

**NATIONAL REPORT DONE BY THE ODYSSEUS NETWORK FOR THE  
EUROPEAN COMMISSION ON THE IMPLEMENTATION OF THE DIRECTIVE  
ON RECEPTION CONDITIONS FOR ASYLUM SEEKERS IN:  
GERMANY**

by

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**1. NORMS OF TRANSPOSITION**

- Q.1. Identify the main norm of transposition (indicate the title, date, number, date of entry into force and references of publication into the official journal) and indicate its legal nature (legislative, regulatory, administrative); indicate in your answer if this norm was only devoted to the directive or if it has been included in a more general text and indicate in that case by quoting precisely the numbers of the provisions adopted to transpose the directive.

The Federal Ministry of the Interior sees no need for fundamental changes in German Asylum legislation in order to meet the directive's requirements. Hence, a recently prepared bill for the transposition of several EU directives on immigration and asylum law includes only minor amendments to the Asylum Procedures Act (Asylverfahrensgesetz). The draft in its recent version (modifications are still possible) provides for an additional paragraph to Sec. 47 asylum procedure code, implementing Art. 5 of the Directive, and for an amendment of Sec. 63 para 1 asylum procedure code stating the obligation to provide the asylum seeker with the necessary documents within three days after lodging his asylum claim (Art. 6 para 1 Directive).

The Zuwanderungsgesetz (Immigration Act) of 30 July 2004<sup>1</sup> introduced an amendment to the Act on Benefits for Asylum Seekers (Asylbewerberleistungsgesetz) providing for restrictions in benefits for asylum seekers who extend their stay in Germany by misusing their rights. This amendment was explained as a case of Art. 16 para 1 a of the Directive<sup>2</sup>. However, this explanation just refers to the Directive's basic intention, as the amended Sec. 2 para.1 of the Act on Benefits for Asylum Seekers does not provide for cutbacks but for the denial of an increase after three years.

- Q.2. List by order of importance by using numbers (1, 2, 3) the others norms of transposition if there are more than one (indicate for each norm the title, date, number and references of publication into the official journal; include in your answer the administrative measures taken to ensure implementation of the

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<sup>1</sup> See Bundesgesetzblatt (Federal Law Gazette) I, 1950.

<sup>2</sup> See Bundestagsdrucksache (Parliamentary Document) 15/420, p. 121.

directive and of the transposition norms like regulations, administrative circulars, special instructions,...)

- Put as an annex to your report a paper copy of each norm in the original language with a reference number to help the reader to find it easily;
- Send us as an electronic version of each norm or a weblink to the text (this will be used for the website we are building);
- Provide the texts of any translation of the above norms into English if they are available.

There are no norms of transposition yet, see above. Texts of the relevant legislation are included, so is a draft version of planned amendments to the Asylum Procedures Act. These amendments are, however, not yet approved and therefore the draft is still preliminary and must not be regarded as the definite version to become law.

- Q.3. Explain which level of government is competent to adopt the legal norms on reception conditions for asylum seekers (specify in particular in case of a federal or regional State, if it is the federal/central power or the components; in case, specify below when it is impossible for you to answer a question because it is about the competence of the components and it is impossible for you to gather reliable information about all of them)

The asylum legislation is part of the so-called concurrent legislation (konkurrierende Gesetzgebung) in terms of Art. 72, 74 para. 1 No. 6 Grundgesetz (German Constitution), i.e. the Länder are competent for legislation as long and as far as the Federal State has not made use of its legislative competence. Since there is a comprehensive legislation on asylum procedure and reception conditions on the Federal level, the Federal level is exclusively competent for amendments to the existent legislation as well. It is however within the federal states' responsibility to set up and run the reception centres, to provide other accommodation facilities and to organise the distribution of material reception conditions. Thus, it is on them to implement the directive into practice.

- Q.4. Explain the legal technical choices done to transpose the directive (comment on the nature and level of the norms used to do the transposition: legislative, regulatory, administrative like instructions, etc). Add any other element about the technique of transposition of the directive which is interesting for the implementation of Community law.

The already mentioned amendments only concern the legislation on the federal level.

- Q.5. Mention if there is a general tendency to just copy the provisions of the directive into national legislation without redrafting or adaptation them to national circumstances? If yes, give some of the worst examples and explain if

there is a risk that those provisions remain unapplied or will create difficulties of implementation in the future.

Since no explicit legislative acts to implement the directive have yet been adopted, this question cannot be answered. The draft amendments to the Asylum Procedures Act do not just copy the Directive's wording but create autonomous legal provisions. Whether the draft and the existing legislation and practice meet the directive's requirements is discussed subsequently. The same applies to the above mentioned amendments to the Act on Benefits for Asylum Seekers through the Immigration Act.

- Q.6. Have all the texts necessary to ensure the effective implementation of the new rules of transposition been adopted, prepared or at least foreseen in the future (for example a regulation completing a new law and the necessary instructions telling the administration how to apply the new rules)?

No, the amendments, which are still pending, concern details of the directive, see above. Further amendments are not envisaged at the moment. The question whether further texts are necessary for effective implementation depends upon a comprehensive in-depth examination of the German legislation which is beyond the scope of this report.

## **2. BIBLIOGRAPHY**

- Q.7. Has an in-depth preparatory study been made public about the changes at the occasion of the transposition? If yes, thanks for trying to provide us a copy (*please contact to answer this question adequately the body and person who was responsible for the preparation of the transposition of the directive in the public administration*).

According to the Federal Ministry of the Interior no such in-depth preparatory study has been carried out.

- Q.8. Quote any recent scientific book or article published about the directive, the transposition rules or the question of reception conditions for asylum seekers in general (answer even if this literature is only available in your language and provide the complete title in your language (without translation) with all references; indicate author, title, in case name of periodical, year and place of publication).

To our knowledge, only one article has been published on the directive and its future transposition into German law. It is "Mindestaufnahmebedingungen für Asylbewerber: Nivellierung auf geringem Niveau oder Fortschritt für eine gemeinsame Asylpolitik in Europa?" by Harald Meyer, published in *Neue Zeitschrift für Verwaltungsrecht* (New Journal on Administrative Law) No. 5 of 2004, pp. 547 – 551.

- Q.9. Quote any interesting decision of jurisprudence based on the implementation of the new rules of transposition of the directive (indicate references of publication if any)?

Since no legislation has been adopted for the transposition of the directive yet due to the fact that the German government considers the existing legislation by and large already sufficient to meet the directive's requirements, there are only very few decisions of jurisprudence which refer to the directive. The only relevant decisions deal with Sec. 2 para 1 of the Act on Benefits for Asylum Seekers. This provision provides for restrictions in social benefits if an asylum seeker extends his stay in Germany by misusing his rights under the Asylum Procedures Act. To interpret the term "by misusing rights" (rechtsmissbräuchlich) the Bavarian Social Court of Appeal (Bayerisches Landessozialgericht) referred to Art. 16 of the directive. The court pointed out that a misuse may be taken for granted if the asylum seeker acted in a way described in Art. 16 para 1 or 2 of the directive<sup>3</sup>.

### **3. GENERAL INFORMATION ABOUT THE SYSTEM OF RECEPTION CONDITIONS**

*The purpose of the following two questions is to help the reader to understand easily and quickly the system of reception conditions in your Member State and also to avoid that you have to repeat general elements in other parts of the questionnaire. **Please do not write more than one or maximum two pages and do not include large historical developments.***

- Q.10. Describe in general the system of reception conditions in your Member State (in particular which are the main actors in charge of reception conditions?)

Reception conditions for asylum seekers are regulated in the Asylum Procedures Act (Asylverfahrensgesetz)<sup>4</sup> and in the Act on Benefits for Asylum Seekers (Asylbewerberleistungsgesetz)<sup>5</sup>. The latter act regulates what kind of reception conditions, particularly social benefits, are granted to asylum seekers. The Asylum Procedures Act deals inter alia with procedures and competences with regard to reception conditions. Both acts are federal legislation. However, the administration of the asylum procedure is divided between the federal level and the Länder. The Länder are responsible for setting up and running of the reception centres. They also decide upon how to spread the asylum seekers within the particular Land and are competent for the implementation of the Act on Benefits for Asylum Seekers. This includes the organisation of the necessary administration.

However, it is within the competence of the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge) to handle the asylum

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<sup>3</sup> See BayLSG, decision of 8 April 2005, file-no. L 11 B 103/05 AY ER, published in Sozialhilfe- und Asylbewerberleistungsrecht (SAR) 2005, pp. 82 – 84 and BayLSG, decision of 28 June 2005, file-no. L 11 B 212/05 AY ER, published in Fürsorgerechtliche Entscheidungen der Verwaltungs- und Sozialgerichte (FEVS) 57, pp. 106 – 110.

<sup>4</sup> AsylVfG as announced on 27 July 1993, Federal Law Gazette I, p. 1361, last amendment through act of 21 June 2005, Federal Law Gazette I, p. 1666.

<sup>5</sup> AsylbLG as announced on 5 August 1997, Federal Law Gazette I, p. 2022, last amendment through act of 12 August 2005, Federal Law Gazette I, p. 2354.

seeker's application. Its decisions are binding in all matters related to the formal recognition of asylum status.

An alien applying for asylum is allowed to stay on the federal territory while his application is pending. His so-called Aufenthaltsgestattung (permission to stay, see Sec. 55 Asylum Procedures Act) is restricted to the district of the competent aliens office. In the first weeks after he has lodged his application, the asylum seeker is obliged to live in a reception centre. This obligation ends after three months or earlier if the asylum seeker is sent to another housing facility or if the Federal Office for Migration and Refugees decides on the application. An asylum seeker whose obligation to live in a reception centre has ended is usually obliged to take up residence in a particular accommodation centre.

Accommodation centres are usually shared accommodation facilities, such as hostels, converted apartment or office buildings, or provisional camps. Sometimes accommodation centres are in the same complex as the reception centre, but unlike the latter accommodation centres should be suitable for long-term accommodation.

As long as the asylum seeker is obliged to live in the reception centre, he is not allowed to take up an employment. Afterwards, he may be admitted to the labour market under the preconditions laid down in Sec. 61 Asylum Procedures Act, cf. *Question 28* for details.

The Act on Benefits for Asylum Seekers came into force on 1 January 1993 and excluded asylum seekers from the scope of application of the Social Code. Instead it provides for lower social benefits for aliens whose stay in Germany is only temporary. These basic social benefits shall only meet the asylum seekers vital needs and are granted to a large extent in kind or in vouchers. This includes basic supply with food, accommodation, heating, clothing etc.

Additionally, a limited amount of money is granted. Health care is granted for the treatment of acute illness and pain. Other benefits may be granted if they are necessary in an individual case to ensure the asylum seeker's subsistence or health. After three years of having received benefits under the Act on Benefits for Asylum Seekers in Germany, asylum seekers are entitled to receive regular social benefits according to the Social Code largely in the same way as German citizens. Exceptions apply, however, if the asylum seeker extended his stay by misusing his rights.

All social benefits under the Act on Benefits for Asylum Seekers are financed through the federal states' budgets, whereas regular social benefits are financed by the municipalities.

- Q.11. A. Explain if you have different types and levels of reception conditions following the different stages of the asylum procedure (this implies that you have to give briefly the necessary explanations about the asylum procedure). Make if relevant for reception conditions a distinction between the following procedural stages: determination of the responsible Member State on the basis of the Dublin II regulation, special procedures at the border (including transit zones in airports), accelerated procedures, admissibility procedures, eligibility procedures and the different possibilities of appeals (suspensive or not) against a refusal of the asylum request. Indicate what the main differences of reception conditions are between the different stages (if necessary by detailing between the different elements of reception conditions, in particular housing) and

explain what the evolution of reception conditions is following the different stages of the procedure.

A special type of reception conditions applies to asylum seekers who arrive in Germany by air if they come from a safe country of origin or cannot identify themselves with a valid passport or passport substitute, cf. Sec 18a Asylum Procedures Act. In these cases the asylum procedure will be handled before the asylum seeker is permitted to enter the federal territory provided that adequate accommodation in the airport premises is available. Material reception conditions are nevertheless to be granted according to the Act on Benefits for Asylum Seekers.

Apart from this group, the reception conditions as described above remain unchanged during the asylum procedure. Only in the first weeks after application asylum seekers are obliged to live in reception centres (Aufnahmeeinrichtungen), see *Question 10* above. Reception conditions end if the asylum seeker is formally recognised as refugee by the Federal Office for Migration and Refugees or if a court commits the Federal Office to do so, even if those decisions can be appealed.

- B. Indicate precisely for which stage(s) of the asylum procedure the answers on reception conditions you give below are valid.

Answers are valid for all stages of asylum procedure from application until final rejection or approval. Where different rules apply, it will indicated in the following sections.

#### **4. GENERAL RULES ON RECEPTION CONDITIONS**

- Q.12. A. Are material reception conditions provided in kind, in money or in vouchers or in a combination of these elements (see article 13, §5 which is an optional provision)? Distinguish between the different elements (housing, food, clothes, health, transportation, pocket money,...). **If reception conditions are provided in money (in general or in some cases, for instance when no places are anymore available in accommodation centres), indicate the precise amount given to the asylum seekers. Indicate in your answer what is provided in general and if there are exceptional cases.** Specify in your answer if reception conditions are different from the general system of social aid for nationals or aliens and if yes, if and when (which stage of the asylum procedure) can asylum seekers have access to the general system of social aid?

In 1993, the Act on Benefits for Asylum Seekers (Asylbewerberleistungsgesetz) has entered into force which provides for a general priority of benefits granted in kind. This includes food, housing, heating, clothes, health care, personal hygiene and household goods for daily use and consumption. If clothes cannot be provided in kind, vouchers may be granted. Household goods may be given on loan, see Sec. 3 para 1 of the Act on Benefits for Asylum Seekers.

Additionally, asylum seekers older than fourteen receive 80 Deutsche Mark (40.90 Euro) per month, children up to fourteen receive 40 Deutsche Mark (20.45 Euro) for personal needs (pocket money).

Asylum seekers who do not live in a reception centre anymore may receive benefits in vouchers or in money if this is necessary without prejudice to the general priority of benefits in kind<sup>6</sup>. Vouchers or money may be granted up to an amount of 360 Deutsche Mark (184.07 Euro) for the head of the household, for children younger than seven years in the same household up to 220 Deutsche Mark (112.48 Euro) and for older persons in the same household 310 Deutsche Mark (158.50 Euro). These amounts do not include the necessary costs for housing, heating and household effects. The benefits in money for personal needs (pocket money) are granted in addition.

Asylum seekers who received benefits under the Act on Benefits for Asylum Seekers for 36 months become eligible to the general system of social aid according to the Social Code, vol. 12 and vol. 2.

- B. Can the reception conditions in kind, money or vouchers be considered as sufficient “to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence” as requested by article 13, §2 of the directive (which is a mandatory provision but leaves a certain space to Member States)?** In order to help to assess the respect of this rule when reception conditions are provided in money, include if necessary in your answer points of comparison with the minimum amount of social aid guaranteed for nationals in your Member State.

The benefits under the Act on Benefits for Asylum Seekers are considerably lower than the ones granted as general social aid which is currently 345 Euro for the head of the household<sup>7</sup> and 276 Euro for other persons older than 13 years living in the same household<sup>8</sup>. This does not include additional benefits for housing and heating.

The social aid benefits are considered as the minimum which is necessary to ensure the recipient’s subsistence<sup>9</sup>. However, this applies to people who live in Germany on a permanent basis and have therefore different needs. Hence, it is considered legitimate to grant lower benefits to aliens who live in Germany only on a temporary basis. Benefits granted under the Act on Benefits for Asylum Seekers are aimed to ensure only the recipient’s very basic subsistence. It is, however, not considered necessary by the legislator to ensure a living standard equivalent to the prevalent basic standard in Germany or to enable the recipient to integrate himself socially into the domestic

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<sup>6</sup> E.g. in most federal states vouchers or money are granted for food, cf. practical report Berlin, Q.1.C. According to Caritas, only in Bavaria and parts of Baden-Wuerttemberg food packages are handed out, cf. practical report Caritas Q.1.C.

<sup>7</sup> Compared to 224.97 Euro for an asylum seeker (adult head of household).

<sup>8</sup> The amount for younger children in the same household is 207 Euro.

<sup>9</sup> Federal Constitutional Court, decision of 25 September 1992, BVerfGE 87, 153.

society<sup>10</sup>. This perspective is widely shared in the administrative courts' jurisdiction<sup>11</sup>, but widely criticised by several NGOs working with refugees<sup>12</sup>. They object that the lower allowances are paid over a period of three years before asylum seekers are entitled to regular social benefits, which is considered too long. UNHCR also points out that chronic diseases may be treated insufficiently because the Act on Benefits for Asylum seekers only guarantees the treatment of acute illnesses. The way of accommodation in the facilities may lead to a certain attitude of passiveness and disheartenment due to the complete dependency on social benefits and the lack of meaningful activity<sup>13</sup>. This is, however, a general problem which cannot be related to the directive's requirements with regard to health in Art. 13 para 2.

## **5. PROCEDURAL ASPECTS**

**Q.13. A. Does the national legislation specifically provide that a request for international protection is presumed to be under the Geneva Convention unless explicitly requested otherwise? (see article 2, b which is a mandatory provision)**

Sec. 13 para 1 and 2 Asylum Procedures Act stipulates that each request for protection from political persecution is regarded as an application for asylum according to Art. 16a of the Grundgesetz and as a request for refugee status in terms of the Geneva Convention unless explicitly stated otherwise.

**B.** Explain if the scope of application of reception conditions is extended to other asylum seekers than refugees in the sense of the Geneva Convention, in particular to persons asking for subsidiary protection or to other forms of protection like humanitarian statuses (see article 3, § 4 which is an optional provision)? If not, explain briefly which the differences between these special regimes and the directive are.

The Act on Benefits for Asylum Seekers is applicable not only to asylum seekers but also to aliens holding a temporary residence permit for temporary protection purposes in terms of Directive 2001/55/EC (Sec. 24 Residence Act), for humanitarian or international law reasons (Sec. 23 para 1 Residence Act) or for other exceptional reasons (Sec. 25 para. 4 and 5 Residence Act). The same applies to aliens with tolerated status (Sec. 60a Residence Act), aliens whose obligation to leave is executable and to family members of aliens who are entitled to benefits

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<sup>10</sup> Parliamentary Document 12/4451, p. 6.

<sup>11</sup> See e.g. Federal Administrative Court of Appeal, Decision of 29 September 1998, Neue Zeitschrift für Verwaltungsrecht (NVwZ) 1999, 669; Administrative Court of Appeal of Lower Saxony, Decision of 27 June 1997, Neue Zeitschrift für Verwaltungsrecht – Beilage (NVwZ-Beil.) 1997, p. 95; Administrative Court of Appeal of North Rhine-Westphalia, Decision of 28 May 2002, ZFSH/SGB 2002, p. 620.

<sup>12</sup> See added practical reports Caritas and UNHCR, Question I.C.

<sup>13</sup> See practical report Caritas.

under the Act on Benefits for Asylum Seekers, see Sec. 1 para 1 Act on Benefits for Asylum Seekers.

- C. Are there specific provisions in national law for reception conditions in case of diplomatic or territorial asylum requests submitted through a diplomatic or consular representation (see article 3, §2 which is an optional provision)?

There are no provisions on diplomatic or territorial asylum in German law.

- Q.14. Are reception conditions available as from the moment one asylum application is introduced? How is article 13, §1 which is mandatory legally understood? Do asylum seekers have to satisfy any other condition in order to get reception conditions?**

Reception conditions, i.e. benefits under the Act on Benefits for Asylum Seekers, are available to all aliens holding a permission to stay (Aufenthaltsgestattung) according to Sec. 55 Asylum Procedures Act which is automatically granted as soon as the asylum seeker asks for asylum. If the asylum seeker entered Germany illegally, he is permitted to stay as soon as he lodges an asylum application with BAMF and is thenceforth entitled to reception conditions.

- Q.15. Explain when reception conditions end, for instance after refusal of the asylum request (include in your answer the link with the right of appeal against a decision of refusal of the status, in particular the question of its suspensive effect)**

Reception conditions in terms of the Act on Benefits for Asylum Seekers end with the last day of the month within which the asylum seeker is recognised as refugee by the Federal Office for Migration and Refugees<sup>14</sup>. Reception conditions end, too, if the asylum seeker leaves the Federal Republic of Germany or if the Act on Benefits for Asylum Seekers becomes inapplicable for other reasons, cf. Sec. 1 para. 3 Act on Benefits for Asylum Seekers. However, reception conditions do not end automatically if the application for asylum is rejected since the scope of application of the Act on Benefits for Asylum Seekers is relatively broad and also includes aliens who are obliged to leave the federal territory<sup>15</sup>.

- Q.16. Are there special rules or practices regarding reception conditions in case of successive applications for asylum introduced by the same person?**

Successive applications will only result in a further asylum procedure and the respective application of rules on accommodation etc. if certain conditions are met (new facts etc.).

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<sup>14</sup> Or within which a court commits the Federal Office to do so, even if those decisions can be appealed.

<sup>15</sup> See Q.13.B.

Q.17<sup>16</sup>. Information of asylum seekers about their rights and obligations in terms of reception conditions, in particular about established benefits (see article 5 which is too large extend a mandatory provision; do not confuse this question with the information to be provided to asylum seekers about the asylum procedure):

**A. Are asylum seekers informed, and if yes about what precisely?**

In federal law there is no obligation for the federal states to inform the asylum seekers comprehensively about their rights and duties under the Act on Benefits for Asylum Seekers. However, in most cases such information will be provided by the management of the accommodation facilities or by NGOs which are active in counselling. A comprehensive illustration of the current practice can not be given since it is in no way centrally organised and may vary considerably between different centres. Statements of UNHCR and NGOs indicate that the current practice might in many cases be unsatisfactory.

The draft amendment to the Asylum Procedures Act includes the obligation to hand out information about rights and duties under the Act on Benefits for Asylum Seekers<sup>17</sup>. The federal states are preparing the necessary handouts<sup>18</sup>

**B. Is the information provided in writing or, when appropriate, orally?**

Answer not possible, see above. The draft bill stipulates that information should be handed preferably in writing. This means that written information is not necessary if it must be considered that the asylum seeker will not be able to understand it due to lacking skills in reading. In these cases information must be given orally.

**C. Is that information in general provided in a language understood by asylum seekers? Specify the list of languages in which it is available**

Answer not possible, see above. The draft bill stipulates that information must be given in a language which the asylum seeker should be able to understand.

**C. Is the deadline of maximum 15 days respected?**

Answer not possible, see above. The draft bill includes a deadline of fifteen days.

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<sup>16</sup> To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>17</sup> Cf. attached document of the Federal Ministry of the Interior.

<sup>18</sup> Cf. practical report Berlin, Q.2.A.

Q.18<sup>19</sup>.

Information of asylum seekers about the existence of organisations or groups promoting their interest and defending their rights (see article 5 which is to a large extent a mandatory provision):

A. **Is there a list of organisations dressed by the authorities and if yes is it comprehensive? Is this in particular the case about the possibilities to get legal assistance and health care?**

In federal law there is no obligation for the federal states to hand out such a list at present. However, this does not hinder them to do so but to our knowledge such an official list does not exist in any federal state. The draft amendment to the Asylum Procedures Act includes the obligation to hand out information about possibilities to get legal assistance and about organisations which may counsel the asylum seeker with regard to accommodation and health care<sup>20</sup>.

B. **Is the information provided to the asylum seekers, and if yes, in writing or, when appropriate, orally?**

Answer not possible, see above. The draft bill stipulates that information should be handed preferably in writing. This means that written information is not necessary if it must be considered that the asylum seeker will not be able to understand it due to lacking skills in reading. In these cases information must be given orally.

C. **Is that information in general provided in a language understood by asylum seekers? Specify if possible the list of languages in which it is available.**

Answer not possible, see above. The draft amendment stipulates that information must be given in a language which the asylum seeker should be able to understand.

D. **How many organisations are active in that field in your Member State?**

It is impossible to give an exact number. The most important charity organisations are Arbeiterwohlfahrt (Workers Welfare Organisation), Rotes Kreuz (Red Cross), Caritas (Catholic Charity Organisation), Diakonie (Protestant Charity Organisation) and local refugee councils. Several other organisations provide counselling, among them amnesty international, Pro Asyl and other, often regional groups and initiatives. Which organisations are in fact most active depends to a large extent on the particular region, if it is urban or rather rural, which religious confession is predominant etc.

**Q.19. Documentation of asylum seekers (see article 6):**

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<sup>19</sup> To be answered with the help of UNHCR local office competent for your Member State or to be completed on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>20</sup> Cf. attached document of the Federal Ministry of the Interior.

- A. **What kind of document is delivered to the asylum seeker? Explain the legal value of this document (just a certification of the status as asylum seeker or also prove of identity?) (see §1 of article 6 which is a mandatory provision)**

The asylum seeker receives a certificate proving his status when he lodges his asylum application, see Sec. 63 para 1 Asylum Procedures Act. This certificate includes a photo and the asylum seeker's personal dates<sup>21</sup>. As long as the application is pending, the certificate serves as identification.

- B. **Are there situations or specific cases in which another equivalent document or even no document is issued? (in particular is there an exception for “procedures to decide on the right of the applicant legally to enter the territory” as made possible by §2 of article 6)?**

No such certificate is issued if the asylum seeker already holds a residence permit in Germany. Asylum seekers who arrive by air and who are subject to the pre-screening procedure in the airport (see Sec 18a Asylum Procedures Act) do not receive a certificate either, since this procedure is carried out prior to entering the federal territory and thus no right to stay has emerged.

- C. **For how long is this document in principle valid and is it necessary to renew it after a certain period?**

As long as the asylum seeker is obliged to live in a reception centre, the certificate's validity is limited to a maximum of three months, afterwards to a maximum of six months. It must be renewed because it replaces the asylum seeker's passport for identification purposes, cf. Sec. 63 para. 2 Asylum Procedures Act.

- D. **What is the deadline for the delivery of that document? Is the mandatory deadline of 3 days set by article 6, §1 respected<sup>22</sup>?**

Sec. 63 para 1 Asylum Procedures Act in his recent version does not contain a deadline for the delivery of the certificate but the draft amendment to the Act stipulates a deadline of three days after the application is lodged.

- E. **Is it possible for an asylum seeker to get a travel document for serious humanitarian reasons (see §5 of article 6 which is an optional provision)?**

A regulation on residence (Sec. 13 para. 1 No 2 Aufenthaltsverordnung) provides for issuance of travel documents in case of emergency. The Asylum Procedures Act does not exclude travel with the permission of

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<sup>21</sup> i.e. name, surname, nationality, place and date of birth, residence in Germany.

<sup>22</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

aliens authorities completely, however, it is limited to cases of extreme hardship.

- E. Is there a central system of registration of asylum seekers and is it or not separate from the registration of aliens? If yes, describe it briefly (content) and indicate in particular if it is an electronic database.

All aliens who stay not only temporarily in Germany are registered in the Central Aliens Register (Ausländerzentralregister - AZR). Also registered in the AZR are aliens who have lodged an asylum application. There is no separate register exclusively for asylum seekers.

The registration includes the aliens' personal data<sup>23</sup> plus differing spelling of names, other names, former names, alias personalities, civil state, information on identification documents, last place of residence in country of origin, voluntary made statements about religious belief, nationalities of spouse or same-sex partner. Additionally it is registered: Information on legal status of residence, decisions on admission to the labour market, recognition as refugee (Geneva Convention) in another country, decision with regard to the alien's legal status in Germany and finally the authority which provided the information. It is planned to register photos as well<sup>24</sup>

The AZR is an electronic database.

**Q.20. Residence of asylum seekers<sup>25</sup>:**

- A. **Is in principle an asylum seeker free to move on the entire territory of your Member State or only to a limited part of it and in case, which part? (see article 7, §1 which is a mandatory provision)**

The asylum seeker's stay permit (Aufenthaltsgestattung) is generally restricted to the district of the competent aliens authority. Only in urgent cases, the asylum seeker will be granted permission to leave this district temporarily.

- B. **About the place of residence (see §2 of article 7): explain to which extend the person is free to choose her residence and if this depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance processing of application, attribution of reception conditions,...).**

During the asylum procedure, the asylum seeker is not free to choose his place of residence, but will be allocated first to a reception centre and later on to an accommodation centre. Allocation is done by quota, so there is no claim for the asylum seekers to be allocated to a specific

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<sup>23</sup> i.e. name, surname, name of birth, spelling of names under German law, nationality, place, district, and date of birth, sex.

<sup>24</sup> See draft for an Act on Transposition of European Directives on Immigration and Asylum Law of 3 January 2006.

<sup>25</sup> Nota bene: the case of detention is covered by other questions and should be ignored under this question.

place. Family units (spouses and minor children) shall be respected, cf. Sec. 50 para. 4 Asylum Procedures Act.

- C. **About the place of reception (meaning where the asylum seeker has to stay to benefit from reception conditions) (see § 4 of article 7): explain which are the general rules about the determination of this place (to which extend are the decisions determining the place taken individually and do they take into account the personal situation of the asylum seeker?) and to which extend the person is free to choose it and if it depends of the stage of the asylum procedure (for instance before and after admissibility); if there are constraints limiting the choice, explain which ones and their reasons (for instance attribution of reception conditions, processing of the application,...).**

Since each asylum seeker is primarily to be accommodated in the reception centre where he filed his asylum application, he may influence his place of residence to a certain extent. Only if the accommodation capacities are exhausted in the respective reception centre or if the asylum application cannot be handled by the competent branch of the Federal Office for Migration and Refugees<sup>26</sup>, the asylum seeker will be allocated to another reception centre, cf. Sec. 46 para 1 and 2 Asylum Procedures Act.

When the obligation to live in a reception centre ends, asylum seekers are allocated within the respective federal state following schemes that are developed by the local authorities. The main goal of these restrictions to free movement and choice of residence is to speed up the asylum procedure and to ensure a fair burden sharing among the federal states and municipalities which bear the costs for reception conditions.

- D. **If all asylum seekers are not placed in accommodation centres because of capacity limits, explain how the persons are distributed between accommodation centres and other accommodation facilities (which authority takes the decisions, on the basis of which elements, can that decision be appealed by the asylum seeker,...)<sup>27</sup>**

At the moment, no such situation occurs due to dropping numbers of asylum applications. If these numbers should rise again and the capacity of accommodation facilities proves to be insufficient, it is within the federal states' competence and responsibility to allocate asylum seekers to other places. Since it is upon the individual federal state to regulate the allocation, no general statement can be made. However, in the past authorities often set up provisional container constructions to house asylum seekers when the regular capacities were exhausted.

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<sup>26</sup> The different branches of the Federal Office for Migration and Refugees are usually not handling applications from all countries of origin.

<sup>27</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- F. How can an asylum seeker ask to leave temporarily the place of residence or of reception or an assigned area? How is the individual AND impartial character of the decision ensured? (see §5 of article 7 which is a mandatory provision)

In urgent cases the asylum seeker may be granted permission to leave the assigned district temporarily. As long as he is obliged to live in a reception centre such a permission may only be granted if the trip is unavoidable. This applies in particular to visits to the asylum seeker's attorney, to UNHCR and to organisations which take care of refugees. After the obligation to live in the reception centre has ended, permission may be granted under less strict conditions. If the asylum seeker has to appear in person before a court or at public authorities, he does not need a permission, but has to announce his appointment. All decisions on leaving the assigned district may be challenged in the courts. However, the possibility to file an objection with the superior authority is excluded.

- Q.21. A. Do rules on reduction or withdrawal of reception conditions exist in internal legislation and if yes in which cases (mention in particular if there are cases not foreseen by article 16, § 1 and 2 which are optional provisions)? Distinguish in your answer between cases of reduction and withdrawal and explain which conditions can be reduced and if access to emergency health care is always ensured as requested by article 16, §4, last sentence.**

Reception conditions must not be completely withdrawn while the asylum procedure is pending. However, benefits under the Act on Benefits for Asylum Seekers are reduced to the very minimum if the asylum seeker refuses to do some work (in particular within the accommodation facility) without good reasons, cf. Sec. 5 para 4 Act on Benefits for Asylum Seekers.

After rejection, reception conditions may be subject to reduction if the asylum seeker is considered to have entered Germany for the mere purpose of receiving social benefits or if he cannot be deported for reasons within his responsibility, cf. Sec. 1 a Act on Benefits for Asylum Seekers. A complete withdrawal is not possible and the remaining minimum always includes emergency health care.

- B. Has article 16, §2 dealing with refusal of reception conditions for unreasonably late applications for asylum been transposed by your Member State (or was this case already applicable before transposition)? Are there cases in practice<sup>28</sup>?**

Illegal immigrants and other aliens whose obligation to leave is enforceable and who do not file an asylum application are nevertheless

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<sup>28</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

eligible to reception conditions. However, in these cases reception conditions may be subject to reduction or withdrawal if the respective alien is considered to have entered Germany for the mere purpose of receiving social benefits or if he cannot be deported for reasons within his responsibility, cf. Sec. 1 a Act on Benefits for Asylum Seekers. A complete withdrawal is not possible.

- C. How is it ensured that decisions of reduction or withdrawal are taken individually, objectively AND in particular impartially (for instance through and independent arbitrator) (see article 16, §4 which is a mandatory provision)?**

The decision on reduction of reception conditions is made by the competent aliens authority and follows the rules of the Act on Administrative Procedures (Verwaltungsverfahrensgesetz). The alien must be given opportunity to express his opinion on the intended reduction. The authority has to give reasons for its decision to enable the alien to file a reasoned objection. The objection will be handled by a superior authority. Its decision on the objection may be challenged in the courts.

- D. Is statement 14/03 adopted by the Council at the same moment as the directive respected (see the documentation pack you received at our meeting in Brussels in April)?**

A complete withdrawal of reception conditions is not possible in Germany. In any case, the respective alien will be provided with housing, food and other allowances which are absolutely necessary. Emergency healthcare is always guaranteed. Statement 14/03 is respected.

- E. Are there already administrative appeal decisions or judgements on cases of reduction, withdrawal or refusal which have been taken, and if yes, what has been the outcome<sup>29</sup>?**

There are already several judgements on reduction decisions<sup>30</sup> since the respective provision has been adopted in 1998. The jurisprudence deals with preconditions for reduction of benefits and the burden of proof. Since most decisions cannot be related to asylum seekers in terms of the directive, the details of the mentioned judgements are not described.

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<sup>29</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>30</sup> Cf. e.g. Social Court of Appeal of Baden-Wuerttemberg, Decision of 25 August 2005, published in Fürsorgerechtliche Entscheidungen der Verwaltungs- und Sozialgerichte (FEVS) 57, pp. 100 – 102; Administrative Court of Bremen, Decision of 28 July 2005 published in Sozialhilfe- und Asylbewerberleistungsrecht (SAR) 2005, pp. 117 – 120; Administrative Court of Appeal of Hesse, Decision of 4 March 2003, published in Sozialhilfe- und Asylbewerberleistungsrecht (SAR) 2003, pp. 119 – 120.

Q.22.

A. **Appeal against a negative decision relating to the granting of benefits or based on article 7 (see article 21 which is a mandatory provision): indicate against which decision an appeal can be introduced, describe the system of appeal in general and include in particular in your answer the information given to asylum seekers about possibilities of appealing, deadline for appealing, if the appeal has or not a suspensive effect, if there are different steps (for instance first an administrative appeal and in particular if the guarantee of an appeal before a judicial body in the last instance is respected)?**

All decisions regarding the denial of social benefits can be appealed according to the general rules of administrative procedure.

The restriction to stay in one specific district cannot be challenged in the courts since it is implied in the stay permit. Asylum seekers are not entitled to a residence permit without geographical limitation, nor is there any right to being sent to one specific reception centre. However, the administrative decision to which district the asylum seeker is allocated after his obligation to live in a reception centre has ended is subject to judicial appeal. The asylum seeker has to file this appeal within two weeks after the decision has been officially announced to him. The reasons for the appeal have to be delivered within one month, cf. Sec. 74 Asylum Procedures Act. The appeal has no suspensory effect, cf. Sec. 75 Asylum Procedures Act.

B. **Explain which are the possibilities for asylum seekers to benefit from legal assistance when they introduce such an appeal (see article 21, §2 which is a mandatory provision but leaves space to Member States)?**

The asylum seeker may mandate an attorney for legal assistance. According to the Act on Legal Assistance only lawyers are allowed to give legal assistance. If the asylum seeker is lacking the necessary financial means, he is entitled to financial support to consult a lawyer (Beratungshilfe) and to pay the lawyer for handling the appeal (Prozesskostenhilfe). However, the latter will only be granted if there is a reasonable chance of success. The decision on financial support for legal assistance is within the competence of the local court.

C. Are there already administrative appeal decisions or judgements which have been taken and if yes, which are the main important ones<sup>31</sup>?

No appeal decisions are known.

D. Is a mechanism of complain for asylum seekers about quality of receptions conditions in general (even if they are not personally concerned) organised? If yes, before which authority? Is it linked to the system of guidance, control and monitoring of reception conditions (see below question n° 39)?

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<sup>31</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Like many aspects in the asylum procedure, this may vary between the federal states. Such a system of complain need not be installed with respect to the Asylum Procedures Act, however, the federal states are free to do so. According to UNHCR, such a system exists in Berlin<sup>32</sup>. In Bavaria, however, there is no such system. Asylum seeker can of course address the facilities' management or an NGO. However, this does not guarantee that they will receive a satisfactory reaction. The success of any complaint depends to a great extent on the addressee's goodwill. If no such system of direct complains exists, the asylum seeker may always address to the superior authority and complain about the an officer's individual attitude or about an individual decision he considers inadequate or unlawful. Such a complaint does not have any legal binding for the superior authority but may initiate a monitoring process as described under *Question 39*.

If the management of accommodation centres is contracted out, the competent authorities are responsible to control the private company's (or NGO's) compliance with the agreement<sup>33</sup>.

## **6. RIGHTS AND OBLIGATIONS OF ASYLUM SEEKERS**

**Q.23. Family unity of asylum seekers: define how a family is defined in relation with article 2, (d) which is a mandatory provision and explain how housing is provided to a family (see articles 8 which is a mandatory provision but leaves space to member States and 14, §2, (a) which is a mandatory provision).**

Family members in terms of the Act on Benefits for Asylum Seekers are the asylum seeker's spouse or partner in a registered same-sex relationship, and his under age children. As a rule, family members are accommodated together. However, in singular cases parents may be allocated to different reception centres if they did not file their asylum applications together. Under age children are in any case entitled to be accommodated with their parent(s), cf. Sec. 47 para 2 Asylum Procedures Act.

Children may, however, be separated from their parents in cases of violence or abuse. They may be accommodated with other relatives or in a children's home in order to protect them from ill-treatment. Separate accommodation may also take place if the parents are not able to care for their child.

**Q.24. A. How is housing of asylum seekers organised: describe the system in general and indicate in particular what is the most frequently system used (see article 14, §1 which is a mandatory provision but leaves space for Member States; distinguish between accommodation centres, private houses and apartments, hotels places or other premises).**

According to Sec. 44 para 2 Asylum Procedures Act it is within the Länder's responsibility to provide for the required number of

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<sup>32</sup> Also mentioned in practical report Berlin, Q.7.B.

<sup>33</sup> Cf. practical report Berlin, Q.19.B.

accommodation places in reception centres. How the Länder fulfil their duty to make a sufficient number of places available is left to their discretion. Most Länder provide only one central reception centre, only Lower Saxony and Bavaria maintain two reception centres each.

With regard to other accommodation facilities the Länder are even more flexible. Usually they tend to spread the asylum seekers by quota within their territory. The local authorities provide for suitable premises which can be municipality flats, converted office or school buildings or different premises available. Often provisional premises like barracks or container constructions are used. There are neither common standards for reception centres nor for other accommodation facilities in Germany which leads to the fact that the standards may differ considerably among the different Länder.

- B. What is the total number of available places for asylum seekers?<sup>34</sup> Distinguish in your answer between accommodation centres, private houses and apartments, hotels or other premises.

According to official information of the Federal Office for Migration and Refugees there were 11,431 places in reception centres available on January 3, 2005, of which 4,382 were not used. A recent request led to the information that on May 26, 2006, 10,781 places were available. However, it was not possible to find out about the utilisation. This number does not contain places in other accommodation facilities than reception centres since only the capacity of reception centres must be reported to the Federal Office for Migration and Refugees. Other accommodation facilities are run by the federal states autonomously. They do not house exclusively asylum seekers but often also other foreigners without residence title. E.g. in the Bavarian district of Oberbayern (Upper Bavaria) 3,984 aliens are presently living in accommodation facilities, but only about one third of them are asylum seekers<sup>35</sup>. The same relation exists in the whole federal state of Bavaria: Of 12,709 persons living in accommodation facilities only 4,070 are asylum seekers<sup>36</sup>.

- C. Is this number of places for asylum seekers sufficient in general or frequently insufficient?<sup>37</sup>

This number has always been sufficient in the last years since there has been a constant decline in asylum applications.

- D. Are there special measures foreseen in urgent cases of a high number of news arrivals of asylum seekers (outside the case of application of the directive on temporary protection)?

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<sup>34</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>35</sup> Cf. Practical Questionnaire Caritas, Question 6 A.

<sup>36</sup> Date of December 31, 2005, cf. Practical Questionnaire, Central Reception Centre Zirndorf, Bavaria.

<sup>37</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

In such cases the period of accommodation in the reception centres may be shortened in order to allocate the asylum seekers sooner to smaller accommodation facilities. Such facilities are more easy to set up by renting suitable premises, converting public buildings into accommodation facilities or setting up provisional premises like container structures.

Q.25. Accommodation centres (**important note: all the following questions are about open and not closed centres where asylum seekers are detained which are covered by another question**)

A Are there different categories of accommodation centres, for instance depending of the stage of the procedure (admissibility and eligibility)?

As already stated above, it is necessary to distinguish between reception centres for the initial accommodation of asylum seekers and other accommodation facilities which have to be suitable to accommodate asylum seekers for a longer period of time after their obligation to live in a reception centre has ended.

B. Is there a legal time limit for accommodation in a centre after which the asylum seekers have access to private houses or apartments or is this limit linked to a stage of the asylum procedure?

Obligation to live in the reception centre ends after a maximum period of three months. However, this does not mean that asylum seekers are free to choose their place of residence afterwards. They are rather allocated to other, normally smaller accommodation facilities.

B. Is there a general regulation about the internal functioning of those centres and the rights and duties of the asylum seekers? If yes, is this general regulation applicable to public and private centres? If not, are the centres supposed to adopt an internal regulation and does a central authority have or not a kind of control about its content?

Accommodation facilities usually adopt their own internal regulations autonomously or such an internal regulation is given by the municipality or the state district for several facilities in their area of responsibility.

C. **Do the regulations foresee the possibility of sanctions against asylum seekers in case of breach of the rules? (see article 16, §3) If yes, which sanctions for which rules? Which is the competent authority to decide? How is it ensured that decisions are taken individually, objectively and in particular *impartially* (for instance through an independent arbitrator) as requested by §4 of article 21 which is mandatory provision? Which are the possibilities of appealing against those decisions if the system is different from the general one under question n°22? Are there already administrative**

**appeal decisions or judgements which have been taken and if yes, which are the main important ones?**<sup>38</sup>

A comprehensive answer is not possible since there might be hundreds of different regulations in accommodation facilities. Two examples are attached to this report. They both include the possibility of sanctions in case of breach of internal rules. The most important sanction is to ban the respective asylum seeker from the accommodation centre and to allocate him to another facility.

In federal law, there is the provision that asylum seekers lose part of their benefits under the Act on Benefits for Asylum Seekers if they decline a working opportunity offered to them, cf. Question 25.E for details.

**D. Are asylum seekers involved in the management of these centres? If yes, how (advisory board, appointment or election of representatives)? (see article 14, §6 which is an option provision)**

To our knowledge, there is no reception centre in which asylum seekers are involved in management. This is, however, the case in some accommodation facilities. We know that the accommodation centres in Parchim (Mecklenburg – Western Pomerania) and Salzwedel (Saxony-Anhalt) have established local advisory boards in which the occupants are represented. This might also be the case in other accommodation facilities. A comprehensive answer is, however, not possible since such advisory boards are established on the basis of internal regulations which are set by the respective management or municipality.

**E. Do specific rules exist on work of asylum seekers inside the accommodation centres different from the general ones about employment (see below)? If yes, which ones? Can working inside accommodation centres be considered as a (mandatory) contribution of the asylum seekers to the management of the centres, is it or not paid and considered as implying access to the labour market and subject to the same rules?**

Generally asylum seekers do not have access to the labour market. After one year of residence in Germany with a stay permit, an asylum seeker may be permitted to take up an employment, cf. Question 28.

Independently of that, asylum seekers shall be offered work opportunities in the reception centres and similar facilities. These work opportunities cannot be regarded as part of the labour market since asylum seekers must not compete with regular workers and thus may only be offered work which would not be done otherwise.

Asylum seekers who are able to work and not employed otherwise are obliged to accept such a work offer. If an asylum seeker refuses to take up work unfoundedly, he loses his eligibility to social benefits which

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<sup>38</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

will be reduced to the very minimum, cf. Sec 5 Act on Benefits for Asylum Seekers.

The work is paid with 1.05 Euro per hour.

The work opportunities may be regarded as contributions to the management of the centre in a wider sense. This may comprise gardening on the grounds of the premises, cleaning of shared facilities etc.

- Q.26. A. How can asylum seekers communicate with legal advisers, representatives of UNHCR and NGOs? (see article 14, §2, (b) which is a mandatory provision).**

The asylum seeker's right to address the UNHCR is guaranteed in Sec. 9 para. 1 Asylum Procedures Act. There are, however, no statutory rules on communication with legal advisers or NGOs. Since there are no closed centres (except the transit accommodation facilities at the airports), asylum seekers may visit legal advisers or NGOs in their offices. If these offices are outside the aliens authorities district, the asylum seeker will be granted a permission to leave the district for meeting them, cf. Sec. 57 para 2 and Sec. 58 para. 2 Asylum Procedures Act.

Asylum seekers confined to airport transit zones must be given opportunity to contact a lawyer, cf. Sec. 18a para. 1 Asylum Procedures Act.

- B. What are the rules about access of legal advisers, UNHCR and NGOs regarding access to accommodation centres and other housing facilities (see article 14, §7 which is a mandatory provision)**

There are no statutory rules on access for UNHCR, NGOs and legal advisers on the Federal level. Permissions to enter are usually granted by the individual centre or accommodation facility. According to the practical reports there are generally no restrictions for UNHCR and legal advisers to enter the accommodation centres. UNHCR reports difficulties for some NGOs to get permission to enter some accommodation centres. Since the decision on access is within the responsibility of the reception centre's or accommodation facility's management, no general statement can be made but the practical reports do not indicate that any serious conflicts occur.

- C. Can the access of legal advisers, UNHCR and NGOs be limited for security reasons or any other reason (see article 14, §7, last sentence)?**

Since the decision on access is within the responsibility of the reception centre's or accommodation facility's management, no general statement can be made. Usually internal rules of the respective accommodation facility stipulate that access of people not living in the centre may be denied for security reasons.

**Q.27. A. Is a medical screening organised by the receiving State, is it mandatory or voluntary? Does it include HIV tests? (see article 9 which is an optional provision)**

Asylum seekers who are obliged to live in a reception centre or a shared accommodation facility are subject to a mandatory medical screening, cf. Sec. 62 Asylum Procedures Act. The scope of this screening may vary in the different federal states so no general statement on HIV tests can be made. The screening does include an HIV test in the federal states of Saxony and Bavaria, whereas in Berlin no HIV test is carried out.

**B. Do the legal provisions on reception conditions ensure that asylum seekers receive at least emergency care and essential treatment of illness as requested by article 15 §1 which is a mandatory provision? Do they have a further access to health care?**

Reception conditions must not be completely withdrawn but may be reduced to the absolute minimum that is necessary for a person to live and preserve his human dignity, cf. Sec. 1a Act on Benefits for Asylum Seekers. This includes emergency health care and essential treatment of acute illnesses. However, Sec. 1a is not applicable as long as the asylum procedure is not completed and the foreigner obliged to leave the Federal Territory. Sec. 5 para. 4 Act on Benefits for Asylum Seekers, providing for a complete withdrawal of benefits, has to be interpreted in a way that the above mentioned absolute minimum of benefits is preserved.

Regular health care benefits for asylum seekers include additionally dental prostheses if the treatment cannot be postponed, care for expectant mothers and women in childbed, and preventive medical checkups including necessary vaccinations.

This standard is however still lower than that for residents, which may lead to difficulties for persons with chronic diseases if they are not considered an acute illness.

**C. What is the practice regarding access of asylum seekers to health care and how is it organised? In particular, what is the situation in accommodation centres (are doctors coming to the centres or do asylum seekers go to doctors outside)?<sup>39</sup>**

There is no common practice in all federal states. In some reception centres and accommodation facilities a health service is in attendance. In other cases, asylum seekers have to visit a doctor outside the centre. Since asylum seekers are not part of the general health insurance scheme, they have to apply with the competent authority for a certificate of coverage to receive medical counselling. To avoid this often bureaucratic and time-consuming procedure, many asylum

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<sup>39</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

seekers tend to call an emergency doctor instead, who is obliged to help patients who do not have a certificate and may hand in his bill afterwards.

- Q.28. A. What is the length of the period determined by the concerned Member State during which asylum seekers have no access to the labour market? (see article 11 which is a mandatory provision)**

One year after application, cf. Sec. 61 para. 2 Asylum Procedures Law

- B. After that period, are asylum seekers or not obliged to obtain a work permit? In case is there a limit for the administration to deliver the permits and how quick are they delivered? What is their length?**

A work permit is mandatory to take up an employment, it may be issued by the aliens authority and requires the Federal Agency for Labour's approval.

- C. After that period, what are the conditions for access of the asylum seekers to the labour market? (in particular, are there rules concerning the maximum allowed of working hours or days per week, month or year, limits in terms of type of work or of professions authorised?**

When the asylum seeker holds a permit to stay for at least one year, he may be admitted to the labour market if he has a job offer. The permission may include restrictions in terms of working time, employer, type of work, area, etc.

- D. What are the rules in terms of priorities between asylum seekers on the one hand and nationals, EU or EEE citizens and legally third-country nationals on the other?**

A work permit may be issued if the vacancy cannot be filled with a German national, an EU citizen or a third country national who is privileged with regard to access to the labour market.

- E. Do asylum seekers have access to vocational training, does this or not depend of their right to access to the labour market, and in case at which conditions? (see article 12 which is optional regarding §1 and mandatory regarding § 2)**

In Germany, vocational training is generally done on the job, i.e. persons in vocational training are employed and receive at the same theoretical education. Hence, an asylum seeker has access to vocational training only if he is employed. That requires, again, a work permit.

- F. Are the rules regarding access to the labour market adopted to transpose the directive more or less generous than the ones applicable previously?**

There have been no changes in national legislation on labour market access due to the Directive.

Q.29. Are reception conditions subject to the fact that asylum seekers do not have sufficient resources? Are asylum seekers requested to contribute to reception conditions when they have personal resources (for instance if they work) or to refund the authorities if it appears that they have resources? (see article 13 §§ 3 and 4 which are optional provisions)

If asylum seekers have financial resources or receive an income, they are not entitled to benefits as long and as far as they are able to provide for themselves and their family members who live in the same household. If the respective asylum seeker is accommodated in a reception centre or another public accommodation facility or if he receives other benefits in kind, he is obliged to refund the authorities for these services, cf. Sec. 7 Act on Benefits for Asylum Seekers. Asylum seekers must not reject reception conditions (in particular housing) in these cases but are obliged to live in the accommodation facility which may be rather expensive.

25 per cent of the income an asylum seeker receives from employment is not taken into account when calculating the asylum seekers ability to contribute to reception conditions.

## **7. SPECIAL NEEDS OF PARTICULAR CATEGORIES OF ASYLUM SEEKERS**

Q.30. A. Which of the different categories of persons with special needs considered in the directive are taken into account in the national legislation (see article 17, §1 which is a mandatory provision): disabled people, elderly people, pregnant women, single parents with minor children, persons who have been tortured, raped or victims of serious physical or psychological violence? Include in your answer all other categories envisaged in national law.

Legal Provisions:

- Pregnant women and women in childbed are entitled to special medical care and midwife support, cf. Sec. 4 para. 2 Act on Benefits for Asylum Seekers.
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- For other persons with special needs additional benefits may be granted if this is necessary in the individual case. Additional benefits may in particular be granted if a child requires more clothes due to growth periods or if parents of a new born child lack basic equipment for the bringing up<sup>40</sup>. Additional benefits may also be granted to ill or disabled people to meet their additional needs in terms of food or clothing, cf. Sec. 6 para. 1 Act on Benefits for Asylum Seekers. This legal provision does not define groups of

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<sup>40</sup> Cf. practical report Caritas, Question 1.C on diapers.

persons with special needs as the directive does. Benefits are granted on a discretionary basis. The practice of granting or rejecting applications for additional social benefits is thus formed to a large extent by the courts.

- Sec. 6 para. 2 Act on Benefits for Asylum Seekers mentions persons with special needs, e.g. unaccompanied minors and persons who have suffered torture, rape or other forms of serious psychological, physical or sexual violence, however, this provisions does not apply to asylum seekers but only to persons enjoying temporary protection according to Directive 2001/55/EC. Interpreting the provision of Sec. 6 as a whole in the light of Directive 2003/9/EC, para. 2 must not be read as an exclusive entitlement of persons under temporary protection whereas victims of violence and other persons with special needs do not receive any treatment or aid. The correct interpretation of para. 1 leads however to the conclusion that persons who have special needs (e.g. because of suffered torture, rape or other kinds of serious violence, or because of their age) have to be granted essential treatment or aid.

**B. How is their specific situation taken into account (see articles 13, §2, second indent, 16 §4 second sentence and 17 which are mandatory provisions)?**

Some examples:

*Administrative Court of Munich:* A multiple disabled child is entitled to visit an integrative kindergarten if this is necessary to meet the child's special needs<sup>41</sup>.

*Social Court of Frankfurt:* Costs for assisted living must be borne by the government if the ending of the assistance would constitute a serious threat to the asylum seeker's health. The mental health must be regarded equivalent to the physical health<sup>42</sup>.

*Higher Administrative Court of Lower Saxony:* Psychological Treatment must be paid in serious cases, however, in the respective case an entitlement was denied as the alleged post-traumatic stress disorder of the asylum seeker was not acknowledged by the court<sup>43</sup>.

*Administrative Court of Gera:* Implantation of hip joint prosthesis is not considered necessary even if the asylum seeker's hip joint is irrevocably destroyed as long as a pain relieving treatment is possible and enables the asylum seeker to live free of pain<sup>44</sup>.

**C. How and when are the special needs of the concerned persons supposed to be legally identified (see article 17 § 2 which is a mandatory provision and clarify how it has been interpreted by transposition)?**

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<sup>41</sup> Administrative Court of Munich, Decision of 26 June 2002, file-no. M 18 K 01/4925.

<sup>42</sup> Social Court of Frankfurt, Decision of 16 January 2006, file-no. S 20 AY 1/06 ER.

<sup>43</sup> Higher Administrative Court of Lower Saxony, Decision of 6 July 2004, file-no.12 ME 209/04.

<sup>44</sup> Administrative Court of Gera, Decision of 7 August 2003, file-no. 6 K 1849/01 GE.

There is no legal provision which stipulates that a general screening has to take place to identify people with special needs as presupposed by the directive. Persons with special needs are granted the necessary help if they identify themselves or the responsible authority obtains knowledge through other asylum seekers, social workers or an NGO.

- D. Is the necessary medical and other assistance provided to persons with special needs as requested by article 15, §2 which is a mandatory provision and in particular to victims of torture and violence as requested by article 20 which is a mandatory provision?**

Even if victims of torture, rape or other forms of serious psychological, physical or sexual violence should receive the necessary medical and psychological treatment (see above), practical reports indicate that sufficient treatment is not always provided. This applies in particular to psychological treatment for traumatised persons which is carried out to some extent by NGOs. Due to capacity problems, in some cases traumatised persons have to wait quite long before they receive psychological counselling and treatment<sup>45</sup>.

**Q.31.**

**About minors:**

- A. Till which age are asylum seekers considered to be minor?**

In general, 18 years, cf. Sec. 12 para. 2 Asylum Procedures Act. However, in terms of social benefits asylum seekers from the age of 14 are entitled to the full amount of social benefits. With regard to the asylum procedure, minors of 16 years and older have the legal capacity to act.

- B. How is access of minor asylum seekers to the education system ensured? Is it at school or in case inside accommodation centres and can it be considered as similar to the conditions for nationals as requested by article 10, §1?**

Asylum seekers of school age are offered access to public schools if they stay more than three months in Germany. Most federal states consider it mandatory for asylum seekers at school age to attend school<sup>46</sup>. Mandatory education ends when a minor turns sixteen. Children of asylum seekers generally attend public schools outside the accommodation facilities. However, since education is within the competence of the federal states, no comprehensive answer on the details can be given.

- C. Is access to education ensured not later than 3 months as requested by article 10, §2 (or after maximum one year if specific education for asylum seekers is provided) and till an expulsion decision is really enforced?**

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<sup>45</sup> Cf. to practical reports UNHCR and Caritas.

<sup>46</sup> Except Baden-Württemberg, Hesse and Saarland. Saxony has only recently adopted compulsory education for minor asylum seekers at school age.

Only a cursory view is possible, since legislation varies between the federal states. For children at school age, i.e. 6-16 years, access to school is generally ensured. There may be transitory classes to help the children of asylum seekers to integrate themselves more easily and to learn German. Some problems seem to occur in federal states in which no mandatory education exists for children of asylum seekers<sup>47</sup>. Newly arrived minors of 16 and older are not subject to mandatory education and may therefore face serious difficulties to attend a school. The obligation to visit school starts as soon as the asylum seeker moves from the reception centre to another accommodation facility. According to Sec. 47 para 1 Asylum Procedures Act, the stay in the reception centres is limited to three months. Thus, Art. 10 para 2 of the directive is respected.

- D. Is specific education (like language classes) available for asylum seekers, in particular to facilitate their effective access to the education system of the reception Member State (see article 10, §2 which is an optional provision)?**

This again depends to a high degree on the legislation in the specific federal state and on the commitment of NGOs and other private initiatives, so no general statement can be given. Especially in bigger cities transitory classes are often offered to facilitate the children's transition into the regular school system. However, there is no general provision on the federal level stipulating such courses.

- E. Are minors in general accommodated with their parents or with the person responsible of them? (see article 14, § 3)**

Sec. 47 para. 2 Asylum Procedures Act stipulates that minor children shall be accommodated with their parents even if they are no asylum seekers themselves. If children do not arrive together with their parents, it may take some time to allocate them to the same place. Cf. Question 23 for further details.

- F. Do minors with special needs enumerated by article 18, §2 which is a mandatory provision, have access to appropriate mental health care and qualified counselling?**

Minors may receive mental health care and counselling according to Sec. 6 para. 1 Act on Benefits for Asylum Seekers. This provision is not designed exclusively for minors but mentions the special needs of children. Nevertheless, minors as enumerated in Art. 18 para. 2 of the Directive fall under this provision. Sec. 6 para. 1 is not very clear in its wording and gives rise to some questions concerning its scope of application, especially when comparing it with its second paragraph. An

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<sup>47</sup> Cf. to practical report UNHCR, Question 12.A.

interpretation that is conform with the requirements of the Directive is though possible and necessary (cf. Q.30.A).

**G. How and when is organised the representation of unaccompanied minors (guardianship, special organisation) and regularly assessed? (see article 19, §1 which is a mandatory provision)**

As soon as a minor who is younger than sixteen<sup>48</sup> claims asylum at a border post, the police or an aliens authority, the respective authority is obliged to refer to the guardianship court, which will instantly appoint a guardian for the asylum procedure since the minor is not capable to file a valid asylum application on his own.

After the guardianship court has considered the parental custody of the minor as suspended, it will appoint a guardian to represent the minor in general matters. In some federal states, a lawyer is appointed for the representation as far as the asylum procedure is concerned, while the Youth Welfare Office represents the minor in all other affairs<sup>49</sup>. Minors sixteen and older are legally able to run their asylum procedure on their own, however, they are still minors with regard to almost all other aspects of daily life. A guardian is therefore necessary to represent these minors outside the asylum procedure. In practice, the appointment seems to fail in a considerable number of cases.

**H. How is placement of unaccompanied minors organised (with adult relatives, a foster family, in special accommodation centres or other suitable accommodation)? (see article 19, §2 which is mandatory provision)**

Unaccompanied minors (younger than 16) are usually accommodated in Child and Youth Welfare facilities. Asylum seekers of sixteen years and older are usually accommodated in the regular reception centres and other accommodation facilities<sup>50</sup>.

**I. How is the tracing of the family members of the unaccompanied minors organised? Are measures taken to protect confidentiality of information when necessary? (see article 19, §3 which is a mandatory provision)**

Unaccompanied minors are accommodated in a centre of youth welfare. Initially they are subject to a screening procedure carried out by the youth welfare authority. The minors are interviewed by social workers to find out about their background, their current situation and their needs. A translator is involved, if necessary. The interviewer tries to

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<sup>48</sup> Minors of sixteen years and older are capable to act in the asylum procedure, cf. Sec. 12 para 1 Asylum Procedures Act.

<sup>49</sup> The latter guardianship may be appointed for all minors irrespective their age. Cf. Helga Jockenhövel-Schiecke, Schutz für unbegleitete Flüchtlingskinder, in: Zeitschrift für Ausländerrecht (ZAR) 1998, pp. 165 – 175; Roland Fritz, Gemeinschaftskommentar AsylVfG (Commentary on the Asylum Procedures Act), § 18a, Rn. 40 (Sec. 18a, No. 40).

<sup>50</sup> Erich Peter, Unbegleitete Minderjährige im Lichte des Zuwanderungsgesetzes und der EU-Asylrechtsharmonisierung, in: Zeitschrift für Ausländerrecht (ZAR) 2005, pp. 11 – 18.

find out details about the minors' families and relatives, be it in Germany, be it in their country of origin or be it in some third country. If the minor delivers any information, the authorities try to identify and localise the mentioned family members or relatives with the help of organisations like International Social Service, familie international Frankfurt e.V., or the search service of German Red Cross.

However, due to scarce information given by the minors or the problem to identify themselves, the tracing of relatives often fails.

Concerning confidentiality, no general statement can be made as the tracing of family members is highly decentralized (see above). This question could only be answered by practitioners working in the youth welfare, however, a respective question was not part of the practical questionnaire.

## **8. EXCEPTIONAL MODALITIES OF RECEPTION CONDITIONS**

**Q.32. Apart from detention covered by the next question, are there exceptional modalities for reception conditions in the following cases and if yes, which ones and for how long are they applicable, knowing that they should be “as short as possible” (see article 14, §8)?**

**A. Persons with specific or special needs, regarding in particular the period of assessment of those needs?**

There are no exceptional modalities during the period of assessment which shall be carried out as fast as possible. During this period, the concerned persons receive the regular reception conditions. However, in many cases, in particular with regard to handicapped people, people with illnesses, children<sup>51</sup> and elderly people, special needs are quite obvious, so extra benefits may be granted on the spot.

**B. Non availability of reception conditions in certain areas**

*Not applicable*

**C. Temporarily exhaustion of normal housing capacities**

Not relevant

**D. The asylum seeker is confined to a border post**

Asylum seekers who arrive in Germany by air and come from a safe country of origin or cannot identify themselves with a valid passport or passport substitute are subject to a specific airport procedure, see Sec 18 a Asylum Procedures Act. In these cases the asylum procedure will be handled before the asylum seeker is permitted to enter the federal territory provided that adequate accommodation on the airport premises

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<sup>51</sup> The assessment of a child's age is in practice often carried out by mere estimate, cf. Erich Peter, Unbegleitete Minderjährige im Lichte des Zuwanderungsgesetzes und der EU-Asylrechtsharmonisierung, in: Zeitschrift für Ausländerrecht (ZAR) 2005, pp. 11 – 18.

is available or that it is impossible only due to clinical treatment. Material reception conditions are nevertheless to be granted according to the Act on Benefits for Asylum Seekers. The asylum seeker must be admitted to the federal territory

- if the Federal Office for Migration and Refugees announces that it is unable to make a short-term decision
- if the Federal Office does not decide within two days after the asylum application has been filed
- if the court which is handling a motion for an injunction against the Federal Office's decision has not decided within 14 days after the injunction has been applied for.

E. All other cases not mentioned in the directive (for instance urgent situation in case of a sudden high number of applicants outside a case of application of the directive on temporary protection).

Not relevant

**Q.33. Detention of asylum seekers (we do not cover the situation of rejected asylum seekers detained for the purpose of their return) (see articles 6 §2, 7 §3, 13, §2 2<sup>nd</sup> indent and 14 §8 which implies that the directive is in principle applicable in case of detention):**

**A. In which cases or circumstances and for which reasons<sup>52</sup> (identity verification in particular if the persons have no or false documents, protection of public order or national security, refugee status determination, way of entry into the territory, etc) can an asylum seeker be detained during the asylum procedure till his request has been finally rejected. Quote precisely in English in your answer the legal basis for detention of asylum seekers in national law.**

It is generally not possible to detain asylum seekers except for reasons of criminal investigations (custody) or a conviction in a criminal court. However, in extreme cases of non-cooperation, coercive detention may be ordered by a court following the general rules of administrative execution. This detention is not a sanction but a means of coercion. In terms of detention as a penal sanction it must be noted that the Asylum Procedures Act contains provisions as to offences punishable with imprisonment. These asylum-related offences are:

- Non-compliance with allocation orders, Sec. 85 No. 1 in relation with Sec. 50 para. 6 Asylum Procedures Act
- Acting contrary to movement restrictions repeatedly, Sec. 85 No. 2 in relation with Sec. 56 para. 1 or 2 Asylum Procedures Act

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<sup>52</sup> Please specify it article 18 §1 of the directive on asylum procedures of 1 December 2005 which specifies that "Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum" is or not respected (even if has not yet to be transposed).

- Unauthorised work, Sec. 85 No. 3 in relation with Sec. 60 para. 1 Asylum Procedures Act<sup>53</sup>
- Non-compliance with an executable accommodation order, Sec. 85 No. 4 in relation with Sec. 60 para. 2 Asylum Procedures Act

The maximum period of imprisonment as penal sanction for one of the above-mentioned offences is one year.

The so-called airport procedure (Flughafenverfahren) according to Sec. 18a Asylum Procedures Act was not considered a case of detention by the German Constitutional Court<sup>54</sup>. The court pointed out that the asylum seeker is not obliged to stay within the airport premises but free to leave by air. However, it may be argued that the reasons for this rulings<sup>55</sup> cannot be transferred upon the application of the directive. Nevertheless, it must be kept in mind that the airport procedure takes place before the asylum seeker is granted access to the territory of the Federal Republic of Germany.

**B. Has your member State adopted measures to transpose §3 of article 7 which is an optional provision? If yes, how has this provision been legally understood (is it a case of detention or an obligation to stay in and not leave a certain place?) and for which reasons can an asylum seeker be “confined” in such a place?**

Art. 7 para. 3 of the Directive is not understood as a case of detention. However, restrictions on free movement are based on this provision. Even if asylum seekers are free to leave the reception centre or any other accommodation facility they are obliged to stay within the district of the aliens authority in charge. These restrictions apply to all asylum seekers and are considered necessary for reasons of effectiveness of the asylum procedure and of burden-sharing among the federal states and municipalities.

**C. Are there legally alternatives to detention, like obligation to report to the authorities, obligation to stay in a place, provision of a guarantor or of a financial guarantee?**

As far as the airport procedure is concerned, no.

**D. Which is the competent authority to order the detention of an asylum seeker? Explain if different authorities are involved to first take and later confirm the decision.**

The airport procedure is the obligatory procedure for all asylum seekers flying into a German airport if they come from a safe country of origin or do not carry any valid documents. The decision if these preconditions

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<sup>53</sup> Not applicable at the moment due to changes in the system of granting access to the labour market. The prohibition to work is no longer imposed by an obligation, but can be deducted from the Residence Act.

<sup>54</sup> Judgement of 14 May 1996, File-No. 2 BvR 1516/93, BVerfGE 94, pp. 166 – 240.

<sup>55</sup> The question to answer by the Constitutional Court was if the airport procedure was a case of habeas corpus.

are met is on the border authorities and may be appealed to the administrative court within three days.

**E. For how long and till which stage of the asylum procedure can an asylum seeker be detained?**

The asylum seeker must be admitted to the Federal Territory if the Federal Office for Migration and Refugees announces that it is unable to decide on the asylum application within short term or if it does not decide within two days after application.

If there is a negative decision by the Federal Office within two days, the asylum seeker has the opportunity to appeal against it within three days. If the administrative court does not decide on the asylum seekers appeal within 14 days, he must be admitted to the Federal territory. Altogether the airport procedure will not exceed 19 days, this period may however be some days longer as far as unaccompanied minors under 16 years are concerned as a guardian has to be appointed first.

**F. In which places (can we call them “closed centres”?) are asylum seekers detained (places in a special closed centres reserved only to asylum seekers, together with returnees like illegal aliens or even in a normal prison, in case within separated areas or with the other detainees)? Indicate if a difference has to be made following the location of the “closed centres” at the border or on the territory? Which is the authority managing those places and is it the same as the one in charge of reception conditions?**

*During the airport procedure the asylum seeker is accommodated within the airport premises provided it offers suitable facilities. If suitable facilities are not available at the airport, the asylum seeker is sent to a reception centre and is subject to the regular asylum procedure.*

**G. Does UNHCR and NGOs have access to the places of detention and under which conditions?**

*Not applicable*

**H. What appeal(s) can asylum seekers introduce against the fact he is detained? Is article 18 of the directive on asylum procedures of 1 December 2005 following which “Where an applicant for asylum is held in detention, Member States shall ensure that there is a possibility of speedy judicial review” respected (even if it has not yet to be transposed)?**

*See above (D)*

- I. Is the directive on reception conditions considered to be in principle applicable to the places where asylum seekers are detained? In particular which information do they receive about their rights, which access do they have to legal advice and health care?

The asylum seeker in the airport procedure must be given opportunity to contact a person of his choice to give him legal assistance (Sec. 18a para 2 Asylum Procedures Act). Furthermore, the provisions of the Act on Benefits for Asylum Seekers are in principle applicable to asylum seekers being subject to the airport procedure (Sec. 1 para 1 No.2 Act on Benefits for Asylum Seekers).

- J. Apart from freedom of movement, what are the main differences between normal reception conditions and exceptional modalities for reception conditions in case of detention, knowing that they should be “as short as possible” (see article 14, §8)? If it is about closed centres, are the regulations of those places in line with the requirements of the directive (is article 13, §2, second indent of the directive following which “*Member States shall ensure that standards of living is met (...) in relation to the situation of persons who are in detention*” respected?).

*See above.*

- K. Are measures taken to avoid detention of asylum seekers with special needs (if yes, which ones?) or are special measures taken because of their needs?

Sec. 18a Asylum Procedures Act does not differentiate between different groups of asylum seekers. However, special needs are met by the provisions of the Act on Benefits for Asylum Seekers which is applicable, see above.

- L. Can minor asylum seekers be detained together with relatives? Can unaccompanied minor asylum seekers be detained? If yes, are there special measures which take into account that children are concerned?

Sec. 18a Asylum Procedures Act does not differentiate between different groups of asylum seekers. This means that no distinction is made between minors and adults in the airport procedure, a fact which is widely criticised by NGOs as accommodation within the airport premises may effect hardships especially for unaccompanied minors<sup>56</sup>.

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<sup>56</sup> Cf. Helga Jockenhövel-Schiecke, Schutz für unbegleitete Flüchtlingskinder: Rechtsgrundlagen und gegenwärtige Praxis, Zeitschrift für Ausländerrecht und Ausländerpolitik (ZAR) 1998, pp. 165 – 175.

**M. In particular is article 10 regarding access to education of minors respected in those places?**

*Not applicable as the airport procedure is strictly limited in time, see above.*

**N. How many asylum seekers are for the moment detained in your Member State? Which proportion does this represent in comparison of the total number of asylum seekers at the same moment?**

*In 2004, 587 persons were subject to the airport procedure. 287 of them were admitted to the Federal Republic after the Federal Office for Migration and Refugees had announced that it is unable to decide on their case within short term. The numbers of asylum seekers in the airport procedure are continuously decreasing since 2001.*

**9. ORGANISATION OF THE SYSTEM OF RECEPTION CONDITIONS**

Q.34. Explain if the system of providing reception conditions is centralised or decentralised (which levels of government do provide practically reception conditions?) (do not confuse this question with question number 3 about the competence to make rules about reception conditions).

In Germany, the system of reception conditions is decentralised. Reception centres are set up, maintained and managed under authority of the Länder. The same applies to other accommodation facilities. In some of the federal states the municipalities are in charge to organize reception facilities for asylum seekers who are not obliged to live in a reception centre anymore. Costs for reception conditions are borne by the federal states. As far as municipalities are in charge for delivering reception conditions, they are refunded by the respective federal state.

Q.35. In case, are accommodation centres public or/and private (managed by NGOs? If yes, are the NGOs financially supported by the State?)<sup>57</sup>

This question cannot be answered in the same way for all federal states. E.g. in Bavaria all accommodation centres are managed by public authorities. In other federal states, accommodation centres are in part or completely managed by NGOs or private companies. The span of involved private organisations is very wide: In Berlin and Bremen the reception centres are managed by the Arbeiterwohlfahrt (Workers' Welfare), a charitable organisation whereas in Brandenburg the reception centre is managed by a private security company. These private organisations have in common that they deliver their services on the basis of a contract with the respective federal state.

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<sup>57</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

Q.36. In case, how many accommodation centres are there in your Member State (distinguish in your answer between public and private centres)?<sup>58</sup>

There are 18 reception centres in Germany (Date: June 1, 2006). It is, however, not possible to quantify the number of other accommodation facilities as they are not centrally registered.

Q.37. Is there in the legislation a plan or are there rules in order to spread the asylum seekers all over the territory of your Member State to avoid their concentration in some areas like big cities or to share the costs of their reception between central, regional and local authorities?

Such a key exists in Sec. 45 Asylum Procedures Act. This so-called Königssteiner Schlüssel (Königstein Key) regulates the allocation of asylum seekers among the federal states to achieve a fair burden sharing. This key takes into account the population and the tax income of the different federal states. The federal states usually use a similar key to allocate the asylum seekers to several accommodation facilities within their territory.

Q.38. Does a central body representing all the actors (like NGOs) involved in reception conditions exist? Does it play a consultative role for the State authorities, a coordination role for the actors or any other role?<sup>59</sup>

There is an advisory board at the Federal Office for Migration and Refugees consisting of experts from science, charitable and other non-governmental organisations, administrative courts, administrative bodies and lawyers. This board plays a consultative role. However, there is no central body as suggested in the question.

Q.39. **A. Which is the body in charge of guidance, monitoring and controlling the system of reception conditions as requested by article 23 which is mandatory provision? Include in your answer which is the competent ministry (Interior, Social affairs, etc) for reception conditions?**

Since the administration of reception conditions is organized by the federal states, there may be different structures of guidance, monitoring and controlling. In Bavaria, there is a commissioner for the reception of refugees who is directly responsible to the Ministry of Labour, Social Affairs, Family and Women. This commissioner is in charge to coordinate the reception centres and is authorised to give them orders. The highest monitoring authority is the ministry in charge which is in the case of Bavaria the Ministry of Labour, Social Affairs, Family and Women<sup>60</sup>. In Saxonia no such commissioner exists and the highest monitoring authority is the Ministry of the Interior<sup>61</sup>. In Hamburg it is

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<sup>58</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>59</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>60</sup> Cf. Regulation on the Implementation of Asylum (DV Asyl) of 4 June 2002.

<sup>61</sup> Cf. Sec. 2 of the Saxonian Act on the Reception of Refugees of 13 February 2003.

the Office for Social and Family Affairs<sup>62</sup>. In Hesse the Ministry for Women, Labour and Social Affairs is the highest monitoring body<sup>63</sup>. In Berlin a special body, called “Begleitende Heimverwaltung” is responsible for the monitoring of privately managed accommodation facilities<sup>64</sup>.

- B. Has your Member State (like the Czech Republic did recently) approved quality standards (not necessary legally binding) for housing services (for instance about the number of persons per bedroom on the basis of its size, number of accessible toilets, bathrooms, showers and washing machines per number of persons, existence of common rooms with radio, television, newspapers, books, computers, accessibility of telephone, existence of recreative rooms for children,...) to be respected in particular in accommodation centres?<sup>65</sup>

There are neither such standards on the federal level, nor – as far as we know – in the federal states.

- C. **How is this system of guidance, control and monitoring of reception conditions organised?**<sup>66</sup>

There is a system of monitoring which is more or less the same for all administrative structures. According to this system, the administrative level ranking higher in the hierarchy is authorised to control the lower level in terms of legality and expediency of administrative acting. The highest ranking level in this hierarchy is usually the competent ministry. Additionally, there is a monitoring system with regard to the proper performance of duties by the officers which is structured alongside the same hierarchy but is dominated by the Ministry of the Interior of the concerned federal state.

There is, however, no specific monitoring system with regard to the quality of reception conditions.

- D. Does the body in charge of guidance, control and monitoring produce reports about the level of reception conditions? If yes, how frequently and are they public?<sup>67</sup>

No.

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<sup>62</sup> Cf. Order on the Implementation of the Act on Benefits for Asylum Seekers of 31 January 1994.

<sup>63</sup> Cf. Sec. 6 of the Regulation on the Implementation of the Act on Benefits for Asylum Seekers of 16 November 1993.

<sup>64</sup> Cf. practical report Berlin, Q.19.B.

<sup>65</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>66</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>67</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

- Q.40. A. What is the total number of asylum seekers covered by reception conditions for the last year for which figures are available (see article 22 obliging Member States to calculate those statistics about which we also asked the Commission to require them from Member States for mid June)?

In 2003, 264,240 persons received benefits under the Act on Benefits for Asylum Seekers. However, not all these persons were asylum seekers, neither do all asylum seekers receive benefits under the Act on Benefits for Asylum Seekers since they may have sufficient funds to maintain themselves, receive a working income or are entitled to regular social aid after 36 months of permitted stay in Germany. This becomes clear when comparing these numbers with the total number of asylum seekers in Germany: On December 31, 2004, only 14,690 asylum applications were pending with the Federal Office for Migration and Refugees plus 95,653 pending actions in the courts.

- B. What is the total budget of reception conditions in euro for the last year for which figures are available?<sup>68</sup>

In 2003, 1.4 billion Euro have been spent on benefits under the Act on Benefits for Asylum Seekers. However, this number has to be read with the same reservations as above.

- C. What is the average cost of reception conditions in euro per asylum seeker for the last year for which figures are available?<sup>69</sup>

The average cost for reception conditions can hardly be determined since they depend on too many factors: the type of accommodation facility, if single men/women or families are concerned, if unaccompanied minors are concerned, the stage of the asylum procedure etc.

- D. Are the costs of reception conditions of asylum seekers supported by the central/federal or federated government or are they shared with regional and/or local authorities?

Reception conditions are financed from the budgets of the federal states (Länder).

- F. **Is article 24 § 2 of the directive following which “*Member States shall allocate the necessary resources in connection with the nationals provisions enacted to implement this directive*” respected?**<sup>70</sup>

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<sup>68</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>69</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>70</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

This question is difficult to answer since the funding may differ between the federal states. As far as reception conditions are provided by the federal states, one can assume that they are soundly financed. There are enough accommodation facilities to house all asylum seekers and no problems occur with regard to social benefits granted by the federal states directly.

However, it is difficult to assess the allocation of the necessary funding when reception conditions are provided by private organisations. State funding for NGOs providing counselling and psychological help was reduced in the last years, mostly due to the fact that numbers of asylum seekers were on a constant decline. These shortenings have nevertheless caused a reduction of services offered by these organisations. Thus, especially the counselling of persons with special needs may in some cases be insufficient as practical reports indicate.

Q.41. A. What is the total number of persons working for reception conditions?<sup>71</sup>

No figures available, due to federal structures and cooperation with NGOs and private companies.

B. **How is the training of persons working in accommodation centres organised? Does it take into account specific needs of unaccompanied minors when relevant as well as the gender dimension? (see article 14 §5, 19 § 4 and also 24 §1 which are mandatory provisions)?**<sup>72</sup>

Reception centres and accommodation facilities are run by the federal states, thus, hiring and training of personnel is within their responsibility, too. A general statement can therefore not be made. Practical reports indicate that personnel is trained in education seminars<sup>73</sup> at regular intervals. NGOs working with refugees train their personnel within their own responsibility<sup>74</sup>. Unaccompanied minors are accommodated in special facilities where adequately trained personnel is employed.

C. Are there rules about the deontology of persons working in accommodation centres, in particular on confidentiality?<sup>75</sup>

Personnel working in the public sector are obliged not to disclose confidential information. The violation of this public duty is considered a criminal offence. Most NGOs have a similar policy. Violations may lead to instant dismissal.

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<sup>71</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>72</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>73</sup> Cf. Practical report Bavaria Question 21.

<sup>74</sup> Cf. Practical report Caritas Question 21.

<sup>75</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

## 10. IMPACT OF THE DIRECTIVE

### Legal impact of the transposition of the directive:

- Q.42. Specify if there are or not big problems with the translation of the directive in the official language of your Member State and give in case a list of the worst examples of provisions which have been badly translated? (please note that this question has in particular been added to the questionnaire concerning the new Member States)

The word reception conditions as such causes some difficulties. In German, it is translated as “Aufnahmebedingungen”, which is correct as far as the total situation is concerned but can hardly be used for individual benefits or services.

- Q.43. Where there precise legal rules on reception conditions for asylum seekers before the adoption of the norms of transposition of the directive (if yes, specify what the nature of those rules was (legislation, regulation, administrative instructions,...))?

Yes, the Directive did not lead to major changes in the legislation.

- Q.44. Did the legal rules applicable to reception conditions become more clear, precise, coherent or detailed with the adoption of the transposition norms (for instance do you now have after the transposition one basic text dealing with reception conditions instead of numerous different texts in the past?)

see above.

- Q.45. Did the transposition of the directive imply important changes in national law or were the changes of minor importance? In case, list the most important changes that have been introduced.

Up to now, there have been no changes in national legislation due to the directive. As mentioned above, some amendments to the existing legislation are in preparation. See attachment.

### Political impact of the transposition of the directive:

- Q.46. Explain briefly if there has been an important debate about the transposition of the directive (in particular in the Parliament, but possibly also in the government, between political parties, including in medias, etc; underline in case the main points which have been discussed or have created difficulties)

There has not been such a debate since the government did not see the need for any major changes in national legislation. According to UNHCR some discussion took place among practitioners, however, this discussion did not lead to a wider debate. Even in academic circles, the directive and potentially necessary amendments to national law were not widely discussed. This is also the reason why no comprehensive bibliography can be provided.

**Q.47. Did the transposition of the directive contribute to make the internal rules stricter or more generous? In particular, did your Member State use the occasion of the transposition to abolish more favourable provisions of national law? Does your Member State still have rules more favourable than the provisions of the directive (if yes, try to give the more important examples).**

see above.

## **11. ANY OTHER INTERESTING ELEMENT**

Q.48. What are in your view the weaknesses and strengths of the system of reception conditions in your Member State?<sup>76</sup>

One clear weakness is the system to assess the age of minors who do not have any documents showing their age. Since there is no legal basis for an X-ray examination of the carpal bone, which would deliver reliable results, the assessment is done by mere estimate. Since reception conditions are different dependent on the age of the asylum seeker, this practice needs to be improved.

Q.49. Mention any good practice in your Member State which could be promoted in other Member States<sup>77</sup>

The decentralised accommodation of asylum seekers helps to establish relatively small units in which internal tensions can be reduced more easily. Individual needs of asylum seekers may be identified easier and the work of local charity organisations is facilitated. These are rather atmospheric factors but they may help to avoid unnecessary hardships for asylum seekers. On the other hand this system makes it more difficult to establish and monitor common standards.

Q.50. Please add here any other interesting element about reception conditions in your Member State which you did not had the occasion to mention in your previous answers.

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<sup>76</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.

<sup>77</sup> To be answered with the help of UNHCR local office competent for your Member State or on the basis of the answers of NGOs and accommodation centres to the practical questionnaire.