

Germany Immigration Detention Profile

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INTRODUCTION

Since 2012, Germany has received the largest number of asylum applications in the European Union (EU). In 2013, more than 126,000 people sought international protection in Germany, the highest number of applications among industrialised countries in the world that year. In 2014, more than 202,000 people submitted asylum applications; 476,500 in 2015; and 745,000 in 2016. In 2016, Germany received almost 60 percent of all asylum applications in the EU and almost six times more than Italy, which ranked second (with almost 123,000 applications).¹

Despite the rising numbers of asylum seekers, Germany initially adopted a welcoming posture. In 2015, Chancellor Angela Merkel agreed to open the country's borders to more than 10,000 asylum seekers stranded in Hungary and declared that Syrian refugees were welcome to stay, independently from where they had first entered the EU.² More recently, however, the country has pursued more restrictive measures, including: increased rates of deportations to Afghanistan;³ new limitations on family

¹ Eurostat, "Asylum and Dublin statistics," <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>.

² Allan Hall and John Lichfield, "Germany opens its gates: Berlin says all Syrian asylum-seekers are welcome to remain, as Britain is urged to make a 'similar statement'," *Independent*, 24 August 2015, <http://www.independent.co.uk/news/world/europe/germany-opens-its-gates-berlin-says-all-syrian-asylum-seekers-are-welcome-to-remain-as-britain-is-10470062.html>; Kate Connolly, "Angela Merkel defends Germany's refugee policy after attacks," *The Guardian*, 28 July 2016, <https://www.theguardian.com/world/2016/jul/28/merkel-rejects-calls-to-change-germanys-refugee-policy-after-attacks>.

³ Mary Bulman, "Germany suspends deportations to Afghanistan following Kabul attack," *Independent*, 31 May 2017, <http://www.independent.co.uk/news/world/europe/germany-kabul-attack-deportation-flight-afghanistan-migrants-cancel-a7764811.html>; UNICEF, "Geplantes Gesetz zur besseren Durchsetzung der

reunion;⁴ the adoption of plans to set up shelters for returned children in Morocco;⁵ and the resumption of returns to Greece under the Dublin Regulation.⁶

The numbers of people ordered to leave Germany have also increased since 2013. Approximately 25,000 non-citizens were issued a return decision in 2013; 34,000 in 2014; 54,000 in 2015; and 70,000 in 2016.⁷ On the other hand, the numbers of immigration detainees have steadily dropped. In 2012, Germany placed 5,748 people in immigration detention; 4,812 in 2013; and 1,850 in 2014.⁸

Until 2014, Germany was one of the only European countries that used prisons to carry out immigration detention. As of 2013, of the country's 16 federal states (*Bundesländer*), ten used prisons for confining migrants. In July 2014, the Court of Justice of the European Union found that this practice was incompatible with the EU Returns Directive. In its ground breaking judgment in *Bero & Bouzalmate*, the court ruled that Germany could not rely on the fact that there are no dedicated detention facilities in a given federal state to justify keeping non-citizens in prison pending their removal. In *Pham*, the court found that the same rule applies even if the detainee has consented to being confined in a penitentiary.

Since these rulings, Germany has significantly overhauled its immigration detention system, in particular by ceasing to use prisons for immigration detention. As of 2016, the country operated seven facilities, all of which were dedicated immigration detention centres. Despite these reforms, recent laws have led to a more restrictive legal framework on detention, including a 2015 amendment to the Residence Act, which introduced grounds for detention during Dublin transfer procedures and "custody to secure departure," to be carried out in the airport transit zones.

Ausreisepflicht muss das Wohl der betroffenen Kinder berücksichtigen," 22 February 2017, <https://www.unicef.de/informieren/aktuelles/presse/2017/stellungnahme-unicef-ausreisepflicht/135618>.

⁴ AITIMA, "Serious Problem Regarding Family Reunification For Asylum Seekers In Germany Under Dublin III Regulation," 14 July 2017, <http://aitima.gr/index.php/en/news/421-14-07-2017-serious-problem-regarding-family-reunification-for-asylum-seekers-in-germany-under-dublin-iii-regulation>.

⁵ Lorena Gazzotti, "German plans to send migrant children to reception centres in Morocco ignore lessons from history," *The Conversation*, 29 June 2017, http://theconversation.com/german-plans-to-send-migrant-children-to-reception-centres-in-morocco-ignore-lessons-from-history-78012?utm_source=twitter&utm_medium=twitterbutton.

⁶ BBC News, "Germany to resume sending migrants back to Greece," *BBC News*, 7 August 2017, <http://www.bbc.com/news/world-europe-40850938>.

⁷ Eurostat, "Enforcement of Immigration Legislation," accessed 17 July 2017, <http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>; United Nations High Commissioner for Refugees (UNHCR). *Asylum Trends 2013: Levels and Trends in Industrialized Countries*, March 2014, www.unhcr.org/5329b15a9.html.

⁸ National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html.

LAWS, POLICIES, PRACTICES

Key norms. Germany's legal framework for immigration detention is provided in the 2008 [Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory](#) (Residence Act) (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz)*) and the 2008 [Asylum Act](#) (*Asylgesetz*).

Some of the provisions of the Residence Act are detailed in the 2009 General administrative regulation to the Residence Act ([Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz](#)). Procedural rules are provided in the 2008 [Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction](#) (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit*).

Within Germany's decentralised legal and administrative framework, the enforcement of immigration detention is under the remit of the federal states. Federal legal provisions are intended to provide only a general framework for immigration detention.⁹ The Residence Act provides the grounds for detention, rules on the length of detention, and basic procedural safeguards. Yet, it contains few provisions dealing with conditions of detention. It is in the federal states' capacity to adopt such laws, since they are in charge of implementation of detention order. Only four states—[Berlin](#), [Brandenburg](#), [Bremen](#), and [North Rhine-Westphalia](#)—appear to have adopted specific laws regulating enforcement of immigration detention (see below “Regulation of detention conditions”).¹⁰ In the remaining thirteen states the [Prison Act](#) (*Strafvollzugsgesetz*), complemented by non-binding federal states' standards, regulates conditions and overall detention regimes. This situation has been criticised by the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) (CPT), which on numerous occasions has called upon the German authorities to ensure that in all federal states detention pending deportation is governed by specific rules reflecting the particular status of immigration detainees.¹¹

The decentralised nature of the German legal and administrative system also makes it challenging to access comprehensive information on German immigration detention practices.¹²

⁹ Federal Office for Migration and Refugees (EMN National Contact Point Germany), *The Use of Detention and Alternatives to Detention in Germany*, 2014, <http://www.asyl-in-deutschland.rs/SharedDocs/Anlagen/EN/Publikationen/EMN/Studien/wp59-emn-abschiebungshaft.html?nn=7660242>.

¹⁰ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769, Drucksache 18/7196*, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>. However in some other federal states, there are regulations or decrees adopted by Interior Ministries, see below.

¹¹ For more details on this point, see the 2014 Global Detention Project report on Germany, <https://www.globaldetentionproject.org/immigration-detention-in-germany>.

¹² For more details about difficulties faced by the GDP in accessing information about immigration detention practices in Germany, see the 2014 Global Detention Project report on Germany, <https://www.globaldetentionproject.org/immigration-detention-in-germany>.

Grounds for detention. The Residence Act and the Asylum Act provide several grounds for immigration detention.

At ports of entry, if a non-citizen is refused entry but the refusal cannot be enforced immediately, then the person is to be placed in “detention pending exit from the federal territory” (*Zurückweisungshaft*) (Residence Act, Section 15(5)). If a person has reached German territory by air and “detention pending exit from the federal territory” is not applied, the person is to be taken to an airport transit area or other place of accommodation from which exit from Germany is possible (Residence Act, Section 15(6)).

Besides border-related procedures, there are three main forms of immigration detention: “custody to prepare deportation” (*Vorbereitungshaft*), “custody to secure deportation” (*Sicherungshaft*), and “custody to secure departure” (*Ausreisegewahrsam*).

Custody to prepare deportation. The Residence Act provides that a non-citizen is to be detained to enable the preparation of deportation (custody to prepare deportation) if a decision on deportation cannot be reached immediately and deportation would be much more difficult or impossible without such detention (Residence Act, Section 62(2)). The General Administrative Regulation to the Residence Act explains that “custody to prepare deportation” is only permissible if the adoption of an expulsion order is legally possible and highly probable, yet the expulsion cannot be decided immediately. Preparatory detention is particularly permitted where deportation is ordered within six weeks after the beginning of the detention and can be carried out during that six-month period (General administrative regulation to the Residence Act, Section 62.1.1).

Custody to secure deportation. A person can be placed in “custody to secure deportation” if: 1) he is required to leave the federal territory on account of his unlawful entry; 2) a deportation order based on state security or terrorist threat has been issued but is not immediately enforceable; 3) the period allowed for departure has expired and the non-citizen has changed his place of residence without notifying the foreigners’ authority of a new address; 4) the person has failed to appear at the location stipulated by the foreigners’ authority on a date fixed for deportation due to reasons for which he is responsible; 5) the person has evaded deportation by other means; or 6) there is a well-founded suspicion that the person intends to evade deportation (risk of absconding) (Residence Act, Section 62(3)).

The criteria for establishing a risk of absconding include when a person 1) has in the past eluded authorities by changing place of residence without notifying the competent authority of an address at which he can be reached; 2) deceives authorities regarding identity, in particular by suppressing or destroying identity or travel documents or claiming a false identity; 3) has refused or failed to cooperate in the establishment of identity and the particular circumstances of the case clearly indicate the intention to evade deportation; 4) has paid a large sum of money to a third person to assist unlawful entry; 5) has declared the intention to evade deportation; or 6) has made other concrete preparations of comparable significance to evade imminent deportation and these

preparations cannot be thwarted by using direct force (Residence Act, Section 2(14)). This provision does not list these criteria in an exhaustive manner.

Custody to secure departure. The 2015 amendment to the Residence Act introduced “custody to secure departure” (*Ausreisegewahrsam*). Section 62(b) provides that a foreigner may be placed in this form of detention if: (1) the period allowed for departure has expired (unless the foreigner was prevented from leaving or the period allowed for departure has been exceeded by an insignificant amount of time); and (2) the person has displayed behaviour indicating the intention to make deportation more difficult or impossible by continually violating statutory obligations to cooperate or by deceiving authorities regarding identity or nationality. The detention order must be waived if the person can demonstrate a willingness not to evade deportation. Custody to secure departure is not permissible if it has been established that the deportation cannot be implemented within the period stipulated in the detention order (Section 62b(1)). The custody to secure departure is to be enforced in the transit area of an airport or in accommodation from which the foreigner’s subsequent departure is possible (Section 62b(2)). According to [Informationsverbund Asyl und Migration](#), as of 2016, detention had not yet been ordered on this ground.¹³ Initially, custody to secure departure had a maximum time-limit of four days but the most recent amendment which entered into force at the end of July 2017 extended it to ten days.¹⁴

Asylum seekers. Although German law does not provide specific grounds justifying detention of asylum seekers, they may still end up in immigration detention under the Asylum Procedure Act. In cases of entry by air, non-citizens coming from a safe country of origin or without identity documents who apply for asylum with the border authority may be kept in custody at airport premises during the asylum procedure for up to 19 days (Asylum Act, Section 18(a)).¹⁵ In 1996, the German Federal Constitutional Court ruled that the placement of foreigners at airport transit zone premises does not constitute detention because according to the court’s reasoning the people concerned have an option to leave by plane.¹⁶ Other EU countries that regard detention in airport facilities as merely accommodation during border asylum procedures or measures preventing irregular entry in the territory include [France](#) and [the Netherlands](#). The [UN Working Group on Arbitrary Detention](#) (WGAD) noted in 2015 that the ruling of the [European Court of Human Rights](#) in *Amuur v. France*, which concluded that

¹³ Informationsverbund Asyl und Migration, “Country report: Germany,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>.

¹⁴ Stefan Kessler (Jesuit Refugee Service Germany), *Email correspondence with Izabella Majcher* (Global Detention Project), July-August 2017.

¹⁵ If Federal Office for Migration and Refugees rejects the application within 48 hours, people have 3 days to appeal at a court, and the court has 14 days to decide about the case (if not people may enter the country as well), Timmo Scherenberg (Hessischer Flüchtlingsrat), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017; Informationsverbund Asyl und Migration, “Country report: Germany,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>.

¹⁶ Decision of 14 May 1996 (case No. 2 BvR 1516/93), BVerfGE 94, 166, quoted in Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/DEIndex.aspx>.

accommodation in transit zones can amount to detention, had not led to any changes in German jurisprudence.¹⁷

In 2012-2013, according to [Pro Asyl](#) and [Diakonie Hessen](#), the majority of detained asylum seekers in Germany were subject to a transfer based on the EU Dublin Regulation. At that time, in some detention centres, such as Rendsburg or Eisenhüttenstadt, the “Dublin detainees” made up to 90 percent of the detainee population.¹⁸ In June 2014, the German Federal High Court ruled that detention during Dublin proceedings did not have a legal basis in the German domestic law. Unlike its forerunner, the [Dublin III Regulation](#) provides that the person concerned may be detained if there is a “significant risk of absconding” and that such a risk is based on objective criteria to be defined in the domestic legislation. As of September 2014, Germany had not yet defined in law such objective criteria for determining the risk of absconding. Thus, few persons were placed in Dublin-related detention as of 2014.¹⁹

The 2015 amendment to the Residence Act provides a legal basis for detention of persons under the Dublin procedures. According to article 2(15), the criteria listed in above-mentioned article 2(14) for risk of absconding in return procedures should also apply in Dublin transfer procedures. This provision sets out an additional criterion, notably where the foreigner has left another member state prior to the conclusion of Dublin or asylum proceedings and the circumstances of the determination made in the federal territory provide concrete indications that the person will not return to that state in the foreseeable future.

Additionally, if a foreign national applies for asylum while already in immigration detention by virtue of the Residence Act, the asylum application must not hinder the ordering or continuation of detention (Asylum Act, Section 14(3)).

In 2011, the [UN Committee against Torture](#) issued a number of recommendations to Germany with respect to its treatment of asylum seekers. It recommended limiting the number of detained asylum seekers (including those who are subject to Dublin regulations); limiting the duration of their detention pending return; ensuring mandatory medical checks and systematic examination of mental illnesses or traumatisations; providing medical and psychological examinations by specially trained independent

¹⁷ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/DEIndex.aspx>; Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Mission to Germany*, A/HRC/19/57/Add.3, 23 February 2012, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/DEIndex.aspx>.

¹⁸ Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

¹⁹ Informationsverbund Asyl und Migration, “Country report: Germany,” *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), May 2014, <http://www.asylumineurope.org/reports/country/germany>; Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/DEIndex.aspx>.

health experts when the signs of torture or traumatisaion are detected; and providing adequate accommodation for detained asylum seekers separate from remand prisoners in all detention facilities.²⁰

Minors and families. The detention of minors, including unaccompanied minors, is not prohibited under German law. The Residence Act merely provides that minors and families with minors may be placed in pre-removal detention only in exceptional cases and only for as long as is reasonable, taking into account the well-being of the child (Residence Act, Section 62(1)).

There are considerable differences between states in terms of both regulation and practice of detention of minors. In some states there are no age-limits on detention, while in others there are regulations setting the minimum age of detention at 16, like in North Rhine-Westphalia. However, even in states with age limits, minors can still be accommodated in special youth facilities, like in Brandenburg. In Schleswig-Holstein unaccompanied minors under 16 are not detained but 10-years old children may be detained as long as they are with their mothers.²¹

According to the government, minors are detained “extremely rarely” in practice.²² Non-governmental sources concur that the numbers of detained children have dropped since 2011. Fifteen minors were placed in immigration detention 2013; 55 in 2012; 61 in 2011, 114 in 2010, and 142 in 2009.²³ According to the [EU Fundamental Rights Agency](#), based on information provided by the federal government, there were no children detained on 31 December 2015, 31 March 2016, 1 September 2016, 15 November 2016, and 1 December 2016.²⁴ This information should be read with caution because in cases federal states have been unable to provide adequate statistics (for more information on this issue, see the section “Trends and statistics” below).

Regarding the conditions of detention for detained minors, the Residence Act (Section 62(a)(3)) provides that age-dependent needs should be taken into account in line with

²⁰ Committee Against Torture, *Consideration of Reports Submitted by States Parties under article 19 of the Convention: Concluding Observations of the Committee Against Torture: Germany*, CAT/C/DEU/CO/5, 12 December 2011, www.ohchr.org/EN/countries/ENACARRegion/Pages/DEIndex.aspx.

²¹ Jesuit Refugee Service (JRS) Europe, *From Deprivation to Liberty: Alternatives to detention in Belgium, Germany and the United Kingdom*, December 2011, <http://www.refworld.org/docid/4f0c10a72.html>; Hendrik Cremer, *Detention and human rights: The duration of the detention and the detention of unaccompanied minors in Germany*, German Institute for Human Rights, March 2011, www.institut-fuer-menschenrechte.de/publikationen/detailansicht.html.

²² Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/DEIndex.aspx>.

²³ Federal government, *Response of the Federal Government to the major interpellation of the deputies Ulla Jelpke, Jan Korte, Agnes Alpers, other MPs and the DIE LINKE: printed matter 17/10597: implementation of the deportation policy of the European Union and the practice of detention*, Ministry of Interior, 4 September 2012, dipbt.bundestag.de/dip21/btd/17/105/1710597.pdf; Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

²⁴ EU Fundamental Rights Agency, *European legal and policy framework on immigration detention of children*, 2017, <http://fra.europa.eu/en/publication/2017/child-migrant-detention>.

article 17 of the [EU Returns Directive](#). According to this provision, children in detention should have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and should have, depending on the length of their stay access to education. In addition, unaccompanied minors should as far as possible be provided with accommodation in institutions provided with personnel and facilities which take into account the needs of persons of their age.

In 2014, the [UN Committee on the Rights of the Child](#) expressed concern over the possibility of imposing pre-removal detention on children that can last up to 18 months. The committee found that this was a direct contravention of the right of the child to have his best interests taken as a primary consideration. The committee urged Germany to ensure that detention of asylum-seeking and migrant children is always used as a measure of last resort and for the shortest appropriate time—in compliance with article 37(b) of the Convention on the Right of the Child—and that detention be subject to time limits and judicial review.²⁵

Following its visit to Germany in November 2014, the Working Group on Arbitrary Detention noted its concern about the lack of procedures in several federal states for the identification of vulnerable asylum seekers, including unaccompanied minors or traumatised refugees. It urged Germany to prohibit pre-deportation custody orders against persons belonging to particularly vulnerable groups. The length of the detention should be reduced to the period of time strictly necessary for identification.²⁶

Pursuant to Section 62(a)(1), if several members of a family are detained, they should be accommodated separately from other detainees awaiting deportation and be guaranteed adequate privacy. In practice, however, family members are often separated. In 2013 Pro Asyl and Diakonie Hessen reported that only in Berlin, Büren, and Ingelheim was there the possibility to accommodate families or couples together. In Eisenhüttenstadt and Hannover, couples were separately accommodated but they could see each other during the day. Also, in practice persons apprehended at the border in Saxony were sent to different places: men to Dresden and women to Eisenhüttenstadt. NGOs have documented several cases in which the deportations of family members detained in different facilities were scheduled at different times.²⁷

Length of detention. The duration of “custody to prepare deportation” should not exceed six weeks (Residence Act, Section 62(2)). However, the General Administrative Regulation to the Residence Act describes “atypical” scenarios in which immigration detention can last longer, for instance when there is a delay in ordering expulsion due to

²⁵ Committee on the Rights of the Child (CRC), *Concluding Observations on the combined third and fourth periodic reports of Germany*, CRC/C/DEU/CO/3-4, 25 February 2014, www.ohchr.org/EN/countries/ENACARRegion/Pages/DEIndex.aspx.

²⁶ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/DEIndex.aspx>.

²⁷ Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

circumstances provoked by the detainee (General administrative regulation to the Residence Act, Section 62.1.3).

“Custody to secure deportation” and “detention pending exit from the federal territory” may be ordered for up to six months. If an immigration detainee hinders his deportation, detention may be extended up to maximum of eighteen months (Residence Act, Sections 62(4) and 15(5)). The General Administrative Regulation to the Residence Act provides examples of such behaviour, which include lack of participation in getting travel documents, breach of the requirement to surrender the passport, and refusal to contact the diplomatic mission of the non-citizen’s country of origin (General Administrative Regulation to the Residence Act, section 62.3.2). The period of time a detainee has been subject to “custody to prepare deportation” should count towards the overall duration of “custody to secure deportation” or “detention pending exit from the federal territory” (Residence Act, Section 62(4)).

Asylum seekers coming from “safe countries” can be confined in the airport transit zones up to 19 days.²⁸

The detention of persons who apply for asylum while in detention should be terminated as soon as the decision on the asylum application has been delivered and no later than four weeks after the Federal Office for Migration and Refugees has received the application, unless another country has been requested to admit or re-admit the foreigner on the basis of European Community law or of an international treaty on the responsibility of processing asylum applications, or unless the application for asylum has been rejected as inadmissible or manifestly unfounded (Asylum Act, Section 14(3)). Thus, the maximum one-month period of detention applies only to persons for whose asylum claims Germany is responsible. Those subject to the Dublin Regulation may stay in detention during the entire proceedings.

The UN Working Group on Arbitrary Detention urged Germany to subject the duration of detention pending deportation to the strict application of the principle of proportionality and limit it to the shortest possible period. It also recommended that the duration of pre-deportation custody be significantly decreased.²⁹

Procedural guarantees. A non-citizen can only be placed in detention by a judicial order (Residence Act, Section 62(2)-(3)). Pre-removal detention decisions are the responsibility of the district courts where the non-citizen in question resides or, if he has not a permanent resident, where detention is to take place (General Administrative Regulation to the Residence Act, Section 62.0.3). Before the court makes a decision, the person concerned has the right to a personal hearing (Act on Procedure in Family Matters and in Non-Contentious Matters, Section 420).

²⁸ Informationsverbund Asyl und Migration, “Country report: Germany,” *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>.

²⁹ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/DEIndex.aspx>.

Authorities may detain without a prior judicial order when: 1) there is strong suspicion the person will be required to leave federal territory because of unlawful entry; 2) it is not possible to obtain the judicial order for detention to secure deportation beforehand; and 3) there is a well-founded suspicion that he intends to evade the detention order. In such cases, the person is to be brought before the court without delay for a detention order (Residence Act, Section 62(5)).

Detention orders must provide reasons for detention measures and specify the date they will end (Act on Procedure in Family Matters and in Non-Contentious Matters, Sections 421-422; Residence Act, Section 62a(5)).³⁰ Court-ordered extension of detention is subject to the same rules as the initial detention order. The German legal framework thus provides for automatic judicial review of immigration detention. Also, detainees have the right to appeal against detention order before a regional court (Act on Procedure in Family Matters and in Non-Contentious Matters, Sections 425 and 429).³¹ According to non-governmental sources dated 2010, judges frequently issue detention orders even when authorities do not sufficiently explain the reasons justifying this measure.³²

As provided in the Residence Act, detainees are allowed to establish contact with legal representatives (Residence Act, Section 62a(2)). There is a possibility to apply for legal aid in the context of judicial review of detention.³³ In 2013, the Federal Court of Justice ruled that a person in pre-deportation detention should be provided with the means necessary to legally defend him against the detention order, including by the appointment of a lawyer, if he does not have the financial means to pay for one himself.³⁴ However, free legal aid is dependent on how the court assesses the chances of success. Thus, in practice, free legal aid is rarely granted.³⁵ Migrants have the right to compensation for unlawful immigration detention but the rules are not explicitly laid down in the Residence Act. People concerned would need to rely on the Constitution and Civil Code.³⁶

³⁰ Holger Winkelmann, "The Act on Proceedings in Family Matters and in Matters of Voluntary Jurisdiction (FamFG) and its procedural implications," *Migrationsrecht.net*, February 6 May 2014.

³¹ Federal Office for Migration and Refugees (EMN National Contact Point Germany), *The Use of Detention and Alternatives to Detention in Germany*, 2014, <http://www.asyl-in-deutschland.rs/SharedDocs/Anlagen/EN/Publikationen/EMN/Studien/wp59-emn-abschiebungshaft.html?nn=7660242>.

³² Peter Fahlbusch, "Haft in Verfahren nach der Dublin II-Verordnung (Detention in the context of the Dublin procedure)," *Asylmagazin* 9/2010, 289-295.

³³ Federal Office for Migration and Refugees (EMN National Contact Point Germany), *The Use of Detention and Alternatives to Detention in Germany*, 2014, <http://www.asyl-in-deutschland.rs/SharedDocs/Anlagen/EN/Publikationen/EMN/Studien/wp59-emn-abschiebungshaft.html?nn=7660242>.

³⁴ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/DEIndex.aspx>.

³⁵ Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>.

³⁶ Kay Hailbronner and Daniel Thym, *Completed Questionnaire for the project Contention: National Report – Germany*, 2014, <http://contention.eu/country-reports/>.

Trends and statistics. The number of immigration detainees has decreased in recent years. According to [National Agency for the Prevention of Torture](#), in 2013, the country detained 4,812 non-citizens, compared to 5,748 in 2012, and 6,781 in 2011.³⁷ The ruling of the [Court of Justice of the European Union](#) (CJEU) in [Bero & Bouzalmate](#) spurred an additional drop in the number of pre-removal detainees in the second half of 2014. Since then, international rights bodies like the UN Working Group on Arbitrary Detention have pressured the country to further diminish detainee numbers.³⁸ According to official sources, in 2014 the country detained 1,850 non-citizens slated for removal and in the first half of 2015, 563.³⁹ It is important to note that these figures may sometimes not be completely coherent because some federal states include Dublin detainees in these statistics and others do not.⁴⁰

Accessing information on German immigration detention practices has historically been very challenging. These difficulties stem in part from the federal, decentralised nature of the country's immigration enforcement system (there are similar challenges in Switzerland). Because immigration detention is under the authority of regional governments, federal authorities claim they do not have this information. For instance, in April 2013, responding to a joint request for immigration detention statistics filed by the Global Detention Project and [Access Info Europe](#), the Federal Office for Migration and Refugees claimed that it did not have "statistics on immigrants in custody" and directed requests to the Federal Statistical Office.⁴¹ The statistics office reported that while it had some statistics on the numbers of foreigners in prison, it did not collect statistics related

³⁷ Federal government, *Response of the Federal Government to the major interpellation of the deputies Ulla Jelpke, Jan Korte, Agnes Alpers, other MPs and the DIE LINKE: printed matter 17/10597: implementation of the deportation policy of the European Union and the practice of detention*, Ministry of Interior, 4 September 2012, dipbt.bundestag.de/dip21/btd/17/105/1710597.pdf; National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html. There are some divergences in the statistics, according to the European Migration Network, Germany detained 4,309 non-citizens in 2013, 5,064 in 2012, and 6,466 in 2011, see Federal Office for Migration and Refugees (EMN National Contact Point Germany), *The Use of Detention and Alternatives to Detention in Germany*, 2014, <http://www.asyl-in-deutschland.rs/SharedDocs/Anlagen/EN/Publikationen/EMN/Studien/wp59-emn-abschiebungshaft.html?nn=7660242>; while according to official statistics 4,258 in 2013 and 5,131 in 2012, see Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

³⁸ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/DEIndex.aspx>.

³⁹ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

⁴⁰ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

⁴¹ Global Detention Project and Access Info Europe, *The Uncounted: The Detention of Migrants and Asylum Seekers in Europe*, December 2017, <https://www.globaldetentionproject.org/the-uncounted-the-detention-of-migrants-and-asylum-seekers-in-europe>.

to the immigration status of these prisoners.⁴² Previously, in 2011, the Global Detention Project sent information requests on where and how many people were detained to relevant authorities in each federal state. Only nine responded with the requested information; two states claimed that the information we sought was “sensitive” and requested that additional steps be taken before they would release any information.⁴³

Alternatives to detention. According to the Residence Act, pre-removal detention is not permissible if the purpose of the custody can be achieved by other, less severe means (Residence Act, Section 62(1)).

However, unlike in most other EU countries, the Residence Act does not clearly enumerate “alternatives to detention.” The key non-custodial measure referred to in the Residence Act is “geographic restriction,” which limits the geographical movement of the person concerned. This measure may be ordered in a few circumstances, including if “concrete measures to terminate the stay are imminent against the foreigner” (Residence Act, Section 61(1c)(3) and 46(1)).⁴⁴ It is not explicitly framed as an alternative to detention. The Residence Act also provides that further conditions and requirements may be imposed (Section 61(1e)). Examples of such measures provided in the General Administrative Regulation relating to the Residence Act (Section 46.1), including reporting duties, obligation to reside in a particular place, or obligation to surrender documents.⁴⁵ These measures are also not framed explicitly alternatives to detention but rather as measures securing removal.

The UN Working Group on Arbitrary Detention (WGAD) has addressed alternatives to detention during its visits to Germany. Following its 2011 visit to Germany, the WGAD urged authorities to use alternatives to detention for non-citizens who do not have valid

⁴² Ralph Kaiser (Federal Statistical Office of Germany), *Email correspondence with Lydia Medland* (Access Info Europe) regarding joint Access Info Europe - Global Detention Project freedom of information request, 22 April 2014.

⁴³ For more details on the responses from each federal state, see the Appendix to the Global Detention Project report, “Immigration Detention in Germany,” October 2014, <https://www.globaldetentionproject.org/immigration-detention-in-germany>.

⁴⁴ Informationsverbund Asyl und Migration, “Country report: Germany,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>; European Union Agency for Fundamental Rights (FRA), *Detention of third-country nationals in return procedures*, November 2010, <http://fra.europa.eu/en/publication/2010/detention-third-country-nationals-return-procedures>; European Commission, *Communication from the Commission to the Council and the European Parliament on EU Return Policy*, COM (2014) 199, March 2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0199&from=EN>.

⁴⁵ Informationsverbund Asyl und Migration, “Country report: Germany,” *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>; European Union Agency for Fundamental Rights (FRA), *Detention of third-country nationals in return procedures*, November 2010, <http://fra.europa.eu/en/publication/2010/detention-third-country-nationals-return-procedures>; European Commission, *Communication from the Commission to the Council and the European Parliament on EU Return Policy*, COM (2014) 199, March 2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0199&from=EN>.

visas.⁴⁶ Following its 2014 visit, the WGAD noted that the principles of necessity and proportionality under international law require the use of alternatives to detention.⁴⁷

Criminalisation. Violations of numerous provisions of the Residence Act can result in criminal sanctions. A one-year prison sentence or a fine may be imposed on a non-citizen who resides in the federal territory without a recognised and valid passport, passport substitute or other identification papers; resides in the federal territory without a necessary residence title (including visa or temporary residence permit) and has failed to depart despite being ordered to do so; has unlawfully entered the German territory; leaves German territory if he intends to enter another state without being in possession of the necessary documents; does not collaborate with identification procedures; or fails repeatedly to meet reporting and geographic restrictions obligations (Section 95(1)).⁴⁸

While there are numerous cases of people being criminally charged for immigration-related violations, according to observers these processes rarely result in prison sentences. For example, in 2010 there were some 2,700 convictions for undocumented stay in Germany; however, only 251 of those cases resulted in prison sentences, of which only 70 actually led to time being served in criminal incarceration.⁴⁹

Privatisation. Several private contractors have been involved in the care and custody of immigration detainees in Germany, although observers have noted that there is considerable resistance in the country to allowing private companies access to this area of public policy. In April 2014, the head of Germany's Committee for the Prevention of Torture told the Global Detention Project that "Privatisation seems to work well in some cases because the people who are employed by the private companies to work in the detention centres are generally not German, and the fact that they are foreigners like the detainees seems to comfort them. ... However, it is difficult to promote privatisation in Germany because it is not an accepted idea to have private actors working on behalf of the state in this area."⁵⁰

The scholar Georg Menz provides a similar assessment of privatisation in Germany, noting that "privatization of detention has proven highly politically contested and ultimately did not proceed fully. ... Given both legal concerns and political resistance to involving private-sector companies in such a sensitive policy domain, there is no interest

⁴⁶ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Mission to Germany*, A/HRC/19/57/Add.3, 23 February 2012, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/DEIndex.aspx>.

⁴⁷ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/DEIndex.aspx>.

⁴⁸ European Union Agency for Fundamental Rights (FRA), *Criminalisation of migrants in an irregular situation and of persons engaging with them*, 2014, <http://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them>.

⁴⁹ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Mission to Germany*, A/HRC/19/57/Add.3, 23 February 2012, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/DEIndex.aspx>.

⁵⁰ Rainer Dopp (Head of the German Committee for the Prevention of Torture (National Agency for the Verhütung of torture)), *Interview with Michael Flynn* (GDP), 11 April 2014.

in broadening the remit of private section involvement. Political resistance combined with a comparatively low extent of neoliberalization thus led to only minimal involvement of private actors.”⁵¹

Private firms providing services in immigration detention facilities in Germany include B.O.S.S. Security and Service, Kötter and European Homecare.⁵² By 2013, six detention facilities were reportedly receiving security and/or management services from both government officers and private firms: Berlin Airport, Büren, Eisenhüttenstadt, Hamburg-Billwerder, Ingelheim, and Rendsburg.⁵³ Following the overhaul Germany’s immigration detention estate in 2014, by 2016 at least three facilities outsourced some of the services to a private contractor, including Eisenhüttenstadt, Ingelheim, and Büren.⁵⁴

For several years, B.O.S.S. has been a contracting partner with Brandenburg regional authorities at the centre in Eisenhüttenstadt. It reportedly provides security personnel, catering, and social services while the Brandenburg government migration agency provides overall supervision.⁵⁵ Some observers in Germany have termed this relationship a “public-private partnership.”⁵⁶

⁵¹ Georg Menz, "The Neoliberalized State and the Growth of the Migration Industry." In *The Migration Industry and the Commercialization of International Migration*, Edited by Thomas Gammeltoft-Hansen and Ninna Nyberg Sorensen, Routledge, 2012.

⁵² Michael Flynn and Cecilia Cannon, "The Privatization of Immigration Detention: Towards a Global View," *Global Detention Project Working Paper No. 1*, Global Detention Project, 2009, www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf; Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>; Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>. The multinational company Serco, which has operated immigration detention facilities in Australia and the United Kingdom, has operated several prisons in Germany, although apparently not any facilities used for immigration purposes, see Georg Menz, "The Neoliberalized State and the Growth of the Migration Industry." In *The Migration Industry and the Commercialization of International Migration*, Edited by Thomas Gammeltoft-Hansen and Ninna Nyberg Sorensen, Routledge, 2012, p. 120.

⁵³ Pro Asyl, *Situation in den bundesdeutschen Abschiebegefängnissen*, April 2013, http://archiv.proasyl.de/fileadmin/proasyl/12-04-13_A-Haftbedingungen_-_PRO_Asyl_2_Quartal_2013_01.pdf; Indymedia, "BOSS and asylum jail Schönefeld," 27 July 2012, de.indymedia.org/2012/07/333103.shtml.

⁵⁴ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

⁵⁵ Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>; Indymedia, "BOSS and asylum jail Schönefeld," 27 July 2012, de.indymedia.org/2012/07/333103.shtml; B.O.S.S. Website, <http://www.boss-berlin.de/index.php>; Michael Flynn and Cecilia Cannon, "The Privatization of Immigration Detention: Towards a Global View," *Global Detention Project Working Paper No. 1*, Global Detention Project, 2009, www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf; Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

⁵⁶ Indymedia, "BOSS and asylum jail Schönefeld," 27 July 2012, de.indymedia.org/2012/07/333103.shtml.

In 2014, the Germany's Committee for the Prevention of Torture found that neither the state-provided personnel nor the B.O.S.S. personnel were trained in prison services.⁵⁷ However, in previous years, observers commended B.O.S.S. for its management of this facility. The CPT, in the report on its 2005 visit to the facility, reported: "Many of the private security staff met by the delegation had already been present at the time of the previous visit [in 2000]. The delegation observed that their general attitude towards foreign detainees had significantly improved. They were ready to communicate and were described by most inmates as sympathetic. This is a welcome development." However, according to the committee, "certain sensitive activities, such as searching and other security measures, including means of restraint, were frequently performed exclusively by private security staff." The CPT stressed that "private security staff working at Eisenhüttenstadt should be held to the same standards in the execution of their duties as apply to staff employed by the Ministry of the Interior. In order to safeguard the rights of immigration detainees and prevent ill-treatment, special arrangements should be made to ensure that the standards ... are applied."⁵⁸ A rights advocate interviewed by the Global Detention Project in 2009 favourably compared Eisenhüttenstadt to a police-run detention facility in Brandenburg. In conversation with the GDP, the advocate said that the Eisenhüttenstadt centre was much better managed than the police-run facility. He added, "If it were me, I'd prefer to be in the B.O.S.S. facility."⁵⁹

Kötter provides services in Ingelheim and Büren centres. In Ingelheim, the firm provides security services and in Büren, security and medical assistance.⁶⁰

European Homecare is best known as a key service provider at reception centres for asylum seekers in Germany.⁶¹ It has also reportedly operated a detention facility at

⁵⁷ National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html.

⁵⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the German Government on the visit to Germany Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 November to 7 December 2010*, CPT/Inf (2012) 6, February 2012, www.cpt.coe.int/documents/deu/2012-06-inf-eng.pdf;

Michael Flynn and Cecilia Cannon, "The Privatization of Immigration Detention: Towards a Global View," *Global Detention Project Working Paper No. 1*, Global Detention Project, 2009,

www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf.

⁵⁹ Michael Flynn and Cecilia Cannon, "The Privatization of Immigration Detention: Towards a Global View," *Global Detention Project Working Paper No. 1*, Global Detention Project, 2009,

www.globaldetentionproject.org/fileadmin/docs/GDP_PrivatizationPaper_Final5.pdf.

⁶⁰ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769, Drucksache 18/7196*, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>; Neue Westfälische, "Verbände sollen zur JVA Büren gehört werden," *Neue Westfälische*, 27 August 2014, www.nw-news.de/owl/11225760_Verbaende_sollen_zur_JVA_Bueren_gehoert_werden.html; National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html; Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

⁶¹ European Homecare, "Was bieten wir unseren Kunden?" *Website*, 19 July 2017, <http://www.eu-homecare.com/de/dienstleistungen/was-bieten-wir-unseren-kunden/>.

Düsseldorf airport.⁶² In 2014, the enterprise was the focus of a scandal in Germany regarding mistreatment of asylum seekers. In October 2014, police announced that they were investigating allegations that guards at reception centres in Burbach and Essen assaulted asylum seekers and in some cases took pictures of themselves as they abused the people.⁶³ In March 2017, the public prosecutor brought the charges against several employees of European Homecare and state-provided guardians.⁶⁴

Regulation of detention conditions. By virtue of the Residence Act (Section 62(a)), as a general principle, custody awaiting deportation should be enforced in specialised detention facilities. If there are no specialised detention facilities in the federal territory, custody awaiting deportation may be enforced in other custodial institutions; in such cases the persons in detention awaiting deportation shall be accommodated separately from prisoners serving criminal sentences. This provision, effectively prioritising the use of dedicated facilities, was inserted as a response to the CJEU's ruling in *Bero & Bouzalmate* (see below "Infrastructure").

The Residence Act provides only basic principles for conditions and treatment in detention.⁶⁵ It provides that if several members of a family are detained, they should be accommodated separately from other detainees awaiting deportation. They should be guaranteed adequate privacy. Detainees awaiting deportation should be permitted to establish contact with legal representatives, family members, the competent consular authorities and the relevant aid and support organisations (Section 62(a)).

Basic rules spelled out in the Residence Act are supplemented at the federal states' level merely in a few federal states. It appears that only federal states of Berlin, Brandenburg, Bremen, and North Rhine-Westphalia have adopted specific laws regulating enforcement of immigration detention.⁶⁶ Berlin's 1995 *Gesetz über den*

⁶² Georg Menz, "The Neoliberalized State and the Growth of the Migration Industry." In *The Migration Industry and the Commercialization of International Migration*, Edited by Thomas Gammeltoft-Hansen and Ninna Nyberg Sorensen, Routledge, 2012, p. 120.

⁶³ Deutsche Welle, "German Police Raid Security Firm Accused of Abusing Asylum Seekers," *Deutsche Welle*, 6 October 2014, www.dw.de/german-police-raid-security-firm-accused-of-abusing-asylum-seekers/a-17979500.

⁶⁴ Zeit Online, "Anklage wegen Misshandlung von Asylbewerbern," *Zeit Online*, 21 March 2017, <http://www.zeit.de/gesellschaft/zeitgeschehen/2017-03/fluechtlingsunterkunft-burbach-misshandlung-anklage-mitarbeiter>.

⁶⁵ Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>.

⁶⁶ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769, Drucksache 18/7196*, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>. However, in some other federal states various guidelines or Interior Ministry's decrees were in use, including in Lower Saxony the 2015 *Hausordnung für die Abteilung Langenhagen der Justizvollzugsanstalt Hannover*, 2015 *Konzept für den Vollzug der Abschiebungshaft in der Abteilung Langenhagen*, and 2014 Interior Ministry's *Erlass über die rechtlichen Hinweise und verfahrensmäßigen Vorgaben zur Organisation und Durchführung des Rückführungs- und Rücküberstellungsvollzugs (Abschiebung) und zur Beantragung von Abschiebungshaft*; in Schleswig-Holstein the 2012 *Erlass über Regelungen zur Durchführung der Abschiebungshaft*; and in Thüringen the *Verwaltungsvorschrift "Handakte für die Ausländerbehörden."*

Abschiebungsgewahrsam im Land Berlin; Brandenburg's 1996 *Gesetz über den Vollzug der Abschiebungshaft ausserhalb von Justizvollzugsanstalten*; Bremen's 2001 *Gesetz über den Abschiebungsgewahrsam* and North Rhine-Westphalia's 2015 *Gesetz über den Vollzug der Abschiebungshaft in Nordrhein-Westfalen* provide a number of guarantees, including that detainees should be informed, if possible in their language, about their rights and obligations; men and women should be confined separately; family members should be accommodated together or at the least have the possibility to spend time together; detainees should be able to file complaints with the facility management and have access to recreational activities, receive visits, and have access to mail.

Cost of detention. In 2014, the daily detention costs per person ranged between approximately 43 euros in Bremen and 420 in Hannover Langenhagen.⁶⁷ The Residence Act (Section 66(1) and 67(1)) stipulates that costs relating to deportation, including the costs of detention, are to be borne by the non-citizen. Non-citizen should pay these costs to be permitted to re-enter Germany, even after the period of validity of re-entry ban.⁶⁸ Reportedly these costs are to be paid by non-citizen only in the event of deportation, thus the obligation to pay for deportation and detention can pressure them to leave.⁶⁹

DETENTION INFRASTRUCTURE

Until recently, Germany was one of a very small number of European countries—[Switzerland](#) being another notable case—where prisons were used for the purpose of immigration-related detention. As of 2013, of the 27 facilities used for immigration detention, **four were dedicated immigration detention centres** (Berlin-Köpenick, Eisenhüttenstadt, Ingelheim, and Rendsburg), **three were airport transit centres** (Berlin-Brandenburg, Düsseldorf, and Frankfurt), and **three were police stations** (Bremen, Frankfurt, and Westhessen). The **remaining 17 facilities were prisons** (Aschaffenburg, Büren, Bützow, Chemnitz, Dresden, Frankfurt I, Frankfurt III, Hamburg-Billwerder, Hannover-Langenhagen, Mannheim, Mühlendorf am Inn, München, Nürnberg, Rockenberg, Schwäbisch-Gmünd, Suhl-Goldlauter, and Volkstedt).⁷⁰

⁶⁷ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

⁶⁸ Christine Graebisch and Beate Selders, "Der Zugang zum Bundesgerichtshof ist das geringste Problem: Interview mit Christine Graebisch von Beate Selders," In *Haft ohne Straftat. Fakten und Argumente gegen Abschiebungshaft*, Edited by Flüchtlingsrat Brandenburg, Flüchtlingsrat Schleswig-Holstein and Humanistische Union, Berlin, 2013, quoted in Federal Office for Migration and Refugees (EMN National Contact Point Germany), *The Use of Detention and Alternatives to Detention in Germany*, 2014, <http://www.asyl-in-deutschland.rs/SharedDocs/Anlagen/EN/Publikationen/EMN/Studien/wp59-emn-abschiebungshaft.html?nn=7660242>.

⁶⁹ Federal Office for Migration and Refugees (EMN National Contact Point Germany), *The Use of Detention and Alternatives to Detention in Germany*, 2014, <http://www.asyl-in-deutschland.rs/SharedDocs/Anlagen/EN/Publikationen/EMN/Studien/wp59-emn-abschiebungshaft.html?nn=7660242>.

⁷⁰ National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html; Pro Asyl, *Situation in den bundesdeutschen Abschiebegefängnissen*, April 2013, <http://archiv.proasyl.de/fileadmin/proasyl/12-04->

As of July 2017, however, Germany used only six facilities for immigration detention purposes: five dedicated long-term immigration detention facilities, in **Pforzheim** (Baden-Württemberg), **Eichstätt** (Bavaria), **Hannover (Langenhagen)** (Lower Saxony), **Büren** (North Rhine-Westphalia), and **Ingelheim am Rhein** (Rhineland-Palatinate); and one police station, in **Bremen**.⁷¹ In addition, it operated five medium-term airport detention centres (at the **Berlin, Düsseldorf, Frankfurt, Munich, and Hamburg** airports).⁷²

The large decline in the size of Germany's immigration detention system has been spurred by judicial decisions made by the European Court of Justice. Although Germany's use of prisons for carrying out immigration detention was for many years the subject of intense criticism from various human rights bodies, including the European Committee for the Prevention of Torture (CPT), the country stubbornly resisted carrying out reforms.⁷³ In addition, despite a provision in the EU Returns Directive stipulating that immigration detention take place as a rule in specialised detention facilities, the federal nature of Germany's governance and its decentralised immigration authority led the country to transpose the directive to allow for detention "in other custodial institutions"

[13_A-Haftbedingungen - PRO Asyl 2 Quartal 2013 01.pdf](#); Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>. For a detailed description of the detention infrastructure before the overhaul in 2014, see the 2014 Global Detention Project report on Germany, <https://www.globaldetentionproject.org/immigration-detention-in-germany>.

⁷¹ Stefan Kessler (Jesuit Refugee Service Germany), *Email correspondence with Izabella Majcher* (Global Detention Project), July-August 2017; Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>; Migreurop, "Fiche de pays: Allemagne," *Close the Camps*, February 2016, <http://closethecampes.org/pays/DEU>; Ricarda Breyton and Tobias Heimbach, "Das Comeback der Abschiebehaft in Deutschland," *Welt*, 1 August 2017, <https://www.welt.de/politik/deutschland/article167243145/Das-Comeback-der-Abschiebehaft-in-Deutschland.html>.

⁷² Flüchtlingsrat NRW, *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017; Timmo Scherenberg (Hessischer Flüchtlingsrat), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017; Loulou Kinski (Münchener Flüchtlingsrat), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017; Anne Lausmann (Caritasverband Frankfurt), *Telephone conversation with Izabella Majcher* (Global Detention Project), 16 August 2017; Flüchtlingsrat Hamburg, *Telephone conversation with Izabella Majcher* (Global Detention Project), 17 August 2017; Federal Office for Migration and Refugees, "Flughafenverfahren," *Website*, August 2016, <http://www.bamf.de/DE/Fluechtlingsschutz/Sonderverfahren/FlughafenVerfahren/flughafenverfahren-node.html>; Migreurop, "Fiche de pays: Allemagne," *Close the Camps*, February 2016, <http://closethecampes.org/pays/DEU>; Federal Office for Migration and Refugees, "Flughafenverfahren," *Website*, August 2016, <http://www.bamf.de/DE/Fluechtlingsschutz/Sonderverfahren/FlughafenVerfahren/flughafenverfahren-node.html>.

⁷³ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the German Government on the visit to Germany Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 November to 7 December 2010*, CPT/Inf (2012) 6, February 2012, www.cpt.coe.int/documents/deu/2012-06-inf-eng.pdf. The CPT criticised the use of prisons in Germany on several occasions, for more details on the exchanges between the CPT and German authorities on this issue, see the 2014 Global Detention Project report on Germany, <https://www.globaldetentionproject.org/immigration-detention-in-germany>.

when a federal state does not have a specialised facility at its disposal (62a(1) of the Residence Act).

In July 2014, the Court of Justice of the European Union (CJEU) rendered long-awaited rulings in a series of cases concerning the use of prisons in Germany. In the [Bero & Bouzalmate](#) case, the court found the practice of systematically detaining immigration detainees in prisons incompatible with article 16(1) of the EU Returns Directive. The CJEU ruled that Germany cannot rely on the fact that there are no dedicated detention facilities in some of its federal states to justify holding non-citizens in prison pending their removal. In [Pham](#), the court found that the same rule applies even if an immigration detainee consents to being confined in penitentiary. The court established that a federal country like Germany is not obliged to set up specialised centres in each of its states. However, it is obliged to establish procedures that enable federal states that do not have dedicated facilities to place migrants in specialised facilities located in other states.⁷⁴

The 2014 CJEU rulings prompted an overhaul of the immigration detention system immigration detention facilities. At the time of the rulings, only five German states had dedicated facilities: Berlin (Berlin-Köpenick), Brandenburg (Eisenhüttenstadt), Rhineland-Palatinate (Ingelheim), Saarland (Ingelheim), and Schleswig-Holstein (Rendsburg). States that were using prisons or other criminal facilities⁷⁵ announced that dedicated facilities would be set up and that during the transition they would transfer immigration detainees to states that have such facilities.⁷⁶

CURRENT DETENTION FACILITIES

Ingelheim. The Ingelheim dedicated immigration detention centre is the only currently operating facility that operated as a specialised immigration facility before the 2014 CJEU rulings. Established in 2001, the centre was renovated in 2012.⁷⁷ As of 2016, it

⁷⁴ Izabella Majcher, "The EU Returns Directive and the Use of Prisons for Detaining Migrants in Europe," *EU Law Analysis*, July 2014, eulawanalysis.blogspot.co.uk/2014/07/the-eu-returns-directive-and-use-of.html.

⁷⁵ National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html; Pro Asyl, *Situation in den bundesdeutschen Abschiebegefängnissen*, April 2013, http://archiv.proasyl.de/fileadmin/proasyl/12-04-13_A-Haftbedingungen_-_PRO_AsyL_2_Quartal_2013_01.pdf; Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>. For a detailed description of the detention infrastructure before the overhaul in 2014, see the 2014 Global Detention Project report on Germany, <https://www.globaldetentionproject.org/immigration-detention-in-germany>.

⁷⁶ Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention: Addendum: Follow-up mission to Germany*, A/HRC/30/36/Add.1, 10 July 2015, <http://www.ohchr.org/EN/Countries/ENACARRegion/Pages/DEIndex.aspx>; Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), December 2016, <http://www.asylumineurope.org/reports/country/germany>.

⁷⁷ National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html; Pro Asyl, *Situation in den bundesdeutschen Abschiebegefängnissen*, April 2013, http://archiv.proasyl.de/fileadmin/proasyl/12-04-13_A-Haftbedingungen_-_PRO_AsyL_2_Quartal_2013_01.pdf; Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

had a capacity of 70⁷⁸; capacity reduced to 40 by 2017.⁷⁹ The facility is comprised mainly of single-room cells. The cells are equipped with a bed, a table, a chair, a locker, and a wardrobe. There is also a separate area with a sink and a toilet. The National Agency for the Prevention of Torture found the rooms and sitting rooms clean and in a good state of repair. The cells are open during the day and detainees can spend four hours a day outside.⁸⁰ According to official sources, as of 2016, detainees had access to internet and could use their phones, provided they did not have cameras, receive visits every day, and wear their own clothes.⁸¹ In 2013, the centre staff was comprised of both state authorities and staff provided by the private firm Kötter.⁸² In 2016, the federal state's authorities confirmed that the centre used services of private companies for surveillance, medical care, cleaning, and telephone service.⁸³

Hannover-Langenhagen. The Hannover-Langenhagen detention centre is one of two currently operating detention facilities that operated as a criminal prison before the CJEU ruling (the other is Büren). When Hannover-Langenhagen was still a prison, its immigration detention capacity was 64 and it confined men, women, and children in single-, double- and 4-person rooms. The rooms were equipped with bed, table and chair, with toilets and showers located elsewhere on the floor. During the day, detainees could move freely about the facility and had one hour outdoors.⁸⁴ After it was converted to a dedicated immigration detention centre, the Hannover facility had a capacity of 30, which increased to 68 by 2017. The capacity is planned to increase up to 116.⁸⁵

⁷⁸ Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), December 2016, <http://www.asylumineurope.org/reports/country/germany>.

⁷⁹ Ricarda Breyton and Tobias Heimbach, "Das Comeback der Abschiebehaft in Deutschland," *Welt*, 1 August 2017, <https://www.welt.de/politik/deutschland/article167243145/Das-Comeback-der-Abschiebehaft-in-Deutschland.html>.

⁸⁰ National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html; Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

⁸¹ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

⁸² National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html; Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

⁸³ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

⁸⁴ Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

⁸⁵ Ricarda Breyton and Tobias Heimbach, "Das Comeback der Abschiebehaft in Deutschland," *Welt*, 1 August 2017, <https://www.welt.de/politik/deutschland/article167243145/Das-Comeback-der-Abschiebehaft-in-Deutschland.html>; Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA)*, European Council on Refugees and Exiles (ECRE), December 2016, <http://www.asylumineurope.org/reports/country/germany>; HAZ, "JVA: Mehr Plätze für Abschiebungshaft," HAZ, 18 March 2016, <http://www.haz.de/Hannover/Aus-der->

According to official sources, detainees can move freely on the premises and their rooms are never locked. They can receive visits every day, have access to free internet, and spend at least four hours outdoors daily.⁸⁶

Büren. Since the mid-1980s, non-citizens were detained in the 426-person immigration detention section of the Büren prison. Rooms, ranging from single to six-person, were equipped with beds, table, chairs, locker, sink and toilet. Detainees had at their disposal a kitchen and sitting area. Families and couples could be detained together in a 4-bed room equipped with WC, shower, and cooking facilities. While women could move freely in their unit during the day, men's rooms were open only four hours per day. The facility was guarded by state's prison service and the private firm Kötter.⁸⁷ With the transformation of the prison to a dedicated immigration detention capacity in May 2015, the centre had a capacity of 100,⁸⁸ which increased to 120 in February 2017, then to 140 in May 2017. The capacity is planned to eventually increase to 175. In 2016, the average daily number of detainees was 58.⁸⁹ As confirmed by official sources, Kötter was in charge of surveillance and medical care. With 30-35 employees working at the centre, the Kötter earns roughly 230,000 euros monthly for surveillance and 23,000 for health assistance.⁹⁰

[Region/Langenhagen/Nachrichten/Mehr-Plaetze-fuer-Abschiebungshaft-in-der-JVA-Abteilung-Langenhagen.](#)

⁸⁶ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769, Drucksache 18/7196*, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>; Eva-Maria Weiss, "Das Gefängnis der offenen Türen," *Neue Presse*, 21 February 2015, <http://www.neuepresse.de/Hannover/Meine-Stadt/Das-Gefaengnis-der-offenen-Tueren>.

⁸⁷ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Report to the German Government on the visit to Germany Carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 25 November to 7 December 2010*, CPT/Inf (2012) 6, February 2012, www.cpt.coe.int/documents/deu/2012-06-inf-eng.pdf; Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>; Government of North Rhine-Westphalia, "NRW schafft in Büren mehr Plätze für die Abschiebungshaft," *Press release*, 22 February 2017, <https://www.land.nrw.de/pressemitteilung/nrw-schafft-bueren-mehr-plaetze-fuer-die-abschiebungshaft>.

⁸⁸ Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>; Ministry of the Interior of the Federal State of North Rhine-Westphalia, "Abschiebungshaft in NRW: Land plant Einrichtung in Büren - Strafvollzug am Standort Büren wird eingestellt," *Press release*, 28 November 2014, <http://www.mik.nrw.de/pressemediathek/aktuelle-meldungen/aktuelles-im-detail/news/abschiebungshaft-in-nrw-land-plant-einrichtung-in-bueren-strafvollzug-am-standort-bueren-wird-ei.html>.

⁸⁹ Ricarda Breyton and Tobias Heimbach, "Das Comeback der Abschiebehaft in Deutschland," *Welt*, 1 August 2017, <https://www.welt.de/politik/deutschland/article167243145/Das-Comeback-der-Abschiebehaft-in-Deutschland.html>; Government of North Rhine-Westphalia, "NRW schafft in Büren mehr Plätze für die Abschiebungshaft," *Press release*, 22 February 2017, <https://www.land.nrw.de/pressemitteilung/nrw-schafft-bueren-mehr-plaetze-fuer-die-abschiebungshaft>; Matthias Bungeroth, "Bereitschaftspolizei muss Abschiebehaft in Büren sichern," *Neue Westfälische*, 10 May 2017, http://www.nw.de/nachrichten/regionale_politik/21776870_Hundertschaft-der-Polizei-soll-Abschiebehaft-in-Bueren-sichern.html.

⁹⁰ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache*

Pforzheim. Pforzheim is one of two centres that did not detain migrants before the reform (the other is Eichstätt). Set up in April 2016 on the premises of a former juvenile prison, the Pforzheim facility had a capacity of 21 in 2016, which increased to 36 in 2017 and will expand to 80 places by spring 2018. According to official sources, detainees are allowed to move freely within the premises, receive visits, make phone calls, use the internet in an internet café, prepare their meals and wear their own clothes.⁹¹

Eichstätt. Eichstätt, the newest detention centre in Germany, opened in June 2017. Established at the premises of a former prison, the facility has a capacity of 96. The centre replaced the facility in Mühldorf am Inn.⁹² Since the end of 2013, the Mühldorf am Inn prison was the only prison in Bavaria confining non-citizens; previously the state used several prisons for this purpose.⁹³ After the transformation of the prison to a dedicated detention centre, the facility had a capacity of 82.⁹⁴ According to official sources, detainees could move freely in the facility during the day, had access to pastoral care, sport facilities, TV, telephone, and kitchen to prepare their own food. The centre employed law enforcement officers, physicians, psychologists, and social pedagogues.⁹⁵ Reportedly, Bavaria plans to establish a new detention centre in Passau with a capacity of 100-200. Construction work is supposed to start in 2019.⁹⁶

18/3769, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>; Bernd Bexte, "Nur noch ein bisschen Gefängnis," *Westfalen-Blatt*, 18 June 2015, <http://www.westfalen-blatt.de/OWL/Lokales/Kreis-Paderborn/Bueren/2017133-Neue-Abschiebeeinrichtung-in-Bueren-seit-einem-Monat-in-Betrieb-Nur-noch-ein-bisschen-Gefaengnis>; Government of North Rhine-Westphalia, "NRW schafft in Büren mehr Plätze für die Abschiebungshaft," *Press release*, 22 February 2017, <https://www.land.nrw/de/pressemitteilung/nrw-schafft-bueren-mehr-plaetze-fuer-die-abschiebungshaf>.

⁹¹ Ricarda Breyton and Tobias Heimbach, "Das Comeback der Abschiebehaft in Deutschland," *Welt*, 1 August 2017, <https://www.welt.de/politik/deutschland/article167243145/Das-Comeback-der-Abschiebehaft-in-Deutschland.html>; Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>; Federal State of Baden-Württemberg, "Abschiebungshafteinrichtung in Pforzheim nimmt Betrieb auf," *Website*, 1 April 2016, <https://www.baden-wuerttemberg.de/de/service/presse/pressemitteilung/pid/abschiebungshafteinrichtung-in-pforzheim-nimmt-betrieb-auf-1/>.

⁹² Tobias Betz and Joseph Röhmel, "Demo gegen Abschiebeknast Eichstätt," *BR 24*, 12 June 2017, <http://www.br.de/nachrichten/oberbayern/inhalt/start-abschiebegefaengnis-eichstaett-100.html>; Stefan Kessler (Jesuit Refugee Service Germany), *Email correspondence with Izabella Majcher* (Global Detention Project), July-August 2017.

⁹³ National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html; Dietrich Mittler, "Letzte Station Mühldorf," *Süddeutsche.de*, 9 February 2014, <http://www.sueddeutsche.de/bayern/abschiebung-von-fluechtlingen-letzte-station-muehldorf-1.1882860>.

⁹⁴ Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>.

⁹⁵ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

⁹⁶ Ricarda Breyton and Tobias Heimbach, "Das Comeback der Abschiebehaft in Deutschland," *Welt*, 1 August 2017, <https://www.welt.de/politik/deutschland/article167243145/Das-Comeback-der-Abschiebehaft-in-Deutschland.html>.

Bremen. The state of Bremen continues to detain immigration detainees in the Bremen police headquarters.⁹⁷ The ground floor of the building confines people in police custody, while the first floor confines up to 20 immigration detainees.⁹⁸ Reportedly, these two areas, including the common areas, are fully separated from each other. Both categories of detainees share the same yard but they have different outdoor times. Immigration detainees have more freedoms and rights in detention than people in police custody.⁹⁹ Because these features, many observers in Germany classify the facility as a specialised detention centre.¹⁰⁰ However, in the GDP's typology this facility remains a "police station." First, immigration detainees can be accommodated in secured cells on the ground floor if they pose a danger to other detainees or themselves. Reportedly, this happens rarely. Secondly, both sections of the building are run by the police and the custodial authority over both of them is vested in the interior ministry.¹⁰¹ As of 2013, detainees were confined in 1-person cells, equipped with bed, table, and chair. The cells were poorly ventilated. Men and women sections were separated from each other and both included a sitting room, equipped with a TV, video, fridge, and microwave. During the day detainees could move freely in their sections of the facility.¹⁰² According to both official and non-governmental sources, as of 2016, the rooms were locked just for the night and detainees could use their mobile telephones and their own clothes and can prepare their own meals. They have access to TV, games, small library, and prayer room.¹⁰³

Eisenhüttenstadt. Germany has a privately operated detention centre in Eisenhüttenstadt, which was temporarily closed in March 2017 due to the lack of compliance with security standards.¹⁰⁴ The centre is planned to re-open in mid-2018.¹⁰⁵

⁹⁷ Martin von Borstel (Verein für Rechtshilfe im Justizvollzug des Landes Bremen), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017; Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769, Drucksache 18/7196*, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

⁹⁸ Ricarda Breyton and Tobias Heimbach, "Das Comeback der Abschiebehäft in Deutschland," *Welt*, 1 August 2017, <https://www.welt.de/politik/deutschland/article167243145/Das-Comeback-der-Abschiebehäft-in-Deutschland.html>; Martin von Borstel (Verein für Rechtshilfe im Justizvollzug des Landes Bremen), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017.

⁹⁹ Martin von Borstel (Verein für Rechtshilfe im Justizvollzug des Landes Bremen), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017.

¹⁰⁰ Informationsverbund Asyl und Migration, "Country report: Germany," *Asylum Information Database (AIDA), European Council on Refugees and Exiles (ECRE)*, December 2016,

<http://www.asylumineurope.org/reports/country/germany>; Martin von Borstel (Verein für Rechtshilfe im Justizvollzug des Landes Bremen), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017.

¹⁰¹ Martin von Borstel (Verein für Rechtshilfe im Justizvollzug des Landes Bremen), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017.

¹⁰² Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

¹⁰³ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769, Drucksache 18/7196*, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

¹⁰⁴ RBB 24, "Das nötige Know-how ist in der Innenverwaltung nicht gegeben," *RBB 24*, 24 March 2017, <https://www.rbb-online.de/studiofrankfurt/beitraege/2017/03/brandenburgs-abschiebehäft-geschlossen.html>.

Established in 1993, the Eisenhüttenstadt facility has a capacity of 108 before its temporary closure.¹⁰⁶ It was divided into four sections, one of which was for women. It had several 3-person rooms, each equipped with beds, tables, and chairs. Detainees could move about freely on the floor during the day and were allowed a one-hour walk outside. According to official sources, detainees were locked in their rooms only at night; they could receive visits every day; wear their own clothes and use their telephones and laptops; and they had access to outdoor areas as well as a gym and a library. They could not prepare their meals.¹⁰⁷ The facility has been partially operated by a private contractor, B.O.S.S. Security and Service GmbH (see above “Privatisation”).¹⁰⁸ Official sources report that as of 2016 another private firm was in charge of surveillance and care.¹⁰⁹

Medium-term airport detention centres. As of 2017, Germany operated five medium-term airport detention centres, located at the **Berlin, Düsseldorf, Frankfurt, Munich, and Hamburg** airports.¹¹⁰ These facilities are used to confine asylum seekers coming from “safe countries” or those arriving without identity papers during airport procedure, which, according to the Asylum Act, last up to 19 days. Germany considers people confined in these facilities to not have yet entered the country (see above “Grounds for detention”). As a result, the GDP classifies these facilities as medium-term “transit centre” detention sites.

¹⁰⁵ Stefan Kessler (Jesuit Refugee Service Germany), *Email correspondence with Izabella Majcher* (Global Detention Project), July-August 2017.

¹⁰⁶ Informationsverbund Asyl und Migration, “Country report: Germany,” *Asylum Information Database (AIDA)*, *European Council on Refugees and Exiles (ECRE)*, December 2016, <http://www.asylumineurope.org/reports/country/germany>.

¹⁰⁷ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

¹⁰⁸ National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html; Pro Asyl, *Situation in den bundesdeutschen Abschiebegefängnissen*, April 2013, http://archiv.proasyl.de/fileadmin/proasyl/12-04-13_A-Haftbedingungen_-_PRO_AsyL_2_Quartal_2013_01.pdf; Pro Asyl and Diakonie in Hessen and Nassau, *Schutzlos hinter Gittern: Abschiebungshaft in Deutschland*, June 2013, <https://www.proasyl.de/material/schutzlos-hinter-gittern-abschiebungshaft-in-deutschland/>.

¹⁰⁹ Federal government, *Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE: Drucksache 18/3769*, Drucksache 18/7196, 6 January 2016, <http://dipbt.bundestag.de/doc/btd/18/071/1807196.pdf>.

¹¹⁰ Flüchtlingsrat NRW, *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017; Timmo Scherenberg (Hessischer Flüchtlingsrat), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017; Loulou Kinski (Münchener Flüchtlingsrat), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017; Anne Lausmann (Caritasverband Frankfurt), *Telephone conversation with Izabella Majcher* (Global Detention Project), 16 August 2017; Flüchtlingsrat Hamburg, *Telephone conversation with Izabella Majcher* (Global Detention Project), 17 August 2017; Federal Office for Migration and Refugees, “Flughafenverfahren,” *Website*, August 2016, <http://www.bamf.de/DE/Fluechtlingsschutz/Sonderverfahren/FlughafenVerfahren/flughafenverfahren-node.html>; Migreurop, “Fiche de pays: Allemagne,” *Close the Camps*, February 2016, <http://closethecamp.org/pays/DEU>; Federal Office for Migration and Refugees, “Flughafenverfahren,” *Website*, August 2016, <http://www.bamf.de/DE/Fluechtlingsschutz/Sonderverfahren/FlughafenVerfahren/flughafenverfahren-node.html>.

As of 2017, the Düsseldorf airport facility had a capacity of 50¹¹¹; Hamburg 20¹¹²; Munich approximately 20¹¹³; and Berlin 30.¹¹⁴ The Berlin airport facility, which contracts security to B.O.S.S., cost 1.3 million euros to build.¹¹⁵ The Frankfurt airport had a capacity of 100 but usually detained less people, up to around 50.

Frankfurt airport. The Frankfurt airport facility confines people in 6-person rooms and separates women and men. It also has a space for families.¹¹⁶ Detainees have two sitting rooms and a courtyard at their disposal and they can move about freely in the facility. The National Agency for the Prevention of Torture found that the facility was clean, properly lighted and furnished.¹¹⁷ Although in theory people can be confined there for up to 19 days at the facility, [Caritas Frankfurt](#) and [Hessischer Flüchtlingsrat](#) report that frequently people have been held for longer, due to prolonged identification or deportation proceedings.¹¹⁸ After 30 days in the detention centre another judge has to decide about further detention and frequently orders it for three months. If the deportation has not taken place within that period due to lack of travel documents, in most cases people are allowed entry to the country. Rarely, their detention at the airport is extended for another three months. According to official figures for 2016, of the 258 people detained in the airport centre, 188 were allowed to enter the country and 64 were deported within two days.¹¹⁹

Since the introduction of “custody to secure departure” in 2015, the country set up places where this form of detention may be carried out. As of July 2017, these places included Hannover-Langenhagen detention centre and Hamburg airport, while the plans are to set up such facility also in Dresden.¹²⁰

¹¹¹ Flüchtlingsrat NRW, *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017.

¹¹² Flüchtlingsrat Hamburg, *Telephone conversation with Izabella Majcher* (Global Detention Project), 17 August 2017.

¹¹³ Undisclosed source, *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017.

¹¹⁴ Undisclosed source, *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017.

¹¹⁵ Katrin Starke, "At Schönefeld Airport refugees live behind bars," *Berliner Morgenpost*, 10 October 2013.

¹¹⁶ Anne Lausmann (Caritasverband Frankfurt), *Telephone conversation with Izabella Majcher* (Global Detention Project), 16 August 2017.

¹¹⁷ National Agency for the Prevention of Torture, *Annual Report 2013 of the Federal Agency and the Commission countries*, April 2014, www.nationale-stelle.de/26.html.

¹¹⁸ Anne Lausmann (Caritasverband Frankfurt), *Telephone conversation with Izabella Majcher* (Global Detention Project), 16 August 2017; Timmo Scherenberg (Hessischer Flüchtlingsrat), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017.

¹¹⁹ Timmo Scherenberg (Hessischer Flüchtlingsrat), *Email correspondence with Izabella Majcher* (Global Detention Project), August 2017.

¹²⁰ Stefan Kessler (Jesus Refugee Service Germany), *Email correspondence with Izabella Majcher* (Global Detention Project), July-August 2017.

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