

## 6. *Country Profile:* *Germany*

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## 6.1. Introduction

The information gathered in this profile is based on three different sources of information:

- The answers delivered by the German Ministry of the Interior to a questionnaire prepared by PLS RAMBOLL Management
- Background documentation (mainly statistics)
- Information gathered during visits and interviews with key actors in the German asylum and reception procedure.

The following institutions have contributed with information to the questionnaire:

The Federal Ministry of the Interior

The Federal Ministry of Labour and Social Affairs

The Federal Ministry of Justice

The Federal Office for the Recognition of Foreign Refugees

The Federal Government Commissioner for Matters Relating to Aliens

The visits and interviews in Germany were carried out on the 15th and 16th of June 2000. During this time the following persons and institutions were visited:

### **Ministry of the Interior:**

Dr. Karsten Kloth, Head of Section, Task force for European Harmonization

Frank Hübschmann

### **Regional authorities Landesamt Berlin;**

Petra Pöggel, Division for reception of asylum seekers

Erika Rattsch, Division for reception of asylum seekers

### **Motard Strasse Accommodation Centre (run by the NGO Arbeiterwohlfahrt):**

Mali Speir, Deputy Head of Asylum Centre, social advisor

Anke Köpschull, social counsellor

### **IOM:**

Manfred Profazi, Office Director Berlin

**Frankfurter Allgemeine:**

Johannes Leithäuser, journalist

**Danish Embassy:**

Vibeke Pasternak Jørgensen, First Embassy Secretary.

**6.2. Background statistics on Germany****6.2.1. Trends in the number of applicants**

This part of the profile presents some statistical background information regarding the number of asylum seekers in Germany, the main countries of origin and the total cost of the German State (federal, regional and local government) in relation to hosting asylum seekers during the pre-asylum phase.

6.1 below shows the number of asylum seekers from 1991–1999 in Germany:

**Table 6.1: Number of asylum seekers in Germany 1991-1999**

	1991	1992	1993	1994	1995	1996	1997	1998	1999
Number of asylum seekers	256,112	438,191	322,599	127,210	127,937	116,367	104,353	98,644	95,113

*Source: Federal Office for the Recognition of Foreign Refugees*

The table shows a significant growth in the number of asylum seekers in Germany in 1992 corresponding to a 71% increase compared to 1991. From 1992 on the number of asylum seekers has decreased significantly every year except for the year 1995. Overall from 1991 to 1999 there has been a 63% decrease in the number of asylum seekers. The big decrease was between 1992 and 1994 (26% between 1992 and 1993, and 61% between 1993 and 1994 and 70% between 1992 and 1994). Between 1995 and 1999 there was a 25% decrease in the number of asylum seekers. Between 1998 and 1999 the decrease was 4%.

**6.2.2. Number of asylum statuses granted**

As illustrated in table 6.2 below, the total number of asylum statuses granted during the period from 1995 to 1999 has constantly been falling from 27,100 in 1995 to 12,360 statuses granted in 1999. This amounts to a 54.4% decrease.

The following table 6.3 shows that for most categories of statuses the number granted has been significantly decreasing since 1997. This amounts to a 51.3% decrease in asylum seekers granted “Refugee status under Section 16” and a 37.1% decrease in applicants granted “Protection against refoulement”.

**Table 6.2: Total number of asylum statuses granted**

1995	27,199
1996	26,082
1997	20,990
1998	13,857
1999	12,361

*Source: Federal Office for the Recognition of Foreign Refugees*

**Table 6.3: Summary of different asylum statuses granted from 1997-1999**

	1997	1998	1999
Total number of first instance decisions	170,801	147,391	135,504
No status awarded	101,886	91,700	80,231
Refugee status under Section 16 of the Constitution	8,443	5,883	4,114
Protection against refoulement under section 51(1) of the Aliens Act	9,779	5,437	6,147
Others (abandoned etc.)	50,693	44,371	42,912

*Source: Federal Office for the Recognition of Foreign Refugees*

### 6.2.3. Main countries of origin

Trends in the country of origin of applicants are shown in table 1.4 below. In the period from 1997 to 1999 the main national groups comprised persons from the former Yugoslavia, Turkey, Iraq, Afghanistan, Vietnam and Iran.

**Table 6.4: Total applicants by country of origin**

1997		1998		1999	
Nationality	Applicants	Nationality	Applicants	Nationality	Applicants
Turkey	16,840	Serbia/- Montenegro	34,979	Serbia/- Montenegro	31,451
Serbia/- Montenegro	14,789	Turkey	11,754	Turkey	9,065
Iraq	14,088	Iraq	7,435	Iraq	8,662
Afghanistan	4,735	Afghanistan	3,768	Afghanistan	4,458
Sri Lanka	3,989	Vietnam	2,991	Iran	3,407

Source: Federal Office for the Recognition of Foreign Refugees

#### 6.2.4. Costs

Costs in relation to the handling of asylum seekers in the pre-asylum phase are shown below. It has only been possible to obtain information on the cost in relation to accommodation and health care. This amounts to a total of 1,758 billion EURO and 422 billion EUROS respectively, taking all the federal Länder together.

**Figure 6.1: Benefits and costs**

BENEFITS	COSTS
Accommodation	In 1998, the <i>Länder</i> incurred total costs of 1,758 billion EUROS/ 3,439 billion DM for basic benefits in accordance with § 3 of the Act on Benefits for Asylum seekers for persons entitled to benefits under this act, especially asylum seekers. There is no separate information on costs arising from the accommodation of asylum seekers.
Means of subsistence	No information
Education	The Federal Ministry of the Interior does not have any information on the costs incurred by the <i>Länder</i> in terms of social and cultural assistance for asylum seekers.
Labour market related activities	No information
Health care	In 1998 the federal <i>Länder</i> spent 422 billion EURO/ 827 billion DM on health care for persons entitled to benefits under the Act on Benefits for Asylum seekers, especially asylum seekers.
Total costs	



### **6.3. Organisation of asylum procedure**

As is illustrated in the figure 1.2 below, the key actors in relation to the German asylum procedure are as follows:

#### **The Ministry of the Interior/ The Federal Office for the Recognition of Foreign Refugees:**

Responsible for:

- Personal interview with the asylum seeker, that is investigation of identity, travel route, asylum reason. (Responsibility of the local branch of the Federal Office).
- Receiving asylum applications
- The decision on the asylum application
- Ascertaining whether there are any obstacles precluding deportation pursuant to section 53 of the Aliens Act
- Responsible for the distribution system EASY
- Informing the Länder each month about the number of newly arrived asylum applicants, the foreseeable trend in the number of new arrivals and the foreseeable need for accommodation.
- International co-operation on asylum matters (the IGC intergovernmental forum).
- The registration of asylum seekers (Takes place in the reception centres)
- Fingerprinting
- Issuing of deportation orders

#### **The Ministry of the Interior/ Federal Commissioner for Asylum Affairs**

(An administrative body under the Federal ministry of the Interior)

- Has the right to challenge decisions made by the Federal Office for the Recognition of Foreign Refugees

#### **The Federal Ländern**

Responsible overall for:

- Operation of the reception centres (Responsibility varies from Land to Land)
- Accommodation of the newly arrived asylum seekers (allocated to them on the basis of defined distribution procedures)
- Operation of the accommodation centres (the social authorities of the Federal Länder. Some authorities involve private operators)
- Access to education
- Access to health care

## **NGOs**

NGOs are involved mainly in the accommodation of asylum seekers. NGO responsibilities in relation to the accommodation centres differ from Land to Land. At some accommodation centres the various organisations (the German Red Cross, Caritas, Workers' Samaritan Column, the Diakonisches Werk) are represented only by a few points of contact, while in other facilities they provide full board and care to the asylum seekers. The NGOs work on behalf of the Land concerned and are paid accordingly. The managers of the centres, who hold ultimate responsibility, are always public officials of the Land concerned.

Furthermore some NGOs offers free educational and other activities for asylum seekers. This kind of offer varies from Land to Land and from municipality to municipality.

## **Administrative court**

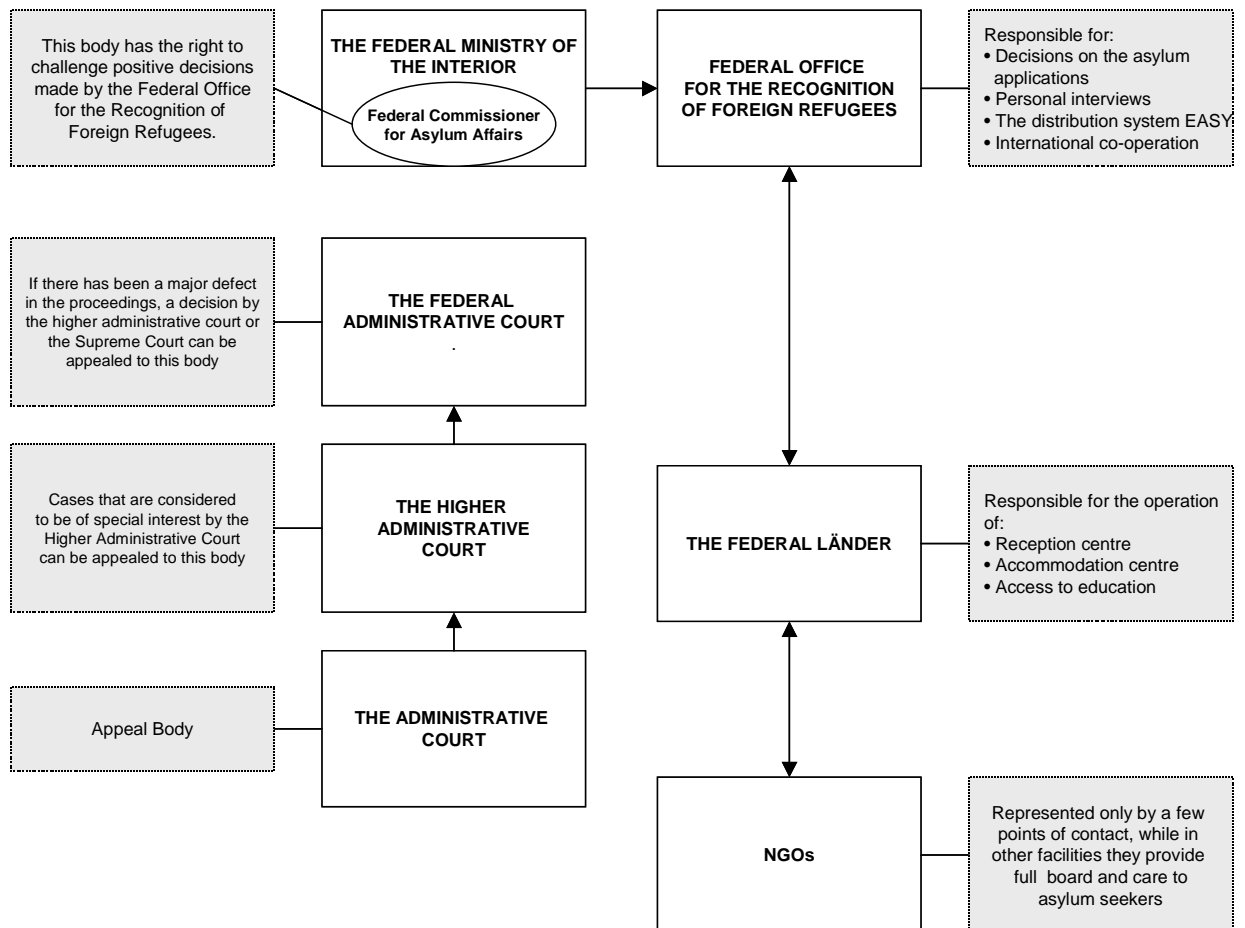
This is the appeal authority for decisions in the asylum field. Asylum seekers can lodge an appeal to this administrative court ("Verwaltungsgericht") within two weeks of notification. The procedure includes a hearing with the presence of the asylum seeker. Decisions may be further appealed to the Higher Administrative Count ("Oberverwaltungsgericht"), if the case is considered to be of special interest by the Higher court. There are special regulations in the case of "manifestly unfounded" cases.

## **The Police**

The police have no role to play regarding the reception of asylum seekers.

Figure 6.2 below shows the institutions involved in the handling of asylum seekers in the pre-asylum phase.

**Figure 6.2: Institutions involved in the pre-asylum procedure**



### 6.3.1. Co-ordination

## 6.4. Legal basis

At the global level the legal basis for the reception conditions of persons seeking international protection in Germany includes the following acts:

- The Geneva Convention of 1951 and the New York Protocol of 1967
- The German Constitution, Articles 16, 16a and 19

- The law on Asylum procedure of 1982
- The Aliens Act of 1990
- The Schengen Agreement and the Dublin Convention

Germany has informed PLS RAMBOLL that the following list includes all the laws and regulations consulted in order to answer the study questionnaire. All laws and regulations mentioned are federal provisions that apply nationwide. For reasons of clarity, the respective regulations on the Länder level are not included in the list. Neither are international agreements, which are not applied directly in German legal practice.

- Grundgesetz für die Bundesrepublik Deutschland (GG) vom 23. Mai 1949, zuletzt geändert durch Gesetz vom 16.07.1998  
Basic Law for the Federal Republic of Germany of 23 May 1949, last amended by the law of 16 July 1998
- Übereinkommen über die Bestimmung des zuständigen Staates für die Prüfung eines in einem Mitgliedstaat der Europäischen Gemeinschaften gestellten Asylantrages ("Dubliner Übereinkommen" DÜ) vom 15.06.1990  
Convention Determining the State Responsible for Examining the Applications for Asylum Lodged in one of the Member States of the European Communities ("Dublin Convention") of 15 June 1990
- Asylverfahrensgesetz (AsylVfG) vom 26. Juni 1992 in der Fassung der Bekanntmachung vom 27. Juli 1993, zuletzt geändert durch Gesetz vom 29.10.1997  
Asylum Procedure Act of 26 June 1992 as promulgated on 27 July 1993, last amended by the law of 29 October 1997
- Asylzuständigkeitsbestimmungsverordnung (Asyl ZBV) vom 04.12.1997, zuletzt geändert am 20.12.1999  
Regulation Determining the Authority Responsible for the Processing of Asylum Applications of 4 December 1997, last amended on 20 December 1999
- Gesetz über Maßnahmen für im Rahmen humanitärer Hilfsaktionen aufgenommener Flüchtlinge vom 22. Juli 1980, zuletzt geändert durch Gesetz vom 29. Oktober 1997

Act on Measures in Aid of Refugees admitted under Humanitarian Relief Programmes of 22. July 1980, last amended by the law of 29 October 1997

Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet (AuslG) vom 9. Juli 1990, zuletzt geändert durch Gesetz zur Reform des Staatsangehörigkeitsrechts vom 15.07.1999

Act Governing the Entry and Stay of Foreigners in the Federal Territory of 9 July 1990, last amended by the Act Reforming Nationality Law of 15 July 1999

- Gesetz über das Ausländerzentralregister (AZR Gesetz) vom 02.09.1994  
Act concerning the Central Aliens Register of 2 September 1994
- Verordnung zur Durchführung des Ausländergesetzes (DV AuslG) vom 18.12.1990 zuletzt geändert am 21.05.1999  
Ordinance Implementing the Aliens Act of 18 December 1990, last amended on 21 May 1999
- Bundessozialhilfegesetz (BSHG) vom 30. Juni 1961, in der Fassung der Bekanntmachung vom 23.03.1994, zuletzt geändert am 22.12.1999  
Federal Social Welfare Act of 30 June 1961, as promulgated on 23 March 1994, last amended on 25 August 1998
- Asylbewerberleistungsgesetz (AsylbLG) vom 30. Juni 1993 in der Fassung der Bekanntmachung vom 05. August 1997, zuletzt geändert am 25.08.1998  
Act on Benefits for Asylum Seekers of 30 June 1993 as promulgated on 5 August 1997, last amended on 25 August 1998
- Arbeitsförderungsreformgesetz (AFRG) vom 24. März 1997  
Act to Reform Employment Promotion of 24 March 1997
- Arbeitsgenehmigungsverordnung (ArGV) vom 17. September 1998  
Ordinance on Work Permits of 17 September 1998
- Gesetz über die Angelegenheiten der freiwilligen Gerichtsbarkeit (FGG) vom 17.05.1898, zuletzt geändert am 19.12.1998. Act Relating to Matters of Non-Contentious Jurisdiction of 17 May 1898, last amended on 19 December 1998

- Gesetz über das gerichtliche Verfahren bei Freiheitsentziehung (FEVG) vom 29. Juni 1956, zuletzt geändert am 24.04.1998  
Act Governing Legal Proceedings in Case of Deprivation of Liberty of 29 June 1956, last amended on 24 April 1998

#### **6.4.1. Recent changes**

In the last two years, there have been no amendments to the Asylum Procedure Act affecting the essential procedural guarantees for asylum seekers.

With effect from the 1st of September 1998, the Act on Benefits for Asylum Seekers was amended. The amendment aims to combat abuse of the Act on Benefits for Asylum Seekers. The aim is that foreigners who are entitled to benefits and who come under the provisions of section 1a of the act will only be given assistance which is absolutely vital.

Previously, all foreigners belonging to the group of persons entitled to benefits pursuant to section 1 were entitled to the same benefits. According to Germany the reason for the above mentioned change was that increasingly, foreigners entered Germany illegally merely to obtain social benefits in Germany, possibly without seeking protection against political persecution. Furthermore, Germany would not tolerate a situation in which foreigners who destroyed their passports or made false statements regarding their person and origin with the intention of foiling measures to terminate their stay were able to extend their stay or draw full benefits under the Act on Benefits for Asylum Seekers.

In 1993 and 1997 the law was also changed regarding social conditions for asylum seekers. Both times the changes resulted in restrictions in the asylum seekers' access to social benefits.

#### **6.4.2. The latest major reform**

The basic right to asylum under article 16a of the Basic Law was amended as of 1 July 1993. Following the 1993 amendment of the constitution with article 16a, the right of the individual to seek and be granted asylum in Germany was restricted. The amendment introduced the concepts "safe country of origin" and "safe third country" into the German constitution. In effect the amendment of the article on "safe third country" means that the constitutional right of asylum is no longer applicable to refu-

gees who come to Germany by land, since all EU Member States and other neighbour states are considered safe third countries.

Thus, the right to asylum remained an individual basic right but the scope of protection was restricted. Due to the 1993 reform the following regulations on the need for protection came into effect:

The safe third-country principle provides that foreigners who have entered Germany through a safe third-country may not invoke the right to asylum. Safe third-countries are all Member States of the EU and other states determined by the legislator in which the application of the Geneva Convention on Refugees and the European Convention on Human Rights is safeguarded (currently these are Norway, Poland, Switzerland and the Czech Republic. Thus, the persons concerned may be refused entry at the border and may be removed to these safe third-states immediately, provided they are willing to admit the foreigner. Measures to terminate a foreigner's stay may be enforced irrespective of whether or not the person concerned has sought legal remedy against such measures.

The concept of "safe country of origin" restricts the admission to the asylum procedure to persons from countries that have not been listed as a safe country. The legislature was enabled to draft a list of safe countries of origin for which safety from persecution is refutably presumed (currently, these countries are Bulgaria, Ghana, Poland, Romania, Senegal, Slovak Republic, Czech Republic, Hungary). Foreigners coming from these states generally cannot invoke the right to asylum.

Where asylum-seekers come from a safe country of origin or where their application for asylum is manifestly unfounded, it has been made easier to enforce measures to terminate their stay. Upon rejecting the asylum application, the Federal Office issues a notification announcing deportation ("Abschiebungsandrohung"), with the foreigner being given a week to leave the country. Within this week, the foreigner can seek temporary relief with the administrative court, which should be adjudicated upon within one week. As part of the temporary relief procedure, the administrative court may suspend deportation only in cases where there are serious doubts as to the legality of the decision.

The so-called airport procedure governs cases where foreigners from safe countries of origin and/or foreigners without valid passport or surrogate passport enter the country through an airport and seek asylum with the border authority. In these cases

the asylum procedure must be conducted prior to entry if the foreigner can be accommodated on airport premises pending the procedure.

A particular regulation governing the granting of temporary stay outside the asylum procedure has been created for war and civil war refugees in section 32 a of the Aliens Act.

Further amendments aimed to implement the Schengen and Dublin Conventions. For instance, the safe-third-state principle is not applied in cases where Germany is responsible for conducting the asylum procedure owing to an international treaty with the safe third state (Dublin Convention).

#### **6.4.3. Reasons for latest major reform**

The purposes of the changes were to reduce the number of asylum applicants, to prevent the abuse of the asylum system and to reduce the costs of hosting asylum seekers. Before 1993 everybody who applied for asylum in Germany was entitled to a full procedure, including three court instances. The full procedure often took five to six years. Due to the new situation in Europe after the end of the Cold War, Germany received more than 400,000 asylum applicants in 1992. This made the old law very expensive.

So the reason for the legal changes in 1993 and in 1997 was a combination of the growing number of asylum applicants, the acceleration of the asylum procedure and misuse of the asylum system<sup>1</sup>.

#### **6.4.4. Types of status granted in Germany**

##### **Category 1:**

Under German law, category 1 comprises persons who apply for protection status under the Geneva Convention on Refugees and for whom an asylum procedure is conducted.

##### **Category 2:**

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<sup>1</sup> Some of the nongovernmental interviewees mentioned the economic situation of Germany and a growing public opposition to receive big numbers of asylum seekers as additional reasons behind the reforms of the 1990s.



The definition of category 2 can comprise two groups of persons under German law:

- Foreigners who are given a status as civil war refugees according to section 32 a of the Aliens Act (Residence Title for Exceptional Purposes, “Aufenthaltsbefugnis”)
- Foreigners who are granted a temporary suspension of deportation (“Duldung”) according to section 55 of the Aliens Act.

#### **Category 3:**

- Civil war refugees who have been granted a temporary suspension of deportation in line with section 55 of the Aliens Act.
- Foreigners who merely request protection against deportation and who have not filed an application for asylum.

As regards the social reception conditions, however, no distinction is generally made under German law between category 1 and 3<sup>2</sup> .

#### **6.4.5. Possible changes**

Currently at the federal level there are no further plans to change the law, as it is considered that the aims of the changes in 1993 and 1997 have been reached.

However, the regional authorities (die Bundesländern) can also initiate new legislation, which could lead to proposals for change.

### **6.5. Arrangements immediately upon arrival**

This section deals with the arrangements in force immediately upon arrival of an asylum seeker.

There are no differences in immediate arrangements due to the expected outcome of the asylum procedure, e.g. due to normal or accelerated procedure. As a matter of principle, all asylum applicants are under the obligation to stay initially in a reception centre, regardless of the outcome of their procedure.

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<sup>2</sup> Section 1, paragraph 1 of the Act on Benefits for Asylum-Seekers, “Asylbewerberleistungsgesetz”.

So far, civil war and war refugees have always both been accommodated immediately upon their arrival in public reception centres where they received the necessary first assistance.

### **6.5.1. Distribution of newly arrived asylum seekers through out Germany**

Ever since the 1st April 1993, asylum applicants have been distributed to the various Länder on the basis of a procedure based on reception quotas, which is defined by law<sup>3</sup>. The nationwide distribution system EASY<sup>4</sup> determines which reception centre shall be responsible for accommodating newly arrived asylum applicants<sup>5</sup>.

The Federal Office for the Recognition of Foreign Refugees is the central distributing agency. Currently, the Länder-run 32 (initial) reception centres each of which is affiliated with a field office of the Federal Office for the Recognition of Foreign Refugees.

In practice the procedure works as follows: Once the details of the asylum applicant (in particular the country of origin, but no personal data) have been collected during initial registration by a reception centre, the EASY system allocates him or her within a matter of seconds to a reception centre. This decision is based on criteria that are defined by law:

- Obligation of the Land to receive the asylum seeker
- The country of origin of the asylum seeker concerned must be among those covered by the field office affiliated to the reception centre concerned
- There must be a sufficient number of beds available

If these prerequisites cannot be met by any of the reception centres in the Land concerned, the asylum applicant will be allocated to the nearest reception centre of another Land whose quota has not yet been exhausted. At the same time the necessary number of beds are reserved in the system. Once the reception centre to which the asylum applicant has been allocated has confirmed the reception, the individual will be deducted from the target quota of the Land concerned.

For the reception of displaced persons from Kosovo who fall under the provisions for civil war refugees pursuant to section 32 a of the Aliens Act, a similar distribution

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<sup>3</sup> Section 45 of the Asylum Procedure Act

<sup>4</sup> Acronym stands for "Erstverteilung von Asylbewerbern" - Initial Distribution of Asylum Seekers

<sup>5</sup> Most part of these cases are in-country cases

system was introduced as of 7th April 1999, which uses the same criteria as EASY. Deviating from the statutory reception quotas of the Länder under the EASY system, the Länder have agreed on absolute numbers of refugees from Kosovo, which are, for some Länder, higher than they would be under the EASY system.

### **6.5.2. Immediate treatment at reception centre**

If the border authorities do not refuse entry to the asylum seeker at the border, he will be transferred to the nearest reception centre. There, the asylum seeker will be allocated to a reception centre in one of the Länder on the basis of the prescribed distribution procedure described above. He is obliged to stay in that centre for a period of up to three months. In the field office of the Federal Office for the Recognition of Foreign Refugees that is responsible for the reception centre concerned, the asylum seeker may file his asylum application. When handing in his application, the asylum seeker will be photographed and fingerprinted. Upon filing his asylum application, the foreigner will receive a residence permit, which is valid for the duration of the asylum procedure (Aufenthaltsgestattung).

The asylum applicant is interviewed by a caseworker and undergoes a mandatory medical check up. As a rule, the asylum applicant is interviewed within a few days of filing his application. The caseworker will ask questions concerning his travel route and check whether another state might be responsible for processing the asylum application; and during this interview the applicant has the opportunity to state the reason why he/she has left his/her home country, why he/she felt prosecuted and so on. (He may serve a notification announcing deportation to a safe third country or determine that another EU Member State is responsible for examining the asylum application under the Dublin Convention). If this is not the case, he will make a prognosis indicating whether he expects the asylum application to be turned down fairly soon as being irrelevant or manifestly unfounded and that there are no obstacles precluding deportation. If this is the case, the asylum applicant will be required to stay in the reception centre. If not, he will be allocated to a municipality in the Land concerned and await the outcome of the asylum procedure there.

The following decisions are possible following initial investigation of the travel route and identity of the asylum seeker:

- If it turns out that, under the provisions of the Dublin Convention, another Member State is responsible for examining the merits of the case, and if that state agrees

to take over the case, the asylum application will be rejected by the Federal Office for the Recognition of Foreign Refugees.

- In cases where the safe-third-country principle is applied and the safe third country agrees to readmit the asylum applicant, it will be established that the asylum applicant is not entitled to asylum in Germany. If he cannot be returned to the safe third country, it must be established whether he is entitled to protection against deportation pursuant to section 51 of the Aliens Act or whether there are obstacles precluding deportation pursuant to section 53 Aliens Act.
- The asylum applicant is recognised pursuant to article 16a of the Basic Law and/or section 51 Aliens Act as a refugee within the meaning of the Geneva Refugee Convention.
- The asylum application is turned down outright or rejected as being manifestly unfounded. In addition, it must be established whether there are any obstacles precluding deportation.
- The asylum application is rejected as being irrelevant and it must be established whether there are any obstacles precluding deportation to the third country concerned pursuant to section 53 Aliens Act.
- The procedure is suspended (e.g. because the applicant has withdrawn his application or failed to pursue his case). It will be necessary to determine whether there are obstacles precluding deportation.

The following legal appeal remedies are available against the decisions of the Federal Office for the Recognition of Foreign Refugees:

- The asylum applicant can lodge an appeal with the local administrative court against any decision taken under the safe-third-country-principle or against a similar decision in cases where the applicant entered Germany via another Member State that is responsible under the Dublin Convention. The appeal must be lodged within a period of two weeks and does not have suspensive effect, nor is it possible to file a request asking the court to give suspensive effect to the appeal.
- In cases where an asylum application has been rejected as being irrelevant or manifestly unfounded an appeal can be lodged within a period of one week with the local administrative court. The appeal does not have suspensive effect. It is, however, possible to file a request with the administrative court within one week asking the court to give suspensive effect to the appeal.
- In cases where an asylum application has been turned down outright, the appeal has suspensive effect; the appeal must be lodged with a period of two weeks.

- Decisions of the Federal Office for the Recognition of Foreign Refugees may be appealed against by the Federal Commissioner for Asylum Matters<sup>6</sup> .

If the case is dismissed, it is only possible to take the matter to the Higher Administrative Court if this is expressly admitted. If not, the review process of law is completed. The appeal shall be admitted only if the matter is of fundamental importance or if it deviates from a ruling handed down by the Higher Administrative Court or by the supreme courts, or if it is based on such deviation, or if an absolute ground for appeal exists (e.g. if there has been a major defect in the proceedings). The persons concerned may lodge an appeal with the Federal Administrative Court against the above-mentioned appeal decision, provided the Higher Administrative Court admitted such an appeal. A non-admission complaint can be lodged against the decision not to admit such an appeal. The appeals procedure exists exclusively in order to review legal questions.

### **6.5.3. Accelerated procedure**

The following list clarifies when an accelerated procedure is applied in Germany:

- Safe-third-country-principle: The procedure is accelerated by the fact that there is a list of safe third countries<sup>7</sup> and by the fact that an appeal does not have suspensive effect, which means that deportation to the safe third country can be effected immediately.
- Safe-country-of-origin-principle: The procedure is accelerated by the fact that it is presumed, as a matter of principle, that a foreigner from a safe country of origin is not subject to persecution and that his asylum application is therefore to be rejected as being manifestly unfounded. The deadline by which he has to leave Germany has been shortened to one week. The deadline for filing an appeal has been reduced to one week. The appeal does not have suspensive effect; a request for a court order giving suspensive effect to such an appeal must be filed within one week.
- Rejection because the application is manifestly unfounded: the deadline for leaving Germany has been shortened to one week. The deadline for lodging an appeal has been shortened, and the appeal does not have suspensive effect; however, a

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<sup>6</sup> Section 6 of the Asylum Procedure Act

<sup>7</sup> Article 16 a para. 2 of the Constitution itself and a list laid down by law article 26a para 2 AsylVfG

court order giving suspensive effect to the appeal may be applied for with the court within a period of one week.

- An asylum application may be rejected as being manifestly unfounded in certain cases of abuse.
- The Airport procedure is a kind of accelerated accelerated procedure and is described below

#### **6.5.4. Other procedures differing from the normal asylum procedure**

- Asylum procedure at airports: For foreigners from a safe country of origin and/or foreigners who do not hold a valid passport or passport substitute and wish to enter Germany through an airport by applying for asylum with the border authorities at the airport, there is an accelerated asylum procedure which must be concluded before the asylum applicant is admitted to the territory of the Federal Republic (cf section 18a Asylum Procedure Act). The asylum applicant shall be given the opportunity to file his asylum request (within a maximum of 2 days) with the field office of the Federal Office for the Recognition of Foreign Refugees responsible for the border crossing point concerned. The applicant shall be heard immediately (within a maximum of 2 days) by a caseworker of the Federal Office. He shall be given the opportunity to avail himself immediately of a lawyer, free of charge. In the framework of the asylum procedure at the airport it is only possible to reject a case as being manifestly unfounded and to refuse the applicant entry to the Federal Republic of Germany. If the Federal Office for the Recognition of Foreign Refugees fails to take a decision within a short period of time or to decide an asylum application within a matter of two days upon its filing, the asylum applicant shall be given leave to enter Germany. If the asylum application is turned down as being manifestly unfounded, the asylum applicant must, within a period of three days upon serving of the decisions, appeal to the local administrative court for preliminary legal protection. The court shall decide within a period of 14 days on the expedited application. If this is not possible, the asylum applicant shall be granted the right to enter Germany.
- Follow-up Application procedure: If an asylum applicant has withdrawn a previous application or if a previous application has been unappealably rejected and he files a new asylum application (i.e. a follow-up application), a new asylum procedure shall be conducted under the conditions pursuant to section 71 Asylum Procedure Act. One reason to resume such a procedure exists if the merits of the case or the legal situation have changed to the benefit of the asylum applicant. If

the prerequisites for a follow-up procedure are not met, the application for a second asylum procedure shall be rejected. If the asylum applicant had filed the follow-up application within a period of two years after the notification announcing deportation from the first procedure became enforceable, the deportation may be enforced on the basis of the old notification announcing deportation.

#### **6.5.5. Duration of asylum procedure**

Currently, approx. 16% of cases are, on average, decided within two weeks. Another 65% are decided within a period of six months and approx. 10% are decided within one year. In approx. 4% of all cases it takes up to two years and in the remaining 5% it takes more than two years until a decision is taken<sup>8</sup>.

If an asylum application is rejected as being manifestly unfounded, the period for lodging an appeal and the deadline for leaving the country are shortened (one week in both cases). According to the instructions for the caseworkers of the Federal Office, such a decision should be taken within one week on the basis of the documents.

The legal provisions governing the asylum procedure at the airports stipulate that the asylum applicant must be heard immediately, i.e. within two days upon the filing of the application, and that a decision shall be taken within another two days.

According to the information available to the Federal Office, decisions by the Administrative Courts on expedited applications pursuant to normal procedure normally take between one and three months, while decisions on an appeal take approximately one year. The duration not only of the administrative procedure but also of the court proceedings may differ substantially, depending on various factors such as the number of asylum appeals that are pending at court, the number of cases which require a lengthy hearing of evidence, and whether the applicant might lodge a full appeal or an appeal on points of law only.

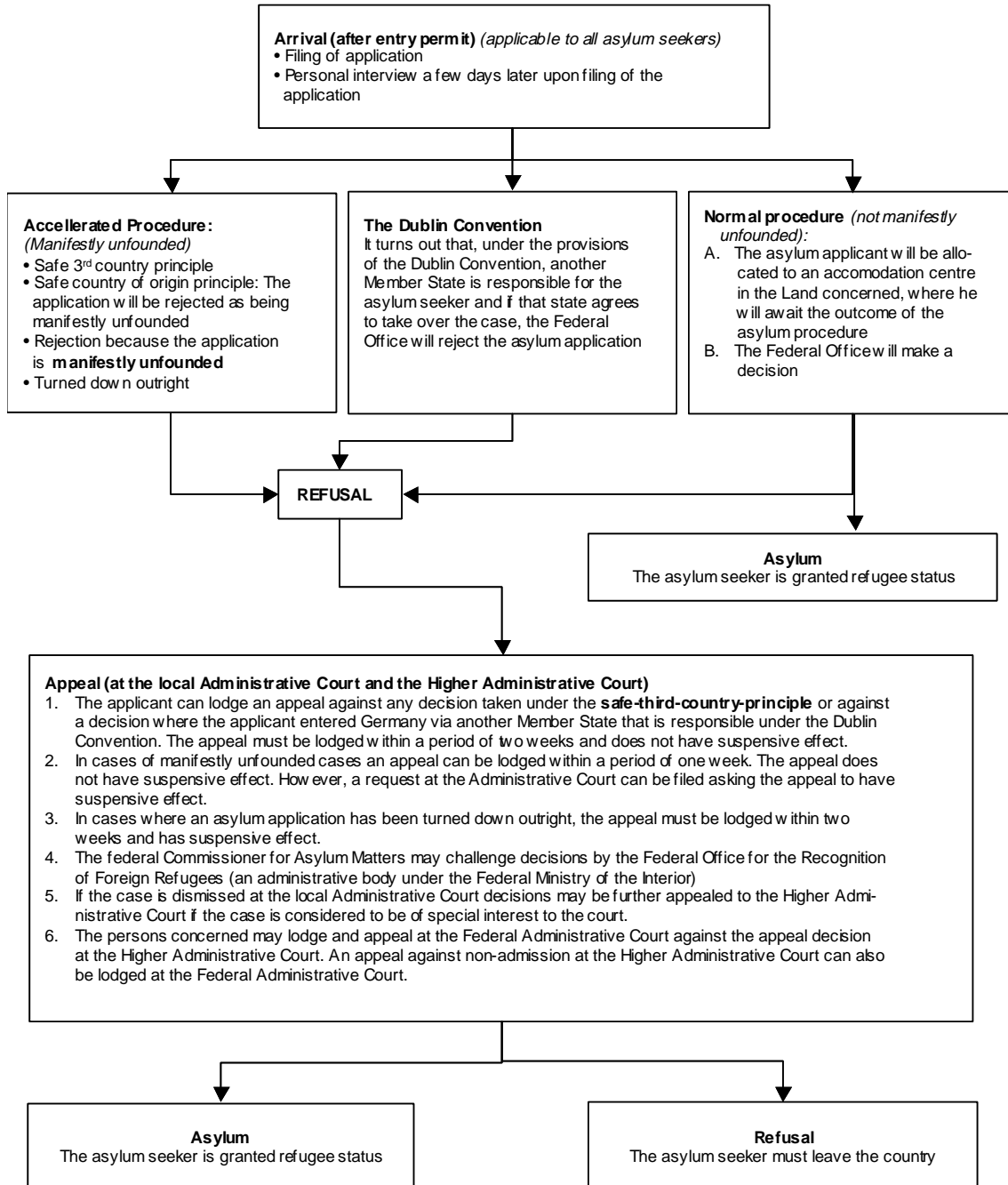
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<sup>8</sup> These figures are based on an analysis by the Federal Office for the Recognition of Foreign Refugees for the period from January through October 1999 – they do not include decisions concerning the Federal Republic of Yugoslavia.

### 6.5.6. Summary of asylum procedure in Germany

Figure 1.3 below sums up the principal points of the asylum procedure in Germany.

Figure 6.3: Asylum procedure





## 6.6. Accommodation

The figure 6.4 summarises the information provided by Germany on the capacity of reception and accommodation centres in Germany.

**Figure 6.4: Number of reception centres**

<b>Number of reception centres</b>	<b>32</b>
Capacity of reception centres	20,500
Number of accommodation centres	No statistics on the overall number
Capacity of accommodation centres	No statistics on the overall capacity
Total capacity of reception/accommodation centers	?
Number of persons accommodated in private housing	No statistical information on the number of centres run by NGOs or private operators

For the initial reception of asylum applicants, there are at present 32 reception centres available. The total capacity of all reception centres is currently approx. 20,500.

The Federal Government does not operate any reception centres. The 32 reception centres are exclusively operated by the Federal Länder. Responsibility for the daily operation of the centres varies from Land to Land.

There are no statistics at the federal level on the overall number or capacity of accommodation centres.

Generally speaking, accommodation centres are operated by the social/alien authorities of the Federal Länder. Some authorities involve private operators, including NGOs. There is no statistical information available on the number of centres run by NGOs or private operators.

The reception centres are large. As a minimum they accommodate 300 people.

As described above asylum seekers are immediately referred to a particular reception centre via the distribution system. It is compulsory for all asylum seekers to stay in a reception centre, and they are not permitted to leave the administrative district in which the centre is located.

In principle asylum seekers are supposed to stay in a reception centre for a maximum of three months, whereupon they should be moved to an accommodation centre<sup>9,10</sup>. Some centres function both as a reception centre and as an accommodation centre

Asylum seekers are in principle obliged to stay in the accommodation centres. An asylum seeker is only allowed to live outside a centre with family or friends if the district where he or she has been allocated to does not have an asylum centre and if the costs of private accommodation do not exceed the costs of living in an accommodation centre<sup>11</sup>.

Persons provided temporary protection under national law might<sup>12</sup> be subject to different accommodation policies than asylum seekers. Displaced persons from Kosovo were frequently accommodated in collective accommodation for asylum seekers. Where possible and where so desired by the persons concerned, they were also accommodated by relatives who were already resident in Germany.

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<sup>9</sup> According to nongovernmental sources, in practice, many asylum seekers stay much longer in a reception centre before they are allocated to an accommodation centre.

<sup>10</sup> The obligation to stay in a reception centre ends prior to the expiry of three months if the alien: is under the obligation to take residence in another town or another accommodation, has been unappealably recognised as a person entitled to asylum pursuant to article 16a Basic Law, or is entitled to a residence permit under the Aliens Act through marriage.

The obligation to stay in a reception centre shall be terminated immediately if a notification announcing deportation has become enforceable and it is impossible to deport the person concerned in the near future, for example because travel documents are lacking or because the communication links with the country of origin are disrupted, if the Federal Office for the Recognition of Foreign Refugees cannot reach a decision quickly. This could occur, for example, because special investigations are required or the administrative court has ordered that an appeal against a decision of the Federal Office shall have suspensive effect.

Moreover, the stay in a reception centre shall be terminated if the asylum applicant has been granted the status of a civil war or war refugee pursuant to section 32 a Aliens Act so that he is entitled to a residence title for exceptional purposes (Aufenthaltsbefugnis). Furthermore, the obligation to stay in a reception centre may be terminated for reasons of public health, e.g. in order to prevent the outbreak/spreading of contagious diseases and epidemics, for reasons of public security and order or for other urgent reasons.

<sup>11</sup> The obligation to live in an accommodation centre terminates if the Federal Office has recognised an alien as a person entitled to asylum or if a court has ordered the Federal Office to recognise him as such. The same applies if the Federal Office or a court has found that the foreigner meets the prerequisites for being granted refugee status under the Geneva Convention. In those cases, the obligation to stay in the accommodation centre shall also terminate for the spouse and any under-age children, regardless of the outcome of their asylum procedure.

<sup>12</sup> The provisions of section 32 of the Aliens Act have been applied only once in relation to displaced persons from Kosovo.

There are no differences in the type of accommodation offered according to other rules or practices.

Persons seeking protection are not offered any kind of choice regarding accommodation during the asylum procedure.

### 6.6.1. Names and addresses of reception and accommodation centres

The Ländern are responsible for the accommodation of the arriving asylum seekers and the running of the reception centres.

Reception / Accommodation centre	Name and Address	Authority managing	Authority financing	Capacity
Reception	Frankfurt Airport Transitunterkunft im Gebäude C182/183 Flughafen Frankfurt 60549 Frankfurt/Main	Federal Länder	Federal Länder	70 – can be expanded up to 120 persons
Reception	Winsentalstr. 20 79115 Freiburg	Federal Länder	Federal Länder	269
Reception	Durlacher Allee 100 76137 Karlsruhe	Federal Länder	Federal Länder	453
Reception	Schleiffenstr. 30 71636 Ludwigsburg	Federal Länder	Federal Länder	540
Reception	Ringelbachstr. 195 72762 Reutlingen	Federal Länder	Federal Länder	500
Reception	Wilhelm-Busch-Str. 2 95447 Bayreuth	Federal Länder	Federal Länder	500
Reception	Österlicher Stadtgraben 30 94469 Deggendorf	Federal Länder	Federal Länder	500
Reception	Schongauer Str. 30 a 86899 Landes- berg/Lech	Federal Länder	Federal Länder	500
Reception	Untersbergstr. 68-72 81539 München	Federal Länder	Federal Länder	500
Reception	Veitshochheimer Str. 100 97080 Würzburg	Federal Länder	Federal Länder	500
Reception	Rothenburger Str. 31 90513 Zirndorf	Federal Länder	Federal Länder	500
Reception	Motardstr. 101A 13629 Berlin	Federal Länder	Federal Länder	500
Reception	Poststr. 72 15890 Eisenhüttenstadt	Federal Länder	Federal Länder	550
Reception	Steinsetzerstr. 12 28279 bremen	Federal Länder	Federal Länder	150
Reception	Amsinckstr. 28 20097 Hamburg	Federal Länder	Federal Länder	1700

Reception / Accommodation centre	Name and Address	Authority managing	Authority financing	Capacity
Reception	Meisenbomweg 27 35398 Giessen	Federal Länder	Federal Länder	400
Reception	Am Weissen Stein 65824 Schwalbach/Ts.	Federal Länder	Federal Länder	364
Reception	Nostofer Str. 1 19258 Nostorf-Horst	Federal Länder	Federal Länder	650
Reception	Boeselagerstrasse 4 38108 Braunschweig	Federal Länder	Federal Länder	1000
Reception	Klostermark 70/80 26135 Oldenburg	Federal Länder	Federal Länder	900
Reception	Am Stadtholz 24/26 33609 Bielefeld	Federal Länder	Federal Länder	500
Reception	Kaiserstr. 129/131 44122 Dortmund	Federal Länder	Federal Länder	600
Reception	Erkrather Str. 349 40231 Düsseldorf	Federal Länder	Federal Länder	550
Reception	Blaubach 13 50676 Köln	Federal Länder	Federal Länder	550
Reception	Dasbachstrasse 19 54292 Trier	Federal Länder	Federal Länder	700
Reception	Oderring 23/25 66822 Lebach	Federal Länder	Federal Länder	742
Reception	Adalbert-Stifter-Weg 25 09131 Chemnitz	Federal Länder	Federal Länder	758
Reception	Jahmener Weg 4 02906 Quitzford a. See	Federal Länder	Federal Länder	225
Reception	Friedrich-List-Str. 1a 38820 Halberstadt	Federal Länder	Federal Länder	1200
Reception	Vorwerker Str. 103 23554 Lübeck	Federal Länder	Federal Länder	500
Reception	Auf dem Forst 1 07745 Jena	Federal Länder	Federal Länder	450
Reception	Am Stadtwald 99974 Mühlhausen	Federal Länder	Federal Länder	450

*Germany has not been able to provide PLS Ramboll Management with information on accommodation centres as requested.*

### **6.6.2. Standard and facilities of reception and accommodation centres**

The general standard and facilities of German reception and accommodation centres seem to be relatively poor. German NGOs assisting refugees have expressed concern with the standard of German reception centres, and also PLS RAMBOLL Man-

agement's impression of the combined reception and accommodation centre visited was that asylum seekers seemed to live under poor social conditions<sup>13</sup>.

There are no general federal regulations defining standards for the accommodation of asylum seekers. The Länder are bound by law to provide sufficient accommodation. There are neither legal standards for minimum or maximum numbers of square meters per person, nor for the minimum equipment of the accommodation facilities. However, the reception and accommodation centres are regulated by regional guidelines and minimum standards, and the centres must meet the construction and health law provisions of the Länder concerned.

Thus, standards and facilities vary from Land to Land. The number of square meters required per person in private rooms varies from 6 to 9. In some centres asylum seekers are provided with prepared food; in others they have access to kitchens and receive an allowance to buy food. Some centres have child care for children between 3 and 6 years old.

The authorities of each local district (Kreis) are responsible for the conditions in the asylum centres and must provide social services. The provision of social services is often delegated to NGOs.

The asylum centre visited by PLS RAMBOLL Management accommodates just over 500 people living in five big buildings (Hutment), each with three floors. The centre had one rather small playroom for small children. It did not have any common facilities for adults like a library, dining rooms, television room and so on. Toilet and bath facilities were collective but seemed to be plentiful and fairly clean. Cooking facilities were poor, but as a general principle all meals were supplied as ready-cooked meals to be eaten in the private rooms of the asylum seekers. The private rooms of the asylum seekers were rather small but seemed fairly clean, with a bed and a wardrobe per person. Single asylum seekers shared rooms with three others. Families were accommodated together in one or two rooms, depending on the size of the family. One floor in one building was reserved for women wanting to live separately from men.

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<sup>13</sup> It should be noted, that the impression of PLS RAMBOLL is based solely on the visit to one centre in Germany.

### **6.6.3. Special treatment**

Unaccompanied children and adolescents who are under age are accommodated in children's homes or homes for adolescents.

As a rule families are accommodated together. When allocating accommodation, the competent Land authorities take into account the domestic unity of spouses and their children under the age of 18.

There are no special accommodation policies for women, particular religious or ethnic groups or victims of torture and organized violence.

### **6.6.4. Possible changes and development**

PLS RAMBOLL Management has not been informed of any initiatives to change the current rules and practices regarding accommodation for asylum seekers in Germany.

## **6.7. Means of subsistence**

On 1 November 1993, the Act on Benefits for Asylum Seekers entered into force. It was amended in 1997 and again in August 1998. The amendments have restricted access to social benefits. Benefits under the act are approximately 20% lower than those granted under social assistance provisions.

### **6.7.1. Social benefits during the asylum procedure**

During the stay in a reception centre essential food, accommodation, heating, clothing, health care and toilet articles as well as consumables and non-consumables are provided in kind. If clothing cannot be provided in kind, it may be granted in the form of vouchers or similar non-cash forms of settlement. Non-consumable household goods may be provided on loan.

In addition, those entitled to benefits receive the following cash payments to cover their personal needs:

1. DM 40,- per month for persons under the age of 14,
2. DM 80,- per month for persons aged 14 and older

If the persons entitled to the benefits are accommodated outside reception facilities, benefits may, if the circumstances so require, be granted in the form of vouchers or

cash payments rather than in kind, even though the basic principle is that benefits should be granted in kind rather than cash. Where benefits are granted in cash rather than in kind, the following benefits are granted per person per month:

1. For the head of the household DM 360,-
2. For household members under the age of 7: DM 220,-
3. For household members aged 7 and older: DM 310,-

Furthermore, essential expenses for accommodation, heating and household goods are provided.

Asylum applicants who have an income and assets of their own must use those first before they can rely on the a. m. benefits.

The Act to Adjust the Social Insurance Acts and other Acts to the Euro (4th Adjustment Act) is in the pipeline. The exact figures in Euros are therefore not available.

The Act on Benefits for Asylum Seekers is also applicable to war and civil war refugees who enjoy a temporary right to stay.

Benefits under the Act on Benefits for Asylum Seekers will cease

- if the foreigner leaves Germany
- at the end of the month in which the Federal Office for the Recognition of Foreign Refugees recognises the foreigner as a person entitled to asylum or in which a court has ordered the Federal Office to recognise him as such, even if the decision is not yet unappealable
- if the maximum period of three years for which benefits may normally be drawn has lapsed. After that period foreigners are entitled to benefits under the Federal Social Welfare Act.

Persons seeking protection are not offered any choice between different types of assistance during the asylum procedure.

### **6.7.2. Summary of social benefits offered**

Tabel 1.5 below summarises the social benefits in cash and in kind for asylum seekers in Germany.

**Table 6.5: Social benefits for asylum seekers**

	<b>Cash</b>	<b>Kind</b>
Child under the age of 14 years	Pocket money 20.5 EUROS/ 40 DM per month	Food, accommodation, heating, clothing, health care and toilet articles as well as consumables and non-consumables are provided in kind. Clothing may be granted in the form of vouchers or similar non-cash form. Non-expendable household goods may be provided on loan.
Adult over the age of 14 years	Pocket money 41 EUROS/ 80 DM per month	

### 6.7.3. Possible changes

For the time being the Federal Government examines whether it is possible to increase the amounts stated in table 6.5.

## 6.8. Access to education

### 6.8.1. Access to primary education

Children always have access to primary education during the asylum procedure.

Education is an exclusive responsibility of the Länder<sup>14</sup>. Each Land has an Education Act of its own with provisions that differ from Land to Land. In some of the Länder children and adolescents who have filed an application for asylum are subject to compulsory education (which normally starts at the age of 6). Compulsory education takes 12 years and includes nine years of primary and intermediate education and possibly three years of vocational school training to complement practical vocational training.

In some of the Länder, there is no compulsory education. Nevertheless, the children concerned are always offered the possibility to attend school if the existing school capacities so permit, even though they are not always granted a legal claim to education.

There are differences in access to primary education according to the stage of the asylum procedure. In most of the Länder with compulsory education for children and



adolescents, this compulsory education does not apply while the children are obliged to stay in a reception centre<sup>15</sup>. This is because they will stay there only briefly (three months at the most).

Within the scope of their logistical capability, the Länder do offer the children and adolescents the opportunity to attend school even while they are staying in a reception centre. Sometimes, tuition is provided in the reception centre itself or in the context of extended social care in the accommodation; or the children and adolescents may attend regular school lessons at the nearest local school.

Concerning access to educational institutions, there is no distinction made between the various categories of persons seeking protection, because so far persons seeking temporary protection (displaced persons from Kosovo) have been allocated to the Länder on the basis of the same prescribed distribution procedure as asylum seekers. Therefore, access to education depends on the Land concerned and on the type of accommodation (collective accommodation or normal housing).

It is not possible to sanction in access to primary education.

### **6.8.2. Access to secondary education**

Children have access to intermediary education or vocational training.

There are no differences in access to secondary education according to the stage of the asylum procedure.

It is not possible to sanction in access to secondary education.

### **6.8.3. Educational possibilities for adults**

While their case is pending, all groups of persons seeking protection in Germany are, as a matter of principle, excluded from access to university<sup>16</sup>.

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<sup>14</sup> Article 70 Basic Law

<sup>15</sup> Section 47 and 48 of the Asylum Procedure Act

<sup>16</sup> In order to be admitted to university as a foreigner, one must enter Germany with the necessary visa and must hold an "Aufenthaltsbewilligung" (residence permit granted for specific purposes). Persons seeking protection in Germany are not granted such a residence permit while their case is pending.

There is no funding for other kinds of training courses for adult asylum seekers; however, they may enrol in adult classes offered free of charge by the "Volkshochschulen" (adult evening schools) or by charity institutions. Participation is voluntary.

No information is available on the extent to which asylum seekers participate in adult evening school activities.

There are no different rules and practices regarding access to adult education due to the stage of the asylum procedure.

It is not possible to sanction in access to adult education mandatory.

#### **6.8.4. Language tuition**

Asylum seekers are sometimes offered language tuition. Some of the Volkshochschulen (adult evening schools) and charity institutions offer German language courses free of charge. Enrolment is on a voluntary basis. Access is not dependent on the stage of the asylum procedure nor on the kind of status sought.

#### **6.8.5. Mother tongue tuition**

Children seeking protection are not offered mother tongue tuition.

### 6.8.6. Summary of access to educational activities

Table 6.6 below summarises the access to educational activities for asylum seekers in Germany.

**Table 6.6: Access to educational activities**

	<b>Children</b>	<b>Adults</b>
Mother tongue tuition	No	-
Language tuition	No special courses are provided, but the children are taught in German in primary school	No public funding, but some adult evening schools offer language tuition free of charge for asylum seekers
Access to primary school	Yes	-
Access to secondary school	Yes	-
Access to vocational training	Yes	No access
Access to further education	-	No public funding for further training courses for adult asylum seekers; however some adult classes are offered free of charge by the adult evening schools or by charity institutions.  There is no access to university

### 6.8.7. Costs

The Federal Ministry of the Interior does not have any information on the costs incurred by the Länder in terms of social and cultural assistance for asylum-seekers (e.g. language training).

### 6.8.8. Possible changes

PLS RAMBOLL Management has not been informed of any plans to change current rules and practices regarding access to educational activities for asylum seekers in Germany.

## 6.9. Access to the labour market

Asylum seekers are allowed to seek and take paid work during the asylum procedure under certain conditions.

First, access to take paid work is dependent on the stage of the asylum procedure. For as long as the asylum seeker is under the obligation to stay in a reception centre (i.e. for a maximum period of three months), he must not take up any gainful employment. If the asylum seeker has not been or is no longer under the obligation to stay in a reception centre, he may be given permission to take up wage or salary-earning employment.

Persons who are entitled to benefits in line with the Act on Benefits for Asylum-Seekers may be given the opportunity to work under section 5 of the said act in initial reception centres, primarily to keep up and operate the facilities. The pay is 2,- DM (1 Euro) per hour. Such work establishes no working or occupational relationship within the meaning of employment or pension law.

Secondly, asylum applicants may take up gainful employment only if the labour exchange has granted them a permit (i.e. they are subject to a ban on gainful employment unless they are granted a permit)<sup>17</sup>.

It is for the labour exchange to decide freely after a due assessment of the circumstances whether or not to grant a work permit to an asylum applicant. Upon written application by the applicant, a work permit may be granted if:

1. The employment of foreigners does not have adverse effects on the labour market, in particular as regards employment structure, the region and the industry sectors,
2. There are no German candidates or foreigners with a comparable legal status on the labour market available for the job concerned (i.e. recognized refugees, nationals of EU Member States).
3. The foreigner is not employed under working conditions which are less favourable than those for German workers doing a comparable job.

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<sup>17</sup> Section 284 et seq. Code of Social Law Vol. III (SGB III)

Due to the high unemployment in Germany, the issuing of work permits to asylum applicants has been restricted following a ministerial decree dated 30 May 1997. In the case of asylum applicants and foreigners whose deportation is temporarily suspended ("Duldung" under s. 55 Aliens Act) (category 3) and who have entered Germany after 15 May 1997, it is generally assumed that privileged workers, e.g. German nationals, EU nationals and recognized refugees, are available to do the job. Asylum applicants and foreigners whose deportation is temporarily suspended ("Duldung" under s. 55 Aliens Act) are therefore, as a rule, no longer eligible for a work permit.

Besides, currently discussions on whether to allow general access to the labour market of asylum seekers are going on.

#### **6.9.1. Unpaid work**

There is no access to unpaid work during the asylum procedure.

#### **6.9.2. Vocational activities**

During the asylum procedure there is access to vocational activities organised by the authorities: In reception centres and similar facilities the asylum applicants are to be given the opportunity to work<sup>18</sup>. This work shall in particular serve to maintain and operate the facility. In addition asylum seekers should, where possible, be given the opportunity to work with public, municipal and non-profit organisations. In return for their work, the asylum applicants receive an expense allowance of approx. 11 € per hour.

The authorities comply with the legal requirement to offer such working opportunities as far as the conditions in the reception centres and in the host community allow. Vocational activities organised by the authorities are compulsory. Participation is a means of avoiding a decrease in benefits.

There are no differences in access to vocational activities organised by the authorities, which are dependent on the stage of the asylum procedure.

#### **6.9.3. Possible changes**

PLS RAMBOLL Management has no information on plans to change the current rules and practices regarding access to paid or unpaid work or vocational activities.

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<sup>18</sup> Section 5 of the Act on Benefits for Asylum-Seekers.

## **6.10. Access to health care**

All asylum seekers undergo health screening as part of the procedure applicable during an asylum application and/or when arriving in the country. The health screening includes a check for communicable diseases including an x-ray of the respiratory organs. The health screening is mandatory.

There is no special screening for victims of torture and organised violence

There is always access to medication and treatment during the asylum procedure. Medication and treatment are provided gratis. The access to free medication and treatment covers urgent needs

### **6.10.1. Standard content of free medication and treatment:**

Benefits are mainly restricted to “the necessary medical and dental treatment of acute diseases and pains, including the provision of drugs and wound dressings”<sup>19</sup>.

Specifically, the scope of medical care is geared to what is relevant in a given case. This is a decision to be taken under medical supervision and depends largely on the assessment given by the doctor in charge. Thus a local doctor takes the decision of when to prescribe free medication and free treatment for diseases.

Acute hospital treatment is covered. Prophylactic immunisation and preventive examinations recommended by the medical authorities are also among the benefits to be granted. Chronic diseases may be treated if acute treatment is necessary and if a doctor has found that it is no longer possible to postpone treatment. Any treatment, which is not clearly medically indicated, or long-term treatment which cannot be completed because the foreigner will probably not stay in Germany long enough, need not be covered. Dental prostheses pose a special case. It has been laid down by law that only treatment, which cannot be postponed, can be claimed as of right.

There is no special medical insurance system for asylum seekers. The extent of services provided in case of illness depends on the provisions of the Act on Benefits for Asylum Seekers.

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<sup>19</sup> Section 4 of the Act on Benefits for Asylum Seekers

Access to medication and the treatment of urgent or chronic diseases does not depend on the type of status sought.

After the initial 36 months of the asylum procedure asylum seekers have the same access to national health care as German nationals (This rule took effect from 1st June 2000).

#### **6.10.2. Special treatment for vulnerable groups**

Special mental health care is provided for mentally ill victims of torture and other organised violence and to persons suffering from post-traumatic stress.

As regards psychotherapeutic treatment, e.g. because of traumatisation or torture, the competent welfare authority will examine if and to what extent such treatment is justified, especially if it seems likely that the foreigner concerned will soon leave the Federal territory. As a rule, such measures are not covered by the Act on Benefits for Asylum Seekers.

However, in many German cities there are so-called psychosocial treatment centres, some of which were founded on the basis of private initiative and may even provide medical and psychological treatment care exclusively to victims of torture and to traumatised persons. These psycho-social treatment centres receive financial support from the Federal Republic of Germany and from the individual Länder . If a seriously traumatised asylum seeker cannot receive sufficient medical and psychological care under the Act on Benefits for Asylum Seekers, he may turn to one of these psychosocial treatment centres. Depending on their financial situation, asylum seekers will be asked to pay for the medical and psychological care they receive at those centres. If they are not in a position to do so, care will, as a rule, be provided free of charge.

Additional free health care is provided for pregnant women.

During their pregnancy and confinement, expectant mothers receive the necessary medical care and nursing, including the services of a midwife, drugs, dressings and medicines<sup>20</sup>.

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<sup>20</sup> This is governed by Section 4, para 2 of the Act on Benefits of Asylum Seekers.

If needed special free health care is provided for minors. Services to meet special needs of children may be granted if necessary on a case-by-case basis (e.g. special drugs or supplementary food)<sup>21</sup>.

### 6.10.3. Responsibility for health care

Responsibility for implementing the Act on Benefits for Asylum Seekers lies with the Regional Commissioner's Office, the counties and the municipalities, depending on the division of responsibilities laid down in the law of the Land concerned.

### 6.10.4. Summary of access to health care

6.7 below summarises the access of asylum seekers to health care in Germany.

**Table 6.7: Access to health care**

	Children	Pregnant women	Adults	Victims of torture or rape or mentally ill
Health screening on arrival	Yes, a mandatory general health screening including a check for communicable diseases and an x-ray of respiratory organs	Yes, a mandatory general health screening including a check for communicable diseases and an x-ray of respiratory organs	Yes, a mandatory general health screening including a check for communicable diseases and an x-ray of respiratory organs	Yes, but no special health screening is provided
Psychological assistance				Responsible authority will determine if psychological assistance is needed. If so it will be provided
Enrolment in health care programme	If needed special food or drugs are provided	Special consultations with a mid wife and doctors are provided		Special care may be provided

### 6.10.5. Costs

In 1998, the Federal Länder spent 827 billion DM on health care for persons entitled to benefits under the Act on Benefits for Asylum-Seekers, especially asylum-seekers.

<sup>21</sup> Section 6 of the Act on Benefits for Asylum Seekers



### **6.10.6. Possible changes**

PLS RAMBOLL Management has not been informed of any possible future changes in the access to health care of asylum seekers in Germany.

## **6.11. Rules concerning detention and other restrictions on free movement**

### **6.11.1. Geographical restrictions on movement**

As a general rule asylum seekers are allowed to move freely in and out of reception and accommodation centres.

The stay of asylum seekers is subject to geographical limitations. Responsibility for the provision of benefits lies with the authorities of the district to which the asylum seeker was allocated and where he is obliged to take up residence. He can only receive benefits from the authorities if he is registered in their district.

An asylum seeker is not entitled to choose a specific Land or a specific town in which to live<sup>22</sup>. As a matter of principle, he is obliged to stay in the reception centre to which he has been allocated for a period of up to three months upon the filing of his asylum application<sup>23</sup>. Those exempt from this rule are asylum seekers who are in custody, under detention, in another form of public custody or in a medical or nursing institution or in a youth home and those who hold a residence permit valid for more than six months. The same applies for children below the age of 16 whose legal representatives are not under the obligation to live in a reception centre.

A foreigner who is not or no longer under the obligation to stay in a reception centre should be accommodated in collective housing. He can be obliged to live in a specific municipality or in specific accommodation or to move there. He can also be put under the obligation to take residence in the district of another aliens authority of the same Land<sup>24</sup>. A permission to reside (Aufenthaltsgestattung – residence permit granting a right of stay for the duration of the asylum procedure) is valid only for the district of the aliens authority where the reception facility is located or where the foreigner is staying<sup>25</sup>.

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<sup>22</sup> Section 60 para. 2, Asylum Procedure Act

<sup>23</sup> Section 47 para. 1, Asylum Procedure Act

<sup>24</sup> Section 60 para. 2, Asylum Procedure Act

<sup>25</sup> Section 56 para. 1 Asylum Procedure Act

There are exceptions from the geographical restrictions confining the stay of a foreigner to a specific district:

Thus, an asylum seeker may, under certain conditions, leave the area to which his stay is confined for appointments at court or with public authorities, in order to meet his attorney or to visit the UNHCR or other refugee organisations or for other urgent reasons<sup>26</sup>.

A war or civil war refugee who has been granted an "Aufenthaltsbefugnis" (residence permit for exceptional purposes) to give him temporary protection is not entitled to choose his place of residence. He may take residence or his habitual residence only in the territory of the Land to which he was allocated and which issued the "Aufenthaltsbefugnis". Within that Land he can be allocated to a specific county or municipality. Furthermore, the aliens authority is authorized to allocate the foreigner to a specific town. The foreigner is obliged to take his residence there. In such a case, however, the aliens authority of another Land may, in well-founded exceptional cases, allow the foreigner to take his residence in the district of that authority<sup>27</sup>.

The suspension of deportation granted is geographically restricted to the territory of the Federal Land concerned<sup>28</sup>; further restrictions are admissible under the provisions governing residence, in particular to ensure a measure to terminate a foreigner's stay<sup>29</sup>.

### **6.11.2. Criteria used when deciding whether to detain**

In Germany, asylum-seekers cannot be taken into custody merely because of their status as asylum seekers.

In order to enforce deportation, an asylum seeker whose case has been turned down and who has to leave the country unappealably, may be taken into custody awaiting deportation if one of the reasons warranting detention applies<sup>30</sup>. Of practical importance are those cases in which an asylum seeker who has to leave the country unap-

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<sup>26</sup> Sections 57, 58 Asylum Procedure Act

<sup>27</sup> Section 32 a paras 1 and 5 Aliens Act

<sup>28</sup> Section 55 of the Aliens Act

<sup>29</sup> Section 56 of the Aliens Act

<sup>30</sup> Pursuant to section 57 para. 2 of the Aliens Act

pealably changes his place of residence without informing the aliens authority; cases in which he has failed on a previous occasion to show up at the place and time fixed for his deportation; cases in which he has through other ways and means avoided deportation or in which there is reason to suspect that he intends to avoid deportation. In the latter case there must be concrete evidence supporting such a suspicion. Detention awaiting deportation is a form of deprivation of liberty that is admissible only on the order of a court<sup>31</sup>.

Responsibility for issuing a detention order lies with the local court (Amtsgericht) as a court of voluntary jurisdiction. The detention order is issued only at the request of the aliens authority<sup>32</sup>.

Where the foreigner was under arrest before filing the application for asylum (for instance as a convicted offender) and files an application for asylum while being under arrest, such filing of an application does not pose an obstacle to ordering or maintaining such custody awaiting deportation<sup>33</sup>.

### **6.11.3. Appeal**

A decision to detain a person can be appealed.

The decision by the judge of the local court can be immediately appealed against<sup>34</sup>. A decision aimed at depriving a foreigner of his liberty may be appealed against by the foreigner himself or, in the case of minors, by his parents or legal representatives, his spouse or, under certain circumstances by a person nominated by himself and by the aliens authority. The right to lodge an immediate appeal a decision rejecting the request of the aliens authority is reserved to the aliens authority only<sup>35</sup>.

An immediate appeal must be filed with the local court or the regional court within a period of two weeks upon the announcement of the decision<sup>36</sup>. By another immediate appeal the decision of the regional court may then be challenged in the Higher Re-

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<sup>31</sup> Article 104 para. 2 Basic Law

<sup>32</sup> Section 89 para. 2 Asylum Procedure Act in conjunction with sections 1 and 3 of the Act on Legal Proceedings in the Case of Deprivation of Liberty

<sup>33</sup> Section 14, paras 2 and 4 of the Asylum Procedure Act

<sup>34</sup> Section 7 para. 1 Act Governing Legal Proceedings in Case of Deprivation of Liberty

<sup>35</sup> Section 7 para. 2 Act Governing Legal Proceedings in Case of Deprivation of Liberty

<sup>36</sup> Sections 19, 21, 22 Act Relating to Matters of NonContentious Jurisdiction

gional Court (in Bavaria in the Bavarian Higher Regional Court of Appeal). Such an appeal may be lodged with the regional court or the Higher Regional Court<sup>37</sup>.

An order to take a foreigner into detention (awaiting deportation) may be imposed only after the asylum request has been turned down and if the foreigner has to leave the country unappealably.

No information is available regarding the length of stay in detention in a typical case.

#### **6.11.4. Maximum length of detention allowed**

Detention awaiting deportation may last for up to six months. It may, however, be prolonged for a maximum of another twelve months if the foreigner prevents his own deportation<sup>38</sup>. This is the case, for example, if he does not co-operate in the procurement of travel documents that are necessary for his return.

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<sup>37</sup> Sections 237, 28 Act Relating to Matters of NonContentious Jurisdiction

<sup>38</sup> Section 57 para. 3 Aliens Act

## 6.12. Differences in treatment according to the stage of asylum procedure and the type of status sought

Table 6.8 below summarises differences in treatment of asylum seekers according to the stage of asylum procedure and the kind of status sought.

**Table 6.8: Differences in treatment**

Differences in treatment according to:			
	Stage of asylum procedure	Type of status sought	Vulnerable groups
Accommodation	In the first three months asylum seekers are accommodated in a reception centre. After that they are moved to an accommodation centre	No	Unaccompanied children and adolescents who are under-age are accommodated in children's homes or homes for adolescents.
Means of subsistence	In the first 36 months of the asylum procedure asylum seekers receive social benefits according to the act on social benefits for asylum seekers. After that asylum seekers are entitled to the same social benefits as German nationals	No	No.
Education	The right of access to primary school does not include the first three months while staying in a reception centre	No	No.
Labour market related activities	As long as the asylum seeker is under the obligation to stay in a reception centre, he must not take up any gainful employment. After that he may be given permission to take up wage or salary-earning employment	No	No.
Health care	During the first 36 months of the asylum procedure medical and dental care is restricted to serious illness and acute pain. After that asylum seekers have the same access to health care as German nationals	No	Special mental health care is provided for mentally ill and traumatised persons in so-called psychosocial treatment centres. Pregnant women receive essential medical care and nursing during pregnancy. Special free health care may be provided for minors.

There appear to be two noteworthy stages during the asylum procedure. Firstly, the right to receive some social benefits does not begin until the first three months of the asylum procedure have elapsed. Secondly, the right to receive some other benefits on equal terms with German nationals is obtained 36 months into the asylum procedure.

It is evident from the table that there are few differences in the treatment of applicants, regardless of the type of status sought. Germany has informed PLS RAMBOLL Management that it is not generally possible to distinguish between laws regulating the reception conditions for the categories of persons seeking protection because most of the regulations apply for all or at least two of the categories at the same time.

## **6.13. Political atmosphere surrounding refugees and immigrants**

### **6.13.1. Modern History**

In modern times, Germany has been very open towards the reception of foreigners.

After the end of the Second World War, (West) Germany felt an obligation to be especially concerned about protecting persons that claimed to have been subject to persecution in their homeland. After the end of the Cold War Germany felt an obligation both to let in persons from the former communist Eastern European Countries with family ties to Germany and to receive asylum seekers.

Because of these two historical events and the subsequent German willingness to let refugees into the country, for many years Germany has been the primary country of reception in the EU both in absolute figures and as a percentage of the population.

Apart from receiving many refugees since the 1950s, Germany has hosted many immigrant workers especially from Turkey of whom many have been given permanent residence in Germany.

However, since the explosive growth of asylum seekers following the successful ending of the Cold War, Germany has taken measures to considerably reduce the numbers of asylum seekers.

### **6.13.2. Public debate on refugees and immigrants**

Following the influx of a large number of both immigrants and asylum seekers after the end of the Cold War, there was a rather emotional debate about the number of asylum seekers, as well as the cost of hosting asylum seekers and refugees. Public opinion became increasingly hostile to the traditional German policy of hosting many asylum seekers and refugees.

The debate had a definite impact on the decisions, which resulted in the changes to the aliens act in 1993 and 1997, whose main purpose was to reduce the number of asylum seekers and related costs.

For about 4 years now, Germany has been debating how to integrate the many foreigners that have arrived to Germany either as refugees or as immigrant workers. Previously undiscussed, the failure of many foreigners to speak German even after many years in Germany is now an issue, and there is also debate about how far ethnic and religious habits and so on should be respected.

The situation in Ex-Yugoslavia, which has resulted in a mass influx first from Bosnia and then from Kosovo, has been a subject of constant public debate. In 1999 especially there was discussion of how Germany could make the rest of the European countries take a fair share of these refugees, and the correctness of repatriating a large part of the Bosnians was debated in 1998.

Germany has just had a very intense public debate on the need for foreign immigration. The debate arose out of the lack of expert labour in the computer industry. Thus, some thought there was a need for immigration while others thought Germany could not open itself to more immigration while 4 million Germans still remained unemployed. It seems that the debate has resulted in a public acceptance of the need for expert immigration in order to secure the economic development of the country. Green cards have been given to a considerable number of Asian new technology experts.

Currently there is a debate relating to right wing violence, including the killing of an Angolan man in Dessau.

### **6.13.3. Attitudes among the German people and German politicians**

The sources consulted by PLS RAMBOLL Management all believe that it is difficult to estimate the level of xenophobic attitudes in the German population, to which the vast majority of the German people are opposed. Though there may currently be a growth in violence committed by right wing groups, the violence is not aimed only at foreigners but also at other outsiders such as the homeless. The sources tend to believe that there is neither an increase nor a decrease in the number of persons belonging to social movements agitating against refugees and other foreigners. However, there seems to be a trend that the issue of foreigners is not necessarily the most important

issue to the right wing parties and movements in Germany. Their voices are often also raised in connection with unemployment, but as was seen with the debate on granting the green card for computer experts, the two debates are often related. This could also be one of the explanations for the fact that both right-wing groups and xenophobic attitudes seem to be most widespread in the former East Germany, where the unemployment rate is much higher than in the former West Germany.

Another explanation of why xenophobic attitudes and conduct are more widespread in the former East Germany is that West Germans have had many more years to get used to living with foreigners, while in East Germany there were almost no foreigners.

In current German politics there are two different approaches emerging towards xenophobia. Some politicians seem to believe that the right wing attitudes and behaviour should be more or less ignored, because of the rather limited number of Germans holding extreme xenophobic attitudes. Others seem to believe that action must be taken to stop the development of xenophobic attitudes.

Regarding political attitudes concerning the number of asylum seekers and immigrants, the trends in the numbers of asylum seekers, refugees and immigrants speak for themselves. During the 1990s, as a response to the growing public opposition to the large amounts of foreigners in Germany, German politicians have taken several steps to reduce the number of foreigners in Germany. Steps have also been taken to integrate foreigners living in Germany better.

#### **6.13.4. International co-operation on asylum matters**

The official German attitude towards international co-operation on asylum matters is that they can only be dealt with properly at the international level.

The IGC is seen as a good forum of exchanging experience in a more informal way than EU co-operation permits. Thus the IGC is seen as an important complementary forum to the EU.

Germany would like to see EU harmonization. Due to the very different general levels of social welfare among the Member States, a uniform system of social benefits is considered impossible for the time being. What is envisaged is the introduction of some kind of minimum standards.



For Germany the question of burden sharing currently seems to be the most important asylum issue at EU level.

