



Input provided by the United Nations High Commissioner for Refugees

into the

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Compilation Report

for the Universal Periodic Review of

Germany

I. Background and Current Conditions

UNHCR has been present in Germany since 1951. Germany belongs to the first six signatory states of the 1951 Geneva Convention Relating to the Status of Refugees as it became a party to the 1951 Convention on 1 December 1953. It used to be one of the main recipient countries of asylum seekers and refugees world-wide, hosting large exile communities from the most frequent countries of origin of refugees. Despite the drop in asylum requests over the years, Germany still ranks worldwide amongst the main recipient countries of persons in need of international protection. At present, there are approx. 654,420 persons of concern to UNHCR residing in Germany. This number includes 578,879 refugees, 34,063 asylum-seekers, 9,478 stateless non-refugees and an estimated 32,000 persons of concern to UNHCR without proper status, the latter consisting of approx. 18,000 Kosovo minorities of concern to UNHCR (Roma, Serbs), 9,029 Iraqi and 2,832 Afghan nationals who hold toleration permits only.

In 2007, 19,164 new asylum applications, as well as 11,139 repeat applications were lodged in Germany. The largest caseloads of new asylum seekers in 2007 originated from Iraq (4,327), Serbia (1,996), Turkey (1,437), Vietnam (987), and the Russian Federation (772). 34% of all first applications were lodged by female applicants, 39% of the applicants were minors. 180 unaccompanied minors below age 16 applied for asylum in 2007. The overall number of applications is slightly higher than in 2006 (21,029 first applications and 9,071 repeat applications).

Recognition rates in Germany have increased considerably during 2007 compared to previous years. Among the reasons for this are changes to the legal framework as

introduced by the Immigration Act in 2005, the direct application of the EU Qualification Directive (Council Directive 2004/83/EC) and the August 2007 EU Directives Transposition Act. Moreover, shifts in the specific composition of the asylum applicants' caseload, changes in the assessment of country of origin information (especially regarding Iraq) and the recognition of family members of refugees. In 2007, the overall refugee recognition rate amounted to 34.9%, while subsidiary protection was granted in 3.3% of the cases (25.2% and 2.4% respectively with otherwise closed cases), compared to a total of 9.9% including subsidiary protection in 2006 (6.4% with otherwise closed cases).

II. Achievements and Best Practices

The entry into force of the new Immigration Act on 1 January 2005 brought about major improvements e.g. for victims of persecution by non-state agents as well as for victims of persecution for gender specific reasons (within the concept of a particular social group). In addition, it also equalised the status of persons granted Constitutional asylum and those granted Convention refugee status. Furthermore, the legal provision establishing the criteria for the recognition of a person as refugee now contain an explicit reference to the 1951 Convention. The relevant legislation was revised again in August 2007 when the so-called Qualification Directive (2004/83/EC) was implemented into German national law and the Transposition Act was passed. The Transposition Act 2007 contained major legal changes with regard to the asylum and aliens law: a legal basis for refugee recognition was created in Section 3 Asylum Procedures Act, a long-stayer regulation was included in the law (Section 104 a and 104 b Residence Act) and the legal provisions with regard to revocation were changed by incorporating into German national law the wording of Article 11 (e) 1 of the Qualification Directive¹ and Article 1 C (5) 1 of the 1951 Convention, respectively.

III. Challenges and Constraints

The core challenges in Germany are as follows:

(1) Interpretation of the refugee definition

German asylum practice used to be almost exclusively influenced by national legal concepts and thinking. Due to continuous lobbying by UNHCR and the inclusion of an explicit reference to the 1951 Convention, this perception is slowly changing.

However, administrative and judicial practice regarding the application of refugee criteria displays a number of divergences with regard to certain criteria promulgated by UNHCR. Divergences pertain, in particular, to persecution for reasons of "religion", to aspects regarding the refusal of military service and desertion, to the concept of internal protection alternative, and the denial of refugee status in follow-up procedures under certain circumstances. However, since the expiry of the transposition deadline for the EC

¹ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304/12 of 20.9.2004.

Qualification Directive on 10 October 2006, and even more since the Transposition Act 2007 entered into force, the influence of EC legislation on the substantive criteria for refugee status and subsidiary protection status has increasingly provoked a review of German standing practices.

(2) Granting of complementary protection

Initially, German practice in granting complementary protection used to be rather restrictive in cases of dangers of torture, inhuman and degrading treatment or general dangers arising from international or internal armed conflicts. It used to be rather generous though, in certain instances, with a view to granting protection for other individualised dangers or, in principle, regarding health related reasons. These legal provisions were amended substantially by the Transposition Act 2007. The European concept of subsidiary protection led to an extension of the provisions dealing with dangers of a death penalty as well as to the incorporation of non-state sources of dangers in the concept of protection against torture, inhuman or degrading treatment. However, the European provision on protection against dangers to life or limb in situations of armed conflicts was transposed rather restrictively. Moreover, the rights entailed to persons with subsidiary protection are in certain aspects weaker than those granted to refugees in spite of comparable protection needs and potential duration of international protection.

(3) Revocation of refugee status

The application of the “cessation clause” in relation to refugee status was characterised by a rigorous understanding by the German authorities and the German jurisprudence on the concept of cessation. In many cases, this rigorous interpretation led to premature termination of refugee status in situations (still) characterised by instability, by the absence of an effective rule-of-law system, or a high level of general dangers for personal security or economic subsistence. In particular, more than 20,000 revocation decisions were taken by the German Federal Office for Migration and Refugees with regard to Iraqi refugees between November 2003 and December 2007. The loss of refugee status potentially leads to a loss of residence status and other rights enshrined in the 1951 Refugee Convention. As a consequence, the loss of refugee status may result in a situation in which persons affected are induced to return or even forcibly returned by the authorities, though conditions for return are not yet appropriate. Based on the assumption that the general situation in Iraq had deteriorated, certain groups, for instance non-Muslim minorities, were exempted from revocation procedures as of spring 2007, and subsequently all Iraqi revocation procedures were stopped as of May 2008, enabling the refugees to maintain refugee status. However, the interpretation of criteria for revocation remains the same and is likely to produce more premature revocations of refugee status in the future. The German Federal Court has submitted a number of relevant questions to the European Court of Justice for a preliminary ruling on the interpretation of Article 11 (1) e of the Qualification Directive, as this Article directly refer to cessation of refugee status.

(4) Council Regulation (EC) No. 343/2003 (Dublin II)

According to German statistics, the share of Dublin procedures in relation to all new asylum applications was 28.1 % in 2007. Certain deficiencies apply in cases of vulnerable groups of asylum seekers, such as separated children or traumatised persons. A further problem remains the fact that in some cases relevant data is not transmitted to the receiving Member State, e.g. with regard to cases of persons in need of medical treatment (e.g. non-transmission of details of the disease and medical reports). Most importantly, Germany rarely applies the sovereignty clause of Article 3 (2) of the Dublin II Regulation for humanitarian reasons in dealing with transfers to situations where protection was not available for the person concerned in the other Member State of the Dublin system. However, Germany at least partly follows UNHCR's call for a stop of transfers to Greece due to major dysfunctions in the Greek system. In cases concerning persons pertaining to vulnerable groups or persons with established family links to Germany the sovereignty clause is used on a regular basis. Some courts have even stopped transfers in full compliance with UNHCR's respective position paper. Nonetheless, decisions establishing the responsibility of Greece for processing asylum claims continue to be adopted and enforced.

(5) Lack of adequate treatment of refugee children, above all separated children/unaccompanied minors, as well as other vulnerable groups

According to the German Asylum Procedures Act, minor refugees between 16 and 18 years are treated like adults in the asylum procedure. In particular, they are included in accelerated procedures, e.g. the airport procedure. Certain minor asylum seekers encounter difficulties in accessing primary and secondary schools, as a consequence of the fact that they are not obliged to go to school in some of the German States. Special attention will continuously have to be paid to ensure that all vulnerable asylum seekers (especially victims of torture, gender-related persecution and other severe human rights violations, as well as the elderly) get a fair treatment in the asylum procedure and receive the treatment they are entitled to under the EC Reception Conditions Directive. With regard to the latter, the Transposition Act failed to insert a claim for treatment into the respective German law.

IV. Recommendations

1. The new provisions, including, in particular, those derived from the EU Qualification Directive, should be interpreted in a liberal, protection oriented manner in line with UNHCR's understanding of the disputed concepts.
2. The German provisions transposing the criteria for subsidiary protection of the EU Qualification Directive should be brought fully into line with the Directive. Its interpretation should be guided by the object and purpose of the Directive to provide subsidiary protection to persons facing serious dangers to life or limb because of general dangers arising from an armed conflict. The rights accorded should be adapted to those granted to refugees.
3. The interpretation of cessation criteria should be brought in line with UNHCR's interpretation as set out in the Guidelines on International Protection (HCR/GIP/03/03).

4. The provisions of the Dublin-II Regulation must be fully applied with a view to separated children. The needs of vulnerable persons should be taken into account in the context of a more frequent application of the take-over clause of Article 3 (2) of the Regulation. If the situation in the State responsible under the Dublin-II Regulation displays serious shortcomings such as unavailability of treatment for traumatized persons or lacking access to fair and efficient asylum procedures, the take-over clause of Article 3 (2) of the Regulation must be applied.
5. Minor refugees should be treated as minors throughout the asylum procedure. Compulsory schooling should apply to all minor asylum seekers, refugees and persons with subsidiary protection. Special needs of particularly vulnerable persons should be fully reflected in asylum procedures. In order to guarantee access to treatment for traumatized asylum-seekers, the Law on Social Assistance for Asylum-Seekers should be amended with a view to establishing a claim in this respect.

V. Capacity Building and Technical Assistance

UNHCR is in constant discussion with the Federal authorities responsible for asylum matters. Moreover, UNHCR provides training on international and European refugee law on various levels including, in particular, courts and lawyers' associations. Further progress on the questions mentioned above depends on political decisions in some respects and on interpretative guidance by higher courts in other respects.

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