

GERMANY

Germany is a state party to the United Nations Convention Relating to the Status of Refugees and its Protocol, as well as to the International Covenant on Civil and Political Rights and its First and Second Optional Protocols. In 2000, some 78,600 applications for asylum were filed; at the end of the year, there were 43,791 applications pending first instance decisions.¹ In 2001, some 88,287 asylum applicants were lodged and at the end of 2001 there were 56,111 asylum seekers awaiting first instance decisions on their applications.² Figures available for the first quarter of 2002 show a reduction in applications, with some 19,230 applications filed.³ No information was available on the numbers of asylum applicants detained.

Those whose applications are being processed are typically housed in open reception centers.⁴ Detention is used mainly for asylum seekers whose applications have been rejected. Germany also may detain individuals who have resided in the country without authorization.⁵

Asylum seekers arriving at an airport without identity documents or from a “safe country of origin” are referred to an accelerated asylum procedure and kept at the airport “transit zone,” a closed airport reception center. If no decision has been made on the asylum application after two days, these asylum seekers are released and assigned to a reception center.⁶ The conditions in the transit zone at the Frankfurt airport were strongly criticized

¹ U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2001 at 226, *available at* <http://preview.refuges.org/world/worldmain.htm> (Immigration and Refugee Services of America 2001) [hereinafter USCR WORLD REFUGEE SURVEY 2001].

² U.S. COMMITTEE FOR REFUGEES, WORLD REFUGEE SURVEY 2002 at 199, *available at* <http://www.refugees.org/WRS2002>. (Immigration and Refugee Services of America 2002) [hereinafter USCR WORLD REFUGEE SURVEY 2002].

³ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, ASYLUM TRENDS IN 28 INDUSTRIAL COUNTRIES: JANUARY TO MARCH 2001—JANUARY TO MARCH 2002, *available at* <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+2wwBmeIFXx8wwwwwwwwwwhFqAIRERfIRfgItFqA5BwBo5Boq5AFqAIRERfIRfgIcFqF+8afDm15BGowcoSnmagd1DBGon5Dzmxwwwwww/opendoc.pdf> (June 13, 2002) (last accessed Aug. 29, 2002) [hereinafter *Asylum Trends in 28 Industrialized Countries*].

⁴ UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, RECEPTION STANDARDS FOR ASYLUM SEEKERS IN THE EUROPEAN UNION at 90 (July 2000) [hereinafter UNHCR EU REPORT 2000].

⁵ AMNESTY INTERNATIONAL, DETENTION OF ASYLUM SEEKERS IN THE EUROPEAN UNION at 7 (December 2000) [hereinafter AMNESTY EU REPORT 2000].

⁶ DANISH REFUGEE COUNCIL, LEGAL AND SOCIAL CONDITIONS FOR ASYLUM SEEKERS AND REFUGEES IN WESTERN EUROPEAN COUNTRIES at 108, *available at*

by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and Amnesty International. Amnesty International expressed concern that prolonged periods of detention in the transit zone might adversely affect the physical and psychological health of detainees.⁷

In response to the September 11 terrorist attacks in the United States—and subsequent reports that terrorist cells had operated in Germany prior to the attacks—the German government passed new anti-terror legislation in late 2001.⁸ The legislation amends many laws, including the Aliens Act and other regulations pertaining to foreigners. The new provisions will allow the government to check on incoming foreigners, including asylum seekers, more stringently, by collecting biometric data and by sharing more freely immigrants' personal information with law-enforcement agencies.⁹ The amendments will also allow closer monitoring of immigrants during their residence in Germany, easier deportation of foreigners considered extremist, and exclusion from the asylum procedure of persons who have committed certain crimes.¹⁰

A new immigration bill (the Immigration Act) was signed in June 2002, to enter into force in January 2003. The bill passed very narrowly in Parliament, and a constitutional challenge to its validity has been lodged. The bill contemplates speeding up the asylum process and proposes to require asylum seekers whose applications are deemed 'manifestly unfounded' but whose deportations have been suspended to live in new camps until they leave the country voluntarily.¹¹

Because Germany considers all of its neighbors to be safe third countries, border police who apprehend asylum seekers at or near a border are not required to refer the asylum seeker to the Federal Asylum Office and may instead refuse entry and force immediate return.¹²

<http://www.english.drc.dk/publications/> (May 2000) [hereinafter DRC W. EUR. REPORT 2000].

⁷ AMNESTY EU REPORT 2000, *supra* note 5, at 7-8.

⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 199.

⁹ *Id.*

¹⁰ *Id.* at 200.

¹¹ EUROPEAN COUNCIL ON REFUGEES AND EXILES, COUNTRY REPORTS 2001 at 85-87, available at <http://www.ecre.org/publications/countryrpt01.shtml> [hereinafter ECRE REPORT 2001].

¹² UNHCR EU REPORT 2000, *supra* note 4, at 85, 87.

Upon filing their application for asylum, all other asylum seekers are sent to open reception centers throughout the country for up to three months.¹³ After three months, they are typically sent to an accommodation center, until their claim has been finally adjudicated.¹⁴ While reception centers vary according to region, all provide meals and some accommodation centers provide cooking facilities. All provide federally-mandated allowances.¹⁵ Families are not typically, but may be, separated. The reception and accommodation centers are open, but an asylum seeker's movement is restricted to within the bounds of the center's district.¹⁶

Asylum seekers whose claims have been denied and who have stayed beyond the date of voluntary departure, failed to appear for removal, or are deemed likely to fail to appear for removal may also be detained.¹⁷ The authorities must apply for an order of detention from the competent judicial authority.¹⁸

*Is there independent review of the detention decision? Yes.*¹⁹

Detention lasting more than 24 hours can be ordered only by the courts, not the aliens authority.²⁰

According to German constitutional law (Art. 19, Abs. 4) every act carried out by a public authority is subject to judicial review upon petition to the courts. Judicial review of detention is provided for in the *Freiheitsentziehungsgesetz*, the law dealing with persons in some form of custody, such as psychiatric clinics or detention pending trial.²¹

¹³ *Id.* At 94; DRC W. EUR. REPORT 2000, *supra* note 6, at 108, 115.

¹⁴ UNHCR EU REPORT 2000, *supra* note 4, at 94.

¹⁵ *Id.* At 90; DRC W. EUR. REPORT 2000, *supra* note 6, at 115-16.

¹⁶ DRC W. EUR. REPORT 2000, *supra* note 6, at 115, 118.

¹⁷ UNHCR EU REPORT 2000, *supra* note 4, at 95.

¹⁸ AMNESTY EU REPORT 2000, *supra* note 5, at 7.

¹⁹ E-mail from Dr. Holger Hoffman, Rechtsanwalt, to Jaya Ramji, Debevoise & Plimpton, (Jan. 18, 2002) (on file with Debevoise & Plimpton) [hereinafter Rechtsanwalt Correspondence].

²⁰ *Id.*

²¹ *Id.*

The decision to detain is made by the civil section of an *Amtsgericht* (the lower district or local court). Appeal of this decision can be made within 2 weeks to the *Landgericht* (the district civil court) and then to the *Oberlandesgericht* (the regional civil court).²²

Review upon appeal is a substantive review of the merits of the case and new evidence may be presented.²³

Detention of aliens in the accelerated procedure must also be ordered by the court.²⁴

For rejected asylum seekers detained while awaiting deportation, the request to detain or extend detention is made by the alien authority and is reviewed, and usually confirmed, by local courts. Appeals may be made within two weeks, but as initial-level appeals are often not heard for several weeks, the period of detention may have expired before a decision is taken.²⁵

Are there limits on the period of detention? Yes.

Applicants in the accelerated procedure who are detained in the transit zone are interviewed quickly and if no decision is made within two days of the interview, are released.²⁶ If the asylum seeker appeals a decision to deny entry within three days and no decision is made within fourteen days, the asylum applicant is automatically released.²⁷ Despite this 19-day limit, the U.S. Committee for Refugees has reported that some asylum seekers have been kept in transit zone detention for months.²⁸

Those who have been arrested for illegal entry prior to applying for asylum may be detained for a maximum of four weeks. Amnesty International reported in 2000 that such cases of detention were very rare.²⁹

For rejected asylum seekers awaiting deportation, detention may be ordered. If a deportation order has not yet been adopted and no immediate decision on deportation can be made, detention of up to six weeks may be ordered. Once the deportation order has

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ UNHCR EU REPORT 2000, *supra* note 4, at 95-96.

²⁶ DRC W. EUR. REPORT 2000, *supra* note 6, at 108.

²⁷ UNHCR EU REPORT 2000, *supra* note 4, at 86.

²⁸ USCR WORLD REFUGEE SURVEY 2002, *supra* note 2, at 200.

²⁹ AMNESTY EU REPORT 2000, *supra* note 5, at 7.

been adopted, asylum seekers can be detained for one week if the asylum seeker is likely to abscond to avoid deportation. If the asylum seeker has failed to depart and changed his place of residence without informing the authorities, or if it is likely that the asylum seeker will fail to appear, then the competent judicial authority can order detention for six to eighteen months, after which time the alien must be released from detention.³⁰

In practice, detention rarely lasts longer than 3 months.³¹

Is there periodic review of detention? Not for asylum seekers who are awaiting resolution of their asylum claims. But for those liable to be deported, three-month review.

Rejected asylum seekers awaiting deportation have the right to review of their detention every three months.³² In order to continue to detain an alien with a removal order, the alien authority must establish that removal is possible within the next three months.³³

Is there access to government-funded legal aid? Very limited.

Financial aid for detainees is governed by the Civil Procedure Act, as is all legal aid provided in Germany.³⁴ State-funded legal aid is granted only to destitute appellants whose cases are considered by the judge to have a chance of success.

In practice, in very few cases is a legal aid attorney appointed.³⁵ An asylum seeker in the accelerated process whose application for asylum has been rejected as manifestly unfounded is provided with a government-funded local lawyer to discuss the possibility of an appeal.³⁶

In most cases, legal aid is granted only if the lawyer is locally based, which can prove difficult for applicants detained in a part of country distant from where their lawyer is located. Moreover, the compensation offered to lawyers is not substantial.³⁷

³⁰ *Id.*

³¹ Rechtsanwalt Correspondence, *supra* note 19 (estimates that within 3 months 90% of deportations are carried out).

³² DRC W. EUR. REPORT 2000, *supra* note 6, at 112.

³³ UNHCR EU REPORT 2000, *supra* note 4, at 95.

³⁴ Rechtsanwalt Correspondence, *supra* note 19 (citing Section 114f of Civil Procedure Act).

³⁵ DRC W. EUR. REPORT 2000, *supra* note 6, at 110-11.

³⁶ UNHCR EU REPORT 2000, *supra* note 4, at 89.

³⁷ Rechtsanwalt Correspondence, *supra* note 19.

In addition, funding for representation in a small number of cases is provided for by NGOs, church groups, UNHCR and others.³⁸

Vulnerable groups: In certain regions, unaccompanied minors are detained in juvenile detention facilities prior to removal.³⁹ Unaccompanied minors under 16 are appointed a legal representative.⁴⁰

³⁸ *Id.*

³⁹ UNHCR EU REPORT 2000, *supra* note 4, at 92

⁴⁰ DRC W. EUR. REPORT 2000, *supra* note 6, at 111.