



Overview of Germany's Asylum System*

German asylum law acknowledges the United Nations *Convention on the Status of Refugees* (or "Refugee Convention") of 1951 and its 1967 Protocol, which accord special protection to refugees. The Convention also includes the principles of "non-refoulement", that is the repatriations of a person to a territory where s/he would face persecution, on which refugee law is primarily based. In 1993 Germany strengthened its asylum laws, but, since then unauthorised immigration into Germany has been growing. However, German asylum law and policy has been in some flux over the last few years. The *Immigration Act*, a bill aimed at controlling and restricting immigration, regulating the stay of foreigners and integrating EU citizens and foreigners was approved in the two German houses of parliament in March 2002. In December 2002 the Federal Constitutional Court upheld complaints of some Federal State governments and declared that the Upper House of Parliament in passing the *Immigration Act* acted unconstitutionally. A draft Act was reintroduced into Parliament in early 2003 and in May 2003 it was once again approved by one House of Parliament, yet in June 2003 the other House, Bundesrat rejected the *Immigration Act*. Processes are now in place to see if a compromise can be reached. As a result the implementation of German and of European immigration policy is blocked. In particular, the recognition of non-state and gender specific persecution and an introduction of a ruling on "hardship cases" are at stake. The failure to recognise such persecutions result in a German protection gap.

As well in response to the attacks in New York and Washington DC in September 2001 the German parliament passed new anti-terror legislation in that year. The new legislation amended numerous laws including the *Aliens Act* and other regulations relating to foreigners. The legislation provided for more stringent checks on incoming foreigners, including asylum seekers, through the collection of biometric data and by making immigrants' person data transparent.

The intensifying process of European integration and the European endeavour to harmonise immigration and asylum procedures obligates Germany to seek to adopt legislation which takes into account transnational commitments. So the process goes on.

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In light of the above political environment the following information is based on the current law and policy, not the proposed *Immigration Act*.

1 What arrangements does Germany have with its neighbours to stop asylum seekers reaching the border? Do they engage in upstream disruption?

Germany is signatory of the Schengen Cooperation. The Schengen agreement eliminates border checks between participating EU member states. The agreement also encourages cooperation to combat trans-national crime and illegal immigration. This is carried out mainly through the Schengen Information System (SIS). The SIS is a joint computerised information system for ensuring rapid and safe exchange of information between member countries. The authorities can retrieve data from the SIS in connection with police tasks and for the administration of immigration legislation. The current Schengen Cooperation member states are: Iceland, Norway, Sweden, Finland, Denmark, The Netherlands, Austria, Italy, Greece, Denmark, Belgium, Luxembourg, France, Spain and Portugal.

Germany also participates in the "Dublin Convention" which determines the state responsible for processes asylum applications lodged on EU territory. The Federal Office for the recognition of Foreign Refugees is responsible for implementing the procedures of the Dublin Convention. Asylum applicants processed under this procedure, like other asylum seekers are issued with an authorisation to stay which is valid for the duration of the procedure and are given the same rights as other applicants.

2 What proactive steps outside its territory does Germany take to stop undocumented, unauthorised persons reaching its border?

Information not available.

3 What arrangements are there at the border to return immediately those who present with manifestly unfounded claims to asylum?

Asylum seekers arriving in Germany from safe third countries are the only category to be immediately returned. Border authorities refuse entry to people arriving from safe third countries and individuals are returned to the safe countries despite lodgement of an appeal. They may pursue an appeal from the safe country. Safe third countries constitute all EU member states, as well as European countries that are signatories of the Refugee Convention and *European Convention on Human Rights*. Currently these countries are Switzerland, Poland and the Czech Republic.

Germany also has a border regulation regarding safe countries of origin. These are countries where, owing to the general political situation, there seems to be sufficient guarantee that there is no political persecution, nor inhuman or humiliating punishment or treatment. If an asylum seeker enters Germany from one of these countries s/he can disprove this automatic legal assumption only by producing facts or evidence proving that s/he is in danger of being politically persecuted in his/her country of origin, contrary to the general situation prevailing there. If the asylum seeker is not able to disprove this legal assumption in his/her statement of facts, the asylum application will be rejected as manifestly unfounded. Bulgaria, Ghana,

Poland, Romania, Senegal, the Slovak Republic, the Czech Republic and Hungary are currently deemed safe countries of origin.

Manifestly unfounded cases are not immediately expelled, but they do face shortened time limits regarding legal procedures, court decisions and deportation. All initial determination decisions are made by Officers of the Federal Office for the Recognition of Foreign Refugees. The Federal Ministry of the Interior holds overall responsibility for this Office.

4 Is there any appeal or review of this summary procedure?

Yes, there is an appeal process for cases deemed to be manifestly unfounded. Once a case is deemed manifestly unfounded, the asylum seeker has one week in which to appeal to the Administrative Court and one week to leave the country. In addition to appeals regarding safe countries of origin, a case can be determined manifestly unfounded for the following reasons:

- economic reasons, in order to evade a general emergency situation or armed conflict - Section 30(2) of the *Asylum Procedure Act 1997*;
- an asylum seekers statements are not substantiated or are contradictory or are based on false or falsified information;
- an asylum seeker misleads Federal Officers as to their nationality or identity;
- an asylum seeker refuses to state their nationality or identity;
- an asylum seeker states different personal data and initiates another asylum application or request;
- an asylum application is lodged in order to avert termination of residence – Section 30 (3 i-vi) of the *Asylum Procedure Act 1997*.

Decisions by the Administrative Court should be given within one week, however the Court can extend this time limit due to exceptional workload by one week. Appeal does not automatically suspend deportation, but an asylum seeker can submit an urgent application to the Administrative Court to prevent their potential expulsion until the appeal decision is made. An order to suspend deportation may only be given if there are serious doubts as to the legality of the administrative act against which an appeal has been filed. Administrative Court judges are able to take any additional information filed with an appeal into consideration at their discretion. An Administrative Court decision confirming manifestly unfounded status is not appealable.

Monthly development of the number of rejected asylum applications as ‘unfounded’ and ‘manifestly unfounded’ since 2000.¹

5 What is the difference in treatment for asylum seekers arriving by land, by sea and by air?

A procedure is in place that applies only to persons who request asylum at an airport. If an asylum seeker is not refused entry, and if he or she comes from a "safe country of origin" or

¹ Graph from the Federal Office for the Recognition of Foreign Refugees, available at: www.bafl.de/template/englisch/asyl_statistik/index_englisch_asyl_statistik.htm

does not possess a valid passport or surrogate passport then the airport procedure is adhered to.

The asylum determination procedure is conducted prior to a decision on entry, as long as the asylum seeker can be accommodated on the airport premises. Asylum seekers are able to contact a lawyer. If their application is refused as manifestly unfounded, the asylum seeker will be refused leave to enter Germany. Case documents are automatically forwarded to the Administrative Court for appeal. The asylum seeker is permitted to enter Germany if:

- the Federal Office is not able to decide the case within a short time (usually 19 days);
- the Federal Office has not made a decision on the asylum application within 2 days after the date of its first being filed;
- the Court has not made an appeal decision within 2 weeks.

Statistics on the airport procedure from 1993 - 2002 ²

Year	No. of asylum applicants arriving at a German airport	No. of applicants falling under Sec 18a para.6 of the Asylum Procedure Act (airport procedure)	Decisions within 2 days		Applicants processed through the Courts	
			No progress	Processed	Approved*	Rejected*
2002	882	584		222	18	196
2001	1.209	930		185	8	184
2000	1.092	687		348	24	347
1999	1.305	740		504	62	436
1998	1.700	1.189		422	53	344
1997	2.262	1.625		429	74	367
1996	4.301	3.770		399	35	348
1995	4.590	4.213		284	59	223
1994	2.581	2.378		166	23	139
Jul-Dec 1993	979	772		221	104	104

* includes an overlap from previous year.

6 How many unauthorised/undocumented arrivals are turned around at the border each year? Does the country have a comprehensive visa system?

Information not available.

Germany operates a reasonably strict visa system for developing nations.³

² Graph available from the Federal Office for the Recognition of Foreign Refugees - www.bafl.de/template/englisch/asyl_statistik/index_englisch_asyl_statistik.htm

³ Full list of visa requirements: http://www.german-embassy.org.uk/do_you_need_a_visa_for_germany.html

7 Once admitted to the territory, what is the procedure for checking health, security and identity? Is there detention? Is it judicially reviewable? How many are admitted each year?

The Federal Office, in co-operation with the Border Authority is responsible for establishing the identity of an asylum seeker. The Federal Criminal Police Office takes fingerprints of the asylum seeker and evaluates them against fingerprint records in order to confirm the identity and establish the security of an asylum seeker. Identity, security and health checks all take place at open reception centres.

Detention is primarily used for asylum seekers whose claims have been rejected. Departure centres have been established which house rejected asylum seekers who cannot be sent back to their countries of origin since they lack travel and identity documents. In order to be able to deport these people a status of possibility of detention pending deportation was created. However, this requires a judicial order which has a limited duration of 18 months. If there exists no realistic chance of the deportation order being completed then such detention must be ended immediately. It is believed, however, that in practice the authorities can compel rejected asylum seekers to live in these camps for an unlimited period until "voluntary departure" or forcible deportation.

Initially the centres were intended for single men but now entire families and unaccompanied minors can be found in the centres. In practice, living in these departure centres means a complete ban on undertaking work and freedom of movement is limited to the city or district in which they are registered. Social security benefits are drastically reduced, and not paid in cash but goods in kind. Only the most essential medical assistance is available, which requires official permission.

Asylum seekers examined under the airport procedure are kept at the airport 'transit zone', a closed reception centre. If no decision has been made on their asylum application within 2 days, the asylum seeker is released and assigned to a reception centre.

The courts must order detention lasting more than 24 hours. According to German constitutional law (Art. 19 Abs. 4) every act carried out by a public authority is subject to judicial review upon petition to the courts. The decision to detain is made by the civil section of an *Amtsgericht* (lower district or local court). Appeal of this decision can be made within 2 weeks to the *Landgericht* (district civil court) and then to the *Oberlandesgericht* (regional civil court). Review upon appeal is a substantive merits review, and new evidence may be presented.

If an asylum seeker appeals a decision to deny entry within 3 days and no decision is made within 14 days, the asylum seeker is automatically released and allocated to a reception centre.⁴ However, despite this time limit the US Committee for Refugees has reported that some asylum seekers have been kept in transit zone detention for months.⁵

⁴ Lawyers Committee for Human Rights, *Review of State's Procedures and Practices Relating to the Detention of Asylum Seekers*, September 2002, available at:

www.lchr.org/refugees/reports/cntry_rev_02/country_reps.htm

⁵ USCR, *World Refugee Survey 2002*, available at:

www.uscr.org/world/countryrpt/europe/2002/germany.cfm

Asylum application figures 1999 - 2002⁶

Year	Total number of applications	Initial applications	Follow up applications
2002	91,471	71,127	20,344
2001	118,306	88,287	30,019
2000	117,648	78,564	39,084
1999	138,319	95,113	43,206

8 Once health, security and identity are established, what is the procedure for processing an asylum claim? Detention? Residence provided? Social security? Right to work? Legal assistance?

Procedure: The asylum seeker's personal details are entered into the IT system ASYLON on receipt of the asylum application. The system is used to check whether the application is an initial application, a follow-up application or a multiple application. The data are compared with those stored in the Central Register of Aliens maintained by the Federal Administrative Bureau in Cologne. The asylum seeker obtains a temporary residence permit (*Aufenthaltsgestattung*), which gives him/her the right to a provisional stay for the duration of his/her asylum procedure.

A Federal Office caseworker interviews the asylum seeker, with an interpreter if necessary. The asylum seeker must explain his/her reasons for being persecuted and present any relevant documents. The caseworker writes a report on the basis of this interview, and the asylum seeker receives a copy (translated if necessary) immediately after the hearing. If, under questioning from the caseworker it emerges that another EU member state holds responsibility for determining the asylum case, the individual will be referred to the Organisational Unit of the Federal Office who will return the asylum seeker to the relevant country in accordance with the Dublin Convention. If Germany is responsible for determining the case, the caseworker will decide on the asylum claim based on further country investigations, the applicant's interview, and information from the Federal Office's Asylum Information Centre (*Informationszentrum Asyl*) which holds reports, reports on specific countries, issues etc.

There are 5 possible decisions on the initial application for asylum:

- (i) recognition as a refugee and statement that the prerequisites of Sec. 51, para. 1 of the *Aliens Act*⁷ are met;
- (ii) refusal as a person entitled to asylum but declaration that the prerequisites of Sec. 51, para. 1 of the *Aliens Act* are met;
- (iii) rejection of the asylum application as unfounded, and admittance or denial of the existence of impediments to deportation;

⁶ Available from the Federal Office for the Recognition of Foreign Refugees, www.bafl.de/template/englisch/asyl_statistik/index_englisch_asyl_statistik.htm

⁷ Sec. 51, para. 1 of the *Aliens Act* states: "An alien may not be expelled to a State in which his life or freedom is threatened by reason of his race, religion, nationality, membership of a particular social group, or his political convictions."

- (iv) rejection of the asylum application as manifestly unfounded, and admittance or denial of the existence of impediments to deportation;
- (v) rejection of the asylum application as irrelevant due to the applicant's entry from a safe third country.

For information on appealing a manifestly unfounded or safe third country decision, please refer to the answer of question 4.

If an application for asylum was rejected as (simply) unfounded, or no impediments to deportation were found, it is possible to appeal within two weeks. Should an appeal be instituted, deportation is automatically suspended until a final court decision. If the court confirms the rejection of the asylum application, the asylum seeker is obliged to leave the country. If an asylum seeker does not voluntarily comply with this obligation s/he will be deported to his/her home country. The Aliens Authority is responsible for enforcing deportation. The prerequisite of enforcement of deportation is, in all cases, that the asylum seeker has exhausted all appeal avenues. For more information about appeal, please see answer to question 15.

If the court finds that there are impediments to deportation, it repeals the Federal Office's decision. This places the Federal Office under the obligation to recognise the applicant concerned. A lawyer may assist the asylum seeker in any phase of the procedure, however the lawyer is funded by the asylum seeker not by the State.

Detention: Asylum seekers are rarely detained throughout their determination procedure.

Residence: Upon filing an asylum claim, asylum seekers are sent to open reception centres spread throughout the country for up to 3 months. The nation-wide distribution system EASY (*Erstverteilung von Asylbewerbern* - Initial Distribution of Asylum Seekers) is used to determine which reception centre is responsible for accommodating the asylum seeker. After 3 months the asylum seeker is transferred to an accommodation centre until their case has been finalised. The state in which the reception or accommodation centre is based is financially responsible for the centre. Allocation to accommodation centres is based on the current population of the *Länder* (states) and districts within them. Authorities are only required to take the place of residence of spouse, children and parents into consideration during the allocation process. While centres vary between regions, all provide meals and some provide cooking facilities. All provide federally mandated allowances. Families are not usually, but may be, separated. The reception and accommodation centres are open but an asylum seeker's movement is restricted to within the bounds of the centre's district. Pro Asyl, a German NGO which advocates for the legal and social rights of asylum seekers and refugees in Germany, highlights that accommodation centres conditions vary greatly, with a gymnasium and underground car park used as centres in two high profile cases.⁸

Social Security: Asylum seekers do receive a monthly allowance whilst living in a reception or accommodation centre. Persons aged 14 and over receive EUR41 whilst people aged under 14 receive EUR20.5. All other items essential to personal wellbeing and hygiene are provided in kind by the centres. If an asylum seeker is still residing in a centre after 36 months, they are

⁸ Pro Asyl, Legal Handbook for Refugees: A Practical Guide Through German Asylum and Alien Law, available at: <http://www.proasyl.de>

entitled to the same social security rights as German nationals (see answer to question 19 for details).

Right to work: From January 1, 2001 asylum seekers are able to work 12 months after entering Germany, provided no German citizen or foreign national with permanent residency status is available to fill the job.

Legal assistance: There is very limited access to legal aid. It is granted only to destitute appellants whose case is considered by the judge to have a reasonable chance of success. An asylum seeker in the accelerated procedure whose application is determined to be manifestly unfounded is provided with a Government funded local lawyer to discuss the possibility of appeal.

9 Is there a distinction drawn between those arriving with a visa and those without?

Only in terms of the airport procedure: those arriving by plane without a valid or surrogate passport (and therefore it can be assumed, without a visa) will be detained within the airport and have their cases accelerated through the airport procedure.

10 Is there a distinction drawn between those arriving directly from a country of persecution, and those engaged in secondary movement? If so, how is this distinction drawn? Who draws the distinction? Is the decision reviewable?

There is no distinction between those arriving directly from a country of persecution and those engaged in secondary movement unless they have arrived from a designated safe country of origin or designated safe third country.

11 Does one have to be strictly a refugee to be able to remain, or are there other humanitarian classifications available? If so, who decides, what are the criteria and is the decision reviewable?

No other humanitarian classifications are available. Under Section 53 of the Aliens Act a Statutory Temporary Suspension of Deportation is given to asylum seekers who, whilst not qualifying as convention refugees face the following on deportation to their country of origin:

- danger of torture;
- capital punishment;
- risk to their life or freedom;
- any violation of the European Convention on Human Rights (prohibition of torture or inhumane or degrading treatment).

The Federal Office decides if the asylum seeker faces impediments to deportation, and appeal follows the procedure outlined in the answer to question 15.

In addition, under Sec. 54 of the Aliens Act, the Ministry of each *Land* may order a Temporary Deportation Waiver for 6 months for groups of asylum seekers staying within the

Land based either on points of international law or humanitarian considerations. This procedure only applies to groups. The Ministry of the Interior must give assent for extension beyond 6 months. The Ministries of the Interior of the *Länder* decided that no *Land* would order a Temporary Deportation Waiver without the agreement of the majority of other *Länder*. Bosnians were the last group to benefit from this procedure.

12 How many asylum and humanitarian claims are decided each year?

Total number of applications decided and the status accorded 2000 – 01⁹

	2000		2001	
	Number	Percentage	Number	Percentage
Recognition (Art. 1, 16a German Constitutional Law)	3,128	3.00%	5,716	5.30%
No status awarded	61,840	58.60%	55,402	51.70%
Convention Status (Sec. 51.1 Aliens Law)	8,318	7.90%	17,003	15.90%
Statutory Temporary Suspension of Deportation Status (Sec 53 Aliens Law)	1,597	1.50%	3,383	3.20%
Other decisions	30,619	29.00%	25,689	24.00%
Total	105,502	100%	107,193	100%

During 2000 and 2001 Applicants from Afghanistan (26%), Turkey (12%) and Iran (10%) received the highest recognition rates.

13 Does the country take a quota of off-shore refugees each year as well as on-shore asylum seekers? If so, is there a nexus between the numbers?

Germany has no agreement with the UNHCR regarding the resettlement of quota refugees. In a so called "coalition agreement" the government stated that Germany would be willing to offer UNHCR a quota of 500 refugees each year.¹⁰

14 How long does an asylum claim take?

Information not available.

15 How many levels of appeals are there?

There are four possible levels of appeal. A Federal Office decision can be appealed to the **Administrative Court** (*Verwaltungsgericht*). The Court hearing takes place either before the Judge sitting alone, or the whole chamber. The whole chamber consists of three professional judges and two lay judges. A whole chamber hearing is rare, and used only for fundamental decisions. The asylum seeker's case is put forward either by a lawyer or the asylum seeker, and the judge is able to ask the asylum seeker direct questions. A request to hear additional evidence on the asylum seeker's case or on the situation in their home country can be put

⁹ From ECRE Country report 2001, available at: www.ecre.org/country01/Germany.pdf

¹⁰ ECRE Country report 2002.

forth, but admitted only on the Judge's discretion. Judgement can be given either immediately after the hearing or at a later date. The Judge, however, must decide on the case within 2 weeks. The Court may, as the Federal Office, reject the application as manifestly unfounded or manifestly irrelevant. No form of appeal is possible following these judgements, although the asylum seeker may seek a constitutional complaint. The period in which the asylum seeker must leave Germany begins.

The Federal Commissioner for Asylum Affairs (*Beauftragte der Bundesregierung für Ausländerfragen*), an administrative body under the Ministry of the Interior, has the right to challenge positive decisions made by the Federal Office within the same legal time-frame. According to NGOs, this happens in about 60% of cases.¹¹

If the Court rejects the asylum seeker's claim as (simply) unfounded, they may file an application for admission of appeal. The application has to be filed and justified by a lawyer at the original Court within 2 weeks of the serving of the Court decision. Chances of success are around 1%. If an appeal is granted, the Court can decide whether or not a hearing is necessary. The asylum seeker is informed of this decision, and given a date by which further submissions and statements must be filed. The appeal is heard by the **High Administrative Court** (*Oberverwaltungsgericht* or *Verwaltungsgerichtshof* in some areas), and the duration of appeal can vary from a few weeks to several years. The appeal has a chance of success if:

- deviation from the decision of a superior court can be shown;
- a question of fundamental importance is to be discussed;
- there is an absolute reason for appeal;
- the original Judge was biased;
- the asylum seeker was not given a fair hearing;
- a particular person was not represented orderly;
- judgement was based on a hearing which violated the provisions concerning publicity;
- no reasons were given for the decision.

If the case has serious legal or other irregularities the High Administrative Court may remit the case to the **Federal Administrative Court** (*Bundesverwaltungsgericht*). If the case is forwarded, new appellate proceedings take place. If the Federal Administrative Court decides on the case, or if permission to appeal was not granted, no other appeals are possible.

An appeal on questions of law may only be granted by the Court of Appeal (very rare) or by appeal to the Federal Administrative Court. This type of appeal is granted:

- if the matter in question is of fundamental legal significance;
- if ruling deviates from a decision made by the Federal Administrative Court or the Common Senate of the Higher Courts of the Federal Republic and is based on this deviation;
- if defects in the proceedings are claimed.

Once the above appeal avenues are exhausted, an asylum seeker can file a constitutional complaint. Deportation is not automatically suspended whilst the complaint procedure is carried out, however, a request to suspend enforcement of deportation can be directed to the Aliens Authority. The constitutional complaint must be filed at the **Federal Constitutional**

¹¹ ECRE, *Social and Legal Conditions for Asylum Seekers and Refugees in Western Europe*, available at: www.ecre.org/drc/germany.shtml

Court (*Bundesverfassungsgericht*) within one month. A three-member committee preliminary examines complaint applications. In cases of abuse the Federal Constitutional Court can issue fines. The committee will approve the complaint application for hearing if:

- it is of fundamental constitutional importance;
- if the applicant will suffer extreme disadvantage as the result of a constitutional infringement;
- fundamental rights are not guaranteed under the original decision.

If the complaint succeeds, the preceding judgement is annulled and the case remitted to the original court for a new hearing and judgement.

16 In what circumstances could a person be held in detention while the claim is processed?

The relevant documents refer only to detention preceding deportation, however, this is no guarantee that asylum seekers are not detained while their claim is being processed.

17 How many overstayers a year does the country have?

Information not available.

18 Once an asylum seeker is rejected, are they taken into detention? If so, what are the conditions and is the decision appealable? If not, how do they arrange the removal of persons?

The Federal Constitutional Court has determined that in respect of rejected asylum seekers who are under a legal obligation to leave the country, but who cannot be deported to their home countries due to a lack of valid travel documents, alien officers are obliged in such cases to issue toleration certificates to these persons, even if they refuse to cooperate in obtaining travel documents. Further, the Court has stated that these rejected asylum seekers must not be prosecuted for illegally residing in Germany. The Court has also ruled that generally foreign nationals can only be detained for the purpose of deportation if there has been a Court order for detention.

For rejected asylum seekers awaiting deportation, the request to detain is made, and usually granted, by the Aliens Authority to the Local Court. Appeal may be made within 2 weeks, but as initial level appeals are often not heard for several weeks, the period of detention may have expired before a decision is made.

If a deportation order has not yet been adopted and no immediate decision on deportation can be made, detention of up to 6 weeks may be ordered. Once the deportation order has been adopted, asylum seekers can be detained for 1 week if the asylum seeker is likely to abscond. If the asylum seeker has failed to depart and/or changed address without informing the authorities or it is likely that the asylum seeker will fail to appear, detention for 6 – 18 months can be ordered. After 18 months of detention the asylum seeker must be released.

Detained asylum seekers have their detention reviewed by the Local Court every 3 months. In order to continue to detain an asylum seeker with a removal order, the Aliens Authority must establish that removal within the next 3 months is possible.

31,033 rejected asylum seekers were deported during 2001, 32,443 were deported during 2000. Numbers of those detained are unavailable.

19 What are the terms of a recognised asylum seeker (or humanitarian entrant) remaining in the country? Is there a time limit on the visa? Family reunion? Right to travel? Right to work? Social security assistance?

A. Visa and time limits:

In Germany, an asylum seeker may be granted:

- Political asylum by virtue of a constitutionally granted right as well as falling within the definition of the Refugees Convention (also known as ‘big asylum’). The asylum seeker will receive an unlimited residence permit (*unbefristete Aufenthaltserlaubnis*) based on Sec. 68 of the Asylum Procedure Act.
- Protection from *refoulement* (in accordance with Art. 33 of the Refugees Convention) by virtue of Sec. 51(1) of the Aliens Act (also known as ‘small asylum’). The asylum seeker will receive limited residence for exceptional purposes (*Aufenthaltsbefugnis*). Residence is originally limited to 2 years but can be renewed. After 8 years in Germany (from the time of asylum application) an unlimited residence permit is granted.
- Suspension of deportation in conformity with Art. 3 of the European Convention on Human Rights (prohibition from torture or inhumane or degrading treatment) by virtue of Sec. 53(4) of the Aliens Act. This is also known as ‘tolerated’ (*Duldung*) status. *Duldung* does not carry real legal status, as it means that the state agrees not to implement a deportation order, which nevertheless remains valid. However, under certain circumstances and after prolonged residence in Germany, people with *Duldung* may be granted a more stable status.

These forms of protection are only granted when the persecution:

- emanates from the state, or
- is attributable to the state, or
- emanates from a quasi/state-like organisation.

B. Family reunion

Refugees recognised under big asylum are entitled to family reunion with their spouse and unmarried children less than 18 years of age. Family reunion with other family members may be granted, provided that the refugee is able to support him/herself and provide accommodation for the additional family members. Unaccompanied minors are entitled to family reunion with parents and minor siblings.

Refugees recognised under small asylum are not automatically entitled to family reunion. The decision is at the discretion of the Aliens Authority in the refugee's place of residence. Family reunion requires that the refugee can support his/her family members with adequate housing and income.

Asylum seekers granted tolerated status have no right to family reunion, however, in exceptional circumstances it is granted on humanitarian grounds.

C. Right to travel

Refugees recognised under big and small asylum have the right to travel or settle anywhere in Germany. Asylum seekers granted tolerated status have their freedom of movement restricted to a local district or *Land*.

D. Right to work

Refugees recognised under big and small asylum have the same employment rights as German nationals and do not need a work permit. Asylum seekers granted tolerated status are able to fill a position that a German or EU national has not been able to.

E. Social security

Financial assistance: refugees holding big or small asylum are entitled to assistance on the same terms as German nationals under the Social Assistance Federal Act. Assistance is given in the form of monthly allowances, one-off grants and, more rarely, help in kind (for instance with clothes). The basic social allowance is intended to cover food, pocket money, essential toiletries, minor purchases, clothes and shoes, electricity bills and transport. The monthly rate is EUR 276 for a single adult. Family members and children receive less. When other income, including child benefit and housing benefit, rises above a certain level, deductions are made. A supplement of approximately 20% of the basic rate may be granted to specific groups, including, amongst others: pregnant women; single parents with a child under the age of 7 or two children under 16, disabled persons under 16 years; persons over the age of 60 who receive social benefit. One-off payments may be granted towards the purchase of furniture, clothes and shoes, or a major household item. A child benefit may be granted to both refugee categories:

First and second child	EUR 138
Third child	EUR 133.5
Fourth and further children	EUR 179

Tolerated refugees are entitled to the same financial support as German nationals, however they are not entitled to claim child benefits, supplementary child allowances or education allowances.¹²

Housing: refugees with big or small asylum are not entitled to receive assistance from the local authorities or private relief organisations in finding permanent accommodation. However, they are eligible for council housing and may apply for a rent allowance (*Wohngeld*). Refugees with no private means may be granted a loan, for a rental deposit, by

¹² ECRE, Social and Legal Conditions of Asylum Seekers and Refugees in Western Europe, available at: <http://www.ecre.org/country01/Germany.pdf>

the Social Assistance Office which they must repay once they start earning money. The Social Assistance Office also gives 'settling in' aid based on a detailed assessment of practical needs. This is often made in kind (second-hand furniture, kitchen equipment, etc.). The Social Assistance Office may also meet rent and heating expenses if a refugee has no private resources, although electricity bills must be paid out of the basic social allowance.

Tolerated refugees are eligible for the same housing as asylum seekers (ie. accommodation centres).

Education: refugees with big or small asylum have to same access to primary, secondary, tertiary and vocational education and educational allowances as German nationals. School attendance is not compulsory for children with tolerated status, and adults do not have access to education or training.

20 How stringent is the law for removal of non-citizens who have committed criminal offences and served their sentences? Is there any appeal from the decision to deport?

Sec. 47 (1) of the *Aliens Act* states that a non-citizen will be deported if s/he:

- i. has been sentenced by a court to a term of imprisonment of at least five years for one or more intentional criminal acts, or
- ii. has been sentenced by a court on several occasions to terms of imprisonment totalling at least eight years for intentional criminal acts, or has recently been ordered to be kept in preventive custody.

Sec. 47 (2) states that a non-citizen will normally be deported if s/he:

- i. has been sentenced by a court to a term of imprisonment for one or more intentional criminal acts, and has not been given a conditional discharge;
- ii. contrary to the provisions of the law on intoxicating drugs, cultivates, produces, imports, transports, exports, sells or transfers intoxicating drugs to another person, or traffics in them in any other manner or deals in them, or if s/he instigates or assists in such acts;
- iii. an alien who enjoys enhanced protection against deportation in accordance with section 48, para. 1 (see below), will normally be deported in the circumstances referred to in paragraph 1. In the circumstances referred to in paragraph 2, the decision on deporting him will be discretionary.

Sec. 48 of the *Aliens Act* - Special protection against deportation - states:

(1) An alien who:

- i. possesses a residence entitlement,
- ii. possesses a residence licence without limit of time, and was born in Federal territory or entered it as a minor,
- iii. possesses a residence licence without limit of time and lives in a marital relationship with an alien in the categories specified in nos. 1 and 2,

- iv. shares a family home with a German family member,
- v. has a recognized right of asylum, enjoys the legal status of a foreign refugee in Federal territory or holds a travel document issued by an official agency in the Federal Republic of Germany in accordance with the Agreement on the Legal Status of Refugees, of 28 July 1951 (BGBI. 1953 II, p. 559), may only be deported for grave reasons of public security and public order.

The law is stringent on expulsions of non-citizens who have served their sentences. Appeal can be made to the Federal Office for the Recognition of Foreign Refugees if the non-citizen risk *refoulement* to a country where they will face political persecution, capital punishment, torture, or cruel or inhumane treatment.

21 How does the country ensure compliance with the Convention Against Torture, the ICCPR, and the Convention on the Rights of the Child before ordering forcible removal of a failed asylum seeker?

Please refer to answer to question 11.

22 Is there any distinctive jurisprudence by the domestic courts or parliaments qualifying or restricting the terms of the Refugees Convention? Make particular reference to 'particular social group', persecution by non-state actors, and Convention reasons being the main cause of persecution or human rights abuse.

Yes – the European Council for Refugees and Exiles have published an overview of German jurisprudence in relation to persecution emanating from or attributable to the state, and persecution by state-like organisations.¹³

23 How does the country apply the cessation clause once there is a change in the situation of the home country? Does the country insist on the refugees re-establishing their individual claim or does the country permit the refugee to remain pending proof of a substantial, durable solution in the home country?

Refugees granted small asylum must apply to have their limited residence permits renewed after two years. However, in practice, the applications are rarely refused.

Those granted tolerated status can be sent home as soon as the situation in their country of origin changes.

24 Does the country countenance anything like the pacific solution?

No.

¹³ Available at: <http://www.ecre.org/research/nsagentsde.pdf>

Websites for further information

German websites:

Federal Ministry of the Interior: <http://www.bmi.bund.de>

Federal Office for the Recognition of Foreign Refugees: <http://www.bafl.de>

Federal Statistics Office: http://www.destatis.de/e_home.htm

Pro Asyl: <http://www.proasyl.de>

European websites:

Amnesty International, European Union Office: <http://www.amnesty-eu.org>

Eurasyllum Portal: <http://www.eurasyllum.org/portal/DesktopDefault.aspx>

European Commission: <http://europa.eu.int>

European Committee for Refugees and Exiles: www.ecre.org

European Migration Information Network: <http://www.emin.geog.ucl.ac.uk>

European Parliament: <http://www.europarl.eu.int>

European Refugee Fund: <http://www.european-refugee-fund.org>

Harvard Law School, Guide to EU Documents and Treaties:

http://www.law.harvard.edu/library/ref/ils_ref/eu_guide/eu_legal_research_treaties.htm

Jesuit Refugee Service, European Office: <http://www.jrseurope.org>

Migration Policy Group: <http://www.migpolgroup.com>

Odysseus Network, Academic Networks for Legal Studies on Immigration and Asylum in

Europe: <http://www.ulb.ac.be/assoc/odysseus/index2.html>

RefugeeNet: <http://www.refugeenet.org>

University of Kent, EU Information: <http://www.ulb.ac.be/assoc/odysseus/index2.html>

General Websites:

Amnesty International: www.amnesty.org

Human Rights Watch: www.hrw.org

Jesuit Refugee Service: www.jesref.org

Human Rights First: <http://www.humanrightsfirst.org>

Migration Information Source: <http://www.migrationinformation.org>

Migration Policy Institute: <http://www.migrationpolicy.org>

Refugee Studies Centre, University of Oxford: <http://www.rsc.ox.ac.uk>

United Nations High Commissioner for Refugees: www.unhcr.ch

US Committee for Refugees: www.refugees.org

Vera Institute of Justice: <http://www.vera.org>