

**RESPOND**

## **Working Papers**

### **Global Migration: Consequences and Responses**

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## **Refugee Protection**

### **Germany Country Report**

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## List of Abbreviations

AfA	Reception Centre for Asylum Seekers   Aufnahmeeinrichtung für Asylsuchende
AIDA	Asylum Information Data Base
AMBA	Reception Management and Counselling for Asylum Seekers in Lower Saxony   Aufnahmemanagement und Beratung für Asylsuchende in Niedersachsen
AMIF	Asylum, Migration, Integration Fund   Asyl-, Migrations- und Integrationsfond
AnKER	Arrival, Decision and Return Centres   Ankunfts-, Entscheidungs-, und Rückführungszentrum
AsylbLG	Asylum Applicants' Benefit Law   Asylbewerber Leisitungsgesetz
AsylG	Asylum Act   Asylgesetz
AufenthG	Residence Act   Aufenthaltsgesetz
BAA	National Employment Agency   Bundesagentur für Arbeit
BAMF	Federal Office for Migration and Refugees   Bundesamt für Migration und Flüchtlinge
BGBl	Federal Law Gazette   Bundesgesetzblatt
BMIBH	Federal Ministry of the Interior, Building and Home Affairs   Bundesministerium für Inneres, Bau und Heimat
BMJV	Federal Ministry of Justice and Consumer Protection   Bundesministerium für Justiz und Verbraucherschutz
BVerfG	Constitutional Court   Bundesverfassungsgericht
EAE	First reception centre   Erstaufnahmeeinrichtung
ECRE	European Council on Refugees and Exiles
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EURODAC	European Dactyloscopy
GCR	Geneva Convention on Refugees
GDL	Transit Centre   Grenzdurchgangslager
GETZ	Joint Extremism and Counterterrorism Centre   Gemeinsames Extremismus- und Terrorismusabwehrzentrum
GG	Basic Law   Grundgesetz
GTAZ	Joint Counterterrorism Centre   Gemeinsames Terrorismusabwehrzentrum
IDM-S	Integrated Database Management System
LAB	State Reception Authority   Landesaufnahmebehörde
LEA	State First Reception Centre   Landeserstaufnahmestelle
LKA	State Criminal Police Office   Landeskriminalamt
MAXQDA	Software Package for Qualitative Data Analysis and Mixed Methods Research
NGO	Non-Governmental Organization
NTFN	Refugee Trauma Network   Netzwerk für traumatisierte Flüchtlinge in Niedersachsen
PEGIDA	Patriots against the Islamisation of the Occident   Patrioten gegen die Islamisierung des Abendlandes
PTSD	Posttraumatic Stress Disorder
RLC	Refugee Law Clinic
SGB	Social Code of Law   Sozialgesetzbuch
UNHCR	United Nations High Commissioner for Refugees
USVB	Qualified Social and Procedural Consultation Centre   Unabhängige, Qualifizierte Sozial- und Verfahrensberatung
VG	Administrative Court   Verwaltungsgericht
ZAB	Central Administration for Foreigners   Zentralstelle für ausländisches Bildungswesen
ZUR	Centre for Supporting Returns   Zentrum zur Unterstützung der Rückkehr

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## About the Project

RESPOND is a Horizon 2020 project which aims at studying the multilevel governance of migration in Europe and beyond. The consortium is formed of 14 partners from 11 source, transit and destination countries and is coordinated by Uppsala University in Sweden. The main aim of this Europe-wide project is to provide an in-depth understanding of the governance of recent mass migration at macro, meso and micro levels through cross-country comparative research and to critically analyse governance practices with the aim of enhancing the migration governance capacity and policy coherence of the EU, its member states and third countries.

RESPOND will study migration governance through a narrative which is constructed along five thematic fields: (1) Border management and security, (2) Refugee protection regimes, (3) Reception policies, (4) Integration policies, and (5) Conflicting Europeanization. Each thematic field is reflecting a juncture in the migration journey of refugees and designed to provide a holistic view of policies, their impacts and responses given by affected actors within.

In order to better focus on these themes, we divided our research question into work packages (WPs). The present report is concerned with the findings related to WP3, which focuses specifically on asylum procedures and refugee protection.

## Executive Summary

This report examines the asylum determination systems and refugee protection regimes of Germany from a multilevel governance perspective, taking into consideration the national level as well as the state and municipal one. Additionally it explores the legal framework, as well as its implementation and concrete practices, along with main narratives among public and state actors and the perception and experiences of asylum-seeking migrants from a historical perspective. The report reveals that after a key decisive policy change in 1993, codified in the so-called asylum compromise establishing central features that endure until today, the next decisive break was the developments of 2015/2016 – with the massive inflow of nearly 800,000 asylum-seeking migrants to Germany. This new increase in numbers led to a near collapse of the reception and procedural systems that had been cut back over previous years, producing in fact a self-made emergency situation.

The main perception of these developments as ‘refugee crisis’, which was soon depicted as a ‘state emergency situation’ and as ‘lack of state control’, made it possible that – despite the fact that a broad civil society movement emerged, and a ‘welcoming culture’ was publicly celebrated – several laws, regulations and procedural practices were able to be passed restricting access to the protection system, thereby lowering procedural rights. So very quickly, as we show in the course of the report, the main emphasis of state actors – also by means of a series of rather symbolic political initiatives – was on accelerating asylum procedures and enhancing deportation ones. Existing standards of rights and the rule of law were rather seen as hindrances and obstacles that should be diminished as far as possible.

The report also demonstrates that sectors of the state apparatus concerned with the asylum and reception systems who opted rather for a more humanitarian approach found it increasingly difficult to legitimate this policy. This in turn – and due also to the federal system, and with it the division of legal responsibilities between the various levels of governance – produced a quite heterogeneous landscape, with different political approaches by the states and local implementations. The effect was highly unequal access to, as well as implemented rights and protection standards for asylum seekers. The voiced experiences by interviewed asylum-seeking migrants we present throughout the report not only vividly demonstrate this fragmented legal landscape; they also show how at every step during their reception and processing granted rights are endangered and challenged.

This results from the way in which pre-procedural categorisations select and exclude some groups from either fully accessing the protection regime or reducing the chances thereof by procedural mechanisms. It is also a consequence of the way in which procedures are accelerated, hearings are conducted, stories are interpreted and vulnerabilities are acknowledged or not. Partly this is codified in law and regulations, partly it is an outcome of the specific implementation – but also of structural racism and a structural mistrust built into the bureaucratic and procedural system of the asylum regime in Germany, as well as of personal resentments among employees on various levels.

Against this background, our report and the many statements of asylum-seeking migrants, of NGOs and lawyers, all emphasise the need to have a broad civil society sector and volunteers that support asylum applicants through each and every step of their procedure, monitoring the performances of state institutions and filling the gaps where state provisions endanger the rule of law and fundamental rights – as codified in international European and national laws.



# 1. Introduction

This report on Germany's protection system is part of Work Package 3 of the EU Horizon 2020 Research Project 'RESPOND – Multilevel Governance of Mass Migration in Europe and Beyond'.

The report examines asylum determination systems and refugee protection regimes within Germany as developed since 2011. It explores track changes at the national and federal level, and their interconnectedness with changes on the EU one that occurred in response to managing recent migration movements – particularly focusing on the period since 2015. In fact, the developments of that year – with the massive inflow of nearly 800,000 refugees – can be seen as a decisive marker, leading in the summer and autumn months to a situation widely described as an emergency, with existing structures not adequately equipped to deal with these numbers. We see how the bureaucratic and institutional structures were reworked, and several laws passed restricting access to the protection system.

This country report aims to analyse the national protection regime (asylum procedure and refugee protection) with regard to policies and practices. Therefore, the asylum procedure is outlined in-depth – focusing on national legislation, changes in policies and their subsequent practical implementation. Since Germany is a federal republic, there are different regional governance strategies regarding reception and protection. In line with the focus of the Germany RESPOND team working on Lower Saxony and Bavaria the developments there are outlined as exemplarily. In addition, the analysis contextualises and embeds the changing protection regime in narratives on migration and refugee protection of mostly high ranked employees of national or state run ministries, municipal administrations and NGO representatives, reconstructing how those narratives as well as tropes of the asylum debate have been changing from a 'welcoming culture' to more restrictive and deportation-centred perspectives both within the state apparatus and among the general public.

In line with the overall RESPOND research methodology, the report also examines the perception of migrants subject to the protection procedures, as well as the role of NGOs and civil society – including their own experiences and perceptions. We try to draw on the experience of the interviewed asylum seekers as many times as possible; thus we do not follow a strict representative approach, rather an exemplary one that takes each biography and experience as singular and worth telling. Most direct quotes will be found in section 4, where we explore the implementation and practical sites of the legal framework. Especially the subsection 4.4. 'Procedural Practice – Problems and Deficiencies' mainly builds on the voiced experiences of asylum-seekers. But not all addressed issues and critiques can be backed by direct statements from the interviewed refugees, as our RESPOND team did not have access to each and every procedural phase and the different campsites – these diverge significantly across Germany due to the federal system and local practices.

The analysis shows that the asylum procedure in Germany was already increasingly marked by the rationality of blocking access for a wider number of groups to the protection system and process acceleration in the years before 2015. This tendency intensified in the course of the developments of 2015: the asylum procedure would become increasingly selective, leading to the categorisation and division of asylum seekers at an early stage in their procedure. This has been accompanied by a new focus on return policies, whereas procedural questions have become closely connected to the question of accommodation. We explore how these

developments – that have been widely legitimated as a means to increase the efficiency of the protection and return systems – rather contribute to the systematic exclusion of certain groups of asylum applicants, endangering the rule of law and legal protection standards as inscribed in international and European declarations and regulations.

Following the analysis of the national and local protection regime, the report outlines best practice examples on how an adequate protection system can be ensured. This takes into consideration the experiences of migrants, and the expertise of civil society and NGOs. Furthermore, we provide policy recommendations outlining strategies to reform and improve the protection system on the national level.

## 2. Methodology

The report at hand is based on a multi-layered analysis taking into account the interplay of different levels of societal and political action, as well as perception: the macro level of policymaking in respect to European and national states, the meso level considering the actions of NGOs and civil society in local contexts, and the micro level focusing on the daily realities of refugees.

The analysis further builds upon the results found in the RESPOND Germany country reports of WP1 ‘Legal and Policy Framework’ and of WP2 ‘Border Management and Migration Control’. In addition, also on legal documents – especially the German Asylum Act forms the central basis for the analysis of the legal framework. They are complemented with assessments by lawyers and researchers – drawing for example on the findings of the Asylum Information Data Base (AIDA) by the European Council on Refugees and Exiles (ECRE), and complemented by scientific cases studies on implementation questions.

Key aspects of the analysis derive from qualitative interviews – 25 in total – conducted in the years 2018/19, with members and high-ranking employees of important political and administrative institutions on the federal, the state (here, especially Lower Saxony) and the communal level who have been involved in developing and designing the German asylum system, as well as overseeing its governance and implementation. Unfortunately, our various attempts to obtain interviews with the Federal Office for Migration and Refugees (BAMF) were unsuccessful. In this respect, we have to rely on statements, newspaper articles, and mostly NGOs’ reports and experiences with the BAMF; additionally, we held interviews with central refugee advocacy NGOs, as well as with social workers, lawyers, and self-organised refugee support groups.

Nine interviews were conducted with representatives on the federal level: from the Federal Ministry of the Interior, Federal Ministry for Economic Development and Cooperation, Federal Ministry of Labour and Social Affairs, the Chancellery as well as with members of the Bundestag (from the party Die Linke/The Left). Additionally, also with a representative of Pro Asyl, as the federal umbrella organisation of the regional refugee councils. Eleven further interviews were conducted with state representatives of Lower Saxony, such as with the State Ministry of the Interior, the State Reception Authority (Landesaufnahmebehörde, LAB), Social Services in the reception centre of Bad Fallingbostel and Social Services in the reception centre of Braunschweig. Additional interviews were conducted with two members of the independent legal counselling service based in the reception centre of Bad Fallingbostel, run by the welfare organisation Diakonie (Deacony); with two members of the refugee councils of

Lower Saxony; with a representative of the Women's Centre of Friedland; and, with an asylum lawyer. One additional interview was conducted with the director of the Refugee Council of Hessen. Five interviews were conducted with representatives on the municipal level of the city of Göttingen, namely the Social Services Department, the Integration Commissioner (municipal and communal), the Migration Centre of Göttingen as well as with one welfare organisation overseeing refugee camps in Göttingen (see appendices).

Additionally, the report draws on 60 interviews with asylum applicants or refugees who have been granted protection, or who have received a negative answer but are still in the process of appealing (see 10. Appendix "List of interviews").<sup>1</sup> According to the quota/percentage of the main nationalities and home regions of arriving asylum seekers, we interviewed 22 from Syria, 13 from Iran, Iraq and Afghanistan, eight from Turkey, 13 from various African countries (Cameroon, Eritrea, Gambia, Nigeria, Senegal, Libya, Algeria), and four from Balkan countries (Serbia, Kosovo) that have been recently classified as safe countries of origin. Given the Germany federal system and the differences between the respective states, and even the local *Ausländerbehörden* (foreigners' offices) and courts, we interviewed asylum seekers in Berlin and the countryside of Brandenburg, in Göttingen (Lower Saxony) and in Munich (Bavaria). Due to the fact of encampment (half-closed camps) of asylum seekers with so-called low perspectives to stay – mostly concerning countries of origin classified as 'safe', outlined in detail below – we hardly could talk to asylum seekers going through such an accelerated procedure and living in mass accommodation centres. In these cases we had to ask officially for permission to conduct interviews, and the camp administration not only preselected interviewees but also reduced their numbers – so we stopped this approach, and rather relied on the experiences of NGOs (such as the refugee councils and Pro Asyl) who still had access to these camps with concern to procedural problems.

Most of the interviews were held in the mother tongue or in a language that the interviewee preferred to speak, as we provided trained interviewers fluent in the different regional languages (later translated into English or German); some interviews were directly conducted in German or English when the interviewee felt comfortable therewith. All interviewers explained the academic context of the interviews, and asked for the consent of the participants in oral and written form. Due to the specific setting of such interviews, with refugees as a vulnerable group, the interviewers were counselled in trauma-sensitive interview approaches and trained to heed their own psychological and physical safety. Nevertheless, not only were all interviewers deeply shocked and physically deeply moved by the stories that they listened to, also the student assistants who transcribed the interviews had the same experience too. All interviews were held with the same questionnaire that was consensually elaborated and agreed on by the European RESPOND consortium members; nevertheless the interviewers were inspired to handle the questionnaire flexibly and to adjust it to individual and regional circumstances. In addition, the code list was jointly elaborated by the respond consortium and individually flexibly handled using MAXQDA.

Summing up the interview process and its interpretation, there is one important impression that needs to be taken into consideration in reading this report: it became extremely obvious reading through all the interviews that only a few asylum seekers are able to tell their procedural story in a chronologically and legal-technically accurate manner; many, for example, cannot actively employ the correct legal wordings and categorisations for the

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<sup>1</sup> Altogether we could speak with 20 female and 40 male interlocutors. All interviewees were above 19 years of age when they were interviewed.

different institutions that they have been confronted with, and statuses awarded. So many spoke about the first interview or the so-called first hearing by the Bundesamt für Migration und Flucht (BAMF), The Federal Office for Migration and Refugees, as having been invited to a 'court'; also the correct terminology regarding legal status is often difficult to articulate, and mostly the interviewees rather described their actual legal situation in terms of their allowed duration of residence. These difficulties are based in a highly complicated legal and bureaucratic as well as non-transparent system, and in the lack of accessible and understandable information for asylum-seeking migrants (as we will outline later). They have to be taken into consideration as a potential source of inaccuracy that has been further heightened by the several acts of translation that have taken place with some interviews prior to the voices of these refugees entering into this report. However, the problems articulated by asylum applicants are an important complementary source pointing to problems, shortcomings and deficiencies of the protection system that only people directly affected by them can express.

In addition, our Göttingen RESPOND team participated in round table discussions, enabling an in-depth understanding of the research field – and of the performance of as well as the relationships between the involved actors. Thereby, the invitation to participate in the already-existing AMBA (Aufnahmemanagement und Beratung für Asylsuchende in Niedersachsen) network focusing on 'Reception Management and Counselling for Asylum Seekers in Lower Saxony' was especially fruitful. Not only could we follow the debates and negotiations between the important state and non-state actors of the reception and asylum system in Lower Saxony, but also content-wise we were able to participate in the ongoing attempt to run and amend such a complicated system – one that decisively decides on the well-being and future prospects of thousands of people.

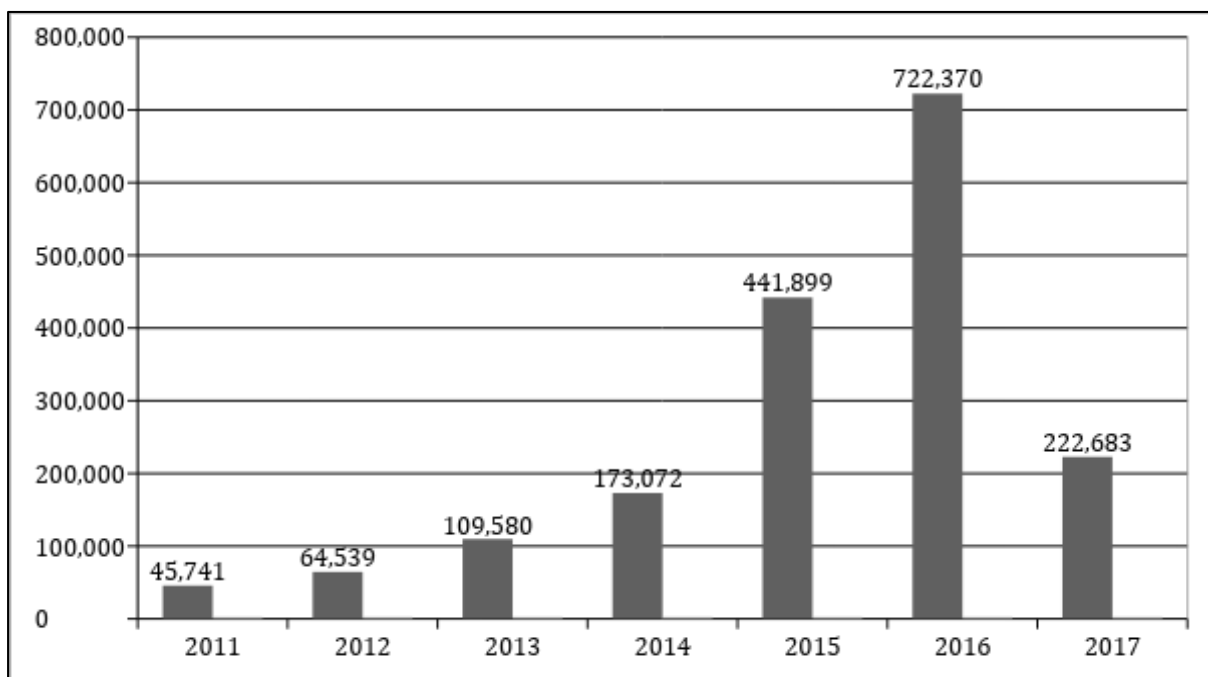
As we don't want to reproduce on the level of our scientific analyses the main political categorisations of cross-border mobilities into mainly 'labour migration' on the one hand and on the other hand "refugees" and "asylum seekers" that are deserving international protection in line with codified criteria and bureaucratic procedures laid down in the Geneva Convention, the European Union Common Asylum System and national laws, we use the term 'asylum seeking migrants' or 'refugee-migration' to hint at the multiple motivation and migration biographies why people seek refuge and protection.

### 3. National Legal and Institutional Framework Regarding Asylum Procedure and Refugee Protection

#### 3.1. Important Developments in the Asylum Regime in Recent Years

The reporting period in this document starts in 2011; nevertheless, we have to also mention here one of the most crucial reforms to occur in the German asylum system dating back to the early 1990s. At that time, hundreds of thousands of refugees from the wars in Yugoslavia – alongside a refugee movement from the Middle East – were seeking protection in Germany. After a prolonged public and political campaign claiming that Germany would be ‘flooded by the global poor’, a rhetoric accompanied by racially motivated violence all over the country, in 1992 a parliamentary majority accepted the reform of Article 16 of the German Basic Law – the legal principle in which the right to political asylum is enshrined. This reform, the so-called asylum compromise, already introduced concepts such as ‘safe third country’ or ‘safe country of origin’, accelerated asylum procedures at international airports, led to the reinforcement of border controls and induced a separate social welfare regime for asylum seekers which saw benefits reduced by 30 per cent (see Chemin/Hess/Nagel 2018). Many of these regulations would be rearticulated after the events of 2015.

**Table 1: Total Number of Applications for International Protection (2011–2017)**



Source: BAMF, Chemin/Nagel/Hess 2018: 21

After the number of asylum-seeking migrants drastically dropped, partly as result of the restrictions introduced by the asylum compromise, the early years of the second decade of the new century would finally see some improvements for asylum seekers. In 2013, the German Asylum Law was decisively extended with the transposition of the Qualification Directive 2011/95/EU into German law and the implementation of the subsidiary protection status. Subsidiary protection – until then unknown to the German asylum system – was adopted in December 2013 through the ‘Law for the Transposition of the Directive 2011/95/EU’ (Gesetz zur Umsetzung der Richtlinie 2011/95/EU). Additionally, there were successive improvements concerning access to the labour market (Neuregelung der Beschäftigungsverordnung, 1 July 2013) and the lifting of the geographic restriction on asylum seekers – the so-called Residenzpflicht (‘residence obligation’).<sup>2</sup>

Already in 2014, when the numbers of asylum applications would steadily rise again, new restrictions were to be introduced, with the extension of the list of safe countries of origin: Serbia, Macedonia and Bosnia/Herzegovina were included therein on 6 November 2014. In the course of a rising number of people fleeing their home countries during summer 2015, a series of amendments were introduced within a very short period of time. In the following, some of the most important changes regarding protection and the asylum procedure are listed (for more details, see Chemin/Nagel/Hess 2018: 60ff):

- On 24 October 2015, the ‘Asylum Package I’ or ‘Act on the Acceleration of Asylum Procedures’ (Asylverfahrenbeschleunigungsgesetz) entered into force. Through this amendment the ‘Asylum Procedure Act’ (Asylverfahrensgesetz – AsylVfG) changed name to the ‘Asylum Act’ (Asylum Act – AsylG). The Act made amendments to a number of laws in order to accelerate the asylum process, and therefore marks a turning point in Germany’s asylum legislation: asylum seekers would now be required to remain for a period of up to six months in reception centres (§ 47 I AsylG; before: three months); Albania, Kosovo and Montenegro were designated as safe countries of origin (§ 29a AsylG; see Annex II of the Asylum Act); asylum applicants from a safe country of origin would be required to live in the reception centre until the Federal Office has decided on their case (§ 47 IaAsylG); no work permits were to be issued to asylum applicants from safe countries of origin during the asylum procedure (§ 61 II AsylG); cash benefits for reception centre residents were substituted with in-kind benefits; benefits were cut for foreigners obligated to leave the country; it was decided that upon expiry of the period allowed for voluntary departure, the foreigner must not be informed of the date of their deportation (§ 59 I S. 5 AufenthG); and, integration courses were designated for asylum applicants with a good perspective to stay.
- On 1 August 2015, the ‘Act to Redefine the Right to Stay and the Termination of Residence’ entered into force. It amended the Residence Act by ordering a ban on entry and residence for applicants from safe countries of origin, and in the case of repeat applications.
- On 1 November 2015, the ‘Act to Improve the Housing, Care and Treatment of Foreign Minors and Adolescents’ entered into force. Its goal has been to improve: the situation of unaccompanied minors and provide them with appropriate care; the distribution procedure for minors; the legal regulation of age determination.
- On 5 February 2016, the ‘Data-Sharing Improvement Act’ entered into force. Its goal has been to register new arrivals more swiftly, with the standardised recording of refugee data.

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<sup>2</sup> Asylum seekers are obliged to stay in the district of the federal state to which they are assigned for a maximum period of six months, pursuant to Section 56 of the Asylum Act.

Asylum seekers are to be issued with a standardised refugee identity card. The Act also regulates the recording of other relevant information (e.g. basic information like name, date and place of birth, as well as information about any accompanying children, health checks and vaccinations, schooling and other qualifications).

□ On 17 March 2016, the 'Asylum Package II' entered into force. In order to accelerate the asylum process it would introduce a set of stricter measures. According to § 30a AsylG: swifter procedures for certain specified groups of asylum seekers were to be enforced (applicants from safe countries of origin; applicants submitting a repeat request for asylum; applicants who do not cooperate during the procedure); the asylum procedure is to be withdrawn if the asylum seeker fails to pursue it (§ 33 AsylG); new reception facilities are to be created; limitations are to be imposed on deportation bans (§§ 60a IIb, § 60 VII); the right to family reunification for refugees entitled to subsidiary protection status was to be suspended until March 2018 (§ 104 (13) AufenthG).

□ Also on 17 March 2016, the 'Act to Facilitate the Deportation of Foreign Criminal Offenders' entered into force. In response to the New Year's Eve attacks in Cologne, the act makes it possible to deport foreigners convicted of criminal offences significantly faster. Therefore, it provides for the deportation of foreign criminal offenders given a custodial sentence – irrespective of whether or not that sentence is suspended.

□ On 20 July 2017, the 'Act on the Better Implementation of the Obligation to Exit the Federal Republic of Germany' (Gesetz zur besseren Durchsetzung der Ausreisepflicht) entered into force. According to § 47 Ib AsylG: the individual states of the Federal Republic have the right to extend the stay in arrival centres up to 24 months; with the aim to determine a foreigners' identity, the BAMF may use their data carriers (e.g. smartphone); the youth office has the obligation to submit the asylum application immediately (§ 42 II SGB VII); a 'leapfrog appeal' in asylum cases is to be introduced (revision of the Administrative Court's decision in front of the Federal Administrative Court).

□ In June 2019, the so-called Migration Package (Migrationspaket) was adopted by the German Bundestag, comprising eight new laws on migration.<sup>3</sup> Especially the 'Second Law on the Better Implementation of the Obligation to Exit the Federal Republic of Germany' (Zweites Gesetz zur Besseren Durchsetzung der Ausreisepflicht), and the 'Act on Tolerated Stay in Training and Employment' had decisive effects on the German asylum system – specifically, with regard to procedural rights as well as guarantees and statuses. Altogether, the package severely tightened the German protection system on multiple levels. The goal of the 'Second Law on the Better Implementation of the Obligation to Exit the Federal Republic of Germany' (also commonly referred to as the 'Ordered Return Act') is to increase the number of deportations. It introduced sanctions for those applicants seen to be not actively collaborating with German institutions to establish their identities and get hold of passports; it lowers the barriers for detention, and allows for the detention of migrants obliged to leave the country in regular penal facilities. The 'Act on Tolerated Stay in Training and Employment'

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<sup>3</sup> Further acts of the package have been: 'Law on Immigration of Skilled Workers' ('Fachkräfteeinwanderungsgesetz'), 'Act on the Removal of Time Limits from the Integration Act' (Gesetz zur Entfristung des Integrationsgesetzes), 'Second Data Sharing Improvement Act' (Zweites Datenaustauschverbesserungsgesetz), 'Foreign Employment Promotion Act' (Ausländerbeschäftigungsförderungsgesetz), 'Third Act Amending the Asylum Applicants Benefits Act' (Drittes Gesetz zur Änderung des Asylbewerberleistungsgesetzes), and the 'Reform of Citizenship Law' (Reform des Staatsangehörigkeitsrechts).

allows for the residence of people with tolerated stay only if a variety of preconditions are met: toleration for at least one year if the applicant can prove 18 months employment subject to social security contributions; it grants residence permission after 30 months only if there is no dependence on social benefits, sufficient knowledge of German and no prior conviction for an intentional crime.

## 3.2. Types of Procedure – Selectivity of the German Protection Regime

There are several different asylum procedures in Germany, implemented depending on the place of entry into German territory and the asylum seeker's country of origin. The different procedures are supposed to be connected to different forms of accommodation, which are partially applied depending on the respective federal state and the communal living situation.

Asylum applications are generally processed by the BAMF, with the exception of applications at the border for people who are stopped there by the police. Asylum seekers arriving at the border can be immediately sent back by the police to neighbouring countries, or be returned to Greece or Spain due to special return agreements with those two countries dating from 2018 – based on the assumption that those in question have travelled through a 'safe third country'.

When arriving at the airport, a special **airport procedure (Flughafenverfahren)** can be implemented – whereby applicants are held there in the transit zone, subject to accelerated examination of their asylum claim without them being considered to have entered German territory.

If applicants ask for asylum in German territory, they normally undergo the **regular procedure**. This includes an admissibility check, before the asylum claim is examined in substance. This includes cases where the **Dublin Regulation** is implemented, meaning that another state is found to be responsible for examining the asylum procedure. In other cases, the examination of the asylum application can be prematurely terminated should it be a second or further asylum application. This way of closing an asylum procedure without an actual examination of the claim in substance is called a 'formal decision', and is frequently implemented. In 2018 a formal decision was taken on 30.2 per cent of asylum applications (65,507 cases) (ECRE 2018).

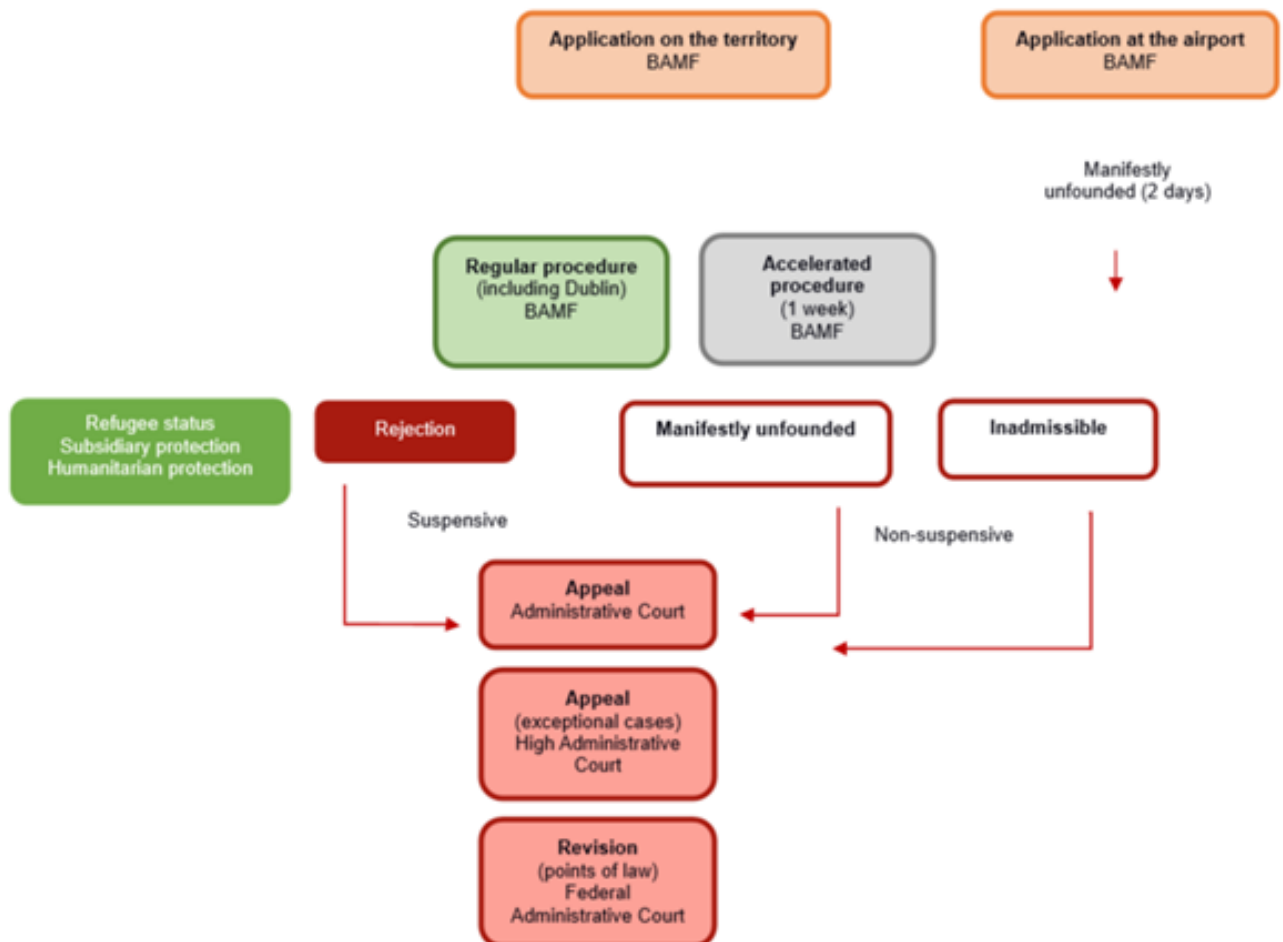
In some cases, the asylum claim is examined under the **accelerated procedure**. This procedure is implemented, for example, for asylum seekers coming from a country that is considered a safe country of origin (currently the EU member states and Albania, Bosnia-Herzegovina, Kosovo, Montenegro, North Macedonia, Serbia, Ghana, Senegal), or as a sanction if asylum seekers are accused of having deliberately provided false information about their identity. A decision is supposed to be taken within seven days. Applications by asylum seekers coming from safe countries of origin are generally considered 'manifestly unfounded', unless the individual in question is able to present evidence proving his or her individual persecution.

Rejections of the asylum application based on inadmissibility or a substantial rejection of the asylum claim can be appealed before the courts. The first appeal is examined before the Administrative Court (Verwaltungsgericht), the second before the High Administrative Court (Oberverwaltungsgericht or Verwaltungsgerichtshof) and the final appeal before the Federal



Administrative Court (Bundesverwaltungsgericht). In case of a simple rejection, an appeal to the Administrative Court has to be submitted within two weeks. If an asylum application is rejected as manifestly unfounded or dismissed as inadmissible, the time frame to submit an appeal is only one week – and the appeal does not have a suspensive effect.

**Figure 1: Overview of Different Procedures**



Source: ECRE 2018

### 3.3. Asylum Hearing

#### 3.3.1. Procedure

The personal hearing – in which asylum seekers have to explain the grounds for their claim, based on Sections 24 and 25 of the Asylum Act (Asylgesetz, AsylG) – constitutes a crucial step within the asylum procedure. The interviewer aims at understanding the *individual* reasons for flight, obtaining further information and at seeking to discover/resolve contradictions. Section 24, Subsection 1, Sentence 3 of AsylG obliges the BAMF to interview the individual in person. The hearing is conducted under the responsibility of the BAMF, which

runs several field and regional offices in each federal state, in the arrival centres and in the so called `AnKER` facilities, special arrival centres that have been set up in 2019.

The so-called decision maker at the BAMF field or regional office invites the asylum applicant to their appointment, and has to provide an interpreter. The hearing is private, and the asylum seeker has the right to bring a lawyer. Unaccompanied minors can be interviewed in the presence of a guardian. Furthermore, the United Nations High Commissioner for Refugees (UNHCR), who is ultimately in charge of monitoring and upholding interview quality, may also attend the hearing.

Interviewees are requested to explain their individual reasons for fleeing, their personal history and any persecution in their country of origin (as well as along the flight route) in a plausible way, and in full detail. Asylum seekers are obliged to give information about their places of residence, transit routes, stays in other countries and regarding whether asylum proceedings have already been initiated or implemented in Germany or other nation states (§ 25 (1) AsylG) and all further facts opposing their deportation (§ 25 (2) AsylG).

All descriptions need to be proven as fully as possible through submitted evidence such as photographs, documents from the police or other authorities, or medical reports; the asylum claim can additionally be supported by written expert assessments. If evidence is provided after the interview, the BAMF may not take it into account (§ 25 (3) AsylG). The interpreter translates the applicant's description, minutes are taken and details are then translated back to the applicants – who can then note any corrections (BAMF 2019e).

### 3.3.2. Decision Makers

Decision makers at the BAMF have the task of examining the asylum applications, conducting interviews and also deciding thereon. The BAMF states that:

The technical prerequisites for performing this task include both comprehensive knowledge of the law on asylum and on immigration, as well as detailed knowledge of the political situation in the applicant's country of origin. Furthermore, certain soft skills such as a mastery of customary interview techniques, culturally sensitive empathy and intercultural skills, are included in the fundamental prerequisites for deployment as a decision maker. (BAMF 2019c)

The far-reaching influence of BAMF decision makers, where for a long time only the individual decision maker decided on the file at hand, as well as a lack of in-depth training were, however, criticised by NGOs (see 4.4.). Staff undergo an initial training phase in the BAMF's Centre for Qualification, one that was shortened in 2015 – when the rising number of asylum applications lead to the employment of hundreds of new decision makers. In autumn 2017 the BAMF introduced a dual-control principle, the so called four-eye principle (vier-Augen-Prinzip), in order to limit the personal influence of decision makers, who also conduct interviews; there are regular additional staff trainings too.

Since Germany is obliged to comply with fundamental procedural guarantees according to EU Procedures Directive 2013/32/EU, the BAMF explains that if 'it is necessary for the applicant for personal reasons, where possible the interview can be carried out or continued by a person of the same sex, and an interpreter of the same sex can attend' (BAMF 2019e). Furthermore, the BAMF has trained so-called Specially Commissioned Case Officers. These are decision makers trained specially regarding interview procedures among particularly vulnerable groups

of individuals (including unaccompanied minors, victims of torture, of trauma and of human trafficking, as well as persons persecuted because of their gender). However, a lack of cultural and gender sensitivity within interviews with asylum applicants who have not been recognised as vulnerable is something that has been criticised by NGOs – since there is no uniform vulnerability screening procedure applied at the federal level (see 4.4.).

### 3.3.3. Assistive Technology: Identity Checks

According to Section 16 of the AsylG, identity checks are carried out as part of the personal hearing. The goal is to verify the data provided within the asylum interview and to assess the applicant's credibility, as well as to identify 'security threats'. The BAMF thereby also relies on technical assistance using the system 'Integrated Identity Management: Plausibility, Data Quality and Security Aspects' (IDM-S). The programme provides the decision maker with image biometrics (automatic facial recognition based on unique individual biometric features, used as a further means of identification in addition to fingerprints), name transliteration and analysis (involving standardised conversion from, for example, Arabic to Latin script), and speech biometrics (voice recordings to biometrically recognise the (major) dialect spoken by the applicant, for the determination of their country of origin).

One of the first steps here was the centralisation of data within the 'Central Register of Foreigners' (Ausländerzentralregister), as regulated through the new 'Law on Improving the Exchange of Data' (Datenaustauschverbesserungsgesetz) of 2016. Additionally, in June 2017 the 'Act on the Better Implementation of the Obligation to Exit the Federal Republic of Germany' (Gesetz zur bessere Durchsetzung der Ausreisepflicht) was enacted to allow the BAMF to read the data of asylum seekers from their mobile phones and other digital equipment. As the answer to a brief parliamentary enquiry by the party The Left (Die Linke) revealed, the BAMF already started to store the following data: the country codes of stored contacts, country codes of called and addressed numbers, country codes of incoming calls and messages, location data as well as languages used in messages (Deutscher Bundestag 2017c).

However, these techniques have not yet been applied across the board, and are highly controversial – for example due to the unreliability of speech recognition tools and to other software errors. They also represent a high level of interference with data protection rights (Deutscher Bundestag 2018b). Nevertheless, the BAMF legitimates the usage of these technical devices to secure such data as follows:

These assistance systems, which are based on modern data analysis methods, enable the information on asylum seekers collected during the asylum procedure to be immediately checked for plausibility. This leads to better data quality. [...] Should any doubts remain as to the applicant's identity, the BAMF carries out an examination using language and text analyses with the involvement of language experts. Such cases can be reported to the BAMF's own Security Division where appropriate. The division works closely with the Joint Extremism and Counterterrorism Centre (GETZ), and with the Joint Counterterrorism Centre (GTAZ). What is more, it carries out automatic data comparison with the security authorities within the bounds imposed by privacy laws. (BAMF 2019e)

One interviewee – an asylum seeker from Libya – told us about such a procedure for checking his origin:

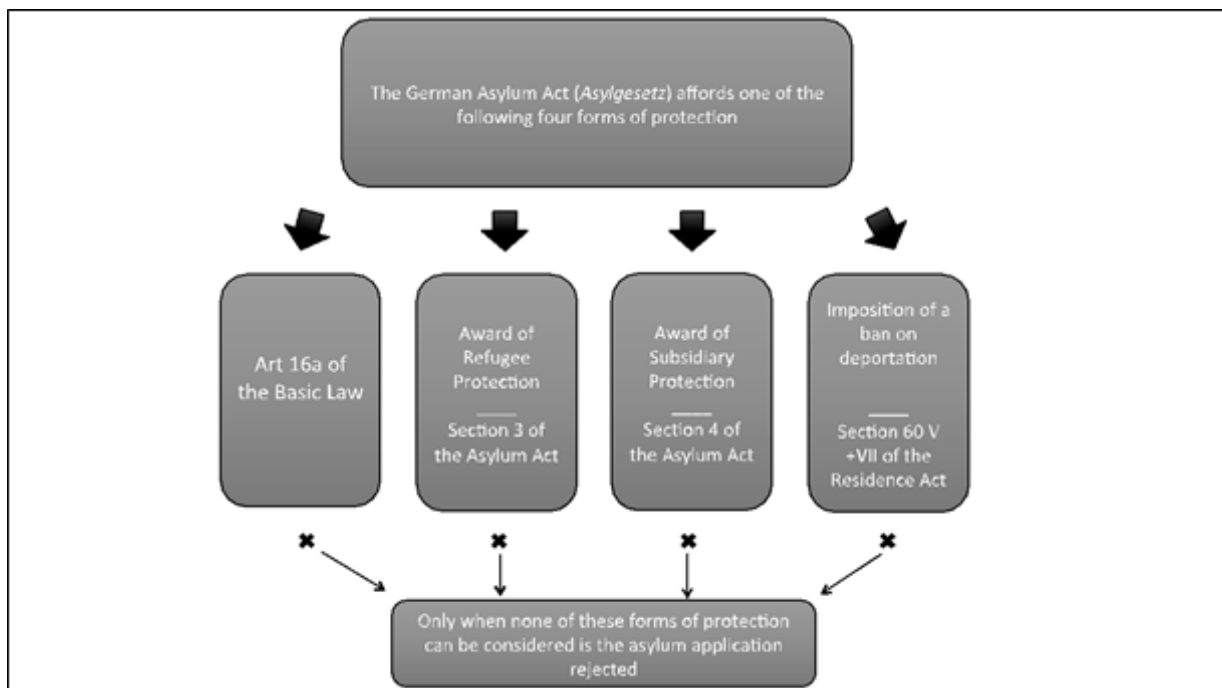
So that was the first registration date, the first interview. Then they asked us to make a recording, they said speak your language with your normal accent because we want to make sure that you are from Libya. They gave me a few paragraphs to read, and then they gave us some drawings for us to describe. You know the type of test they do, like say what you see in the picture. I don't know, they didn't probably believe that I was Libyan. (LIB-M-BER 270419)

### 3.4. Forms of Protection

There are different forms of protection in Germany based on the assessment of the asylum claim by the BAMF, providing people with different rights dependent on the outcome of their personal hearing.

There is **asylum status** based on the German Constitution, **refugee status** according to the 1951 Refugee Convention and to the Qualification Directive, and **subsidiary protection** as well as the **prohibition of deportation (Abschiebungsverbot)**. The **toleration of stay (Duldung)** based in § 60a of the Residence Act (AufenthG) leads to a "temporary suspension of deportation" of foreigners who are obliged to leave the country.

Figure 2: Overview of Different Legal Statuses



Source: Chemin/Nagel/Hess 2018

#### 3.4.1. Asylum Status

The right to apply for asylum is part of the German Constitution, and based on Article 16a, para. 1 of the Basic Law (Grundgesetz, GG). It was introduced in the constitution in memory of the crimes of Nazism, and applies for people persecuted on political grounds because of

their race, nationality, political opinion, fundamental religious conviction or membership of a particular social group (including those with shared characteristics, such as a specific sexual orientation).

It provides beneficiaries with a residence permit for three years, unrestricted access to the labour market, privileged family reunification and a possible settlement permit after three or five years if other preconditions are met (such as the ability to make a secure living and adequate knowledge of German). Asylum status can only be applied for on the basis of state persecution (with the exception of quasi-state persecution), excluding any form of emergency situation.

Initially, the right to asylum was based on Art.16 of the GG. Through the asylum compromise (Asylkompromiss), the law was radically changed on 22 May 1993. The newly introduced Art. 16a still contains the sentence: 'Politically persecuted persons enjoy the right of asylum'. However, the four other detailed paragraphs then announce drastic restrictions: Anyone who arrives in Germany by land via so-called safe third countries or comes from a safe country of origin is able to be returned immediately to the border. Since all EU countries as well as Norway and Switzerland are considered safe and the fast-track procedure at airports was introduced at the same time, the right to asylum based on the GG has in terms of quantitative significance been nearly abolished. The number of asylum seekers receiving protection based on Art. 16a has since its introduction remained below 2 per cent of yearly such applications (BAMF 2019b).

### 3.4.2. Refugee Protection

The status of refugee protection on the basis of the 1951 Refugee Convention is the most frequently applied protection status in Germany. Its content is broader than the notion of individual political asylum laid down by the German Constitution, and also applies to persecution by non-state actors and for gender-specific reasons. The Geneva Convention categorises people as refugees who

are outside their country of origin and nationality, or as stateless individuals are outside of their country of habitual residence and are unable or, because of a well-founded fear of being persecuted by state or non-state players, are unwilling to avail themselves of the protection of their country of origin for reasons of race [The term 'race' is used in accordance with the wording of the Geneva Convention], nationality, political opinion, religion or membership of a particular social group A group may also be regarded as a specific social group on the basis of the joint characteristic of sexual orientation). (BAMF 2019f)

Refugee status in Germany provides the same rights as asylum status: a residence permit for three years, the possibility of a settlement permit after three or five years if other preconditions are met, as well as unrestricted access to the labour market (gainful employment is permitted) and the entitlement to privileged family reunification (§ 3 (1) AsylG, § 25 (1-3), § 26 AufenthG). The Integration Act of 31 July 2016 that came into force on 6 August 2016 contains, among other things, restrictions on freedom of movement and residence requirements for recognised refugees and other comparable groups (§ 12a AufenthG).

### 3.4.3. Subsidiary Protection

When an asylum applicant is threatened with serious harm in their country of origin, but neither refugee protection nor the entitlement to asylum are granted, he or she can receive subsidiary protection status based on the (AsylG). The asylum applicant needs to be able to prove that he/she faces serious harm in their country of origin from the government or non-governmental actors. 'Serious harm' is defined as the imposition or enforcement of the death penalty, torture, inhuman or degrading treatment or punishment, or a serious individual threat to the life or integrity of a civilian as a result of arbitrary force within an international or domestic armed conflict.

The rights connected to subsidiary protection status are much more limited than those coming with asylum or refugee status. The residence permit is only valid for one year (if extended, for two more years in each case) and a settlement permit is possible to receive after five years provided – as with the other forms of protection status – preconditions are met. Unrestricted access to the labour market is provided, but not the entitlement to privileged family reunification (§ 4 (1) AsylG). As of 1 August 2018, family reunification for subsidiary protection beneficiaries vis-à-vis nuclear family members is limited to 1,000 persons per month for the whole of Germany, and presupposes humanitarian grounds.

### 3.4.4. National Ban on Deportation

The weakest form of protection that can be granted in Germany is the national ban on deportation (Abschiebeverbot) (AufenthG), which can be applied if none of the three previous forms of protection are considered applicable. The person is not deported if their return is considered a breach of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), or a concrete danger to life, limb or liberty exists in that country.

A person with national ban on deportation receives a residence permit for at least one year, with the possibility to repeatedly extend the document, a settlement permit possible to receive after five years, again only if other preconditions are met, such as the ability to make a secure living and adequate knowledge of German. Employment is possible, but a permission must be obtained from the immigration authority (§ 60 (5), § 60 (7) AufenthG).

### 3.4.5. Tolerated Stay

A person with tolerated stay (Duldung) is actually obliged to leave the country, but cannot currently be deported. While the tolerated stay does not constitute a residence permit, there is no criminal liability for illegal stay according to § 95 Para.1 No. 2 AufenthG. Currently, there are about 182,000 tolerated people in Germany (Pro Asyl 2019). Tolerated stay is for example granted in case of serious illness, separation of families, and absence of travel documents or if the deportation is impossible due to the situation in the country of origin. It is in practice currently mainly used for applicants from Iraq and Afghanistan. Anyone who is in education gets what is known as an 'education tolerance' (Ausbildungsduldung). The tolerance expires with the departure of the foreigner (§ 60a (5) AufenthG) and does not entitle the foreigner to return to the Federal Republic of Germany.

NGOs criticise the fact that the work permit is in practice often refused, or the decision on it delayed. Failed asylum seekers from safe countries of origin generally receive a blanket ban on employment. At the same time, social benefits are kept far below those for unemployed people with German citizenship in the first 15 months. People receiving these benefits are not allowed to move, but have to live in a place determined for them. This is also the case of people accused of misleading the authorities about their identity (Pro Asy 2019l).

The status of tolerated stay is an important focus of ongoing debates about current measures to increase the number of deportations, and it has been tightened up several times now.

**Table 2: Decisions on Asylum Applications and Quotas Concerning the Different Forms of Protection**

year	in general										
	Decisions on Matters										Formal Decisions
	Refugee Status (§3 Abs. 1 AsylG, Art 16a GG)				Subsidiary Protection (§4 Abs 1 AsylG)		National Ban on Deportation (§60 Abs. 5 o. 7 AufenthG)		Rejection		
	Recognized Refugees (Art 16a GG)										

2010	48.187	7.704	15,8%	643	1,3%	548	1,1%	2.143	4,4%	27.255	56,6%	10.537	21,9%
2011	43.362	7.098	16,1%	652	1,5%	666	1,5%	1.911	4,4%	23.717	54,7%	9.970	23,0%
2012	61.826	8.764	14,0%	740	1,2%	6.974	11,3%	1.402	2,3%	30.700	49,7%	13.986	22,6%
2013	80.978	10.915	13,3%	919	1,1%	7.005	8,7%	2.208	2,7%	31.145	38,5%	29.705	36,7%
2014	128.911	33.310	25,8%	2.285	1,8%	5.174	4,0%	2.079	1,6%	43.018	33,4%	45.330	35,2%
2015	282.726	137.136	48,5%	2.029	0,7%	1.707	0,6%	2.072	0,7%	91.514	32,4%	50.297	17,8%
2016	695.733	256.136	36,8%	2.120	0,3%	153.700	22,1%	24.084	3,5%	173.846	25,0%	87.967	12,6%
2017	603.428	123.909	20,5%	4.359	0,7%	98.074	16,3%	39.659	6,6%	232.307	38,5%	109.479	18,1%
2018	216.873	41.368	19,1%	2.841	1,3%	25.055	11,6%	9.548	4,4%	75.395	34,8%	65.507	30,2%
Jan- Feb 2019	39.710	8.670	21,8%	469	1,2%	4.657	11,7%	1.236	3,1%	12.844	32,3%	12.303	31,0%

Source: BAMF 2019g

## **4. Implementation: Boundaries, Selection and Exclusion of Accessing Asylum**

The asylum procedure as such is a process of filtering out and dividing people into those who are considered deserving of protection – categorised as refugees – versus others who are considered as undeserving of such protection (and hence residence status). This filtering process is complemented by several further measures that very often are implemented on the procedural level, and lead to the exclusion of a wider number of groups of asylum-seeking migrants: namely, entry barriers through border controls as well special regulations and the fast-tracking of the asylum procedure. In the following, the different asylum procedures in Germany are described – with a focus on measures restricting the chances to receive protection and leading to a graded, differential exclusion of certain groups from the protection regime.

This section starts by outlining the limits to physically entering German territory (as a result of border protection measures) and to accessing the country's asylum system. Then, procedural mechanisms allowing the closing of an asylum application without first considering the grounds of the claim are described. This is followed by an analysis of certain forms of accelerated or fast-track procedure that are combined with certain types of mass accommodation centre, and of their impact on the chances of being granted protection. Then the section turns to the practical level, focusing on the shortcomings of the implementation of the asylum process at all stages.

### **4.1. Boundaries to Submitting an Asylum Application**

#### **4.1.1. At the German Border: Refusal of Entry and Expulsions**

The ability to apply for protection in Germany is based on the possibility to physically reach German territory, whereto the AsylG applies. The only exceptions are measures of resettlement, relocation and family reunification that can allow people to gain humanitarian residence status in Germany without entering the country, as facilitated by the UNHCR, German embassies or consulates abroad.

Germany applies strict visa policies, aiming to prevent migrants and refugees from illegally entering the country. In addition, Germany follows the controversial policy of implementing so-called carrier sanctions (Arts. 63–65, corresponding with EU Directive 2001/51/EC). Carrier sanctions impose severe penalties for companies and people (e.g. airlines, bus companies, taxi drivers) facilitating the entry of persons without a valid visa into Germany – as we outlined in our WP2 report on the German border regime (Hänsel, Hess and Kasperek 2019).

Beyond this, asylum-seeking migrants can be refused entry at the German border or be expelled from the country when they are found in the border area. From 2015, Germany reintroduced controls of its southern border with Austria – where most of the refusals of entry are imposed on the grounds that to reach there the migrant travelled through a safe third country.



**Table 3: Numbers of Refusals of Entry and Expulsions**

Year	Number of Refusals of Entry into Germany				Number of Expulsions from Germany			
	Land border	Sea border	Air border	Total	Land border	Sea border	Air border	total
2015	4,689	19	4,205	8,913	1,444	7	30	1,481
2016	16,562	56	4,233	21,851	1,220	12	47	1,279
2017	7,504	122	4,744	12,370	1,663	6	38	1,707

Source: Deutscher Bundestag 2018c; Hänsel, Hess and Kasperek 2019

Since August 2018, migrants have not only been expelled and sent back to neighbouring countries but have also been deported to other EU countries based on readmission agreements, enacted on a strictly administrative basis. Beyond the common Dublin Regulation, Germany negotiated bilateral arrangements with Greece (Administrative Arrangement, Greece), Italy and Spain (Administrative Arrangement, Spain) for the readmission of migrants found at the German border based on the construct of ‘fiction of non-entry’. In the case of a so-called EURODAC1 hit, the respective person is to be immediately returned without a Dublin Regulation procedure – if the authorities are able to demonstrate within 48 hours that the person has already previously applied for asylum in Greece or Spain. This practice has been criticised as illegal by lawyers and human rights organisations (Pro Asyl 2018b; Hruschka 2018).

In practice, the arrangement has only been implemented in very few cases. Between August 2018 and February 2019, there were only 11 forced returns carried out on the basis of these agreements (ECRE 2018a).

#### 4.1.2. Refusals at Airports and the Airport Procedure

As shown above, refusals of entry and expulsions also take place at the German ‘air border’. In addition, Germany conducts a special fast-track procedure for asylum seekers entering the country by air. The so-called airport procedure is laid down in Section 18a of the AsylG, and applies for asylum seekers before they even enter German territory – in the case that they are unable to identify themselves by means of a valid passport or replacement passport, or if they come from a country classified as a safe third one. In 1993 an amendment was made to Art. 16 of the GG, in order to implement the airport procedure without breaking the non-refoulement rule by applying a fiction of non-entry (as it takes place in the transit zone). According to the principle of immediacy, the asylum interview must be completed within two days of receiving the asylum application. If an application is rejected as manifestly unfounded, the applicant is immediately returned by plane to his/her country of origin, or to the place of departure.

If the application is rejected, applicants have three days to submit an application for temporary legal protection to an Administrative Court. Then, they are supposed to receive legal advice. An additional four days can be granted by an Administrative Court to submit the grounds for the request. The asylum applicant can only enter the country if the Administrative Court approves the emergency application or does not rule on it within 14 days. Therefore, the total duration of the airport procedure is 19 days – during which time the asylum seeker has to remain in custody at the airport (BAMF 2016a).

In practice, the procedure is only carried out at airports which can accommodate asylum applicants on the premises while the person in question is kept in the transit area. This is currently possible at the airports of Berlin-Schönefeld, Düsseldorf, Frankfurt am Main, Hamburg and Munich. The airport procedure is constantly criticised by NGOs and lawyers for a lack of transparency, and regarding the negative effects of this significantly fast-tracking mechanism.

#### 4.1.3. Blocking Access to the Asylum System through Border Controls along the Route

The possibility to apply for asylum in Germany is not only prevented through securing national borders, but is strongly affected also by the country's policy of externalising border controls. This prevents people already in the early stages of their journey of flight from reaching Europe and Germany, as we illustrated in the WP2 report 'Border Management and Migration Control – Germany Report' (Hänsel, Hess and Kasperek 2019). The first such boundary is the visa policy, which is not predictable and pushes protection-seeking migrants into taking irregular routes – as this interviewee, a young man from Syria who arrived in 2015, describes:

Before coming to Germany, I stayed for two years in Lebanon. I applied for a student visa in the German embassy in Lebanon. I had an acceptance from a German university. My brother and I applied for that. We had the same papers and acceptance; my brother got an acceptance for a student visa, but I didn't. I couldn't believe it in the beginning. I went again to the embassy and asked them for an explanation, but they said that I just have a rejection. During that time, I collected information on leaving to Germany from the internet, from my friends who came to Germany for their studies and from the friends who came as asylum seekers. I would say up to 70 per cent of this information was correct. (SYR-M-MUN 151218)

A Libyan asylum-seeking migrant who previously entered Germany on a business visa also experienced socially what it means to enter the country via these different modes:

You know, of course, when I first came to Germany before with my business visa to do the training at Lufthansa, you know people treat you very well. You are a tourist. Then years later, when I came back and applied to become a refugee, now that I am an asylum seeker, the treatment is very different. It's upside down. As soon as they see that you want to apply for asylum, then suddenly you are viewed in a different way; you are here to take money from the government just to get the benefits, to fiddle with our daughters etc. etc. You know when I got to Eisenhüttenstadt, the treatment was so bad [...]. (LIB-M-BER 270419)

Additionally, Germany cooperates with the governments of refugees' countries of origin as well as along the route of travel. The EU and Germany provide assistance in border management,

often connected to the export of resources for border security and the provision of police capacity-building and training – as we outlined in greater detail in our WP2 report (Hänsel, Hess and Kasperek 2019; Rosa Luxemburg Stiftung 2018).

The German government has been particularly active in recent years to promote the implementation of border policies in the Sahel (Chad, Mali, Mauritania, Niger and Sudan) (Deutscher Bundestag 2017a). Along the eastern and western Mediterranean route measures for border protection have also been implemented; the EU–Turkey statement was primarily negotiated by the German government (European Council 2016). German Chancellor Angela Merkel has also praised the Balkan states several times for their strict stance on transiting asylum-seeking migrants, as implemented through firm border controls after 2016 – although NGOs and lawyers have documented a systematic practice of illegal pushbacks on the borders of Hungary and Croatia (Pushback Map 2019; Border Violence Monitoring Network 2019).

On the other hand, people migrating to Europe have found themselves somehow forced to apply for asylum – as the only way to obtain residence status against the background of possibilities the German immigration policy offers. This was recounted by one woman from Nigeria, who pointed out she came to Germany on the basis of false promises of marriage but suddenly found herself in a situation of human trafficking, with friends recommending she go to a ‘camp’. When asked what she knew about the asylum procedure, she answered:

I did not realize actually that it's asylum. They said they will protect me. Only after one month, I stayed in that camp for like one month, then they told me that this was asylum. Before I didn't know – I had no idea – where should I ever hear of asylum? I didn't even know anything. (NIG -W -GRO 110718)

## 4.2. Closing the Asylum Procedure without Examining the Asylum Claim

When asylum seekers do manage to cross the border and enter German territory despite the extensive border controls along the route, they cannot be sure that the submitted reason for their asylum application is in fact examined. In a significant number of cases, as we show in Table 5 below, the aforementioned **formal decision** is taken and the asylum application is closed without considering the individual grounds for it. This decision can be appealed before the Administrative Court within seven days.

One of the most frequent reasons for this formal decision is the rejection of the asylum claim on admissibility grounds. The possibility to declare an asylum request **inadmissible** is based on Section 29 of the AsylG. While there is no separate admissibility procedure in Germany, the admissibility check is included in the regular asylum procedure.

There are six different legal options vis-à-vis considering an asylum application inadmissible as Table 4 shows (see also, ECRE 2018). It can be found that:

- (a) another country is responsible for carrying out the asylum procedure based on the Dublin Regulation and further international treaties (§ 29 (1) AsylG);
- (b) the asylum applicant has already been granted protection in another EU member state (§ 29 (1) AsylG);

- (c) the asylum applicant has made a subsequent application after their one in Germany was already rejected (§ 29 (1),(5) AsylG, citing § 71 AsylG);
- (d) the asylum applicant has made a secondary application following one in another country considered a safe third country (§ 29 (1),(5) AsylG, citing § 71a AsylG);
- (e) the asylum applicant can be readmitted to a country categorised a safe third country” (§ 29 (1),(3) AsylG, citing § 26a AsylG);
- (f) the asylum applicant can be readmitted to a country that is not an EU member state but still regarded as ‘another third country’ (§ 29 (1),(4) AsylG, citing § 27 AsylG).

**Table 4: BAMF Inadmissibility Decisions in 2018**

Inadmissibility decisions: 2018	
Ground	Number
Applicability of the Dublin Regulation	33,904
International protection in another EU Member State	10,719
Safe third country	76
Another third country	37
Secondary application (after procedure in a safe third country)	3,795
Subsequent application (after procedure in Germany)	13,482

Source: ECRE 2018: 41

Furthermore, a formal decision can be taken if the asylum application is explicitly withdrawn (e.g. when an applicant agrees to ‘voluntary return’ to his/her country of origin<sup>4</sup>). The procedure can also be closed if the applicant ‘does not pursue the proceedings, meaning that they do not appear at the personal interview, their whereabouts are unknown or they have travelled to their country of origin during the asylum proceedings’ (ECRE 2018).

The statistics show that formal decisions closing the asylum procedure between 2011 and June 2019 made up over 25 per cent thereof on average (ECRE 2018). In the three years following 2015, the numbers hereof dropped significantly. However, they rose again in 2018 and in the first half of 2019, amounting to one-third of the total decisions.

**Table 5: Number of Formal Decisions from 2011–2019**

Year	Number of Formal Decisions	Percentage of Formal Decisions
2011	9,970	23.0
2012	13,986	22.6
2013	29,705	36.7
2014	45,330	35.2

<sup>4</sup> In 2018, 15.941 cases of voluntary return registered alone in the programme REAG/GARP, from January to May 2019 it was 5.804 (BMIBH 2019).

2015	50,297	17.8
2016	87,967	12.6
2017	109,479	18.1
2018	65,507	30.2
Jan-Jun 2019	33,827	33.0

Source: BAMF 2019g

#### 4.2.1. Dublin Regulation

The most frequently cited reason to declare an asylum application inadmissible in Germany is the Dublin III Regulation (Regulation (EU) 604/2013). The regulation provides the legal basis for readmissions and relocations among the member states of the EU, as well as Switzerland and the European Free Trade Association countries. According to the Dublin Regulation, the EU member state where an asylum seeker first entered EU territory is responsible for processing the application of the person in question.

The frequently cited reasons for the rejection of asylum claims as inadmissible under the Dublin Regulation are if:

- (a) someone has already lodged an asylum application in another EU member state (§ 3 (2) Dublin III Regulation);
- (b) another EU member state has issued a residence permit or a visa (§ 12 Dublin III Regulation);
- (c) the person could enter another EU member state without a visa, unless he/she could also enter Germany without a visa (§ 14 Dublin III Regulation);
- (d) someone has stayed in another EU member state for more than five months as an 'illegal' person (e.g. proven by fingerprints) (§ 13 (2) Dublin III Regulation);
- (e) family members (in particular parents) or siblings of an unaccompanied minor legally reside in another EU member state and it serves the best interests of the minor (§ 8 (1) Dublin III Regulation);
- (f) a relative (aunt, uncle, grandparent) of an unaccompanied minor is legally present in another EU member state, it has been established that the relative can take care of the minor and that doing so is in the best interests of the minor (§ 8 (2) Dublin III Regulation);
- (g) a family member (spouse, child) legally resides in another EU member state as an international beneficiary of protection and the refugee wishes in writing that this EU member state should be responsible for their asylum procedure (§ 9 Dublin III Regulation);
- (h) a family member (spouse, child, parent) in another EU member state has applied for asylum, no decision has yet been taken on this and the refugee wishes in writing that this EU member state should be responsible for their asylum procedure (§ 10 Dublin III Regulation) (Flüchtlingsrat Niedersachsen 2019).

The statistics on Dublin Regulation transfers, as shown in Table 6 below, demonstrate that the number of requests made to EU member states by Germany to deport people has been

growing significantly since 2011 (9,075 were made in 2011, 64,267 in 2017 and then with a slight decrease in 2018 to 54,910 such requests). At the same time, the number of actually carried out Dublin Regulation deportations – that is, far below the number of requests – grew significantly from 2,902 in 2011 to 9,209 in 2018. The majority of outgoing Dublin Regulation requests were based on EUODAC hits (65.4 per cent in 2018, in comparison to 65.1 per cent in 2017, 69.2 per cent in 2016, 76 per cent in 2015, 68.5 per cent in 2014, 66.7 per cent in 2013 and 72.8 per cent in 2012) (Deutscher Bundestag 2019b).

In the years 2011–2015, Germany deported more people under the Dublin Regulation than were received. This changed in 2016 and 2017, when more people were received than deported. The ratio reversed again in 2018, when the political and public champagne in Germany grew more loudly to implement more deportations, as we will outline in more details 5.3.1.

**Table 6: Dublin Regulation Requests and Actual Transfers**

<b>Year</b>	<b># Dublin takeover requests made by Germany to other EU countries</b>	<b># Transfers under the Dublin Regulation from Germany to other EU countries</b>	<b># Dublin takeover requests made by other EU countries to Germany</b>	<b># Transfers to Germany under the Dublin Regulation</b>
<b>2011</b>	9,075	2,902	2,995	1,303
<b>2012</b>	11,469	3,037	3,632	1,495
<b>2013</b>	35,280	4,741	4,382	1,904
<b>2014</b>	35,115	4,772	5,091	2,275
<b>2015</b>	44,892	3,597	11,785	3,032
<b>2016</b>	55,690	3,968	31,523	12,091
<b>2017</b>	64,267	7,102	26,931	8,754
<b>2018</b>	54,910	9,209	25,008	7,580

Source: Authors' own compilation, based on numbers annually published by Pro Asyl<sup>5</sup>.

The Dublin Regulation affected many asylum seekers we talked to in our interviews, and produced the opposite of what it actually pretends to do: namely, to stop 'secondary movements' of asylum-seeking migrants within Europe and to orderly manage their flows. In fact, due to the Dublin Regulation asylum experiences were prolonged and led to protracted situations of being in legal limbo over years. As this Syrian woman is experiencing:

<sup>5</sup> See Pro Asyl's website for a more detailed table of country numbers. Available online at: [https://www.proasyl.de/wp-content/uploads/2015/12/Dublin\\_%C3%9Cbernahmen\\_2018.pdf](https://www.proasyl.de/wp-content/uploads/2015/12/Dublin_%C3%9Cbernahmen_2018.pdf).

Yes. After we got the rejection, we immediately submitted an appeal of the decision. But I know other families who got deported. They had also lawyers, but after the second rejection you cannot submit an appeal anymore. Our lawyer told us that our case is difficult especially given that we have a five-year residence permit from Lithuania, and Germany and Lithuania are European countries. However, I find huge differences between them. If we get another rejection for our asylum procedure, we will just leave with our dignity – although we wish to stay here. But, what can we do? My husband and I are thinking of going back to Turkey in case of another rejection. Lithuania is a very bad place. It is very cold in the winter, in a bad economic status and the people are so unfriendly. If you want to stop someone in the street and ask them a question, the person treats you as if you have a knife in your hand and want to stab him/her. Some friends told us to go to another European country like Holland just to gain time and see if changes meanwhile will happen in Syria, so we can go there again. But, I can't do that anymore. I am so tired. I cannot change camps anymore and sleep in a bed that is not mine [the participant starts crying]. I know that we are fine here, we get money every month and we can go in and out so freely but it something very tiring psychologically. You reach a state where you dislike everything. You don't see anything pretty in Europe anymore. You don't see beauty, but you feel as if Europe is suffocating you. But that's what God gave us, to be refugees. I will go out to smoke a cigarette. (SYR-F-MUN 030918)

### **Suspension of Dublin Regulation Returns**

According to Art. 29 (2) of the Dublin III Regulation, the competent member state is no longer obliged to take back the person concerned if the transfer is not carried out within a six-month period. This period may be extended to a maximum of one year if the transfer could not take place due to the detention of the person concerned, or to a maximum of 18 months if they disappeared.

Furthermore, in certain cases, Germany suspended deportations under the Dublin Regulation because of political considerations, and after court decisions stating that the respective countries did not meet basic standards for asylum applicants. In 2010 an asylum seeker from Iraq sought an injunction against his deportation to Greece under the Dublin Regulation, citing substantial shortcomings in the Greek asylum system (Bundesverfassungsgericht 2010). It was an outstanding development that the Constitutional Court (BVerfG) – the highest German court, only ruling on constitutional matters – even accepted the case. Ultimately, the German authorities withdrew the deportation decision for the Iraqi and the court did not render a verdict. Only a few weeks later, the European Court of Human Rights handed down a judgement revoking a deportation decision from Belgium to Greece (landmark case of *M.S.S. vs. Belgium and Greece*). Germany therefore suspended all Dublin Regulation deportations to Greece until 2016 (*Zeit* 2011). In December 2016, the EU Commission eventually concluded that transfers to Greece could be resumed under strict conditions. In March 2017, the German government announced its intention to deport refugees to Greece again (*Süddeutsche* 2017). However, Greece at first refused to take anyone back. In 2018, only six people were deported back to Greece (Deutscher Bundestag 2019d) due to German negotiations with that country. In July 2018, the BVerfG again stopped the deportation of a Syrian national to Greece (BMJV 2018).

Also, in the case of Italy, Dublin Regulation deportations from Germany were suspended. With thousands of people arriving in Italy in recent years and completely overwhelming the country's asylum system, German courts in many cases suspended deportations because it was found that the living conditions for Dublin Regulation returnees were too poor. In September 2016, the Administrative Court of Munich saw, for example, the considerable danger in the case of a Nigerian national 'that the asylum seeker would not find accommodation in Italy, or would be accommodated in overcrowded facilities in a confined space, or even in conditions that were harmful to health or violent' (*Zeit* 2017). However, the BAMF announced that such procedures would be carried out again from June 2017 – with the exception of for families with very young children. The reception capacity for families with children has meanwhile been increased, and Italy has also issued 'guarantees' regarding reception and accommodation – according to the statement of reasons for the policy change (Pro Asyl 2017).

In May 2017, the EU Commission initiated infringement proceedings against Hungary for violations of EU asylum law. Since then, no asylum seekers have been sent back from Germany to Hungary – although there are still requests from Germany to that country to take back asylum seekers (Deutscher Bundestag 2019). Also in the case of Bulgaria, German courts often prevent deportations because of serious shortcomings in that country's asylum system. In 2018, 62.5 per cent of legal protection requests against transfers to Bulgaria were successful (Deutscher Bundestag 2019d).

#### 4.2.2. The 'Safe Third Country' Concept

The **safe third country** concept is contained in Section 26a of the amended AsylG of 1993. It provides the basis for refusals of entry at the border (at land and sea borders, and also as part of the airport procedure) based on the argument that those concerned travelled through a safe third country.

All member states of the EU are by definition considered as safe third countries, while further ones can be added to the list – provided that the upholding of the 1951 Refugee Convention and of the ECHR is 'ensured' there. The list has to be approved by the German parliament. Currently, Germany's list of further safe third countries only consists of Norway and Switzerland. While the safe third country concept initially only applied for the constitutionally defined asylum status, it was extended to other forms of protection in 1996 (Bundesverfassungsgericht 1996).

Asylum applications can furthermore be considered inadmissible in case of a **secondary application** – meaning that the person's asylum application was already **rejected in a safe third country** (§ 29 (1),(5) AsylG, citing § 71 AsylG). If it is proven that asylum has already been **granted** in another **EU member state**, the asylum application is likewise declared as inadmissible (§ 29 (1) AsylG).

Sections 27 and 29 (1), (4) of the AsylG refers to the term '**another third country**' (sonstiger Drittstaat) as grounds to declare an asylum application inadmissible. In practice, the concept has only been implemented in a few cases. This concept is based on the analogous idea of the 'first country of asylum' construct used in other EU member states (ECRE 2018: 60). It relates to the inadmissibility of asylum applications for people who were already safe from persecution in another third country, which is assumed to be the case when the applicant holds



a travel document from that country (§ 27 (2) AsylG) or has resided there for more than three months without facing the threat of persecution (§ 27 (3) AsylG).

### 4.3. Fast-Tracking of Procedures and the Accelerated Procedure

Beyond the regular procedure (including inadmissibility decisions) and border procedures (such as the airport procedure and refusals and readmissions at the land border), an accelerated procedure and different forms of fast-track procedure have also been implemented in Germany. While the accelerated procedure has been based in law since 2016, different fast-tracking mechanisms of the procedure have been implemented provisionally in the aftermath of 2015 – and differs depending on the federal state in question.

The perceived need to speed up the asylum process arose in the context of the rising number of asylum applications and the overstraining of the BAMF, which was unable to process all new asylum applications in 2015. Personnel reductions at the BAMF and a big backlog of asylum applications during the years before 2015 forced asylum seekers to wait for months and sometimes years for the processing of their applications. Several restrictions on the AsylG in the context of the ‘Asyl Package I’ and the ‘Asyl Package II’, as well as a profound rebuilding of the BAMF in the name of process optimisation, were introduced with the aim of drastically accelerating the asylum procedure. The asylum compromise of 1993 already had implemented exclusionary procedural norms with the newly invented category of **safe country of origin** (see 4.3.1.) that entailed a shortened and accelerated procedure. Since 2016 with the ‘Asylum Package II’, people from safe countries of origin are generally channelled into the accelerated asylum procedure.

The ‘Asylum Package I’ in 2015 introduced a further selection criterion based on the national origin of the asylum applicants and their chances to stay. This was initially initiated to speed up integration for some groups with high chances to stay. Later on, it was used as a filter mechanism also in the procedural sense: It follows the rationale of pre-dividing asylum applications based on the expected outcome of the asylum procedure, and a new term ‘perspective to stay’ (Bleibeperspektive) was introduced. This way, individual asylum seekers are filtered by statistical recognition rates of their respective countries of origin (above 50 per cent, earlier: Syria, Iran, Iraq, Eritrea and Somalia, since August 2019: only Syria and Eritrea) that are clustered and predetermine the further procedures employed (as we will outline in detail below). So, for many asylum seekers it was very visible that especially Syrian ones were prioritised. A refugee who arrived in 2015 from Syria commented:

I wouldn't say the asylum procedure is easy or not, but it was clear that Syrians can get their asylum rights. You just needed to prove that you are Syrian. [...] You are asking me if I had been afraid to get a rejection? We were not afraid about it, because Syrians were getting always acceptances. Maybe Iraqis and Afghans were afraid about that. (SYR-M-MUN 031218)

Another Syrian refugee remembers: ‘It was not difficult; the whole procedure was very smooth’ (SYR-F-MUN 140818).

Asylum seekers from other nationalities did not talk about such smooth experiences in their interviews. In contrast, asylum seekers from other nationalities complained heavily about this

practice. Take the words of one asylum applicant from Cameroon; he not only remembers that Syrians were given priority in crossing the border in 2015, but also in the accommodation centre too he experienced different treatment as he did not belong to the five nationalities with a high perspective to stay:

When I went there the camp was so full, and it was winter and I used to be, I remember, in the tent. Because the house was for Syrians, and so I was in the tent. And that was my first experience in cold in winter, because I've never faced winter. And I got sick. I got an infection. (CAM-M-GRO 070718)

Furthermore, the different procedures are connected to a reorganisation of the reception system. This produces strongly differing forms and standards of accommodation that decisively influence not only the asylum seeker's well-being, but their chances of asylum. So-called centralised **arrival centres and special reception centres** were established under the responsibility of the federal states.

Additionally, with the 'Act on the Acceleration of Asylum Procedures' (§ 47 (1) AsylG and § 47 (1a) AsylG) as central part of the 'Asylum Package I' of October 2015, a distinction was made concerning the maximum duration of stay of asylum seekers in mass reception centres. The general length thereof was extended to maximum six months, with the exception of asylum seekers from safe countries of origin and with 'low perspective to stay'. This latter group had to stay in these mass, half-closed reception centres for the whole duration of their asylum process to smoothly implement deportations. With the first 'Act to Enforce the Obligation to Exit the Country' of July 2017, the states got the right to individually extend the maximum stay in arrival and reception centres up to 24 months. The 'Second Act on the Better Implementation of the Obligation to Exit the Federal Republic of Germany' (Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht) from 21 August 2019 later extended the maximum length of stay for all persons in initial reception facilities to up to 18 months with exception of families with minor children, including adult siblings, who may not be accommodated in mass reception facilities for more than six months, which also applies to families from so-called 'safe countries of origin' (new § 47 AsylG).

This was a drastic departure from the system before, which foresaw that most asylum seekers should be transferred to communal, so-called decentralised accommodation – mostly smaller camps, apartment buildings or private flats. In Bavaria, the new mass reception centres were called 'transit centres' and later transformed into 'AnKER centres' (BAMF 2018); in Lower Saxony they were named 'first-reception centres' (Erstaufnahmeeinrichtungen) (Flüchtlingsrat Niedersachsen 2018).

In the following, the different procedures and categories to accelerate the asylum process are described in depth – focussing on the example of the state of Lower Saxony. This is followed by a critical examination of how those procedures and categories impact on the chances of migrants being granted asylum.

#### 4.3.1. The 'Safe Country of Origin' Concept

The definition of safe countries of origin, as first laid down in the asylum compromise of 1993, plays, as noted, a crucial role in the accelerated procedure and also the airport procedure. This is similar to the concept of safe third countries, which can lead to the rejection of asylum applications as inadmissible. Asylum applications of people from safe countries of origin can

be rejected as **manifestly unfounded**. This term describes the reversal of the burden of proof in the asylum procedure: Applications from asylum seekers from safe countries of origin are considered as manifestly unfounded from the beginning of the procedure, unless they are able to present evidence or facts leading to the conclusion that the applicants might be persecuted despite the general situation in the country of origin. If the case is examined in the accelerated procedure, it becomes more difficult to prove the necessity of asylum within the limited period of seven days.

The term safe country of origin is defined in the German Constitution. It applies to countries 'in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists' (§ 16a (3) GG). The list of safe countries of origin has been gradually expanded. EU member states are by definition considered safe countries of origin (§ 29a (2) AsylG). Beyond EU states, Germany currently considers, as noted earlier, the following as safe countries of origin: Albania, Bosnia-Herzegovina, Ghana, Kosovo, Montenegro, North Macedonia, Senegal and Serbia.

The Balkan states were added in 2014 and 2015 under the German conservative government (Serbia, North Macedonia [then the Republic of Macedonia] and Bosnia-Herzegovina, based on BGBl. I, No. 49, 5 November 2014, 1649; and Albania, Kosovo and Montenegro based on BGBl. I, 23 October 2015, 1722). Attempts to further expand the list of safe countries of origin have failed so far, since the list has to be adopted by both chambers of parliament: In April 2016, the government introduced a draft to add Algeria, Morocco and Tunisia to the list. The Bundesrat rejected the draft law on 10 March 2017. In 2018, there was another attempt to add these countries that was however removed from the agenda in February 2019, when it became clear that it would be rejected again (ECRE 2018: 58).

#### 4.3.2. Fast-Tracking of Asylum Procedures since 2015

More recent fast-tracking is based on the principle of pre-selecting asylum seekers depending on the recognition rates ('perspective to stay', with above 50 per cent protection rate – whereas this is the decision rate by the BAMF before the appeal process) in order to swiftly carry out the procedure. This is not to be confused with the accelerated asylum procedure, since the fast-tracking measures are not grounded in law and differ across federal states.

In the following, we first present the underlying basic concepts of 'clustering' and 'perspective to stay'. Then, different variations of fast-tracking procedures are outlined – including both those in favour of asylum seekers of nationalities with high recognition rates and procedures bringing disadvantages for asylum seekers from countries with low such recognition rates. The 'Heidelberger Modell', a prototypical model of the fast-track procedure, is then described. Since this model did not prevail in other federal states, the case of fast-tracking in Lower Saxony is outlined as a more commonly found form of implementation of fast-tracking asylum procedures.

##### 4.3.2.1. Clustering and 'Perspective to Stay'

The clustering of applications according to the asylum seeker's estimated perspective to stay prioritises certain applicants, and channels applications into different procedures. The sole

criterion for this categorisation even prior to the examination of the asylum claim is the statistical chance of being granted protection based on the indicated country of origin.

This pre-sorting of asylum seekers emerged in the context of 2015, firstly in the name of speeding up access to integration for some groups, as outlined in Asylum Package I. It was further developed with the priority needs of acceleration and efficiency to deal with the rising number of asylum applications and of decreasing costs in the context of the nearly collapsed BAMF. The German government commissioned the management and consulting company McKinsey, a worldwide operating firm, at a cost of 29.3 million euros in 2016 to develop strategies on how to cope with the number of asylum applicants. Their suggestions were implemented in the form of fast-track procedures and centralised arrival centres (*Washington Post* 2017).

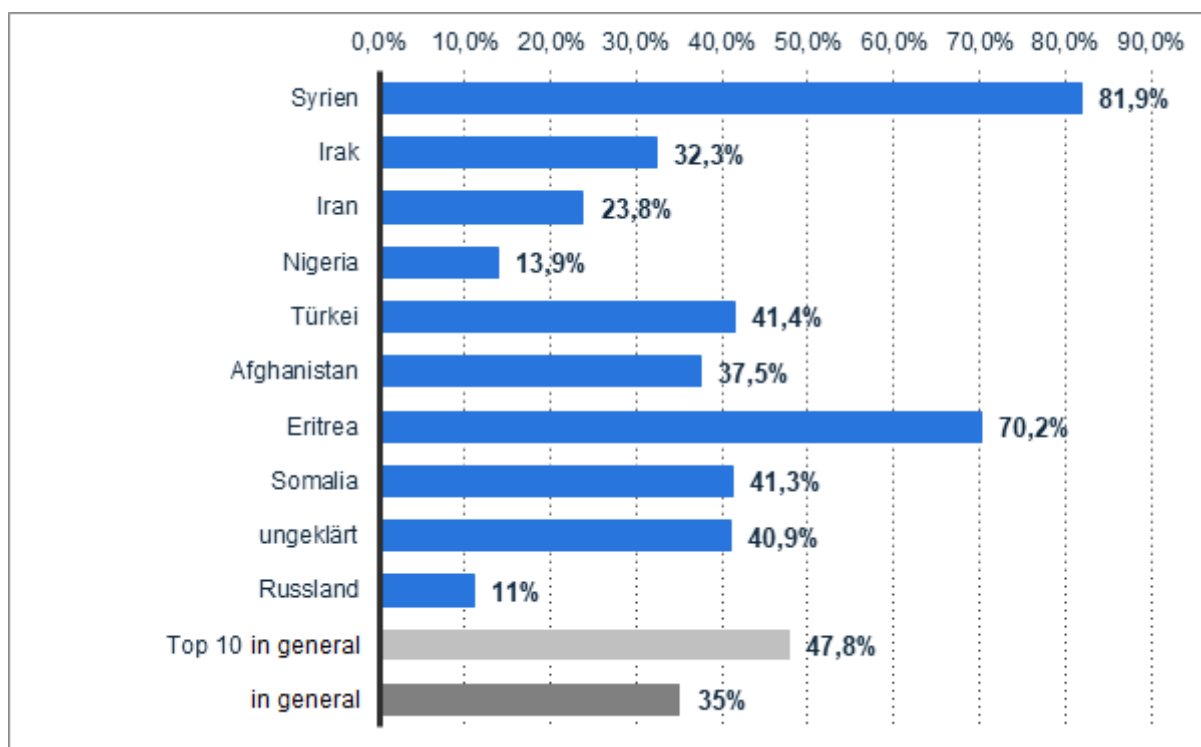
The clustering divides asylum seekers in the following way: Applicants with **high perspectives to stay** (hohe Bleibewahrscheinlichkeit) form **Cluster A**, including mostly countries affected by civil war such as initially Syria, Iran, Iraq, Somalia, Eritrea. **Cluster B** comprises refugees from countries with statistically lower asylum recognition rates and a **low perspective to stay** (schlechte Bleibeperspektive) that goes beyond the previous definition of safe countries of origin. These two clusters already contain about half of all arrivals, whose asylum applications are generally accepted or rejected already within 24 hours. A third **Cluster C** contains people whose asylum applications require more thorough examination, since the **recognition rate of the country of origin is indecisive**. Asylum applications for which another country is responsible according to the Dublin Regulation are grouped into a fourth **Cluster D** (Moll 2016).

**Table 7: Protection rate (including all protection categories)<sup>6</sup> of asylum seekers**

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<sup>6</sup> The total protection rate shall be calculated on the basis of the number of asylum applications, refugee applications, subsidiary protection and prohibition of deportation issued in relation to the total number of decisions taken during the period concerned.

## of the main countries of origin 2018



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### 4.3.2.2. Fast-Track Procedures for Asylum Seekers with ‘High Perspective to Stay’

In 2014/2015 a fast-track procedure based only on a written questionnaire was applied to certain groups of persons with high recognition rates, in cases where it was expected that the application for asylum was well-founded. The practice drew on the already-existing option for written asylum procedures in German asylum law (§ 14 (2) AsylG). Syrian and Eritrean nationals and members of minorities from Iraq, for example, were granted refugee status without a personal interview if a questionnaire showed that they actually belonged to the respective group. This procedure allowed asylum seekers to be easily recognised as refugees if they came from particular ‘unsafe’ countries with a high risk of persecution.

There was one female asylum seeker from Syria who underwent this procedure. She remembers that:

We all went to the city hall [Rathaus] and did the required procedure to get our residence permit. I had to do one political interview. My kids did not do it, because they are under the age of 18. We did not have a translator for that because all the questions were written in Arabic and I had to reply by ticking the boxes of yes or no. After we finished, I remember that they gave us a small booklet which had our rights and obligations. (SYR-F-MUN 230818)

However, in the course of 2015 with the rising numbers of asylum applications and the subsequent restrictive turn in asylum policies, this shortened practice for asylum seekers was terminated from the beginning of 2016. Since then, about half of the Syrian applicants have only been granted subsidiary protection pursuant to Section 4 of the AsylG – instead of refugee status, in accordance with Section 3 thereof (BAMF 2019h).

Since 2016, the BAMF furthermore considered withdrawing refugee statuses that had been previously granted according to these written procedures. The persons in question received a letter from the BAMF requesting to meet for an informal discussion, in order to see if formal revocation or withdrawal procedures could be initiated (Pro Asyl 2018a). Consenting to these requests has now become mandatory; since 12 December 2018, the 'Third Act Amending the Asylum Act' (Drittes Gesetz zur Änderung des Asylgesetzes) entered into force and introduced new obligations to cooperate in revocation and withdrawal procedures. For refugees who were recognised by the BAMF between 2015 and 2017, the 'Zweite Gesetz zur bessere Durchsetzung der Ausreisepflicht' extends the deadline for revocation and withdrawal procedures to up to five years (new § 73 (7) AsylG).

#### 4.3.2.3. Fast-Track Procedures and the Establishment of Arrival Centres: Asylum Procedures on an Assembly Line

Other forms of fast-track procedure (verkürztes Verfahren or Direktverfahren) were implemented in order to speed up the lengthy process and to quickly determine if an asylum application will be rejected.

Fast-track procedures are closely connected with the establishment of centralised arrival centres (Ankunftscentren). They were introduced ad hoc in 2015 in order to handle the rising number of asylum applications, and, by the end of 2017, about 26 such centres had been established throughout Germany (*Taz* 2017). In arrival centres, all relevant actors in the asylum system are brought together under one roof. This comprises the BAMF, the Central Administration for Foreigners (ZAB), the National Employment Agency (BAA), the police and in some cases the court of appeal, among others (Borderline Europe et al. 2018). Through close cooperation between these different administrations, the duration of the asylum procedure could in some places be drastically reduced.

The director of the Refugee Council of Lower Saxony summarises the impact of these regulations that in fact brought a decisive acceleration of asylum files:

Okay, the main effect was that the new director of the BAMF had optimised the indeed bureaucratic and entrenched [*verkrustet*] decision-making procedures. Especially the famous 'asylum line' that he had implemented in the arrival centres meant that the people got registered, criminally identified by the police, then the medical check, the police, the secret service and finally the interview came – and all this within a short time frame of perhaps 2 days, 24 hours, 48 hours. That was like a pearl bracelet knotted to each other. And the asylum seekers were pushed through it relatively quickly. (Interview A)

Because of the federal structure of German administration, there are different regional practices and names for these centres across the federal states. In Rheinland Palatinate, arrival centres are called 'Reception Facilities for Asylum Seekers' (Aufnahmeeinrichtung für Asylbegehrende, AfA), in Saxony 'First reception centre' (Erstaufnahmeeinrichtung) (EAE). Lower Saxony has two arrival centres established in Bad Fallingb. and in Bramsche. The functions of all these centres are similar to those of the model arrival centre described in the following analysis. All of these types of centre follow the same rationale of centralising as many administrative bodies involved in the asylum process as possible in one location, streamlining and accelerating asylum procedures, and filtering out and isolating different groups of applicants according to their high or low perspective to stay.

The concept of arrival centres will be explained in the following on the basis of the model one in Heidelberg, set up with the aim to arrive at a decision on the asylum application in cases with 'low complexity' within 48 or even 24 hours (Staatsministerium Baden-Württemberg 2015). Then the case study of the arrival centres of Lower Saxony follows.

#### 4.3.2.4. Case Study 1: The 'Heidelberger Modell' – Early Clustering and Separating

The clustering procedure was first examined and optimised in the model arrival centre of Heidelberg in 2015, and subsequently adopted in arrival and AnKER centres across all federal states. Today, clustering is part of the standard asylum procedure. The case of the central arrival centre in Heidelberg portrays the general rationale and aspirations behind the fast-track procedures and therefore we explain it in more details in the following chapter due to its model nature.

The central arrival centre of Heidelberg is located in Baden-Württemberg, the only federal state in Germany governed by a Green Party government. Baden-Württemberg is responsible for 13 per cent of all asylum applications in Germany, with about 70 per cent of newly arrived refugees there being registered in Heidelberg. Opened in December 2015 in response to the sharp increase in the number of arrivals, the registration centre in former United States military barracks soon housed over 5,000 refugees (Staatsministerium Baden-Württemberg 2015).

In November 2016, every day about 75 asylum procedures were decided on by 70 decision makers, and finalised by 200 employees in the BAMF branch office, processing all relevant administrative acts relevant for the asylum procedure (Moll 2016). Newly arrived asylum seekers enter a standardised procedure to ensure that they undergo all relevant steps within the course of two days: on the first day, personal data and identification documents are recorded with the help of interpreters. The same interpreters also inform the applicants about their rights and duties in the asylum process (according to § 14 (1) and § 23 (2) AsylG). Fingerprints and photographs are taken for identification, and cross-checked with criminal records and the EURODAC database. Additionally, a health check is carried out by doctors in order to diagnose infectious diseases such as tuberculosis.

On the second day, the formal asylum application is initiated and a BAMF file is opened in a personal hearing, involving the recording of personal information and documents. Applicants are furthermore instructed about their duties to cooperate per § 15 AsylG. If the applicant's fingerprints come up with a match in the EURODAC database, information on the Dublin Regulation is handed out and approval for data exchange is sought. At the end of the formal process, the written application is signed.

Within the next few days after the initial application, the personal hearing takes place – either according to the Dublin Regulation or to the regular procedure. In case of the former, only the first part of the interview regarding questions about safe third countries is conducted in person and the second part addressing possible reasons against deportation is to be filled out in written form individually within one week. For the second part of the Dublin Regulation examination, the questionnaire is shortened according to the predetermined cluster that the applicant is categorised in. People in Cluster A have to answer 19 instead of 25 questions, ones that mostly aim at asserting their identity – since their application is deemed already justified due to their country of origin. People in Cluster B (safe countries of origin and Maghreb nationalities) have to answer a shortened questionnaire of only 14 questions. If the Dublin

Regulation is not applied, the regular personal hearing according to § 25 AsylG is scheduled to be conducted within five days.

In theory, applicants who have been granted protection are distributed into decentralised housing on the communal and local levels as soon as their first interview is done. On average residents stay four to six weeks in the arrival centre of Heidelberg, which remains consistently fully occupied and still houses between 1,000 and 1,500 refugees as of 2019. If their applications take longer or are declined, applicants are relocated to one of ten other centralised mass reception centres in Baden-Württemberg.<sup>7</sup>

#### 4.3.2.5. Case Study 2: Arrival Centres in Lower Saxony – LAB and Fallingbostal

As reception is the duty of the federal states, in the following section we will describe the structure of the earlier-mentioned LAB of Lower Saxony – which introduced two arrival centres in the course of 2015. The arrival centre at Fallingbostal will be detailed as a concrete case study, describing the procedures on site and problems arising from their implementation.

Lower Saxony is responsible for 9.32 per cent of newly registered asylum seekers, according to the 'Königsteiner Schlüssel' (key for the distribution of asylum seekers to the different federal states). In absolute figures, from beginning of 2015 until July 2019 168.700 asylum seeking migrants came to Lower Saxony. All asylum procedures allocated to Lower Saxony are administrated by the 'State Reception Authority' (Landesaufnahmestelle, LAB). It cites as its core purpose the 'reception and accommodation of residents, educational and cultural first orientation, registration office and processing of asylum applications, identification processes, support and consultation for voluntary returns, execution of deportations' (LAB NI 2019a). These purposes derive from the AsylG, residency law (AufenthaltG) and asylum applicants' benefit law (AsylbLG). The LAB functions as an overarching administration agency with several branch offices and accommodation centres across the whole of Lower Saxony.

#### **Figure 3: Overview of Arrival Centres and First Reception Centres Run By the LAB**

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<sup>7</sup> According to §47 of the AsylG, the duration of stay in centralised accommodation should not exceed six months – unless the applicants are from safe third countries. However, this maximum duration of stay is in fact exceeded in most cases: at the beginning of 2017, more than 1,500 persons had lived in these reception centres for longer than six months and were still there (Flüchtlingsrat Baden-Württemberg 2017).





Source: LAB NI 2019

Notes: Medium blue: main branch offices with refugee accommodation; light blue: remote branch offices with refugee accommodation; dark blue: administration offices without refugee accommodation; red: central office.

The LAB is also responsible for the execution of deportations of both residents of its accommodation as well as of applicants who have been distributed to the communal level.

Also the LAB set up two central arrival centres in Bad Fallingbostal and Bramsche in 2016, and centralised all relevant administrative agencies in the two facilities that are relevant for the asylum procedure (Interview B). Currently, Bramsche has an active accommodation capacity for 1,200 people and Fallingbostal for 800 (LAB NI 2019c). Both facilities were built with the aim of registering up to 800 asylum applications per day (BAMF 2016b). The arrival centres house the 'Federal Office for Migration and Refugees' (BAMF) and the 'Federal Employment Agency' (Bundesagentur für Arbeit, BA) office as well as independent consultation services. Housing, sanitary, social and childcare are conducted by private companies or welfare organizations.

Registration and hearing procedures are carried out within the arrival centres. In some cases, the decisions on asylum are announced while applicants are still accommodated in the centres, but in general, people are relocated from these arrival centres soon after first reception procedures have been fulfilled to first reception centre run by the LAB. The LAB has a clear policy not to execute deportations and voluntary returns from the arrival centres.

In the arrival centre, the steps of the asylum procedure broadly correspond to those in other arrival centres, as exemplified in the previous case study. After checking federal responsibilities according to the Königstein key, asylum applications are registered and the

identification procedure is conducted – mostly on the day of arrival (Interview O). Dublin Regulation procedures are initiated in case the applicant's fingerprints match the EURODAC database. The next step is the personal hearing, on average five days after arrival. In between, applicants undergo appointments at the medical examination centre, social services and the BAMF (Interview F).

Consultation concerning the asylum procedure is provided by two agencies, both funded by the Ministry of Social Affairs. Diakonie Walsrode offers independent counselling in groups and on an individual basis, and provides translators where necessary (Diakonie Walsrode 2019).

In order to identify special needs and vulnerabilities among asylum applicants, the LAB established a standardised 'clearing procedure'. The so-called Friedland Modell serves to identify applicants suffering from post-traumatic stress disorder (PTSD). Social workers are especially trained by the regional 'Refugee Trauma Network' (NTFN) to identify possible PTSD patients and forward them to an in-house ambulance, where diagnosis interviews can be conducted. Subsequently, individual needs regarding treatment, accommodation and relocation are determined and recommended – but often remain without effect as the information is not passed on to the relevant bodies (Elle and Hess 2018).

All asylum applicants are further distributed to the LAB first reception centres in Braunschweig, Celle, Osnabrück,<sup>8</sup> Oldenburg and Friedland where they have to stay for a maximum duration of six months before they are further distributed to communal accommodation (with the exception of those asylum seekers from safe countries of origin and with a 'low perspective to stay'). They, as indicated, have the obligation to stay in these reception centres for the whole duration of their procedure (Interview N).

Refugee rights organisations criticise the pooling of people with low perspectives to stay in one big camp, from where most people return – either voluntarily or by execution of administrative decisions (Interview A). Also the director of the LAB admitted that this decision to pool this group of asylum seekers in a mass, half-closed accommodation centre for the duration of their whole stay brought several new 'challenges':

I think the main challenge in recent years was the decision that asylum seekers from safe countries of origin won't be distributed any more to the municipalities. And there are similar discussions concerning the so-called Dublin cases. And in fact, this is really something that keeps us busy, as this would immediately have consequences on our capacity regarding the accommodation available, the duration for which people stay in the camps and hence the challenge concerning social care and counselling [Betreuung] of the people. (Interview B)

In Friedland (GDL), another branch office of the LAB, 820 people can be accommodated simultaneously. Historically Friedland was founded after the Second World War for refugees, displaced persons and later for 'homecoming' German prisoners of war. Over the years several

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<sup>8</sup> In Braunschweig, more than 950 people can be accommodated – with an additional 250 beds in the associated branch office in Celle. A consultation office in Braunschweig provides advice and counselling on the possibilities of voluntary return for asylum applicants, and helps in the planning and execution of returns. The accommodation centre of Osnabrück, whose capacities amount to 600 persons, is associated with the arrival centre in Bramsche and hosts as well especially asylum seekers from countries giving them low perspectives to stay. Also here, independent counselling as well as return counselling is provided (LAB NI 2019d). Single women are provided with separate accommodation, as is the case in Braunschweig as well.

refugee groups were hosted there too, as well as Jewish immigrants and ethnic German repatriates from the former Soviet Union. Today, the centre in Friedland additionally functions as a special reception centre for asylum applicants by the LAB. Certain groups with special vulnerabilities, such as pregnant women or refugees in the resettlement programme or other federal humanitarian programmes, are first registered and accommodated there. As in the arrival centres, in practice there are no deportations executed from the location of Friedland (Interviews G and N).

Interviewees especially criticised the location of Bad Fallingbostal, situated far away from the nearest urban centre (see Figure 4 below). This produces additional difficulties not only to access social activities and medical care, but also to find a lawyer or civil society support. According to several studies, one of the strategies to facilitate deportations is to prevent the integration of people and to cut them off from civil society support structures (Scherr 2017).

### 4.3.3. Accelerated Procedure in Special Reception Centres

Beyond the different fast-tracking mechanisms of the procedure, there is an accelerated asylum procedure that was introduced into German law in 2016. In the following, this accelerated asylum procedure is outlined. Afterwards, the form of accommodation centres connected to the accelerated procedure is described. They are called special reception centres (*besondere Aufnahmeeinrichtungen*), and comprise the former transit centres only introduced by Bavaria that were turned into ‘arrival, decision and return centres’, shortly AnKER centres, (*Ankunfts-, Entscheidungs-, Rückführungszentrum*).

#### 4.3.3.1. The Accelerated Asylum Procedure

Since March 2016, an accelerated procedure has been introduced as part of Asylum Package II (§ 30a AsylG). This procedure is carried out in branch offices of the BAMF within the special reception centres” (*besondere Aufnahmeeinrichtung*). The procedure was implemented for two years at two BAMF sites – Manching/Ingolstadt and Bamberg, both in Bavaria – where special reception centres were prescribed by law for this procedure (§ 5 (5) AsylG). According to Section 30a (2) of the AsylG, an accelerated procedure is supposed to last only seven days. The law provides for an accelerated procedure if an applicant:

- (a) comes from a safe country of origin;
- (b) has clearly misled the authorities about their identity or nationality, by presenting false information or documents or by withholding relevant documents;
- (c) has in bad faith destroyed or disposed of an identity or travel document that would have helped establish their identity or nationality, or if the circumstances clearly give reason to believe that this is the case;
- (d) has filed a subsequent application, in case they left Germany after their initial asylum procedure had been concluded;
- (e) has made an application merely in order to delay or frustrate the enforcement of an earlier or imminent decision which would result in their deportation;
- (f) refuses to be fingerprinted in line with the Eurodac Regulation;
- (g) was expelled due to reasons of public security and order, or if there are grounds to believe that they constitute a threat to public security and order (ECRE 2018: 47f.).

The decision on the application is closely entangled with the accommodation type for asylum seekers: During the accelerated procedure, applicants are obliged to stay in special reception centres (§ 30a (3) AsylG). If people have been granted protection or their asylum claim has been rejected as simply unfounded, or in the case that the BAMF is unable to process the application within seven days, the person in question is allowed to leave the centre and the process can be continued as a regular procedure (§ 30a (2),(3) AsylG). People whose asylum claim is processed under the accelerated procedure are according to the AsylG affected by much stronger sanctions if they break the obligation of residence in the centre. Leaving the centre can even lead to the closure and termination of their asylum procedure (§(2),(3) AsylG).

In fact, the accelerated procedure has had so far only very little impact. According to research by the ECRE, it stopped after the special reception centres Manchingen/Ingolstadt and Bamberg were transformed into AnKER centres on 1 August 2018 (ECRE 2018: 48). Instead, the general fast-tracking of procedures connected to the above-described clustering of asylum applicants is currently much more widely implemented. However, since the accelerated procedure is based in law – in contrast to the fast-tracking of procedures – it could become more relevant in future.

#### 4.3.3.2. Special Reception Centres – AnKER Centres

Special reception centres were established in order to implement the accelerated procedure in two locations in Bavaria. These have been turned into AnKER centres, as designated in the coalition treaty of the red/black government of 2018. In his 'Masterplan on Migration' of July 2018, Federal Minister of Interior Horst Seehofer presented the idea of AnKER centres to centralise competences of the federal, the national and the municipal level under one roof for making the asylum process even more efficient and fast (*Welt* 2018). Thereby the acronym AnKER signifies the central purposes of these centres: arrival, decision and deportation. Their general rationale is to keep people in one centre for the duration of their asylum procedure, facilitate deportation and voluntary returns, and only distribute to the communal level applicants with positive decisions or good prospects. These different treatments are applied according to the clustering mechanisms described in 4.3.2.1.

The concept was controversially debated, and whereas the proposal aimed to standardise central accommodation across Germany only a few federal states actually followed through (*Bayrischer Rundfunk* 2019a). Bavaria renamed all existing reception centres as AnKER centres on 1 August 2018; but only Saxony and Saarland followed suit, establishing one AnKER centre each (ECRE 2018: 76). Many states – such as Lower Saxony – argued that they had already established the far-reaching centralisation of essential functions in their facilities, without the punishing and restrictive gesture of the AnKER concept (Interview G).

Along with the introduction of AnKER centres, also the obligation to stay in reception centres – as defined in § 47(1b) of the AsylG – was extended and made flexible (ECRE 2018: 73). As an official guideline, the federal government suggested an average duration of stay of six months, but allows the states to extend it up to 24 months. Accordingly, Bavaria extended the obligation of asylum seekers to stay in a reception centre to up to 24 months – amending § 2 (2) of its Reception Act (*Aufnahmegesetz*) in December 2017 accordingly. After filtering, applicants with high perspectives to stay are soon redistributed to the communal level, whereas the majority of residents now face a longer stay in the centres (*Flüchtlingsrat Bayern* 2019a).

In fact, the introduction of AnkER centres has led to a reduction of asylum recognition rates. According to a Bavarian asylum lawyer, the recognition rate of asylum seekers from Afghanistan in the AnkER centre of Manching/Ingolstadt in Bavaria is 34.1 per cent, compared to a federal-level average of 51.2 per cent. In the cases of asylum applications from Nigeria, the federal average is 24.6 per cent – compared to 8 per cent in Manching/Ingolstadt. In the AnkER centre of Bamberg, only 7 per cent of asylum seekers from Iran are granted protection, compared to a federal average of more than 34 per cent – as the government conceded in an answer to a parliamentary question (*Bayerischer Rundfunk* 2019). These low recognition rates may be connected to a lack of information and shortcomings in legal consultation and is a direct result of the acceleration.

As an unintended consequence hereof and a marker of the possibly decreased quality of the accelerated asylum procedure, rates of appeal after negative decisions increased to a record high of 76 per cent in 2018. The Administrative Courts are working at the limits of their capacity, and asylum applicants have to wait several months, sometimes up to two years, until their hearing comes about. They are obliged to stay in the AnkER centres throughout. The intended acceleration of asylum decisions therefore seems to produce a backlog in the courts, effectively restricting the movement of people for even longer than before in more isolated circumstances – as the Bavarian refugee council has been criticising (Flüchtlingsrat Bayern 2019a).

#### **4.4. Procedural Practice – Problems and Deficiencies**

The increasing numbers of arrivals in 2015 showed that the German administration was not prepared to process large numbers of asylum applications. In fact, the BAMF had been claiming it was understaffed already in 2013; former presidents had several times unsuccessfully asked for an increase in the number of decision makers for the institution. An enormous backlog of cases was the consequence. While asylum seekers and NGOs had already protested against the lengthy asylum procedure in previous years, the system reached breaking point in the summer of 2015.

An Iraqi asylum seeker who arrived in the autumn of 2015 described the situation quite vividly:

So, the problem was the great number of refugees and the small number of employees. We had to wait for two or three months, and waiting for many long hours to be seen, and this was in December and January so it was very cold. So for two or three months it was very difficult for us, but day by day it was getting better because the number of refugees became less and less and after, for example, a couple of months after that you could already do it all in a few days and now it is a couple of hours. But for me, when I came I spent two to three months in the cold weather, waiting just to speak to someone. (IRAQ-M-BER2 020818)

A female asylum applicant from Syria recalls her first time in Germany in 2015:

On our arrival to Germany, there was no one responsible for us. In every camp a different person would come and give us papers. [...] No one was explaining the procedure for us. (SYR-F-MUN 091118)

Another asylum seeker from Syria remembers that:

It was not difficult, but there were a lot of people applying. So, we had a problem with time and waiting. We had to wait for long to reach our turn. It took me 15 days only to prepare my papers and to be able to take an appointment for the interview. I was staying in the camp during that time. (SYR- M- MUN 041218)

Subsequent attempts to re-stabilise the asylum system through the reorganisation of the BAMF, especially with the help of new staff and on the basis of the rationalisation of internal processes, as well as via additional laws and regulations accelerating the asylum procedure together significantly shortened the procedure for certain applicants. Many others, meanwhile, are still stuck in limbo for months or even years. The acceleration of the asylum procedure also led to a strong reduction in procedural guarantees, as we will outline in greater detail in the following section.

Critics have remarked that the fast-tracking of procedures prevents an in-depth examination of the individual asylum application. In addition, applicants are prevented from receiving thorough and independent information on the asylum procedure, which hinders them from making full use of their rights – affecting especially vulnerable groups. Furthermore, it is pointed out that the clustering and residence requirements lead to a predetermination of the chances to gain asylum based on nationality. In this regard, the practice to concentrate and isolate asylum applicants in collective accommodation centres, especially in AnKER ones, has been strongly criticised. The different critiques of the current German protection regime will be outlined in the following section.

#### 4.4.1. Little Information – Complicated Paperwork

Generally speaking, many asylum seekers mentioned in the interview with the RESPOND team that they experienced the whole asylum procedure as heavily bureaucratic and difficult. As this man from Syria pointed out: 'The procedure was so bureaucratic and much harder than I expected' (SYR-M-MUN 041218). Another Syrian refugee noted: 'I expected the process to be easy, but it turned out to be difficult. So much paperwork and waiting time and sometimes the behaviour of the employees was bad' (SYR-M-MUN 151218).

Whereas some asylum applicants felt that they had been provided with enough information about the procedure and their rights and duties, others complained that there was hardly any information in a language that they could understand. A Syrian women who applied for asylum in Munich told us:

The employee who did the interview with me told me about my rights and the other information. They were giving us papers as well, most of them were in German but some were translated into Arabic. But no one told me what I should do in case of a negative decision, and I did not ask because I expected it to be accepted. No one told me how long I should wait to get the residence permit, they told me that I simply should wait. (SYR-M-MUN 041218)

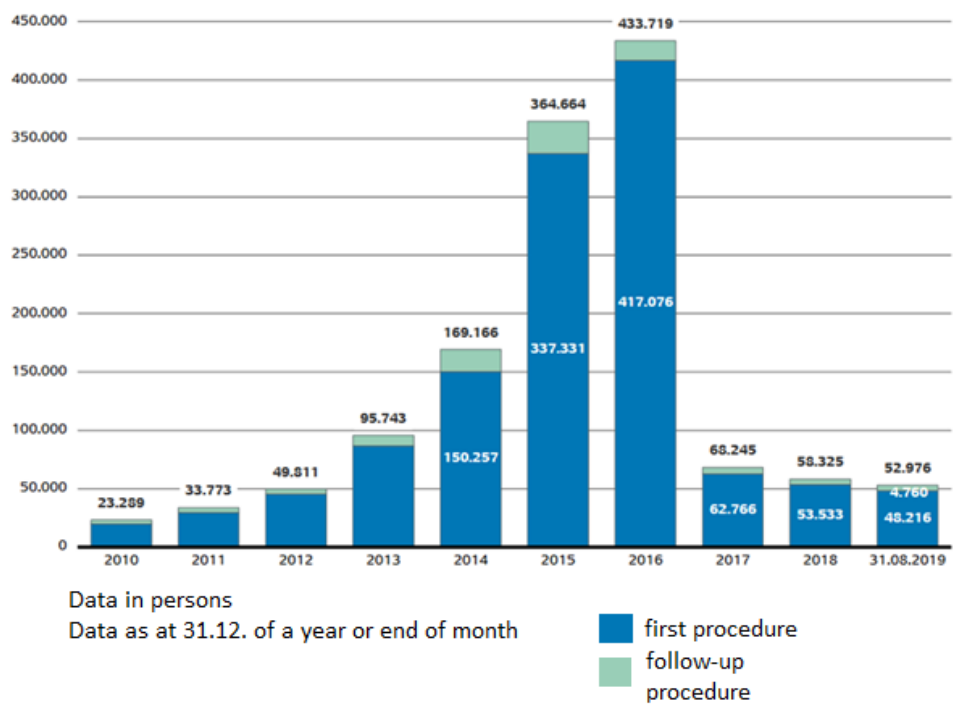
Many asylum applicants (SYR-M-GOE 41218; SYR-M-GOE 261018) recalled as well that no one informed them about their rights, as this Syrian refugee who applied for asylum in Munich remembers: 'No one told me what my rights and obligations are'. Under such conditions, he went on to emphasise the importance of personal contacts: 'I remember that there was an employee who became our friend in the camp and who was telling us the whole time what to do as steps in the asylum procedure. I also knew what to do from my friends who already did their papers' (SYR- M- MUN- 15.12).

Many got some information about the procedure from relatives and friends who arrived earlier and already had some knowledge, some also got their information from social media platforms such as Facebook. A female Syrian asylum applicant told us: 'We did not get any legal advice from anyone. We were doing everything on our own, by asking people around us' (SYR-F-MUN-03.09).

#### 4.4.2. Long Duration, Waiting and Situation of Limbo

The understaffing of the BAMF led to a backlog of cases, as Table 8 below shows. This in turn caused very lengthy time periods for a single case to be processed.

**Table 8: Development of Asylum Cases Waiting to be Processed since 2011**



Source: BAMF 2019g

In the course of the 'crisis' in 2015, the BAMF hired new staff and the backlog of cases could be significantly reduced – as could the processing time for asylum applications. In 2017, the average time to process an asylum application at the BAMF was still 10.7 months (Deutscher Bundestag 2017c, 2018e) until a final decision was made (including also court cases); the average time was 12.6 months in mid-2017 (Deutscher Bundestag 2018f, 2019d). In 2018, the average time until a BAMF decision was reached slightly decreased to 8 months (Deutscher Bundestag 2017c, 2018e), but the total duration including appeals rose to 16.8 months in mid-2018 – and many appeals are still pending today (see also ECRE 2018: 20f.). But, as outlined in 4.4. already, the acceleration led to a loss of quality in the procedure, and subsequently to more appeals. In fact, the total duration of the asylum procedure could in

many cases not be reduced, and some people remain in limbo at length – quite often due to a Dublin Regulation procedure. This is apparent in this exemplary description of a lawyer regarding her clients:

I had a file today on a family that's been here since 2013 – somewhere in Osterode – and they still have no status. [...] They arrived and then there was a Dublin Regulation procedure. They were in Italy before. [...] But then the deportation was cancelled because the woman was pregnant. Then the Dublin Regulation deadline was over and it took forever, because nobody at the BAMF took care of it. At some point there was a so-called second application procedure where they said: 'Your first asylum procedure was in Italy, so this is your second one in Germany and then there are stricter standards and you are only allowed to report new things'. [...] And now, they are in their sixth year and still in ban of deportation, and in court. Most probably, the responsible judge will announce a deportation prohibition concerning Italy. Because he will say, a family with small children in Italy, I do not take part in that. [...] But I thought to myself: 'How absurd this procedure is, no?' And you can't explain that to them [the clients] any more. [...] I think they have given birth to two children here in Germany by now. And then the BAMF simply bluntly makes a secondary application. Although that can't be logical, because the child has never been to Italy before and that's just the way it is and that's also legally wrong. (Interview C)

Many interviewed asylum seekers (see also CAM-M-GRO 070718) – mostly from African countries – who came via the central Mediterranean route and arrived in Italy complained about the lengthy duration of their asylum procedure (amounting to between one and two years, due to a Dublin Regulation request). As this young man from Eritrea described:

They found out that I had given my fingerprints in Italy. So, I waited for two years because after they found out that I had fingerprints in Italy, they told me I had no right to be here to seek asylum in Germany. And then, they already decided to return me to Italy. They asked the Italian government but they didn't answer – they usually don't answer. So, I hired a lawyer and was fighting with the lawyer to get the asylum but they refused again. They decided to send me back. So, I sought asylum in a church. (ERI-M-GRO 090718)

But there were also asylum seekers who waited for one year or more without knowing the reason for that:

Our interview was done last year, we have had one and a half years of waiting now. When I was there, I have seen people who got an answer after one month, and even positive answers. I couldn't believe and accept it, why this was the case [...]. The people who arrived in 2016, later than I, already did their interview and received their results and I had to wait until 2017. Thereby, I did not know the reason for it. You can't ask someone why this is happening. No one answers your question, no office. (IRA-M-GOE 190918)

Another Syrian asylum applicant had the same experience of a system that was perceived as highly arbitrary and non-transparent:

I took the protection [subsidiary protection], but not the residence permit [refugee status]. My sisters who came with me got the residence permit, I don't know why or what is the difference to be honest. My friends who are here, one took the residence permit after two months another one took it after one year. So I did not put to myself



any period. In general, my procedure took so much time. I arrived in Germany in August 2015 and took the protection in February 2017. I did not have enough information. I knew that I should get a lawyer and submit an appeal in case of rejection. No one told me, I knew that from Facebook groups. (SYR-M-GOE 281018)

Many interviewees described this long waiting time without being informed and understanding the reason for the delay as psychologically highly frustrating and demanding. The story of one Syrian refugee illustrates this. He arrived with a brother who as a 13-year-old minor applied for family reunification. Instead of specially protecting the minor as a vulnerable asylum seeker, his case was for a long time in limbo; finally his application for family reunification was only partially positively decided on. Only his mother was allowed to come, which meant that his siblings had to stay back in Turkey, as did his father:

Because of my brother. He is a minor, and I came here with him. I immediately got the residence permit, but he got it after a year and a half. His process was delayed because he had family reunification. Now he is 13. We got a rejection of the family reunification because of the new laws in Germany. Complications with complications. Things are really bad as I told you. So we still have a lawyer. But useless. We have him for more than a year now but we didn't get anything new. Not even a negative reply. That's the worst thing in Germany. They keep you on hold. Give me a rejection or give me an acceptance, so I know what to do and if I start working. But no, they keep you in the middle. (SYR- M- MUN 031218)

Also an interviewee who came from Turkey to apply for asylum in Germany described this waiting time and the uncertainty surrounding it as traumatising:

It was a big gap for me to leave my family there, so having the residence permit after eight months of waiting in the court and getting it after one year [...] I was very affected psychologically. I wonder, my status is not certain whether I will go back, will not go, will they give a permit or not. In that sense, I've experienced what I would call a traumatised psyche. (Tur-M-GÖ2 201218)

#### 4.4.3. Underqualified Staff, Unqualified Decisions, Structural Mistrust

Another issue that was widely criticised by NGOs was that the new staff hired ad hoc in 2015/2016 were not sufficiently trained or qualified. The new employees passed fast trainings of maximum five weeks, instead of a three-month training plus sitting in on lectures, as was common before. ECRE pointed out that:

According to a media report, based on information submitted by the BAMF, 454 decision makers had not received any kind of relevant training in May 2017, although most of them had been handling asylum applications for many months at the time. As of February 2018 the number of decision makers without any relevant training had been reduced to 36, according to the report. Nevertheless, 769 out of 2,139 staff members who were deciding on asylum applications as of February 2018 had not completed the full training programme. In July 2018, a leading member of the BAMF staff council [a body of staff representatives] stated that deficiencies in the training of decision makers were persistent, with new staff members only being trained in 'crash courses' and getting basic training only after they had started [and therefore after they had already begun deciding on asylum cases]. BAMF management acknowledged that

training measures were ongoing, with 489 decision makers undergoing 'ongoing training' and a further 45 being trained by colleagues who have more experience. (ECRE 2018: 20)

The Refugee Council of Lower Saxony furthermore explained:

There are all sorts of absurdities which had taken place there, and which were of course due to the poor quality of the hearing and implementation by interviewers and decision makers – who were often only trained for this activity in short courses of two, three or five weeks. First they relied on soldiers, sociology students or whoever suddenly came into consideration as a decision maker. (Interview A)

This practice turned out to be problematic: Since decision makers are encouraged to uncover contradictions in the asylum interview, a thorough knowledge of the political situation in countries of origin and along the flight route is crucial. Due to the new practices, these qualifications were not possessed by all decision makers. This often led to standardised narrations rejecting the asylum claim that showed only a highly superficial knowledge of the political and social situation of the country of origin, as this Iranian asylum seeker had experienced:

They wrote 16 pages about why I had been rejected. Out of these 16 pages, seven or eight are simply copied from the Internet. I tell you one example. They wrote in which year and on what date and with how many votes Rohani became president. I don't know how this is connected to my case? Or, in which year the highest Islamic council was founded and how many delegates are women [...]. (IRA –M-Goe 190918)

The spokesperson of the BAMF staff council, Gernot Hüter, also criticised this employment strategy in 2016, and pointed out that some of the new decision makers had been dismissed because of personal inclinations such as an aversion to foreigners (ARD 2016). This issue intensified the generally problematic setting found in the hearings anyway, whereby the interviewee needs to openly explain her or his personal situation and convince the interviewer of his/her credibility.

The case study 'Memorandum for Fair and Careful Asylum Procedures in Germany. Standards to Uphold Procedural Guarantees under Asylum Law', published by a number of NGOs such as Amnesty International, criticised the fact that:

According to comments and suggestions from lawyers, counsellors and affected persons, in many cases it cannot be said that the hearing was conducted in a faithful and understanding manner. This is also demonstrated by the cases documented within the framework of the project. Some of the hearings are carried out like interrogations, which intimidates and unsettles asylum seekers. Personal circumstances of applicants, such as a low level of education, are not sufficiently taken into account. Interviewers often react impatiently, and in some cases the asylum seekers are even urged to hurry up by the translators. Particularly serious are the cases in which the interviewer does not approach the interview objectively and impartially from the outset. (Amnesty International Sektion der Bundesrepublik Deutschland e. V. et al., 2016: 17)

The above-mentioned Iranian asylum seeker also pointed to such a problem of how to prove his credibility, against the background also of structural mistrust and misinformation, vis-à-vis the behaviour of the decision makers:

He [the decision maker] said: 'You are claiming to be a Chavari. But I don't believe you.' I don't know what kind of documents I should have brought with me to prove that I am a Chavari. When I speak with Germans, they ask me if I come from China or Korea, although I am from Iran. I say, 'No, I am Iranian'. This is highly interesting, as they don't know that there are such people in Iran that look like that. We are a certain race, and we are called Chavari. When I went to the hearing it was very similar to the situation on the street – it was very racist. And I know that this decision maker rejected nine asylum claims by Iranian people out of ten cases altogether. (IRA –M-Goe 190918)

Another asylum applicant from Turkey had similar experiences; she put it in the interview as follows:

They don't listen, they are not behaving according to your needs, they don't listen to you; they have a duty to do so. They try to get answers to questions, but only to those in front of them. So, you know, I try to express something extra there because my situation is an atypical one; as a highly educated person who can go there with a work visa, I applied for asylum, for political reasons. So that's exactly why my answers are not included in those options. They're pushing me to give that, but I'm not there. So after a while they make their own comments, and do not actually listen. (TUR-W-BER 031118)

#### 4.4.4. Errors, Mistakes, Sloppiness and Politics of Scandalisation

Nearly 12 per cent of asylum applicants who had an interview with our RESPOND team reported errors, mistakes or simple sloppiness by BAMF officers, officers of local foreigners' offices or by lawyers that had decisive effects on the asylum seekers' procedures and chances to secure protection status. Interviewees not only told us about changed names and dates of birth in the papers (IRA-M-Goe 190918). A couple of interviewees recounted also lost papers, as was the case for a Syrian asylum seeker who was at the time of his arrival a minor. The loss of his papers prolonged the whole procedure, and hence his chance for family reunification:

The employee who did the interview with me told me that I should wait until the decision is out. He told me that this might take one month, one year or two years. After a month, my friend who did his interview at the same time as me got his residence permit. I did not. The person responsible for the procedure told me that my papers were lost, and that I need to repeat everything, the interviews and everything. I was totally broken then. Because I wanted to bring my parents, and I knew that repeating everything would take a year. I did not have any other option, I repeated everything. (SYR-M-MUN 271118)

Due to lost papers and a prolongation of the procedure, another Syrian minor in fact was not any more entitled to family reunification – as he was already over 18 at the end of his procedure:

My papers were lost, and only found after a year and a half. Because of that I got my residence permit after I became 18 years old, so I could not do a family reunification for my parents anymore. I wanted to do that. My dad came here later, illegally. (SYR-M-MUN 281118)

Interviewees also told us about mixed up identities and files (SYR-F-GOE 141218). One asylum seeker from Eritrea experienced his file and identity being mixed up with another person's file, so that in the end he did not exist anymore in the system and his case was closed. This was able to happen also as a result of the lawyer mixing up identities and agreeing on the closure of the procedure:

The officers gave him [the other asylum seeker] a visa, a five-month visa and then he went to America. And how did he do that? I don't know because his identity card was also 'Duldung'. So, my lawyer thought this documents were mine because all of this guy's documents were in my folder, mixed in with my documents. So they say: this guy is already in America so he doesn't have a right to request asylum here. That's why. So when the judge hears this from the Ausländerbehörde [foreigners' office], she decided and closed my case. And then my lawyer said: 'I accept'. That means he said that yeah, that I was this other guy so then the judge made her final decision. My Ausländerbehörde was the same as that other guy's, so somehow they mixed up the paperwork. I was given a 'Duldung Ausweis' [tolerated stay document] and they told me that I was not allowed to study any more, to ask asylum – case is closed – and as such I am not allowed even to make another appeal. It's a final decision so I have to leave the country. So that means that I don't exist, in their mind. So I went there and confronted them. I said: 'This paper comes from you – why did you do that?' I was taking money every month and you know what I am doing every time. They know that I am studying. But they didn't want to listen to me. But, I also couldn't trust my lawyer. It was a big mistake he made – to confuse my identity. So what I did was I wrote directly to the judge. I compiled all documents and showed what I was doing this time, and the whole time. I was studying the language, I was studying at university. I explained that my date of birth was different from the other guy, that my name was spelled Ephren and the other guy was Ebrahim and I only wanted them to correct this because I wanted to continue to study. But the Ausländerbehörde told me that I had to stop that, I had to bring my passport and they wanted to deport me. This happened last December, in 2017. (ERI-M-GRO 090718)

Such kinds of errors and mistakes ascribing to asylum seekers the wrong identity will probably intensify with the usage of new technical and digital devices such as voice recording, and with the compiling of new data gained from the mobile phones of applicants – as NGOs also warn. The techniques are not only still prone to errors – for example in how they technically analyse dialects – but they also take the decisions out of people's hands too (*Netzpolitik.org* 2017).

#### 4.4.4.1. Politics of Scandalisation

While such incidents as the ones described above did not attract any media coverage even though NGOs pointed to the fact that they were no isolated cases, especially in 2015 and 2016, the media and politicians rather made a scandal of two other incidents – portrayed as BAMF scandals, and receiving extensive media coverage in Germany. One of these cases happened in 2017, and became known as the 'Franco A. Scandal'. A German far-right soldier who belonged to extremist networks successfully received asylum pretending to be a Syrian refugee. He then prepared a terroristic attack pretending that it was done by certain Islamist refugees. This case was widely used to point to a loss of state control, and the danger of terrorism that comes along with an 'open border'.

However, the second case, occurring in 2018, wherein decision makers at the BAMF office in Bremen were accused of having sweepingly granted asylum to an unjustified number of applicants had much deeper effects on the German protection system. It not only led to the dismissal of the head of the Bremen BAMF field office and the opening of a trial against her, as well as to the dismissal of the director of the BAMF. It also led to the reviewing of all positive decisions granted in previous years. It became clear, however, that the number of falsely granted protection statuses in Bremen was not higher than in the rest of Germany. Instead, a parliamentary request by Die Linke revealed that 99.3 per cent of all 43,000 of the positive decisions that had been reviewed in the first half of the year 2018 were confirmed as valid. Only in 0.7 per cent of cases was there a revocation or withdrawal of the earlier decision (Deutscher Bundestag 2018c).

Running contrary to the public discourse of too many favourable asylum decisions are also the outcomes of court appeals lodged against rejections: the success rate of refugees vis-à-vis court judgments rendered in the first three quarters of 2018 was 32 per cent, meaning that almost one-third of rejections by the BAMF were eventually revoked and corrected (Deutscher Bundestag 2019a).

The variety of critiques led the BAMF to improve its quality standards, for example through the introduction of a dual-control principle, the so called four-eyes principle, that demanded that two decision makers have to evaluate an asylum application. NGO members acknowledged in interviews that quality standards are slowly improving.

#### 4.4.5. Translation as an Essential Problem

Nearly all asylum-seeking migrants we talked to and who raised the topic of translation complained about the wrong choice of translator, or his/her poor quality in the BAMF-run hearings as well as at the courts. An Iranian recounted, for example, that:

I had an interpreter for the interview whose mother tongue was not Farsi. The person had an accent. I actually had the right to say that I want to have another interpreter, but I didn't do it. Okay, no problem, I understand what the person is asking. And when the interpreter is translating into German I will listen. I didn't want to intervene at the very beginning and hurt the person. But in fact, it is important that an interpreter knows Iran. In Iran we use many words that he can't understand if he doesn't live there. How should the person know what Shoraye Tamin [Council of Security] or Basije Edarat [a paramilitary unit] mean? (IRA-M-Goe 190918)

Additionally, the translator was not neutral during the interview, as this asylum seeker further explained:

The interpreter always attacked me, because I could talk in German and therefore I could understand the question before the person translated it. And the person started his translation in 50 per cent of cases with: 'This is strange'. He wanted psychologically to attack me. This is hilarious what you are saying, hilarious this and hilarious that [...]. This really got on my nerves. (IRA-M-Goe 190918)

Other asylum seekers from Iran had similar experiences with the question of Farsi and Dari, such as this man: 'They bring you a person from Afghanistan who speaks Dari. But Dari and Farsi are two different languages. You can't understand what the person talks about. But if you complain, they say: "No, this is Farsi"' (IRA-M-BER 181218). Syrian asylum applicants also

experienced something similar with interpreters coming, for example, from Lebanon, and hence who did not speak the practiced dialects of the migrants' home country – so that it was only barely understandable for them (SYR-M-BER2 030818).

Problems with the incorrect language also occurred many times for applicants from African countries, such as this man from Gambia:

The last time, that was a bit difficult because they brought someone, for my interview, they brought someone from Senegal. Not from Gambia. And our language is a bit difficult to understand, a bit. And then what I said in the interview, and what they wrote back that I had said were quite different. It was really crazy. (GAM-M-BER 060718)

But it was not only that the language the translator could speak did not align to that of the interviewee. Some applicants even had the impression that the translator explicitly and intentionally did not want to translate matters correctly, as he/she belonged to a different party or opinion, or just had some other resentments. So many refugees voiced significant mistrust in the work and competence of the translation on offer during the BAMF hearing, as well as in front of the court. As this woman from Turkey rued:

They brought a person from Turkey to me, to translate. And I found out that he did not translate some of my responses correctly, especially on atheism issues – because in the interview the officer was asking about religion and identity. Though I said I was an atheist, he said write it as 'Muslim' – I understood that even though it was in German, and corrected the response of the interpreter, by talking in English. Then I realised that actually the questions asked via the interpreter were not the ones posed by the officer, then I corrected the matter somewhat by talking in English. Then I found out about this scandal, that translators send asylum information to Turkey. (TUR-W-BER 031118)

Another individual decried: 'There is an Iranian translator who is really bad. He is a man who doesn't want to listen. He is only translating if you tell him, my problem is this and that and please translate it, but still, he doesn't do it' (IRA-M-BER 181218).

Another female asylum applicant from Berlin had a similar experience with an interpreter who simply refused to translate her story, dismissed with the remark that she was talking too much:

The officers they were good, and the investigators they were so good, but the translators were not good – sorry! I think they don't translate well, and when you speak to them and say to them 'Please, I want you to translate this' they say 'No, no, no its ok – you talk a lot. Why do you have to say so much?' (ALGSYR-W-BER 020818)

But, it seems that it is not so easy to delete and correct an erroneous translation – even if the decision maker has to read to the applicant the protocol of the hearing. As this Libyan asylum applicant had experienced:

Yes, there was a translator. But actually, after I received a transcript of the interview, I gave it to my friend and when he read it out loud back to me I was amazed by how different it was from what I had said. So, I went to the court to get that interview out of my record. It was a really terrible thing. The translator was deceitful. It put words in my mouth I never said. (LIB-M-GRO 220419)

NGOs also severely criticised shortcomings in translation, for example due to the interpreters not being sufficiently qualified for the work (Amnesty International Sektion der Bundesrepublik Deutschland e. V. et al., 2016).

#### 4.4.6. Discrimination through Pre-Selection and Procedural Acceleration

The pre-selecting and clustering of asylum seekers before their procedure starts has been criticised by NGOs: Especially categorisation according to countries of origin is called into question by human rights and civil society organisations. They point out that 'early separation' (Interview A) contributes to the evocation of nationalities whose members have no chance in the German asylum system, and who are subsequently systematically excluded.

In addition, NGOs also doubt that the practice of classifying asylum applications as inadmissible based on the safe third country concept fulfils the duty of 'individual and careful examination' thereof, as enshrined in the German Constitution. In a similar vein, the practice of declaring certain states safe countries of origin is often criticised, with claims that it replaces individual consideration of an asylum application with a 'typifying, primarily rejecting' assessment (Interview A). It has been argued that the individual assessment of the reasons for requesting asylum is abandoned in favour of a political tool of deterrence of possible future migration.

But clustering is in practice mostly connected to accelerated and fast-track procedures that additionally negatively affect the perspective to stay for the individual asylum applicant. This is due to a shortened preparation time for interview, less time for orientation and understanding the asylum procedure, and the low quality of accommodation and counselling. In combination with reduced deadlines of appeal from two to one week in cases of rejection as manifestly unfounded, the lack of orientation and counselling can lead to mistaken rejections – ones which are not reviewed by the court. Also, individual conditions or special needs, especially of vulnerable groups, may not be recognised, which poses serious difficulties according to independent analyses (Moll 2016). In the worst case, clustering contributes to the risk that reasons for asylum may not be identified, and so applicants are not granted necessary protection.

In practice, asylum seekers categorised under Cluster B (low perspective to stay) are informed of their poor chances of recognition in the asylum process already before their hearing. So all our interviewees from African countries (Eritrea, Gambia, Senegal, Nigeria and Cameroon) received negative decisions from the BAMF, and had all launched an appeal before the court.

Considering the threat of a re-entry ban, an increasing number of people from safe countries of origins chose to withdraw their asylum application. Subsequently, the number of people agreeing to voluntary return increased considerably in the first half of 2016. In this regard, the introduction of fast-track procedures increased the pressure on some to withdraw their application without a hearing or an assessment (Moll 2016). The underlying goal of reducing the number of successful asylum applications / refugees in Germany is thus achieved at the cost of individual protection rights.

#### 4.4.7. Pressure on Independent Counselling

The EU reception as well as the qualification directive entitle asylum applicants to independent legal consultation (Arts. 12 and 20 of Guideline 2013/32/EU, issued 26 June 2013). The coalition agreement also states that independent legal counselling should be provided in accommodation centres.

In many arrival centres, there are independent institutions present to provide such counselling, but the conditions surrounding it vary greatly. As the head of the Refugee Council of Hessen explains:

In the case of Hessen, independent legal consultation is allowed, but does not receive any funding. In other federal states, the states also finance jobs. And again in other federal states [Bavaria], they [the independent legal advisors] must place themselves with a caravan before the door of the first reception centre in order to offer consultation. (Interview E)

The situation is especially critical in mass accommodation centres. Many reports point to the fact that they negatively affect the individual's chances in the asylum procedure, due to a lack of information, independent counselling and support networks (Flüchtlingsrat Bayern 2019a). Looking at the example of the model arrival centre of Heidelberg, there was an independent Qualified Social and Procedural Consultation Centre (Unabhängige, Qualifizierte Sozial- und Verfahrensberatung, USVB) established in 2015. This institution also serves to identify special needs or special guarantees according to Art. 21 of the EU reception guidelines, and has the task to support people with special needs (PTSD, disabilities etc.) throughout the procedure. In cooperation with lawyers, the aim of the USVB is to support all asylum applicants to sufficiently understand the asylum procedure in order that they can act and decide properly, and in a self-determined manner.

However, a variety of practical problems have been pointed out even here: According to the Heidelberg Model, only a matter of days separate arrival and the personal hearing. Psychologists argue, however, that people first need rest before they are prepared to report on their mostly traumatic reasons for migration (Moll 2016). Individual consultation and interview preparation are based on the requirements of sufficient time, a safe setting and a relationship of trust, all of which are impeded by the efforts to complete individual asylum applications within 48 hours. In addition, the capacity for independent counselling in arrival centres is often limited: The USVB in Heidelberg, for example, also serves as social consultation service with many different responsibilities. Therefore, it often cannot guarantee or accomplish thorough legal preparation within the short time frame of the fast-track asylum process (Moll 2016).

A member of the Refugee Council of Lower Saxony explained the essential importance of independent legal counselling and support structures:

It only works because there are these volunteers somewhere. That is also the case with access to legal assistance. [...] If there weren't all these advisory structures – which the state hasn't introduced as a matter of urgency – if they did not exist, access to legal advice would be almost impossible to guarantee. (Interview A)

The situation in Bavarian AnkER centres regarding counselling is even more problematic. The 'Second Law on the Better Implementation of the Obligation to Exit the Federal Republic of Germany' (Zweites Gesetzes zur Besseren Durchsetzung der Ausreisepflicht), introduces an "independent state asylum procedure consultation" (new § 12a AsylG). This means that a pilot project of the BAMF practiced in some AnkER centres will be cast in legal form. In a first step, the BAMF informs asylum seekers only in group discussions about the asylum procedure and at the same time about return possibilities. In a second step, an individual appointment is offered either by the Federal Office or by the welfare associations - but without any guarantee that it will take place before the hearing. However, the BAMF explicitly does not offer any legal



advice, which the persons concerned need in this particular situation (Pro Asyl 2019a). NGOs are excluded from some premises as in the case of some Bavarian Anker-centres (ECRE 2019: 10).<sup>9</sup>

An independent report by ECRE regards the AnKER centre approach as ‘undermining asylum seekers’ access to a quality asylum procedure and adequate reception conditions’ (2019). In particular, procedural guarantees such as independent, timely and individual legal counselling are not implemented sufficiently, and may negatively affect the quality of the asylum procedure and increase the danger of erroneous rejection in cases where asylum protection should in fact be guaranteed. Especially the isolating circumstances pose a threat to the applicants’ right to independent consultation and legal assistance, since their only source of consultation are the centre’s own in-house facilities. In an evaluation report of 2017, the BAMF itself conceded that there is a ‘significant lack of information and consultation on the part of asylum seekers’ (BAMF 2017).

#### 4.4.7.1. Voluntary Return Counselling

What the BAMF mostly provides within the AnKER centres is information on voluntary return. As interviews revealed, voluntary return is considered to be of major importance by actors on both the federal and state level. In some places, the information on offer of voluntary return seems to be more in-depth than that on the asylum procedure. A member of the Federal Ministry of the Interior explained:

Return counselling in the narrower sense actually only takes place after negative decisions. It is pointed out beforehand that there is the possibility of voluntary return and of support. Those who wish to have this on an individual basis will certainly receive return counselling beforehand; during the asylum procedure, so to speak. Because certain subsidies in the voluntary repatriation programme are also on the table. That pointless asylum applications should be withdrawn. For example, when people come from Tajikistan and say I want to work here. [...] Then, of course, he gets his individual return advice before the asylum procedure is completed. (Interview J)

An employee of the Ministry of the Interior of Lower Saxony perceived return counselling as an expression of the humanitarian approach of the asylum policy of that federal state:

This is the humanitarian component that I mentioned. I think it is important for the returnee that as a very first step he/she is carefully advised and supported in respect of voluntary return. And that is why this is an area which we as the Ministry of the Interior with the State Reception Authority have also set our sights on, and which will continue to be the focus of attention. Irrespective of whether demands are made on the federal or state side for a stronger return – and that means repatriation in the sense of deportation – this will nevertheless remain an important, initially significant priority component for us. (Interview G)

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<sup>9</sup>A volunteer asylum lawyer offering free consultation in the AnKER centre Manching criticised the standard one-hour group counselling as insufficient, and described the centre as a ‘space of unknowing’ (*Bayrischer Rundfunk* 2019) in which applicants do not understand their own asylum procedure.

#### 4.4.8. Remedies and Court Cases

Appeals against rejections of asylum applications have to be lodged at a regular Administrative Court (Verwaltungsgericht, VG) with regional competency situated in the place of residence of the person appealing. Germany has 51 VGs dealing with asylum matters.

The rising number of asylum applications has also led to a drastic growth in those of appeals. In addition, the quick decisions of the BAMF also involving staff lacking sufficient training fuelled this rise in appeals: they were no exception any longer, but rather became the norm. BAMF statistics as seen on Table 9 show that in 2018 almost 75.8 per cent of rejected asylum applications ended up in court; in 2016 it was 43.2 per cent (BAMF 2019a).

**Table 9: Decisions on Asylum Applications, Negative Decisions and Appeals**

Decisions on Asylum Applications				
Year	in general		Rejections	
	of which appealed		of which appealed	
first half 2019	102.489	50,5%	65.248	74,6%
2018	216.873	53,6%	140.902	75,8%
2017	603.428	49,8%	341.789	73,4%
2016	695.733	24,8%	261.813	43,2%
2015	282.726	16,1%	141.811	31,9%
2014	128.911	40,2%	88.348	55,8%
2013	80.978	46,2%	60.850	57,0%

Source: BAMF 2019

At the same time, the average duration of appeals went up significantly due to the drastic increase in the number filed. In 2017, 361,059 cases were pending before the VGs by the end of the year – with this backlog being only slightly reduced in 2018 (310,959 pending). In 2017, the average time frame for processing appeals was 7.8 months, going up to 12.5 months in 2018 (Deutscher Bundestag 2019c).

The lengthy duration of appeal procedures is especially problematic since, as noted, applicants with low perspectives to stay are often forced to remain in the meantime in centralised accommodation centres, such as the AnKER ones, with very limited resources. An asylum seeker from Iraq waited two years for the appeal court:

I got a letter that me and my family were rejected and not allowed to stay in this country. And the letter was in German and Arabic, and said that I had to leave the country with my family within 10 days. After that I refused the decision, I paid 1,200 euros for a

lawyer and we appealed. So my file (and the file of my family) was moved from the BAMF to the higher court, and from 2016 until today we are still waiting for a decision. (IRAQ-M-BER2 020818)

Another asylum applicant from Cameroon had the following experience:

I applied for asylum, and until now I have been waiting to hear from them. I did get a rejection. They said: 'No'. So I got a lawyer and appealed. Now, I am waiting on that since 2014. Almost three and a half years. No Duldung [tolerated stay], no Abschiebung [deportation]. Simply, no answer. (CAM-M-GRO 230718)

Generally speaking, appeals have had a high success rate since 2015 – which shows that the doubts expressed by NGOs about the quality of training of BAMF staff employed on an ad hoc basis were well founded. The situation slightly improved when a so-called quality offensive was introduced at the BAMF in the wake of pressure from NGOs and the general public. A member of Pro Asyl frequently consulting with the BAMF about quality measures described the situation before this time: 'So the answer of the BAMF to criticism before the quality offensive was a sentence that we heard quite regularly: 'We as the BAMF have a corrective. These are the administrative courts"' (Interview D).

**Table 10: Number of Court Cases, Quota of Positive Decisions**

Year	Court Decisions	of which positive for applicants	in percent
2018	173.416	29.703	17,1%
2017	147.616	32.522	22,0%
2016	70.904	9.299	13,1%
2015	62.828	2.640	4,2%
2014	40.748	4.130	10,1%
2013	31.075	4.013	12,9%

Source: BAMF 2018

Former BAMF president Dr. Hans-Eckhardt Sommer commented on the slight drop in successful appeals in 2018 as follows: 'The figures reflect the BAMF's efforts to improve the quality of asylum decisions by training our decision makers and improving the quality assurance system. Our top priority is to produce high-quality decisions' (BAMF 2018).

Although the number of appeals is high, many rejected asylum applicants in practice do not have the possibility to appeal for several reasons. In case of a simple rejection, an appeal can be submitted within two weeks – already a short period of time – and has a suspensive effect. However, the asylum application can also be rejected as manifestly unfounded – for example because of unsubstantiated/contradictory statements by the asylum seeker, or because of

attempts to conceal their real identity. In this case, the time frame for submitting an appeal is even shorter, reduced to one week and without a suspensive effect. Therefore, lawyers in addition have to submit a substantiated request to restore the suspensive effect within seven days. The same is true for dismissal of asylum applications as inadmissible in the course of the Dublin Regulation. The deadline of seven days is even more difficult to meet here.

#### 4.4.8.1. Scarcity of Lawyers

The major problem faced by many asylum applicants is a lack of accessible lawyers. Counsellors in rural areas such as at the arrival centre in Bad Fallingbostal – who are themselves not lawyers, and therefore not able to file an official appeal before the court – described that it is very difficult to find a lawyer within such a short period of time. This is even worse in AnKER centres without independent counselling.

There is no public defender for migrants, who additionally have to cover court expenses privately. During court proceedings, asylum seekers can apply for legal aid to help pay for a lawyer. However, this depends on how the court rates the chances of success in the so-called merits test. This test is carried out by the same judge who will decide on the case itself, and according to the ECRE it is applied very strictly in many areas of Germany (such as Bavaria). Therefore, lawyers do not necessarily recommend applying for legal aid 'since they are concerned that a negative decision in the legal aid procedure may have a negative impact on the main proceedings' (ECRE 2018: 29). Lawyers also reported, on the other hand, struggling to cover their expenses through fees earned based on the legal aid system. This is also one of the key reasons why there is a general lack of lawyers defending asylum applicants in court. As a Pro Asyl member explained:

The BAMF was in a quasi-positive situation. They could hire new staff. And they did massively hire. But on the same side there are not so many lawyers, asylum lawyers. So that's not exactly the most lucrative thing for new lawyers. And that is already very extreme – there is an imbalance. [...] So at the moment I think we have a lot of people in the last year and a half who can't be adequately represented to the level that was possible in the past. (Interview D)

#### 4.4.8.2. In Front of the Court

The Refugee Council of Lower Saxony also described the court hearing as a highly stressful situation for applicants:

So for the people who are in court, this is the 1,000th case, and accordingly they go fast. So that's fast. They don't explain anything, as we do that in the counselling. There is no room for questions. Sometimes [they] simply proceed – you see, there is no room for an interpreter. The interpreter does not translate well, translates too fast. People are in a stressful situation anyway. They are standing in front of a judge, and are now somehow supposed to go to prison. (Interview A)

Furthermore, there are enormous differences between the jurisdictions of different courts and judges, because of varying sensitivities, knowledge at hand and attitudes. As an asylum lawyer noted:

And then within the court it depends on which judge I will get. It is really very crazy. And it's the old judges who are the good ones. That is absurd. They also explained that to me, saying: 'We were also hired during an asylum wave'. So that was in the 1990s. They're all about to retire now. And all those young judges being around in court, they all have no idea and it's really creepy. So that's really dangerous. Because then they start: 'So why not, why should the person with PTSD not go back to Chechnya?' And you sit there and think: 'They don't understand the core problem of PTSD; that it doesn't really matter how big the local health care structure is'. And that annoys me a lot, and that means a lot of work. Because then you just have to start again from scratch. But that worries all lawyers nationwide: these young judges and then these new BAMF employees, who somehow all come with me to court and have no idea. This is simply an absurd game. (Interview C)

#### 4.4.9. Gender and Sexual Orientation – Not Treated with Care and Respect

Even if gender-specific reasons for flight are covered in the AsylG since 2004 and gender issues high on the agenda of the BAMF, the reality is still very different. The biographies of female refugees seem still to count less, as this Afghan woman described:

We got a rejection after two months. The reason was: the story that you told us made clear that not your life was threatened but rather that of your partner. But I was also working in this hospital and was threatened by the Taliban, as my husband was. But they were of the opinion that only my husband was in danger. I appealed against this decision, and went to a lawyer. But I still wait for an answer. (AFGH-W-GOE 171018)

Additionally, despite reform efforts on behalf of the BAMF and the special training of its staff regarding how to conduct interviews with vulnerable people, in many hearings this special treatment is not practised. This Iranian transgender asylum seeker pointed out: 'No, I didn't get any information about my rights. Even the social worker who was working in this special gay refugee hostel did not tell me anything. I did not know anything. (IRA-M-Berlin-241018)

Thereby independent legal counsellors point to the importance of decision makers who are trained to, and actually do, act sensitively in hearings with vulnerable people, especially with survivors of traumatic experiences such as torture and rape. Not only because of the fact that many survivors have learned not to talk about such shameful and dismissed experiences – ones that are mostly taboo in their countries of origin – but also because talking about such experiences is simply extremely difficult and painful. A member of the Refugee Council of Lower Saxony working in procedural consulting commented:

We have, however, had the experience that even when we discuss the content of their case with people, important things are often not said (in the asylum interview). [...] Even if we point out again and again that they have to say particularly the unpleasant things, because these are the important things. And that there is also the possibility that women can have a female interpreter, a female interviewer, but people still say afterwards: 'I was not asked about it'. If you just get told: 'Tell me about you', then you just have to tell everything. And we still haven't found out 100 per cent how we can motivate people to always say everything. There are many cases where people were waiting to be asked about specific things. Where of course the interviewer don't even

get the idea to ask, because they simply don't know or can't empathise with the situation – or it's not their responsibility, I think, to realise this on their own. (Interview I)

However, the experience of the transgender Iranian asylum seeker vividly demonstrates that despite the training of specialised decision makers not only BAMF officers but also translators still behave rather according to their everyday knowledge and prejudices. This serves systematically to discriminate against people with non-heteronormative sexual orientations and gender practices, as empirical research into court protocols and decisions also makes clear (Hübner 2016):

The BAMF was terrible. There it was never really good, and still is not. Even though I go there with a big beard and deep voice they still name me 'Miss'. Is this not awkward? They don't understand anything, and they have zero understanding and sympathy. Only racist people work at the BAMF. Recently I went there to change my surname, and the person responded that I should first go and have surgery; afterwards she could change my name. But, what the hell is this person telling me? Please write this down in your report. In Germany, it is not necessary to have surgery. Perhaps I don't want to have one? Are we in Iran or Saudi Arabia here?

Also when I moved to this camp, I got a letter for the hearing. The officer was a cruel person. She decided to give me a negative answer. But when I arrived there – in fact, I am totally fine with anybody's race – they gave me a person as my interpreter from Afghanistan, speaking Pashto. But we can't understand Pashto. Perhaps we could understand Urdu; but Pashto, we really can't understand it well. And the social worker at the camp didn't tell me that I have the right to reject the translator appointed. I could have said that today I didn't want to do the hearing. But I did not know my rights. So we talked for an hour, and I explained that I am female to male and what kind of a situation I was confronted with in Iran. But finally, in the end, the officer said: 'I don't get it. You have been a man in Iran who had to wear a *tschador* [Islamic female dress]?' The problem of the interpreter was that he didn't understand correctly what 'female to male' meant. I tried it in German, and said 'Transmann' – as well as in English. But it didn't matter, the person didn't understand. It wasn't only a problem for the interpreter, the officer was also mistaken. They asked questions that were also nonsense. For example: 'Did you already serve in the army?' But I pointed out that I was born as a woman. I am a transman. This was really a bad situation. It lasted for three, four hours. And even though I was explaining my situation in depth, I got a negative answer. (IRA –M-BER 241018)

#### 4.4.10. From Right to Favour: Family Reunification

Within the group of Syrian asylum seekers we were able to talk to in the context of our RESPOND interviews, there were several minors and single men or women who had tried to bring their relatives to Germany via the family reunification mechanism codified as a basic right to family life in the Constitution (§ 6 GG) and in the Residence Law (§ 27 AufenthG). But the right to family reunification was restricted in 2016 with the 'New Regulation on the Right to Family Reunification' (§ 104 (13) AufenthG) as part of Asylum Package II to only refugees with full asylum or refugee status under certain conditions, and only for nuclear family members. For refugees with subsidiary protection status the right was suspended until 16 March 2018

(Heuser 2017). In 2018, subsidiary protection holders were again entitled to family reunification – although the number was limited to a monthly contingent of 1,000 cases. Thereby the new regulation of 2018 does not frame it as a legal right, but rather as an act of benevolence that is decided on humanitarian grounds (BAMF 2019j).

A female asylum seeker from Syria explained to us the value of family reunification, especially for more vulnerable groups like women and children. This is especially so under the given condition of highly unsecure flight routes that forces family members to split up and decide who should do the journey first:

Most of my family were already living in Turkey, so I knew a bit the situation there. They helped me a lot after arriving. My husband followed me after I moved to Turkey. He stayed there for seven months, and then he went with smugglers to Germany. He wanted me and the kids to go with him, but I refused. I told him that I would not put the safety of my kids at risk from drowning at sea. I told him take as much time as you need in Germany. Even if it will take two or three years. Whenever our papers are ready for family reunification, we will come to Germany. A year after his arrival in Germany, we did the family reunification. We came by airplane from Turkey. (SYR-F-MUN 230818)

Also, a woman from an Algerian–Syrian couple explained to us the function of family reunification in the family's flight plans, that were as well heavily affected by these new regulations. Also in their case the husband went ahead, in order to spare his wife and children the dangerous journey across the sea. However, while waiting at home she received notice of the legal changes. Nevertheless, after one year she arrived safely in Germany:

He told me that if I were with him, I would not have coped with the situation. He said if you could have seen the situation of the people. My god you can't imagine what is going on here – oh my god, what is this? He arrived here in Germany and I was watching the news and seeing what is going on in future; that the German government was going to give the Syrians subsidiary protection but no family reunification. I thought: 'Oh my god now I will stay here and you will stay there. You will live in Germany, and I will live in Algeria. No family reunification. (ALGSYR-W-BER 020818)

Most applications for family reunification did not go so smoothly, as other interviewees experienced. In two cases concerning minors who wanted to apply for family reunification, the age limit of 18 years old became a problem. As one Syrian minor told us, not only was German bureaucracy a problem – with them losing his papers so that he had to repeat the whole procedure, thereby prolonging the process until he was over the age limit (as outlined earlier) – but also the paperwork in Turkey was extremely strenuous. This was not taken into consideration during the bureaucratic procedure:

I did the family reunification for them. We had a problem with the passport of my dad, that's why the procedure took longer. He needed to have a new one, but it was difficult to get an appointment at the Syrian embassy in Turkey. One month of waiting to get an appointment, and then one month of waiting to get the new one. My dad was trying to get it in other ways, through offices and different persons. He would pay them extra money because they were telling him that he will get his passport in two days, but then he was getting nothing. This did not happen only once, maybe four times. We were losing time. Then a person told him that he should do it in the official way through the embassy, and just wait until the passport is out. He did that. It took so much time, and

I had one more year until I would turn 18 years old. The German embassy was calling us and telling us that all our papers are ready, and that the only missing document is the passport of my dad. They told us that we should contact them as soon as the passport is released. We asked them if we can get my mother and siblings first to Germany, so we can prepare the apartment and everything and then my dad follows when his passport is ready. They said no, they had to come all together. They told me that if your mother and siblings come now, your dad will not be able to follow. My dad was almost giving up, and he told me that he will come alone later through a smuggler. However, his passport was released only two months before I turned 18 years old. They arrived to Germany two weeks before my birthday. (SYR-M-MUN 271118)

Additionally, NGOs like Pro Asyl complained in previous years about the performance of the embassies in this respect, leading to a systematic prolongation of procedures and a backlog. They pointed to the highly uneven relationship between positively decided asylum cases of Syrian refugees between 2014 and 2015 (127,000) and the number of visas issued in the same period for family reunification (18,400). Especially the waiting times to get an appointment for handing in the application were very long; in 2016 at the embassy in Beirut it was 14 months, as it was at the embassy in Turkey too (Pro Asyl 2016).

Also the German practice of family reunification in the context of the Dublin Regulation has been criticised; recent figures show that applications from Greece are increasingly rejected. Whereas the quota of successful applications was 81% high in 2017, it sharply decreased up to 40% in 2018 and in the first four months of 2019 the quota was 17%, that means that 366 applications have been rejected and only 84 got accepted (*Süddeutsche* 2019).

Another Syrian minor did not have such luck. Due to mistakes by the BAMF his asylum procedure got prolonged. In the meantime the change of policy concerning the protection status for Syrian refugees and the new regulation concerning family reunification excluding those with subsidiary protection status took place, with tremendous consequences for him personally:

My papers were lost. Because of that I got my residence permit after I turned 18 years old, so I could not do the family reunification with my parents anymore. I wanted to do that. My dad came here later, illegally. He is trying to do the family reunification now, but it is not easy. He is waiting. There is a 30 per cent chance to have the family reunification, because he has only a one-year residence permit. (SYR-M-MUN 281118)

The new regulations and practices also affected another 13-year-old Syrian minor who had arrived with his elder brother. They applied for family reunification, but only their mother was allowed to come to Germany, dividing the family further:

We were rejected for the family reunification because of the new laws in Germany. Complications with complications. [...] They only allowed my mum to come. But I still have siblings who are minors in Turkey. My mum did not know what to do, should she leave my siblings there or my brother here? But in the end she had to come, because I could not study and take care of my brother. So the options were to send my brother back to Turkey or to stop my studies. So my mum came and my dad stayed with my siblings. They didn't allow even my siblings to come with my mum. So the problem is not with being a minor or not. They said that they don't allow siblings to come anymore, only the father and the mother. The friend of my dad is in Turkey as well and has a three-month-old baby. His kid here did the family reunification, the mum and dad got



an acceptance, but the three-month-old baby got a rejection. Imagine. Isn't that something bad? Don't they say here that they are with the rights of kids, and that they are the number one country in that concern? How do they do that? How can the mum come and her three-month-old baby stays with I don't know whom. (SYR-M-MUN-03.12.)

#### 4.4.11. The Special Protection Status of Minors

There is a special protection mechanism in place for unaccompanied minors – those under the age of 18 – in Germany. The BAMF describes it as follows:<sup>10</sup>

Unaccompanied minors are first of all taken into care by the youth welfare office that has local responsibility. This provisional taking into care ensures that they are accommodated with a suitable person or in a suitable facility. Suitable persons can be relatives or foster families, while suitable facilities are as a rule 'clearing houses' specialising in caring for unaccompanied minors, or youth welfare facilities. [...] 'Initial screening' is also carried out when such minors are provisionally taken into care. As well as the general examination of the state of health, the age of the minor is established. The methods that are used for this range from simply estimating age through physical examinations to X-ray tests. The responsible youth welfare office also estimates whether the implementation of the subsequent distribution procedure might endanger the child's best interests in physical or psychological terms. The possibility of family reunification with relatives living in Germany is also examined in this context. If close social ties exist with other unaccompanied minors, the youth welfare office examines whether it makes sense to accommodate them together. (BAMF 2019i)

However, many minors not only have severe problems to reunite with their families, as we have outlined above. Many, who made the difficult journey to Germany as part of a group of people also feel isolated and lost when they are taken into special care by the youth welfare office. As this asylum seeker explained:

I was the only one in the group, within my friends, who was a minor. They took my friends to a camp in Munich, and I stayed alone in the police station. I felt bad and alone. I started to ask myself: 'Why did I leave?' The second day, they took me to a camp for minors. Only one Syrian guy was there, and the rest were from Afghanistan. They told me that I would stay there for one month. I developed a psychological condition there, because when I arrived they told me that I can't turn on the TV or go out whenever I want. I regretted my decision of leaving and coming here. I was in shock for two days. But after two days a woman came and did an interview with me; they then took me to a camp in Lindau, she told me that I had received a transfer decision to there. I stayed there for a month, and then they transferred me to the city where I

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<sup>10</sup> Under current rules, the youth office in the district in which an unaccompanied minor arrives is obligated to take him or her into its care. Some local communities in central arrival locations are therefore disproportionately affected. In order to distribute the burden evenly, the 'Act to Improve the Housing, Care, and Treatment of Foreign Minors and Adolescents' in Nov. 2015 created an obligation for all German states to receive unaccompanied refugee minors and should be distributed according to the quota system, the Königsteiner Schlüssel. In addition, the age of legal capacity to act in an asylum procedure was raised from sixteen to eighteen years. That means that every asylum seeker under the age of eighteen is provided with a legal guardian to act on his or her behalf and to handle the complex asylum procedure (cf. Chemin/Nagel/Hess 2018)

live now. In Landshut [a town in Bavaria]. I was staying in the Jugendamt [the youth welfare office]. I stayed in it for one year and a half, until my parents came to Germany. The problem was that there was only me and another guy speaking Arabic. We felt bad. So we asked the people working there to bring us more people. They brought three other guys speaking Arabic, and we stayed all together. When my parents came, we stayed all together in Landshut. (SYR-M-MUN 27.1118)

Additionally, there has been a long-running debate about the different methods used to establish the age of young asylum seekers. Many NGOs not only challenge the accuracy of the technical and medical measures employed, but also complain that the dignity of the applicants is not acknowledged and maintained (BUMF 2015).

#### 4.4.12. Deportation Custody and Returns

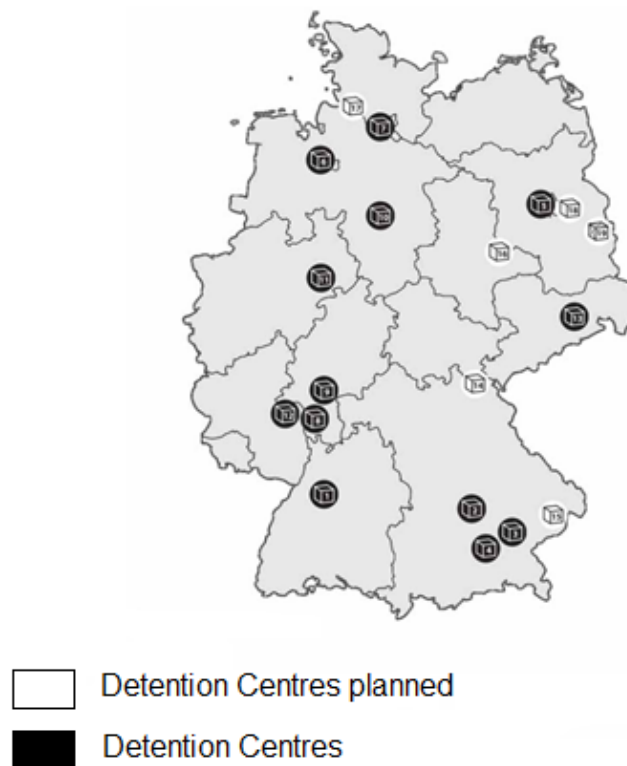
In Germany, the organisation and execution of deportations and voluntary returns are the responsibility of the federal states. For example, in Lower Saxony, the State Reception Authority (LAB) or communal foreigners' offices are informed about negative decisions on asylum applications by the BAMF. The LAB or the responsible local foreigners' office then organise deportation through contacting the State Criminal Police Office (Landeskriminalamt, LKA). The local foreigners' office or the LAB ask the local court for a warrant of arrest for deportation custody. LKA books the flights, gives an assessment of what staff are necessary for the execution of deportation and informs LAB about the date thereof. LAB then organises the execution of the deportation and may ask the police for their administrative cooperation, for example with transportation to the airport – where the deportee is handed over to the federal police.

In preparation for a deportation, medical and humanitarian grounds may render a planned one impossible. If deportation is obliged, asylum applicants may appeal against this decision by putting forth reasons for their inability to travel or humanitarian grounds for them not returning to the country of origin. The duty to prove these obstacles to deportation is up to the asylum applicant. After the introduction of the Asylum Package II in 2016, only a qualified attestation from a certified doctor may temporarily suspend deportation (§ 60a AufenthG).

In the last few years, the number of deportations from Germany has been significantly and steadily rising. While 10,884 people were deported from Germany in 2014, 31,068 were in 2017 (Deutscher Bundestag 2018a). In a number of cases these deportations were declared illegal afterwards, and the authorities had to bring the affected persons back to Germany. In a prominent case from 2018, one person who was deported to Afghanistan on 3 July as part of a collective deportation flight was brought back by German authorities by the end of August the same year (Deutscher Bundestag 2018d). Most deportations are carried out to safe countries of origin.

The number of deportation custody cases has also been rising significantly in recent years. For example in Lower Saxony, 656 cases of deportation custody were reported in 2016 compared to 844 in 2017. Deportation custody capacities have not only been introduced but also built up of late; more are being constructed and planned, as the figure below indicates (Öztürkyilmaz 2019). A strikingly large number of the cases of deportation custody are declared illegal, as lawyer Peter Fahlbusch – who regularly represents asylum applicants in custody – points out: in 860 out of 1,757 of his cases, the detention of asylum applicants was eventually declared unlawful (Fahlbusch 2019). However, the access to legal consultation and lawyers is made very difficult for people detained in deportation custody.

**Figure 4: Deportation Detention Facilities in Germany**



Source: Öztürkyilmaz 2019: 22; graphic: Agnes Andrae

#### 4.4.13. The Importance of Civil Society Actors and diasporic networks for Having Access to the Protection System

Against this background of the difficult bureaucratic procedure, the lack of information and of problems with expressing oneself fully and correctly, support from civil society actors was perceived by many refugees as essential. This was true simply because of the language problems:

Now, most refugees get support and assistance. But, when I arrived this was not the case. I had to do everything on my own. And I had a lot of problems with the foreigners' office. I go there and want to apply for something, but then they tell me that it is wrong and they are angry at me. This happened many times to me. Someone who has assistance, especially concerning the language, is much better off. (IRA-M-GOE 090818)

An Eritrean asylum seeker also underlined the importance of such support networks:

Yeah, so actually, I have a friend in G. church, I went there. There is a woman called Celine, and she helped me a lot. Very much. And there was a woman here, her name

is Sandra, she is a policewoman and she helped us at first – a lot. And she tells us everything and any problems we have, we tell her – and there are many, many Germans in the G. society groups, and there is one woman called Frau Christa, we call her 'Mama Christa'. Actually when I was going to join the university I couldn't pay my student fees, 312 euros, so she paid for me, and then I paid her back 50 euros every month, and in six months I had finished. Then she paid for me the next semester, and then I did the same. She is helping me so much. She lives here on Bahnhofstraße. She helped me so much. And Celine also. They coordinate everything for me. They helped me find a lawyer and they told me it was better to take this lawyer and especially last year they paid for the lawyer on my behalf – 150 euros – and they bought train tickets for me to go to Berlin, the Monatskarte [a monthly ticket for the train], before I got the ticket from my university. Yeah they are my friends, very much. (ERI-M-GRO 090718)

Whereas a couple of further asylum seeking migrants told the RESPOND team in the interviews that they met as well German individuals that helped them in their paper work or accompanied them to appointments at the foreigner office, other interviewees mentioned civil society initiatives or local NGOs such as local 'Asylum working groups' (AK Asyl) or topic specific counselling centres; Two refugees of the sample went to a church asking there for church asylum.

Many others could rely on the knowledge and help of relatives and friends that have moved to Germany years ago as this Syrian refugee expressed: 'I did the asylum procedure in Munich. My relatives living there helped me a lot. I had all the support I need from my family and relatives.' (SYR- M- MUN 041218)

In fact, co-ethnic diasporic networks seemed to be equally important as German civil society initiatives as a female asylum applicant from Turkey explained:

When I needed psychological support, I solved it through Diaspora again. There were some psychiatrists in solidarity who wanted to support the friends who recently came here, and I met them, so I solved them under their guidance. But as I said, to go to a family doctor, we are mostly dealing with it in our own Diaspora, or we are solving it by German doctors who say that they are in solidarity with us. But who recommend this to us, again the Diaspora leads us. (TUR-W-BER 031118)

## 5. Dominant Narratives and Tropes

The analysis of the 25 interviews held with state and non-state actors of institutions and NGOs operating at the different levels of governance shows how the dominant narratives and tropes on asylum-seeking migration, the right of asylum and on protection have changed quickly in the last four years: from a discourse of welcoming, to a security-based narrative arguing for deportation, from the war-suffering, 'deserving' refugee, to a perception of these fleeing migrants as a threat; from a humanitarian approach to an exclusionist one.

While the migration of asylum seekers to Germany was always a topic of public and political concern, one accompanied by refugee centres being set on fire in the early 1990s, with the massive influx of such migrants in 2015 and the early months of 2016, it became one of the most central, controversial ones – influencing elections, the public debate and the culture of Germany to a so-far-unknown degree. In 2015, a welcoming culture and thousands of local civil society initiatives supporting and assisting asylum seekers emerged in the summer months – that in parallel to increasing right-wing, right-populist mobilisation within political parties as well as on the streets. These problematised refugee migration as 'Umvolkung' (something like the racial destruction of the German people through populations mingling) (FAZ 2016; *Spiegel Online* 2019; AFD 2018; Piringçi 2016; Ministerium des Innern des Landes Nordrhein-Westfalen 2017) and as a 'state emergency' demanding extraordinary measures (*Süddeutsche* 2015). Widespread were narratives stressing the paradigm of 'crisis' and 'emergency' and a 'lack of state control' (5.2.2.); institutionally, calls for efficiency and centralisation became increasingly dominant. This led both to an intensification of a discourse of securitisation and to the legitimating of severe cutbacks in the German refugee protection system. From the year 2016 onwards, the following phrase emerged herewith: 'Germany needs a new culture of deportation'.

In the following section, we outline the central tropes and narratives represented in the interviews.

### 5.1. The Pre-2015 Narratives

In the years 2013 to 2015, a narrative portraying asylum-seeking migrants as 'suffering refugees' in need of humanitarian assistance was widespread. Also, anti-deportation protests on the local level increased, while refugees and asylum seekers themselves launched protests and campaigns (Lorenz 2015; Kirchhoff et al. 2017). The 'Lampedusa in Hamburg' movement, protests on Oranienplatz in Berlin and demonstrations on Weißekreuzplatz in Hannover all articulated demands for equal rights, especially the right to the access to a fair asylum procedure and to stay (Niess 2018). With the continuing war in Syria and an increasing number of arrivals in late 2014, the narrative figure of the war-suffering, highly skilled Syrian refugee emerged. When Chancellor Merkel did not close the border to Austria in September 2015, thereby refraining from stopping the refugee movements from Hungary (Hänsel, Hess, Kasperek 2019), the aforementioned welcoming culture was in place, and grew into a large civil society movement. Numerous volunteers in every bigger city organised themselves to assist the incoming asylum-seeking migrants with reception, housing and legal affairs (Hamann and Karakayali 2016). This enormous civil society engagement, expressing the widespread consensus that refugees have to be welcomed, had repercussion in the state

apparatus to a certain degree, especially in those federal states that were governed by red and red-green party coalitions (like Lower Saxony) – therewith calling for, and legitimating, a ‘humanitarian approach’. A local social worker remembers the situation in 2015 as follows:

Three years ago, here in Germany we were a welcoming culture. In the very beginning, many, many people greeted refugees in the country’s train stations with flowers and clothes. Unfortunately, however, it did not take long for people here to form a completely different impression of refugees, something in which the media and right-wing populism had a significant role to play. (Interview H)

## **5.2. The Developments of 2015 as a ‘Refugee Crisis’ and ‘State of Emergency’**

A high-ranking employee of the Federal Ministry of the Interior remembers the summer months of 2015 as a decisive break with previous debate and policy; ‘as a change of paradigms’. The perception came to dominate that ‘a situation like [that] in the summer months of 2015 should not and must not be repeated’, as Chancellor Angela Merkel herself would put it in December 2016 (*Spiegel online* 2016).

The Federal Ministry of Interior employee also stated that the developments in the summer months of 2015, conceived of as a ‘refugee crisis’ and ‘state of emergency’, can be seen as a watershed moment leading to several ground-breaking changes in the country’s political-institutional governance structure:

And yes, with the support of the Chancellery [Bundeskanzleramt] they were successful in breaking open the rejection front within the ministries and in achieving an understanding and open-mindedness in favour of a trans-ministerial approach. In this respect, the crisis was turned into progress. (Interview L)

### **5.2.1. Lack of Infrastructure and Capacity**

In 2015 the crisis narrative was initially mainly fuelled by discussion of the lack of infrastructure and capacity. The number of people arriving in Germany was considered to exceed the capacity of the Federal Republic. The analysis in preceding years of political scientists and NGOs that significant numbers of refugees would make their way to Europe in the course of the Arab Spring had been ignored, and as such asylum infrastructures as well as BAMF facilities rather decreased instead. As a Pro Asyl member recalled:

The previous director of the BAMF desperately tried to get more money to hire more employees. We as Pro Asyl were always supporting the BAMF in this respect, saying that the low rate of asylum applications of around 20 to 30 thousand people per year will change again, and more asylum seekers will come. We publicly declared again at the beginning of the Syrian war that it is only logical/rational that in the near future more people will come. Now, slowly, it becomes obvious that the politicians did not support the BAMF in the necessary way and now they have installed a general with lots of power saying there is an emergency. (Interview D)

The massive number of asylum-seeking migrants arriving in 2015 were in fact an infrastructural challenge, due to the lack of facilities and personnel. A high-ranking employee

of the Federal Ministry of the Interior summed up the situation as first and foremost a infrastructural and logistical challenge, one that pushed legal and procedural aspects into the background: 'Still in 2016, many asylum seekers were accommodated in provisional facilities. The situation was still not so good. Also the asylum procedures still were relatively long. The reason for all of this was the incredible mass of people' (Interview J).

On the level of the federal states, responsible, as noted, for reception and accommodation, the situation was perceived similarly. The large number of volunteers and the spontaneous civil society engagement at the time were mostly welcomed. For Lower Saxony, the LAB director recounted that:

In 2015/2016, there were totally different reception conditions. We were confronted with very different challenges that forced us to neglect certain areas altogether, as we had to organise accommodation and to look after the basic needs of these people. We managed to do it quite well, also due to the great support of many charity and aid organisations, due to the support of the municipalities, of volunteers and with the help of enormous civil society engagement. (Interview B)

It was on the level of municipalities that solutions had to be found, while the rising numbers of migrants had to be practically managed. An administrator of a municipal immigration authority described the situation in an interview with a RESPOND team member as at that time 'at the limit' (Interview P). But the construction of the situation in 2015 as an infrastructural emergency also mobilised many volunteers, who between them helped offset the deficiencies and failings of the state.

## 5.2.2 The Crisis as Lack of (State) Control

In autumn 2015, the emphasis on the lack of infrastructure and capacity shifted to a public and political discourse of a lack of (state) control and 'state emergency' (Staatsnotstand). Demands were made to regain control over the country's borders, the movements of asylum-seeking refugees and thereby to reduce the number of arrivals.

One main point of reference was for a long time the decision of Chancellor Merkel not to close the borders to Austria in September 2015, perceived as an 'invitation letter' and as an 'unlawful' decision leading to uncontrollable mass migration by conservative party members. The director of the Refugee Council of Lower Saxony recollected – and contradicted – the widespread argument of the unlawfulness of that decision:

In 2015, the Dublin Regulation was simply doomed to fail. Chancellor Merkel had by the way she was not closing the borders to Austria in fact somehow proclaimed something like the responsibility [Selbsteintritt] of Germany for the asylum procedures in the framework of Dublin. In this regard, we have to counter the right-wing argument that her decision was unlawful. To the contrary, states have the right to claim their responsibilities within the frame of Dublin. But, if the responsibility is declared then it has to be executed. And, in fact, the BAMF genuinely suspended for some months the Dublin Regulation for all arriving asylum seekers. Later, this led to a situation whereby the bureaucrats sat down together in a laborious effort to reinstall the old system. (Interview A)

Another point of concern and widely debated example of a seemingly inadequate, badly equipped system was the performance of the BAMF (as outlined earlier). Its deficiencies and

failures were widely discussed by the media, and one scandal after the other portrayed. In 2016, this debate culminated in the trope of the so-called *Obergrenze* [maximum limit] of arrivals that was mainly pushed by the conservative party CSU, part of the coalition government. The interior minister, and at the same time party leader of the CSU, emphatically claimed: 'We won't give up our goal of a maximum limit, we will strongly demand it and if necessary will apply legal steps to gain it' (*Welt* 2016).

The narrative of a lack of control called for a strong state and more restrictive measures like closed camps and the speeding up of the asylum procedure. It also shifted the focus from reception to rather deportation of those who were considered as not 'deserving the protection' of the state. This narrative formed a basic condition not only designed to limit the influence of the vast civil society sector and of growing pro-refugee networks and initiatives; as outlined above, it has also clearly served to increase the acceptance of basic rights being limited and of the narrowing of access to the protection system for an increasing number of groups of asylum-seeking migrants.

This discursive climate and public debate had its repercussions within the asylum bureaucracy and state apparatus, as a high-ranking employee of the Ministry of the Interior of Lower Saxony described:

The political approach has been changing. Indeed. One of the reasons for that is that the initial high acceptance of society of a humanitarian approach – that in broad sectors certainly still exists – has been decreasing. But, at the same time, certain positions and voices from certain more extreme political sectors have become louder, [ones] that demand a different approach and a cut in protection standards. And these kinds of political and societal demands have had their repercussions on the daily political practices [politischer Alltag] in federal and state bureaucracies in regard of political initiatives, no doubt. (Interview G)

A high-ranking employee of the Chancellery admitted meanwhile: 'Yes, you are right, we have introduced a policy in respect of asylum seekers that was unthinkable years ago. However, it only affects a certain bounded group of people' (Interview K).

### 5.2.3. The Narrative of the 'Societal Willingness to Integrate' (Aufnahmebereitschaft) and Its Limits

Another oft-repeated narrative justifying the increasing turn to a strict law-and-order policy is the supposed limited 'capability' and 'willingness' of society to welcome and integrate 'foreign people', represented as having been 'overstrained'. More foreigners would endanger the societal capacity for integration, and social cohesion. A high-ranking employee of the Federal Ministry of the Interior explained:

Concerning the topic of migration, it is all about the willingness and the capability of society and the state to receive and integrate, which must not be overstrained. Because if you don't pay attention to it, it leads to a destabilisation of the community. If we don't manage to secure societal cohesion, then – let's put it like this – we can give up [einpacken]. (Interview L)

This narrative sets an imagined host society as a holistic entity, and ignores the negotiations occurring within society. It constitutes an outside and inside to the host society, that is unchanging through migration, and claims the right to have a societal core that decides how



many 'others' are acceptable – even if these individuals are already part of the German population. It ignores furthermore the engagement of many civil society actors against deportation, the calls for open, solidarity cities (Kron and Wenke 2019) as well as the demands for the right to stay (Caritas, Diakonie 2019).

This trope of a societal willingness at its limit was strengthened by pointing out at the growing right-wing and right-populist movements in Germany – as represented by the party 'Alternative für Deutschland' (Alternative for Germany, AfD) and by overtly racist mobilisations like the 'Patrioten gegen die Islamisierung des Abendlandes' ('Patriots against the Islamisation of the Occident, PEGIDA). These kinds of anti-migrant mobilisations increasingly dominated the public debate in such a way that the political actors involved in refugee reception seemingly had to now legitimate their work. This the director of the LAB of Lower Saxony expressed as follows:

At the moment, we have to state that the political climate has changed with the consequence that the person who still signals welcoming has to explain their position much more and doesn't get positive feedback, as previously. The welcoming culture has, amazingly, rapidly changed. (Interview B)

### **5.3. Regaining Control – Restrictions in the Name of Efficiency and Centralisation**

Early in 2016, the narrative of the crisis as a lack of (state) control shifted the public perception of refugees and of the related political discourse decisively pushing for a "law and order" policy. This not only meant a shift from reception to an intensified focus on return policies, but also an increased debate on how to enforce control via an acceleration of the asylum procedure and an extension of a policy of campization, as a representative of Pro Asyl outlined:

Now the conviction that the state has to enforce law and order, no matter the cost, has regained ground in the public discourse [...]. In this respect, we are experiencing at the moment a kind of counterrevolution, Counter-Reformation, against the more humanitarian approaches and the welcoming culture, with the state wanting to regain control. Politically, this will lead to an interesting contestation as parts of the supporters definitely will be more than annoyed when they are suddenly told that their refugees are to be deported. (Interview D)

One of the widely debated topic was the deficiencies of the BAMF, specifically as causing a lack of state control and intolerably long asylum procedures. 'Acceleration' was the technical term adopted by the media as well as politicians, whereby – as a member of the Federal Ministry of the Interior laid out – such acceleration was also necessary to prevent legal claims arising from the consolidation of residence:

Timely decisions have to be made. Even judicial proceedings must not run on so long. They simply consolidate their residence. People fall in love. That is the most normal thing in the world. Of course, we do not lock people up, they walk around. Of course they get to know each other, form social ties, it's quite clear the longer you are here. And then there are legal reasons, as I said. In families, there are children and then of course you have real reasons where you have to look again whether there is not a (new) claim arising. What about this case? Then everything becomes a bit more difficult. That is real life. (Interview J)

### 5.3.1. From Reception to the 'Obligation to Return'

From 2016 onwards, the new trope of a 'deportation gap' or the 'obligation to return' emerged, dominating the debate. As a high-ranking employee of the Federal Department for Return stated:

It was widely acknowledged that the acceptance of society to welcome more asylum seekers entitled for protection can only be ensured [guaranteed], if we really manage to return those people who receive a negative decision. This is very clearly an interest of all that is now widely internalised. (Interview J)

In this respect, the supposed 'crisis of state control' was also created by repeatedly presenting the number of persons obligated to leave the country (ausreisepflichtig) as alarmingly high. One of the high-ranking officials of the newly implemented special Federal Department for Return remarked: 'Very roughly, the potential number of persons who are still residing in Germany despite the fact that they are actually obliged to go home can be estimated as being between 400,000 and 450,000' (Interview J). The national director of the Union of Police Officers described the 'deportation gap' in a newspaper article as 'state failure' (Staatsversagen) (*Welt* 2018b). The Pro Asyl representative was highly critical regarding these repeatedly cited numbers, and rather spoke of the 'hysteria' that is created by this kind of 'number game', while not explaining why so many refugees still reside in the country despite having received negative asylum decisions (Interview D).

This perception of state failure concerning the enforcement of deportations led to several institutional and political-legal changes and initiatives on the federal level, as well as on the level of federal state and municipalities too. These have lasted until today; the rationale behind them a high-ranking employee of the Ministry of the Interior of Lower Saxony described in the following way: 'It is possible, by means of stronger standardised and centralised assistance or mentoring (Betreuung) of the asylum procedure, to have a much more efficient and precise realisation [thereof]. Because, the topic of deportation is all over the media and permeates society' (Interview G).

On the federal level, this led to the foundation of the aforementioned Department for Return within the Ministry of the Interior to centralise resources and intelligence:

The department owes its foundation to the circumstances that within this enormous number of people who arrived, there are many who don't deserve protection. But we had been ill-equipped regarding the resources to deal with this problem. Initially, there were attempt to deal with it with a working group. Very quickly it became obvious that a whole sub-department is needed within the Ministry in order to really come to terms with it. The Department for Return was initiated. (Interview J)

But he also cautioned against a quick and easy solution hereto, pointing to existing human rights standards still having to be taken into consideration. This clearly indicates that the rule of law and human rights are increasingly seen as a burden and hindrance:

One has to react quickly to these challenges. However, they can't be quickly resolved as we are a constitutional democracy. And there are rights, and these can be realised. But, one has to be careful that the state is still in control of things ['dass man im Staat nicht durch die Manege geführt wird']. I believe that it is possible to be much more efficient without harming the rule of law. (Interview J)

One main answer to the above-stated deportation gap was the further centralisation of institutional resources, and more effective cooperation between the different governmental levels in Germany. On the federal level, a special 'Centre for Supporting Returns' ('Zentrum zur Unterstützung der Rückkehr', ZUR) as a 'central service provider for the federal states' was opened in 2017 (Interview J). While the federal states are responsible for the termination of residency, the federal ministry is charged with speeding up return procedures. In the words of the employee working for the new Department for Return, the aim of the ZUR was also to obtain more state control over the whole asylum procedure: 'We feel responsible, although we are not responsible in the legal sense. And, so to speak, we chase after the cases and make sure that the person who is really responsible does his or her job quickly and properly.' (Interview J) But also on the state level, further centralisation was propagated: 'It is also necessary to further centralise the return management within the states, as it is a highly specialised task. And the states have had good experiences that have already centralised it, and that we propagated as well.' (Interview J)

On the municipal level, the problem of organising the papers to deport rejected asylum seekers was presented in our talks with employees of local foreigners' offices as a key one hindering enforcement. They stressed the fact that one of the main reasons 'why a return or a timely return fails' was always that the person in question's identity could not be established. This meant that due to missing travel documents, the deportation had to be suspended and the person accepted. In this respect, the call for further centralisation of deportation management was also put forward by the municipalities:

One policy that the Federal Ministry of the Interior is discussing with the union of local governments is to centralise further the resources and the intelligence for the procedures that play a role in returns. Specific standards and consistent procedures are reasonable, in order to speed up returns and to make the procedures more transparent to the people. This is an incredible complex field of law that also includes detention [...]. And specialists can do it more effectively, and also in accordance with the rule of law. (Interview G)

### 5.3.2. Control through 'Campization'

The discourse surrounding accelerating the asylum procedure and making deportations more efficient was also connected to the question of accommodation. Thereby, a clear connection was established by the federal conservative minister of the interior and conservative state presidents between acceleration, efficiency, state control and the encampment of increasingly more groups of asylum seekers in half-closed large campsites for the total duration of their stay. One argument for such camps was the centralisation of all state bodies and agencies within them, in order to speed up procedures and minimise the tension and distance between the different agencies involved. 'The basic thought to bring together all the different functions of refugee management in one single space, in order to speed up the procedures, is shared by all' (Interview J).

While in all federal states centralised arrival centres and special reception campsites were established separating out asylum seekers with high perspectives to stay from those from groups with low such perspectives, the introduction of the AnkER centres by the federal minister of the interior in 2018 was widely and hotly discussed. Some state representatives defined the debate as clearly a symbolical one. The newly nominated director of the BAMF,

Dr. Hans-Eckhard Sommer, legitimated the introduction of such centralised camps with the following words:

The AnkER facilities are of central importance in order to make the asylum procedure more effective, to start early with integration measures for asylum seekers with a high perspective to stay – and in the case of a negative decision, to rapidly start the process of return. (Dr. Hans-Eckhard Sommer, BAMF 2018)

On the other hand, the director of the LAB of Lower Saxony was rather sceptical about this new national initiative:

This was a highly political controversy over wordings and concepts. If the idea of the AnkER centres really would have helped, then I would have immediately put up an AnkER label – but not in front of individual facilities, rather in front of our state reception office. (Interview B)

The increasing ‘campization’ of asylum seekers, as Kreichauf (2018) described this process of an expansion of camp-like infrastructures within the European territory to control and immobilise refugee populations, was described as an appropriate answer to the above-stated ‘deportation gap’. The centralisation of accommodation and its timely extension for certain individuals throughout the whole duration of the asylum procedure should ensure their deportability, as local employees of a municipal immigration office explained to us in informal conversations. They complained that most deportations would fail, because the persons to be returned were not there and were hiding when they arrived – as they are not allowed to announce the dates of deportation in advance.

Therefore, the encampment of asylum seekers with a low perspective to stay and even for Dublin Regulation cases is represented as a more efficient solution. This the director of the State Reception Authority (LAB) also explained:

The distribution of Dublin Regulation cases to the municipalities doesn’t make sense, if they have to be returned to Greece or Italy [...]. For our employees in the return administration it doesn’t make sense to look for these people decentralised, let’s say, in Cuxhaven, if we can have them directly at the spot where our employees are as well – and where they can directly bring them to the airport, and we know that the person is there. (Interview B)

## **5.4. Securitisation and Criminalisation**

### **5.4.1. From the Suffering Refugee to the Refugee Perpetrator**

Crimes committed by refugees were taken up by the media and right wing-groups (especially on social media), leading not only to heated debates about integration and its limits. In fact, several incidents like the assumed mass sexual abuse and rape on New Year’s Eve 2015/2016 in Cologne, the terrorist attack committed by the asylum seeker Anis Amri, who drove a hijacked truck into a Christmas market in Berlin and murdered 12 people in December 2016, and two further rapes committed by asylum seekers in Freiburg in 2017 and 2018 led more generally to a climate of fear and public calls for a law-and-order-policy. Right-wing groups were able to scandalise this incidents further, and managed to mobilise hundreds of supporters who demonstrated their anti-migrant and anti-government resentments quite

overtly, with fascist undertones, on the streets. In 2018, after further incidents in Köthen and Chemnitz with deadly outcomes, allegedly perpetrated by asylum seekers, a fascist mob demonstrated for days in these respective cities – whereby foreign-looking people were attacked on the streets and ‘hunted down’ (Zeit 2019).

After the attack by Anis Amri, ‘Gefährder’ (a person potentially causing danger) would develop from an internal police term to a relevant category of law. In 2018 and 2019, this wording was institutionalised in the new laws of the different federal states. ‘Now, we have a taskforce ‘Dangerer’ [Gefährder] for people acting within terrorist or Islamist environments, and who have officially to leave the country or who should be made to, in order to get them deported’ (Interview J).

#### 5.4.2. The Masculinisation of the Refugee Movement, and the Trope of the ‘New Year’s Eve of Cologne’

The sexual assaults on New Year’s Eve 2015/2016 in Cologne and their media coverage can be seen as an essential turning point, one delegitimising the welcoming culture as ‘naïve’ and calling for a strict law-and-order approach to all asylum seekers ‘who do not honour our values’. ‘Gender equality’ was suddenly consensually declared as one of the central ones. While before the figure of the war-suffering refugee dominated the media debate, now that of the ‘dangerous male refugee’ widely circulated, with politicians and intellectuals warning against a ‘masculinisation of public culture’ due to the disproportional number of single, young male asylum seekers who had arrived in Germany (see Elle and Hess 2018). This ‘gender talk’ helped to build a broad alliance against the movements supporting asylum-seeking migrants, with well-known feminists such as Alice Schwarzer warning against the ‘refugee rapist’ – as did the protagonists of the far right too.

Media headlines such as the following one of January 2016 express this nicely: ‘Women accuse. After the sex attacks of migrants: Are we still tolerant or are we already blind?’ (Focus 8 January 2016). This new ‘gender awareness’ (Elle and Hess 2018) was taken up, and had repercussions for refugee support networks and the state apparatus alike, by taking gender equality aspects more seriously. This helped, on the one hand, the push for more gender-sensitive approaches and the implementation of protection standards as well as mechanisms in the accommodation centres. As an interview partner from the LAB described:

Yes, in some cultures it is quite visible, but it is not always the woman who suffers. This has to be said. But, there is a lot violence within the families, perhaps they have a different inhibition threshold, or different limits of toleration or perhaps these people don’t realise the legal side. And this is our part to say: no, here in Germany no one has to tolerate it and to bear it. Here we have laws that exactly forbid this. It is a criminal offence, and we offer you the chance to go with us the legal way and to start litigation. (Interview B)

On the other hand, a cultural notion of ‘the Orient as patriarchal’ increasingly came to dominate, being linked to an ethnicity-based perception of ‘the culture’ of most asylum seekers as backward and violent. Own culture and society, in contrast, was perceived as gender equal and hence progressive. This notion of a patriarchal oriental culture led to diverse, rather restrictive and coercive measures within integration programmes set up to teach refugee men and women about gender equality. An interview with a social worker vividly revealed this

gendered discourse of othering, ascribing to asylum-seeking migrants an innate culture of backwardness:

Okay, at the beginning all wanted to help these poor people, these victims. And now they are increasingly not perceived as victims any more, but as perpetrators. [...] And now we suddenly realise that these people are mainly coming from the Orient, and have grown up in heavily patriarchal societies. They are so different from us, in a way that we had never imagined. (Interview M)

This gender discourse led to enhanced scrutiny of women living in families, whereas maintaining family life was seen as problematic and the main obstacle to gender equality and refugee integration:

Yes, these families are highly isolated and not so integrated. The kids, they are of course. But [...] the father he is so busy to protect his family against evil influences, against the Westernisation of his wife and daughters, and this rather is an obstacle and leads to further self-exclusion. (Interview M)

## 6. Best Practices - Civil Society Engagement

In the past few years, civil society has often served as a corrective to ensure that protection mechanisms are upheld. As pointed out in the previous sections of this report, asylum laws and official policies changed towards the stronger filtering out and exclusion of people otherwise deserving protection in recent years. While the efforts of administrative and executive units do not suffice to ensure equal treatment and sound procedural conditions for all asylum applicants, NGOs and civil society organisations often counter deficiencies and injustices resulting from these accelerated and standardised procedures.

Refugee rights NGOs like the Refugee Councils in all of the federal states represent refugees in public discussions, where their voices are lacking due to their weak position and excluded status from mainstream society. They critically comment on the developments of asylum laws and practices, emphasising human rights standards and pointing out possible injustices and discriminatory practices.

In practice, many civil rights initiatives and organisations work in the field every day to support asylum applicants, to identify their needs and provide information, translation, legal and social consultation, as well as offering clothing or other material goods not provided in the accommodation centres. Especially the summer of 2015 saw a broad civil society effort to meet the needs of large numbers of new arrivals in terms of accommodation, orientation and basic supplies. In three practical examples, the role of civil society in the asylum procedure will now be outlined. Three important structures providing independent counselling for asylum applicants are the regional AMBA network in Lower Saxony, the locally based 'Refugee Law Clinics' (RLCs) and more recent initiatives like 'Authority Watch'.

### 6.1. AMBA – A Network for Reception Management and Legal Counselling in Lower Saxony

AMBA (Aufnahmemanagement und Beratung für Asylsuchende in Niedersachsen) is an acronym for "Reception management and legal counselling in Lower Saxony" and is the title of a network of nine regionally active organizations with a long experience in refugee support work like the federal Refugee Council, the Caritas, the Diakonie, or more locally based civil society initiatives and migrant self-organizations like *karga e.V.* all sharing a partisan approach. Its main aim is to improve the reception conditions by a) ensuring a qualified legal counselling to all asylum seekers in decentralised accommodation facilities as well as in the first reception centres run by the LAB, b) implementing women's groups, c) implementing support infrastructures for traumatized refugees, d) qualifying professionals and volunteers working in the sector and e) ensuring quality assurance in the reception process and in the asylum procedure through regular discussions with authorities and ministries (Refugee Council of Lower Saxony 2019). The network is mostly funded by the Asylum, Migration and Integration Fund (AMIF) run by the EU and to a lesser extent by the Ministry of Social Affairs of Lower Saxony. Apart from the individual, local measures the AMBA network offers a regular platform for coordination and dialogue between the involved civil society actors, welfare organization and state actors like representatives of the LAB. This dialogue ensures a timely discussion of problems and deficiencies encountered by locally active partners, whereas the delegates of the LAB are asked for comments and solutions. 'This short communication way' enables again and gain corrections and improvements of the situation in the LAB campsites.

The network gathering central regional expertise in the field of asylum policies is also asked by the federal government to comment on new legal provisions and developments in the field.

## 6.2. Legal Counselling and Accompaniment to Official Appointments: Refugee Law Clinics and ‘Authority Watch’

In many cities, Refugee Law Clinics (RLC) provide free and self-organised legal counselling for all kinds of refugees. These RLCs were founded by law students and legal scholars, and work completely on a volunteer basis. Some can use university infrastructures and manage to secure some funding through university channels. Most RLCs offer open consultation hours and provide legal advice to people at all stages of the asylum process. Where needed, contact with professional lawyers is arranged. Some RLCs also offer information concerning social law and employment law.

Regarding the quality of asylum procedures and decisions, legal counselling is crucially important – since the way in which the procedures are construed presupposes that applicants know their rights and are able to pursue legal means. Markedly, if a person misses the period of appeal after a negative decision, their chance of asylum and to correct a mistaken rejection is missed. With this high burden laid on the individual applicant, independent civil society assistance and correctives are crucial to rectify mistakes in the asylum procedure.

Beyond that, RLCs also offers information for people who work with asylum applicants to understand the asylum system better. They also participate in public discussions, stressing the rights of asylum applicants and addressing legal questions regarding the asylum system from an independent position. As Pro Asyl argues, volunteer legal consultations fill the gap that insufficient legal assistance leaves, thereby being crucial to asylum seekers’ recognition in almost all cases (Interview D).

Accompanying people to their official appointments with local authorities is another related form of assistance for people in the asylum system living in decentralised accommodation. In the later steps of the asylum procedure, living conditions and questions regarding individual cases depend on appointments being fulfilled at the foreigners’ office, social assistance office, housing association or at the employment agency. Refugee support groups also report that people are often discriminated, intimidated, sanctioned and deprived of their rights by employees of official agencies and other institutions. From the experience of refugee support organisations, the success of these appointments often improves when people are accompanied by volunteers offering translation, understanding, reassurance and insisting on individual rights (Interview H).

In various places across Germany so-called ‘Authority Watch’-groups have been founded, coordinating among volunteers accompaniments for refugees who have requested such a support. Beyond this everyday support, the networks also publish discriminatory practices by official agencies and individual bureaucrats, and represent refugees’ voices in official discussions. As a recent example, in December 2018 the network denounced the practice of summoning people with a tolerated stay-status to renew their papers every three days – thereby extending their precarious social status and limiting their living conditions. In another case, people were taken into deportation custody directly from the premises of the foreigners’ office. As authority watch members were on-site to observe such acts and could organise legal support, after a few days the individuals concerned were released when a court decided that



their detention was unlawful. This practice of detaining people sparked public protests, and was thus stopped (*HNA* 2019).

Against prevailing structural racism within the state bureaucracy, heightened structural dependency by clients on individual employees, and the structural non-transparency of bureaucratic measures, authority watch – as a volunteer civil society initiative monitoring the rights of asylum seekers by law – proves thus to be a necessary corrective (*Flüchtlingscafe* 2019).

## **7. Conclusion: Selecting, Excluding, Blocking Access to the Protection System**

The analysis of the refugee protection system in Germany has shown how asylum seekers' right to protection – in focus here, procedural rights – has been further and further restricted. The perception of the population movements of 2015/2016 as a refugee crisis and a state emergency led to the securitisation of refugee-migration, and to a shift from welcoming – therein focusing on reception and integration – to a law-and-order approach encapsulating the imperative of regaining control (through emphasis on deportation).

The asylum procedure is still the most important means to grant individuals protection from persecution, as legally provided by the German Constitution, the Geneva Convention on Refugees as well as by the EU Qualification Directive. But, in this report we have highlighted several – mostly recently implemented – factors and categories leading to a heightened process of, what we want to call, 'differential exclusion' of an increasing number of asylum seeking migrants from the protection system. Historically, the right to asylum was inscribed in the German Constitution – representing a central feature of it, after the experiences of persecution during the Nazi era. However, from the late 1980s this right was gradually cut back and hollowed out – not by removing the right of asylum from the Constitution altogether, but by putting up more and more obstacles and special conditions. Fewer and fewer people thereby have access and are still entitled to the full scope of its protection.

Especially the years around 1992/93 and 2015/16 signify two historical peaks in Germany in the limiting of access to protection – the latter forming a still-ongoing process. In a first push, the heated migration debate in 1992/93 led to the virtual abolition of the right to constitutional asylum just after German reunification. In a second step, the perception of the developments of 2015/16 as a 'refugee crisis' resulted in various changes to the asylum regime as documented in the report. As outlined above, several barriers have been created that bar individuals from access to the German asylum system and have established a highly arbitrary and unjust legal regime.

These barriers include border practices along the entire migration route, such as visa restrictions right in the middle of situations of mass flight, refusals of entry as well as expulsions at the German land, sea and air borders. Since 2015, meanwhile, border controls have been re-established along those shared with southern neighbours. Furthermore, formal decisions and the dismissal of asylum applications as inadmissible, particularly grounded in the Dublin Regulation or the safe third country concept, form a major obstacle to receiving protection in Germany.

In addition, the priority to speed up the asylum procedure and to increase the rejection rate is visible in the formally accelerated asylum procedure, as well as in different recent procedural changes that have the goal of fast-tracking it. The latter is mainly based on a pre-filtering of asylum seekers and the centralisation of all concerned institutions in one spot, primarily following the principles of rationalisation and process optimisation. This rationale often interferes with the individual's right to protection and a thorough asylum hearing. It especially leads to a deterioration of procedural guarantees and safeguards.

This dangerous tendency has been intensified by the recent strategy of accommodating more and more groups of asylum-seeking migrants in large, isolated camps during the whole

application procedure. The aim of this new policy is to keep asylum applicants under surveillance and to impose maximum control over their everyday lives – a process that has been described as campization, and which leads not only to the heightened production of social and legal precarity but to a heightened deportability.

Preselection through the clustering of asylum seekers already before their hearing, based on the recognition rates of their national belonging, in tandem with the concepts of safe countries of origin as well as of safe third countries strongly limit the possibilities to receive protection in Germany. They can therefore contribute to 'the self-fulfilling prophecy' that certain nationals are not considered even eligible for asylum protection. Especially negatively affected by the acceleration of these processes are people in need of an asylum procedure that is sensitive to their personal history and individual requirements, such as the extremely vulnerable (survivors of rape, torture, people suffering from PTSD, relatives living in war zones) and women\*/LGBTIQ+.

The acceleration of the asylum procedure furthermore does not necessarily reduce the waiting time for individuals if appeals are also taken into account. Instead, it upholds a state of being in limbo – especially for those who are not distributed to communal accommodation but have to remain in central arrival centres / special reception centres with restricted rights and precarious living conditions.

Backed by the public discourse of a refugee crisis, the goal to swiftly complete pending asylum procedures and, more importantly, to quickly return as many asylum-seeking migrants as possible necessarily leads to a deterioration of procedural standards. The current practice to minimise the applied standards to the lowest-possible limits was well expressed by an employee of the Chancellery:

Well, you're certainly pushing the envelope of what you can do with the Geneva Convention on Refugees [GCR]. The GCR says, first of all, you have to protect someone from danger – you can't deport them. Then it is argued: Is there danger? So one still thinks in terms of the GCR. It is clear that in these times, of course, everything that is a little more than the minimum standard comes into question. This is not only the case in refugee law. If a system comes under such pressure, then people ask: 'What is just still permissible?' (Interview K)

## 8. Policy Recommendations

The analysis of the German asylum system has shown that there has been a general development of the systematic tightening up of the law, leading to stark gaps in the protection system. The following recommendations are thus made to improve the protection of asylum seekers:

### 1. *Provide access to the asylum system*

There are several barriers restricting access to the German asylum system, ones preventing refugees from even applying for protection. Political efforts should be made to reduce these barriers:

- Ensure safe passage along the flight route towards and within Europe to enable asylum seekers to apply for protection.
- Carefully monitor expulsions and refusals at the German border to ensure that migrants are provided with the possibility to apply for asylum.
- Carefully monitor the airport procedure, and make sure that asylum seekers are able to exhaust their legal remedies within the given short period of time.
- Refrain from dismissing asylum applications as inadmissible and returning people to third countries if those states are not able or willing to provide protection and basic needs for asylum seekers and refugees.

### 2. *Guarantee basic rights- especially in the fast-tracked and accelerated asylum procedure*

Accelerating the asylum procedure has, on the one hand, proven necessary in order to avoid lengthy periods of limbo for asylum applicants and the overstraining of administrative capacities. On the other, the fast-tracking of asylum procedures has, however, also led to strong limitations on basic rights and acute shortcomings in the protection system. These deficits have to be reduced:

- Prevent discrimination based on nationality through pre-selection procedures such as clustering, which limit the chances to access protection before the asylum procedure has even commenced.
- Ensure that applications considered manifestly unfounded are carefully examined, and the individual reasons for persecution are analysed in-depth.
- Do not expand the label of safe country of origin to further countries in which there is clear evidence of the violation of basic human rights.
- Ensure that BAMF decision makers and interpreters are competent, have sufficient training in order to be able to recognize well-founded fears on the part of an asylum applicant about returning to his/her country of origin or to a third country.
- Make sure that BAMF decision makers and interpreters are culturally sensitive and also sensitive towards gender-related discrimination, creating a trustful interview atmosphere.
- Make sure that special needs, vulnerabilities and traumas are recognised, and adequately supported

- Make sure that asylum applicants have access to independent legal counselling and competent interpreters
3. *Prevent isolation and human rights violations in centralised accommodation such as arrival centres and special reception centres.*

The centralisation of accommodation has led to a deterioration of living conditions for asylum seekers, especially for those with low perspectives to stay – who remain throughout the process in mass accommodation centres. The surrounding conditions also affect the chances of applicants in the asylum procedure, thus needing to be changed:

- Make sure that asylum applicants have access to independent counselling within the reception centres.
- Create a safe environment with decent living conditions regarding privacy, basic needs such as food, hygiene, medical and psychological services.
- Ensure asylum seekers have contact with the outside world, and the access of civil society to the accommodation centres, in order to prevent isolation and to serve as a corrective for the possible misalignment of accommodation centres.
- Abolish deportation custody, which has been proven to be imposed unlawfully in an extremely large number of cases.

## 9. Appendix - List of Interviews

**Table 11 List of Conducted Meso-Level Interviews**

No.	Institution	Area	No. of persons interviewed
<b>Federal level</b>			
1	Federal Chancellery	Refugee Unit / Integration Officer	1
2	Federal Ministry of the Interior	Migration; refugees; European Harmonisation	1
3		Return Department	1
4		Federal police force/ Leadership and operational matters of the Federal Police	3
5		Department for International affairs concerning border controls	2
6	Federal Ministry for Economic Cooperation and Development	Return/ Reintegration	1
7	Federal Ministry of Labour and Social Affairs	Migration/ Integration Policy Unit	1
8	Bundestag	Group of the party The Left, Migration Section	2
9	Pro Asyl	Legal Policy Department	2
10	Asylum Lawyer		1
<b>State level</b>			
11	Ministry of the Interior Lower Saxony	Asylum section	1
12	State Reception Authority Lower Saxony	Directorate	2
13	Reception Centre Bad Fallingbostel	Management and Social Services	3
14	Refugee Council of Lower Saxony	Directorate	1
15		Deportation Custody, Procedural Consultation	2
16	Refugee Council of Hesse	Directorate	1
17	Procedural Counselling, Reception Centre Fallingbostel	Procedural Counselling	1
18	Reception Centre Braunschweig	Direction of Social Services	1
<b>Municipal level</b>			
19	Social Services Department Göttingen	Department Housing	1

20	Migrationszentrum Göttingen	Co-Leader & Speaker	1
21	Integration Commissioner, County Göttingen		1
22	Integration Commissioner, City of Göttingen		1
23	Welfare Organisations	Bonveno Coordination of voluntary work and integration	1
24	Women's Centre within Reception Centre Friedland		1

**Table 12: Abbreviations of Cited Meso-Level Interviews**

Lettering	Date	Place	Number of People
A	04.12.2018	Hannover	1
B	23.01.2019	Braunschweig	2
C	01.07.2019	Göttingen	1
D	30.11.2018	Frankfurt	2
E	30.11.2018	Frankfurt	1
F	5.2.2019	Fallingbostel	1
G	5.3.2019	Hannover	1
H	30.10.2018	Göttingen	1
I	01.10.2018	Hannover	2
J	25.09.2018	Berlin	1
K	27.09.2018	Berlin	1
L	28.09.2018	Berlin	1
M	12.12.2018	Göttingen	1
N	29.11.2018	Friedland	1
O	5.2.2019	Fallingbostel	3
P	10.12.2018	Göttingen	1

**Table 13: Abbreviations of Cited Micro-Level Interviews with Asylum Seekers**

No.	ID	Nationality	Gender	Location of interview
1.	AFGH-W-GOE 171018	Afghanistan	Female	Göttingen
2.	ALGSYR-W-BER 020818	Algeria	female	Berlin
3.	CAM-M-GRO 070718	Cameroon	male	Großbeeren
4.	CAM-M-GRO 230718	Cameroon	male	Großbeeren

5.	ERI-M-GRO 090718	Eritrea	male	Großbeeren
6.	GAM-M-BER-0607	Gambia	male	Berlin
7.	IRA-M-BER 181218	Iran	male	Berlin
8.	IRA-M-BER 241018	Iran	male	Berlin
9.	IRA-M-GOE 190918	Iran	male	Göttingen
10.	IRA-M-GOE 090818	Iran	male	Göttingen
11.	IRAQ-M-BER2 020818	Iraq	male	Berlin
12.	LIB-M-BER 270419	Libya	male	Berlin
13.	LIB-M-GRO 220419	Libya	male	Großbeeren
14.	NIG -W -GRO 110718	Nigeria	female	Großbeeren
15.	SYR- M- GOE 281018	Syria	male	Göttingen
16.	SYR-M-GOE 261018	Syria	male	Göttingen
17.	SYR- M- MUN 031218	Syria	male	Munich
18.	SYR- M- MUN 041218	Syria	male	Munich
19.	SYR- M- MUN 151218	Syria	male	Munich
20.	SYR-F-GOE 141218	Syria	female	Göttingen
21.	SYR-F-MUN 030918	Syria	female	Munich
22.	SYR-F-MUN 091118	Syria	female	Munich
23.	SYR-F-MUN 140818	Syria	female	Munich
24.	SYR-F-MUN 230818	Syria	female	Munich
25.	SYR-M-BER2-030818	Syria	male	Berlin
26.	SYR-M-MUN 271118	Syria	male	Munich
27.	SYR-M-MUN-281118	Syria	male	Munich
28.	TUR-M-GÖ2-201218	Turkey	male	Göttingen
29.	TUR-W-BER-031118	Turkey	female	Berlin



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