Conclusions /short list of recommendations**

### ***5.1 recommendation concerning airport asylum procedure:***

1) The very short delay of the asylum interview in the first days after immigration should be prolonged in order to allow a physical and psychological recovery of the refugees, facilitating a fair asylum interview.

2) Vulnerable persons whose vulnerability proves to be a risk factor for their return and life in their country of origin should be granted an immigration permit for humanitarian reasons, to clarify the humanitarian permit of stay.

### ***5.2 recommendation concerning social support systems/detention centres:***

Given the key role that social workers can play in identifying symptoms of trauma and other characteristics that trigger the “particularly vulnerable” label and its accompanying rights, the detention centres should institute an independent social service program. At a minimum, such a program should offer weekly office hours during which any detainee could seek counselling or assistance. In Eisenhüttenstadt in particular, the detention center administration should allow social support staff who work in the Home to offer regular office hours, once or twice a week.

### ***5.3 transparency of the asylum procedure:***

The multiple responsibilities in the reception and questioning of asylum seekers should find a clear-cut common intersection concerning the identification of vulnerability as defined in the European Qualification Directive – independent of political specialities in the 16 federate states/Bundesländer. Official reporting on vulnerability, especially with regards to subsidiary protection, is rare and arbitrary and does not allow a systematic and humanitarian response to the needs that should be identified by independent medical and social experts as soon as possible after the moment of immigration.

### ***5.4 Detention and Dublin II:***

- Under no circumstances should asylum seekers be detained
- For non-asylum seekers subject to a removal order, detention should last no longer than absolutely necessary to execute the order and under no circumstances should it exceed one month.
- Prohibit the detention of the elderly, the disabled and minors under 18 years of age
- Refugees in detention pending removal should not be governed by regulations written for criminal prisons. Any regulations governing removal detention should reflect the fact that it is administrative detention of non-criminals and should include, at a minimum,
  - Unlimited access to an outdoor area during daylight hours
  - Unlimited access to visits during working hours and weekends
  - Access to a telephone free of charge
  - Permission to retain cell phones and other non-dangerous personal property
  - Access to work and recreational activities
  - Unrestricted access to an onsite social worker or counselor
- Detention centres should not be permitted to restrict access to legal representation in any way. Detainees must be permitted unrestricted access to legal representation of choice, including the opportunity to meet with representatives offering free or pro bono legal services.
- Require genuine judicial review of all detention orders, including mandatory notice of any hearing at least 7 business days in advance.
- Amend Articles 19 (1) & (2) and 20(1)(e) of the Dublin II regulation to require:
  - Written notification of any decision to transfer an individual pursuant to a “take back” or “take charge” request;

- That such notification be served on the individual (and counsel if he or she is represented by counsel) no less than 30 days in advance of the pending transfer;
- That written notification include the date of such transfer;
- That appeal of the transfer order stay any execution of the transfer pending a decision by a judge (at least through the first level of review)

#### **Others<sup>44</sup>**

- Basic rights (especially food (self-relied nutrition), shelter, medical treatment, education) should be granted for all non-citizens irrespective of their legal status
- Social support (economic and social integration, thus also access to job opportunities) should be given to all non-citizens irrespective of the legal status and of the assumed length of stay
- Quotation concerning residence rights: „If a third-country national cannot be returned for a certain period (e.g. three months) he should be provided with a residence permit so that he can organise his integration into German society. This would replace the current toleration“.

## **6. List of contacts (in detail see annexe 2 for the expert interviews)**

1) Expert interview with Anni Kammerlander, Member of the Board of the German Association of all (currently 20) psychological/social Centres for Refugees and Victims of Torture BAFF (Bundes- Arbeitsgemeinschaft der psychosozialen Zentren für Flüchtlinge und Folteropfer), e-mail: anni.kammerlander@refugio-muenchen.de

2) Expert interview with Thomas Gittrich (German representing Separated Children in Europe Programme) and Albert Riedelsheimer (director of the national association for unaccompanied minors BUMF (Bundesverband Unbegleitete Minderjährige Flüchtlinge) e-mails : t.gittrich@b-umf.de, a.riedelsheimer@b-umf.de

3) Expert Interview with Tim Schröder, Member of the Board of the German Section of amnesty international, responsible for the subject “Political Refugees”, e-mail: tim.schroeder@amnesty.de

4) Expert Interview with Frank Gockel, chairman of the association „Hilfe für Menschen in Abschiebehaft Büren e.V.“, Gockel@gegenabschiebehaft.de

5) Telephone interview with Tobias Pieper, author of the dissertation “The centre as structure of the German Refugee Policy”, concentrating on the situation of accommodation centres, being published end of 2007, e-mail: tobias.pieper@web.de

6) Telephone interview and discussion of figures of the Federate Office for Migration and Refugees, Klaus-Peter Richert, Department “Steering of Asylum Procedures”, BAMF Nürnberg, e-mail: Klaus-Peter.Richert@bamf.bund.de

7) informal exchange with the UNHCR German liaison officer, Dr. Constantin Hruschka in addition to his documents concerning the recognition of refugees and the European directives (unpublished exposés as of November 2006 and 24 June 2007), e-mail: hruschka@unhcr.org

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<sup>44</sup> These recommendations support the ones made by the JRS, resulting from their recent case studies on detention.

## **Annexe 1: Selected literature and links**

- ❑ amnesty international (ed.): „asylinfos“ 2003-2007
- ❑ Bast, Jürgen, The Legal Position of Migrants - German Report. In: Recent Trends in German and European Constitutional Law. German Reports Presented to the XVIIth International Congress on Comparative Law, Utrecht, 16 to 22 July 2006, Eibe Riedel, Rüdiger Wolfrum (Hrsg.), Beiträge zum ausländischen öffentlichen Recht und Völkerrecht Bd. 188. Springer, Berlin u.a. 2006, 63-105.
- ❑ BAMF (2005): Illegal aufhältige Drittstaatsangehörige in Deutschland. Staatliche Ansätze, Profil und soziale Situation“; Forschungsstudie 2005 im Rahmen des Europäischen Migrationsnetzwerks; Nürnberg, 2005
- ❑ BUMF (ed.): „Aktualisiertes Positionspapier des Bundesfachverbands Unbegleitete Minderjährige Flüchtlinge e.V. zum Gesetzesentwurf der Bundesregierung – Entwurf eines Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union“, März 2007
- ❑ CPT/Inf : Report to the German Government on the visit to Germany carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (20 November to 2 December 2005); Strasbourg, April 2007
- ❑ Dokumentation „Studientag zur Abschiebungshaft“, ed. Bayerisches Aktionsbündnis gegen Abschiebungshaft, May 2006
- ❑ European Council on Refugees and Exiles (ECRE): „Summary Report on the Application of the Dublin II Regulation in Europe“, dt. Zusammenfassung Liliane Danso/Pro Asyl, März 2006
- ❑ European Migration Network: „Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the Reception System in the EU Member States“, May 2006
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- ❑ PRO ASYL, „Familientrennung durch Abschiebung – Eine Falldokumentation über den Umgang deutscher Behörden mit ausländischen Familien“, December 2004
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- ❑ UNHCR Germany: summary of EU legislative with special regards of Unaccompanied Minors (January 2007)
- ❑ 10 Flüchtlingsorganisationen und Wohlfahrtsverbände sowie UNHCR: “Gemeinsame Stellungnahme zu dem Entwurf des Gesetzes zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union in der Fassung vom 8. Februar 2007”, März 2007

### **links:**

**[www.abschiebehaft.de](http://www.abschiebehaft.de)**

**[www.amnesty.de](http://www.amnesty.de)**

**[www.asylnet.de](http://www.asylnet.de)** (press releases, country informations updated)

**[www.bamf.de](http://www.bamf.de)**

[http://www.bamf.de/cln\\_043/nn\\_566316/SharedDocs/Anlagen/DE/Migration/Publikationen/Forschung/Forschungsberichte/fb2-illegale-drittstaatsangehoerige.html](http://www.bamf.de/cln_043/nn_566316/SharedDocs/Anlagen/DE/Migration/Publikationen/Forschung/Forschungsberichte/fb2-illegale-drittstaatsangehoerige.html)

**[www.bim.bund.de](http://www.bim.bund.de) and [www.bundestag.de](http://www.bundestag.de)**

<http://dip.bundestag.de/btd/16/050/1605065.pdf>

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**[www.eaberlin.de](http://www.eaberlin.de)** (see 7th Berlin Symposium on Refugee Protection, 18 June 2007)

**[www.fluechtlingsinfo-berlin.de](http://www.fluechtlingsinfo-berlin.de)** ([www.fluechtlingsinfo-berlin.de/fr/pdf/Classen\\_Hohenheim\\_BleibeR.pdf](http://www.fluechtlingsinfo-berlin.de/fr/pdf/Classen_Hohenheim_BleibeR.pdf))

**[www.integrationsbeauftragte.de](http://www.integrationsbeauftragte.de)**

[www.integrationsbeauftragte.de/wiki.bleiberechtsbuero.de/index.php/Bleiberechtsbroschue](http://www.integrationsbeauftragte.de/wiki.bleiberechtsbuero.de/index.php/Bleiberechtsbroschue)

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<http://www.jrseurope.org/EPIM/Desitute%20Forced%20Migrants.pdf>, pp.26-39 case studies in Germany

<http://www.jrseurope.org/EPIM/Policy%20Positions%20for%20Website.pdf>

**[www.proasyl.de](http://www.proasyl.de)** [http://www.proasyl.de/fileadmin/proasyl/fm\\_redakteure/Archiv/presseerl/PE\\_21.\\_Mai\\_2007.pdf](http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Archiv/presseerl/PE_21._Mai_2007.pdf)

[http://www.proasyl.de/fileadmin/proasyl/fm\\_redakteure/stellungnahmen/Stellungnahme\\_PA\\_AEnderungsG\\_16.5.2007.pdf](http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/stellungnahmen/Stellungnahme_PA_AEnderungsG_16.5.2007.pdf)

**[www.separated-children-europe-programme.org](http://www.separated-children-europe-programme.org)**

[http://www.separated-children-europe-programme.org/separated\\_children/publications/assessments/index.html](http://www.separated-children-europe-programme.org/separated_children/publications/assessments/index.html)

**[www.unhcr.de](http://www.unhcr.de)**

<http://www.unhcr.de/uploads/media/UNHCRZuwanderung.pdf>

<http://www.interkultureller-rat.de>

<http://www.interkultureller-rat.de/Themen/Abschiebehaft/L%E4nderstatistikAbschiebehaft04-05-Endf.pdf>

### Expert interviews for EP study STEPS/CIMADE „vulnerable refugees“

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1) Interview with Anni Kammerlander, Member of the Board of the German Association of all (currently 20) psychological/social Centres for Refugees and Victims of Torture BAFF (Bundes- Arbeitsgemeinschaft der psychosozialen Zentren für Flüchtlinge und Folteropfer) Munich, 6 May 2007, 14h30-15h15

Who identifies when the special needs of traumatised refugees in Germany?  
transit area: not known

administrative detention centre during the first weeks/months of the stay in Germany: there is the standard medical check on infectious disease made by the public health department and some medical consulting of doctors or nurses (depending on the respective Bundesland), but no standard procedure for identifying traumatised persons

most of the psychological/social centres' clients use to be transferred by social services, by refugee councils, by doctors/nurses/psychiatric clinics or even by lawyers – depending on the individual commitment of volunteers or professionals around the refugee/asylum centres, sometimes refugees come on their own during an acute psychological crisis, even years after the event that caused the trauma. For them, the language barrier prevented a first call or contact at an earlier time, if there are no relatives or close friends to help them  
an important number of traumatised refugees see a psychological or social centre at a very late moment if not too late

according to Dublin II, a trauma is not hindering a transfer back to a third safe country in Europe; the only criteria for this readmission transfer is the fact if the person in question is physically able to travel (diagnosis made by public health services or doctors in the prisons or at the police stations); traumatised refugees are stabilised by medicaments in order to be able to enter the airline. Only a total breakdown will result in an interruption of the readmission. Sometimes it is possible after a breakdown to take up some administrative procedures with a little chance that the trauma will be recognised according to a psychologist's opinion. This expert opinion used to be respected to a higher extent before expulsion or removal in earlier times.

In context with the expulsion of refugees who have been victim of violence, the Federal Office for the Recognition of Foreign Refugees BAMF (Bundesamt für Migration und Flüchtlinge) tends to reduce its interest on the existence of a hospital and/or medical treatment in their country of origin resp. of expulsion and providing them with medicine rather than to clarify the local quality and access to treatment.

Who is in charge of an adequate treatment of refugees with special psychological and/or medical needs due to trauma?

The European reception directive says in its preface, paragraphs 34/35 and in special in article 29 (3) that vulnerable refugees should have access to sufficient medical and social care. In fact, costs of treatment, including costs for translators and travel costs, have to be covered by the psychological centres themselves, mostly financed by donors. Public financing only allows the existence of such specialised centres with expert personnel.

It depends on the social administration of each Bundesland if and under which conditions refugees in need of psychological or medical treatment may have the permission to leave their residence in order to attend a therapy session outside their place of residence (as most of the centres are in bigger towns). There are no standardised guarantees or rules about the public social services competence or duty to cover the costs of transport, it is always an individual decision which the psychological centre has to apply or to fight for.

According to the European directive for victims of trafficking, therapies and care is granted to women willing to testify in a trial at court.

During the past 4 years, there has been no change in this context, neither in a positive nor in a negative sense.

In general, there is no interest in political discussions and advocacy for the application of EU directives for refugees in Germany, studies of experts just stay inside their associations

What would you recommend in order to better respect the need of traumatised refugees?

There should be a standardised and culturally acceptable first interview with refugees at the administrative reception centres. In a pilot phase, these interviews should be made by an external medical service, later on the public medical services might be charged with this task. The interview should take place before the asylum interview at the Federal Office for the Recognition of Refugees.

The European Reception Directive should be respected in the formulation of § 6 AsylBewLG (Act on Social Benefits of Asylum Seekers), enabling a care in time.

The entitlement of a therapy for traumatised refugees should be fought through in a process at the Social Court of Germany

Being severely traumatised should grant the person concerned to stay in Germany with a humanitarian refugee status in order to prevent re-traumatising experience as consequence of removal

The behalves of refugee children should be taken into consideration with care and pedagogic services at the centres (with skilled personnel)

Furthermore, the family unity has to be respected in a culturally adapted way (not restricted to the European demographic comprehension of a small family unit), especially in the procedure of attributing refugees throughout Germany by a centralised administrative responsibility. There is nearly no chance for refugees to find the way back to family members living in another Bundesland – at least not during their asylum procedure and when living with a toleration for years.

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2) Interview with Thomas Gittrich (German representing Separated Children in Europe Programme) and Albert Riedelsheimer (director of the national association for unaccompanied minors BUMF (Bundesverband Unbegleitete Minderjährige Flüchtlinge)

Munich, 21 May 2007, 13h30-14h45

What is the position of Germany in the Separated Children in Europe Programme ?

The programme was founded in the middle 90ies as synergy between Save the Children Alliance and UNHCR, both committed in the definition of obliging standards in dealing with Unaccompanied Minors in Europe; result: statement of good practice

BUMF joined this strategic union in 1999, meanwhile there are some 30 member states (UE + Cyprus, Norway, Switzerland and – to some extent - Croatian, Albania)

UE took over the funding and replaced UNHCR in this role, the standards/guide was translated in most of the relevant languages; a first evaluation (1999/2000) and a second in 2004/05 validated the application of the standards (see [http://www.separated-children-europe-programme.org/separated\\_children/publications](http://www.separated-children-europe-programme.org/separated_children/publications))

Today, due to a limited budget, BUMF and other members concentrate on organising training sessions for services, authorities and social workers once a year concerning the application of the guidelines

Further activities of BUMF in the international context: lobby-guide in context with children's rights, investigations concerning Dublin II, and currently a study/project on violence against children in the situation of migration (DAPHNE-project)

If you compare the situation of Unaccompanied Minors in Germany 10 years ago and today, what is the difference?

Different:

The fact that German's National Police checks already for Unaccompanied Minors at the airport of the countries of origin (based on bilateral agreements), allows only UM with visa to migrate to Germany.

Gender-specific subsidiary protection for girls/women has improved, due to the Immigration Law (2004 Zuwanderungsgesetz) and especially thanks to a strong commitment of German's UNHCR Office in this matter

Prostitution/human trafficking is increasing

Still the same:

Respect of family unity is neglected (in Dublin II application as well as within Germany with the specifics of the federate responsibilities and residence restriction)

Determination of the correct age: BUMF was one of the organisations fighting for the abolition of x-ray-procedures in order to define the age of minors (within a range of mistake of about 2 years, which makes the procedure useless especially as means of clarification if the minor's age is 16 or 18 years). The medical test of age determination has been abolished in the beginning of 2000, to be re-introduced with the second amendment of the Immigration Law (Zuwanderungsgesetz) in 2007.

Not really respect of the well-being of minors in the situation of removal to their country of origin (no independent clearing of the minor's situation in his/her country of origin (should be done by NGOs and partner organisations as national or IOM statements proved to be not sufficient in some cases), no guarantee of pedagogic care (in- or outside the family) after removal, no (pedagogic) follow-up after "Lufthansa-Shuttle-Service")

Long delay of clarification of a possible removal before adulthood, long period of insecurity about the future, delay of removal decision until the moment of the 18th anniversary in order to organise the sudden removal then without adequate support

What are the most critical points of the situation of Unaccompanied Minors in Germany?

detention and Dublin II transfers for Unaccompanied Minors (especially transfer back to France is said to lack some assurance of pedagogic care afterwards)

wide range of conditions and administrative decisions concerning stay and integration when comparing the situation in cities and in rural areas/small towns

wide range of diverse conditions comparing the 16 Bundesländer

What would you recommend in order to better respect the need of Unaccompanied Minors?

Above all, the respect of the well-being of the Unaccompanied Minor should have first priority in all decisions (inside or outside Germany), be it concerning removal, be it concerning family re-unification in a Third Country (International Social Service Red Cross), be it concerning asylum procedure)

The removal to the country of origin should be really voluntary, not only the option to necessarily accept if or as other measures of integration stay out of question

The removal to the country should provide a transfer of pedagogic responsibility to a local youth NGO

- 1) If no adequate solution of removal, family re-unification or asylum decision can be offered to the Unaccompanied Minor, the German Immigration Law should offer a humanitarian status due to the fact of being Unaccompanied Minor and offer integration measures to the concerned.
- 2) The permanent residence permit foreseen in the German Immigration Law should be offered to Unaccompanied Minors in the same period of time as it is demanded for children of Third-Country families (minimum stay 6 years, for UM it is 8 years).

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3) Interview with Tim Schröder, Member of the Board of the German Section of amnesty international, responsible for the subject "Political Refugees"  
Munich, 27 May 2007, 11h00-12h00

What is the role of amnesty international in Germany concerning advocacy for refugees, especially vulnerable refugees?

- For reasons of neutrality and of protection of the members or people co-operating with amnesty international, the organisation's mandatory for human rights' protection in the country where the respective office of ai has its site (prohibition of "work-on-your-own-country WOOC"). But the prevention of human right's violations justifies the national mandatory of ai-sections in favour of (political) refugees.
- It is at this cross-section that the international council of ai decided in 2001 to widen its mandatory to advocacy work regarding Economic, Social and Cultural Rights (WSK-Rechte) based on the international Civil Pact and on Social Pact (1976).
- The current discussion in Germany is about when and to what extent ai Germany will consider the respect of ESC-Rights with regards to the countries of origin of refugees, the asylum reasons and possible reasons for humanitarian protection. Some theses have been formulated in autumn 2007, a "dignity-campaign" with special regards to ESC-Rights is going to start in 2008, keeping the subject on the primary agenda up to 2011.
- The theses/position paper from autumn 2007 focused on health (esp. trauma and asylum procedure) and education. The overall objective of the campaign will be the standardised consideration of ESC-Rights in decisions concerning the removal and expulsion of refugees.
- The 7<sup>th</sup> symposium about refugees held in Berlin on 18<sup>th</sup> of June 2007 is about the same question: => violation of ESC-Rights as reason for refugees to leave their country (especially environment, access to natural resources). Is there a need to add criteria for humanitarian protection to the current legislative framework in Germany?
- It is the intention of ai to include illegal persons and people in irregular situation in this discussion
- ai started to train its teams for political refugees in applying ESC-rights in the counselling
- the "Forum Menschenrechte" (Forum Human Rights), an advocacy-instrument of German NGOs specialised on refugees (among them BAFF, see expert interview 1) is going to demand an expert report about the question how ESC-Rights may be respected in subsidiary protection in Germany
- in context with the European directive of removal, ai demands a standardised checking procedure about if the refugee whose removal shall be prepared is to be considered as vulnerable or not
- in the second amendment of the Immigration Law (June 2007), the directive on victims of human trafficking and the directive on reception of third country's nationals have been considered especially concerning the access to therapy for traumatised people and the permit of stay (at least for 6 months) for victims of human trafficking.
- Currently, the scientific study of Prof. Hailbronner (University of Konstanz) is the most recent documentation and analysis of the application of all European directives in the German immigration law

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#### **4) Interview with Frank Gockel, President of the association Help for People in Removal Büren, 21 June 2007**

##### **What, in your experiences, are the biggest problems facing detainees in the Detention Centre in Büren?**

- Inadequate medical care, lack of judicial oversight or access to legal assistance, the inordinately long time spent in detention, the detention of people who don't belong in detention at all, like disabled persons, minors or the elderly, the detention of non-citizens who have lived in Germany all their lives, and the chaos surrounding Dublin II transfers are the biggest problems here. We used to have a problem with lack of access to religious services, but that seems to be improving. However, it took us ten years to convince the administration here to offer a catholic service for detainees who were catholic.
- In the area of medical care, there are a number of enormous problems.
  - Doctor-Patient relationships: There's very little trust between the detainees and the doctors here because the doctors don't provide enough information. We frequently get complaints from detainees that the doctor simply instructs them to take certain medication without explaining what it is or what the diagnosis is. The issue of trust is particularly problematic in the mental health area. The psychiatrist who is available here to treat detainees, is one of the few psychiatrists in Germany who is willing to participate in approving detainees with trauma symptoms or other mental health issues as psychologically capable of being deported, resorting to sedation if necessary. He no longer participates in removals because the German Medical Association (Ärzttekammer) banned him from issuing expert medical opinions (Gutachten) attesting to detainees' fitness to travel because of the methods he used. However, the detainees here know who he is and don't trust him. Additionally, we've had numerous reports from Turkish detainees that he exhibits hostility towards them, telling them they should just go home.
  - Quality of care and response times: We repeatedly find that the doctors here don't respond quickly enough to detainees' medical needs and when they do, the response is often insufficient. In one case, a detainee lost an eye because he had to wait two days for medical care.
  - Dental care: There are very few dentists in the area who are willing to treat detainees because they get paid so little by the administration. The last dentist ultimately stopped treating detainees at all because of the cost. The new dentist who is here now refuses to provide any kind of dental treatment other than pulling teeth and giving pain medication.
- Detention of vulnerable refugees
  - Persons with disabilities and severely ill persons: We repeatedly see people here who just shouldn't ever be detained at all, including persons with disabilities, seriously ill persons, minors and elderly persons. We've even seen a detainee in a wheelchair as well as a detainee over 70 years old. Such vulnerable persons should never be detained. Also, seriously ill persons and persons with disabilities are often paralyzed with fear of the consequences of removal because there is not adequate medical care in their home countries.
  - Minors: The consequences of detaining minors with adults is particularly severe. While minors here officially live in their own secure hallway, that section also houses young adults through age 22 or 25 or so. We recently had one youth who was so traumatized by his experience of being jailed alongside adults that he now has to spend the entire summer in a psychological clinic. Additionally, the detention centre here doesn't have social workers trained to meet the needs of minors and young persons. The guards who work with minors have a little extra training, but they don't have a degree in social pedagogy or social work. Finally, as you might imagine, minors detained here have problems with school attendance.

- Traumatized refugees and torture victims

The fear of removal and the consequences in a detainee's home country are so extreme that we often see suicide attempts. I would estimate that we see either suicide attempts or incidents of severe self-injurious behaviour once or twice a month. If we believe someone is at risk of suicide, then we warn the detention centre administration, but even then the person is not offered treatment but only placed under observation.

- Inadequate judicial review

As you know, detention can last up to 18 months in Germany, but it's initially only ordered for 3 months. After that three month period, if the authorities request an extension, a judge must review the case to determine, among other things, whether the police have made a good faith effort to obtain travel documents and the likelihood that removal will actually take place. While the initial detention orders can come from all over Germany, once someone is here there is only one judge who reviews and decides all requests for an extension after three months. Out of 10,000 requests for an extension of detention, this judge has only ever refused four, and two of those were for procedural flaws raised by the advocate, not for substantive reasons. I've attended many, many of these so-called "hearings" on extension requests. They never last more than 2 or 3 minutes (including translation time) and the only 2 questions the judge ever asks is 1) who are you/where are you from, and 2) do you want to go back voluntarily. However, even if the person responds that he or she does want to go back voluntarily, the judge grants the extension order anyway. An appeal is possible through the Landgericht and a subsequent appeal to Oberlandesgericht (Court of Appeals), but amendments to the FeVG will soon eliminate the right to appeal to the Oberlandesgericht. Finally, on a related topic, lawyers here frequently complain that they only get 24 hours notice of any hearings regarding their clients. In my opinion, the right to judicial review of your detention is a total sham, at least here in Büren.

- Detention of long-term German residents

Over the past few years we started to see the increasing detention and removal of non-citizens who've lived in Germany all their lives. They often only speak German and have no connection to the country of their citizenship. As far as I can tell, this new group represents the second generation of families with "tolerated" status. They may have had tolerated status as children and are now adults and subject to removal. However, Germany is the only country they've ever known.

- Dublin II

Another new group we're seeing is persons being detained pending their return to another EU member state under Dublin II. The biggest problems we see with this group are:

1) detainees are provided with absolutely zero information about their rights or even when they might expect to be transferred (making judicial review practically impossible because there's no order to appeal until it's too late), and

2) many detainees have an enormous fear of being detained in the other EU land, where detention practices may be even harsher and conditions even worse. At the moment, the biggest Dublin II country among detainees in Büren is Greece, and many detainees are afraid of being returned there and put in jail.

### **What recommendations do you have regarding removal detention?**

Aside from fixing all the problems I mentioned above, I would also strongly recommend that the maximum time in detention be significantly reduced. I believe the maximum detention time in France is 32 days. I don't understand why officials in Germany should not need any more than one month to figure out if they will be able to arrange travel documents for someone. Additionally, I would also recommend that Germany amend its penal system law (Strafvollzugsgesetz) to provide for explicit regulations for removal detention. Right now, all persons in removal detention are subject to the same detention regulations as convicted criminals, which is completely unnecessary and often cruel. There are a few exceptions. For example, convicted criminals must work, while detainees here can choose to work. However,

if they don't choose to work then they're locked in their cells all day long. The current regulations governing removal detention were written for the purpose of regulating criminal prisons and with the same safety considerations in mind. The people here aren't criminals, but we treat them like they are.

