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The use of detention and alternatives to detention in Germany: Study by the German National Contact Point for the European Migration Network (EMN)

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for Migration
and Refugees

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European Migration Network

The use of detention and alternatives to detention in Germany

Study by the German National Contact Point
for the European Migration Network (EMN)

Working Paper 59

Janne Grote

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for the European Migration Network (EMN)

Janne Grote

Federal Office for Migration and Refugees 2014

Foreword

At the time of compilation of this focus study, the institutional and legislative framework in Germany of detention pending deportation and alternatives to detention pending deportation were in flux. On the one hand, work on legislative modifications is currently under progress. On the other hand change is related to a ruling by the European Court of Justice from 17 July 2014, concerning the accommodation of persons in detention pending deportation within specialized detention facilities. Developments related to detention pending deportation during the lawsuit and the pronouncements of the judgment are incorporated within this study (cf. chapter 4). Potential further consequences for the accommodation of persons in detention pending deportation were not foreseeable at the time of completion of this study and could therewith not be taken into account.

Alongside, the need for implementation of the EU admission directive 2013/33/EU into national law is checked, which needs to enter into force officially until 20 July 2015. These legislative procedures were not terminated at the time of the editorial deadline. Thus, due to the continuous decision-making processes, this study may not present the current state of affairs exhaustively, nor can it foresee future developments. It must be explicitly emphasized, that this study reflects upon a state, which may or will soon be out-dated due to the continuous decision-making processes. Nevertheless, the Federal Office for Migration and Refugees did decide to portray the German practice, legal foundation and discussion, in order to participate in the EU-wide comparison.

Executive Summary

The organisation and conditions of detention pending deportation are shaped by the complexity of the federal structure of the German state and have undergone many changes in recent years. This has been caused, inter alia, by European harmonisation at the level of the common migration and asylum policy that have been incorporated into German regulations governing detention pending deportation in the form of regulations and directives.

In 2013, more than 4,300 persons were detained pending deportation in the Federal Länder over the course of the year (not including Hesse, see Chapter 2.5). All in all, the number is declining since 2008 (8.805), though the decline differs strongly between the Federal Länder. In those Federal Länder, which provided data, in 2013 the average duration of detention pending deportation varied between 17.5 days and 37 days.

General legal and administrative terms

The provisions for the staff of the competent foreigners authorities, the police forces of the Federal Länder and the Federal Police to apply for detention pending deportation or other coercive measures to terminate a person's residence or to refuse them entry are set forth in the Residence Act (Aufenthaltsgesetz), the correspondent General Administrative Regulations relating to the Residence Act and in the 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).

Generally speaking, it is important to establish whether the deprivation of liberty is proportional for the purpose of safeguarding deportation, or whether it could also be implemented successfully by imposing less restrictive but also sufficient measures. Some Federal Länder have issued their own decrees and laws to supplement and specify the provisions set forth in the Residence Act and the General Administrative Regulations relating to the Residence Act.

Moreover, at present, the Federal Ministry of the Interior revises the Residence Act as well as the Asylum Procedure Act (Asylverfahrensgesetz). Therewith, objective grounds for the assumption that a person will abscond shall be implemented into national law. By the time finishing this study, these legislative procedures were not completed, yet.

Types of accommodation and detention conditions

In some Federal Länder, persons taken into detention pending deportation are being accommodated in separate facilities of prisons reserved specifically for them whereas other Federal Länder have set up special pre-removal detention facilities (until 25 July 2014). Some Federal Länder also cooperate in finding accommodation for persons taken into detention pending deportation. Until now, conditions at the individual pre-removal detention centres depend in particular on whether the person is detained in a special pre-removal detention facility or in separate facilities of prisons.

Within the framework of national law the detention conditions prove to be shaped heterogeneously. Due to extended cooperation among the Federal Länder in accommodating persons taken into custody, already before the ruling of the European Court of Justice, more persons are taken into custody awaiting deportation at special pre-removal detention centres than in prisons.

On 17 July 2014 the European Court of Justice judged (C-473/13, C-514/13 and C-474/13) that a Member State cannot rely on the fact that there are no specialized facilities in a part of its territory to justify detaining third-country nationals separately in prisons pending their deportation, removal or refusal of entry

if a specialized detention facilities exists in a member state as a whole. The competent ministries will evaluate the transformation of the ruling by the European Court of Justice.

Alternatives to detention

On the one hand, alternatives to detention pending deportation continue to involve institutionalised procedures that apply either to all persons required to leave the federal territory (who have their passports confiscated) or certain groups of persons (unaccompanied minors). On the other hand, staff at the public authorities may also determine further alternative coercive measures (administrative provisions) in individual cases (for instance, to provide a surety). In addition, in several Federal Länder the staff at the public authorities has further alternative coercive measures at its disposal (for instance, payment of a guarantee or the handover in the area of responsibility of a person of trust). Though, with each of the alternatives the question needs to be asked, to what extent they suit the purpose of safeguarding deportation in praxis.

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1 Introduction

Third-county nationals[1] can be refused the right to reside in Germany, even prior to crossing the border, if they do not fulfil the entry conditions set forth in Article 5 of the Schengen Border Code[2] (Regulation (EC) No 562/2006) or because an application for asylum was refused as final and conclusive on the grounds that it was unfounded. It is also possible that third-country nationals are persons who have entered the country unlawfully and who do not have any right of residence from the outset. If the person in question is not or is no longer in possession of the necessary residence permit, this person is obliged to leave the federal territory. The competent foreigners authorities, police and border authorities are obliged by law to ensure that third-country nationals[3] required to leave the federal territory actually do so and that persons attempting to enter the country unlawfully are refused entry – unless they are seeking international protection. Generally, a voluntary return is to be preferred. Though, if necessary, the termination of an immigrant's residence can be accompanied by coercive measures, if the time limit for a voluntary return has expired or such time limit did not exist. The termination of a residence can be accompanied by simply requesting the immigrant to leave the federal territory, to threatening deportation, to deport or remove a person without taking him into detention, to enforcing deportation or removal after taking the immigrant into detention pending deportation or into pre-removal detention. Deportation and removal, by act of law, come along with a ban on entry and residence.

1 In accordance with Article 2 of the Schengen Borders Code "third-country nationals" mean any person who is not a Union citizen as defined by Article 17 para. 1 of the treaty and who is not a "person enjoying the Community right of free movement" according to number 5 of the present Article (Regulation (EC) No 562/2006).

2 Regulation (EC) No 562/2006 of the European Parliament and the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

3 As a rule, the masculine form will be used for non-gender-specific designations in this report. It will refer to men and women alike.

Subject matter and objective of the study

Detention and alternatives as coercive measures used for the purpose of safeguarding deportation (respectively removal, refusal of entry) without detaining a person are the subject matter of the study. Although the various types of detention are measures that deprive a person of his or her liberty (*preparatory detention, detention ordered as a preventative measure, detention pending exit from the federal territory, pre-removal detention and detention pending deportation*), the purpose of detention pending deportation is not "to prepare or institute criminal proceedings or execute a sentence nor does it represent a sanction or an alternative to imprisonment" (General Administrative Regulations relating to the Residence Act 62.2.0.0). Rather, it is a "preventative measure within the context of enforcing the obligation to leave the federal territory". In principle, detention pending deportation does not presuppose any intentional conduct or misdemeanour on the part of the foreigner, it merely predicts the risk regarding the enforceability of the deportation" (Dienelt 2011: § 62 of the Residence Act margin number 5).

The general regulatory and organisational conditions for the purpose of enforcing the requirement to leave the federal territory, on which the individual measures are based, are regulated by numerous laws, regulations and directives at federal level and state level. They are being influenced to an ever larger extent by EU Directives and Regulations. The strong influence European law is having on national law can be attributed to a general harmonisation strategy in the policy-making area of European migration policy in general and asylum and visa policy in particular.

Germany's federal structure and increasing EU integration has resulted in the emergence of a complex legal and regulatory organisational structure in relation to issues regarding the detention of third-country nationals. This study therefore aims to sum up the administrative and organisational status quo in relation to detention, the conditions at pre-removal detention

centres and potential alternative coercive detention measures.

At present, the Federal Ministry of the Interior revises the Residence Act as well as the Asylum Procedure Act (Asylverfahrensgesetz). Therewith, objective grounds for the assumption of absconding shall be implemented into national law. By the time finishing this study, these legislative procedures were not completed, yet.

This Focus Study was completed within the framework of the European Migration Network, it is being completed in parallel in all participating Member States as well as Norway and will be summarized in a comparative synthesis report.

Sources used

In addition to the general legal and organisational conditions and the most recent developments in policy-making, this Focus Study includes many sources on the various measures terminating an immigrant's residence, the various types of detention, the number of persons detained, detention conditions and the alternatives to detention. Legal texts and administrative provisions as well as decrees issued by the Federal Länder on the Foreigners Act and Residence Act were the most important sources. Responses by the Federal Government and Governments of the Federal Länder to minor interpellations on the subject submitted to the German Bundestag or the parliaments of the individual Länder since 2012 were used to prepare the latest statistics.[4] Since the enforcement of detention pending deportation comes under the remit of the Federal Länder in Germany and the most recent nationwide surveys on cumulative annual overviews of detention pending deportation were carried out in 2011 (cf. Deutscher Bundestag 2012a + b), the Ministries, Senate administrations and statistics authorities responsible for detention pending deportation at state level were asked to provide information for the years 2012 and 2013. Further data was obtained from the Central Register of Foreigners or from statistics reports and studies conducted by the Federal Office for Migration and Refugees (BAMF) and the EMN. National and international studies and reports by a wide range of non-governmental organisations were also taken into account.

4 I would like to thank Julia Amann and Matthias Kauzmann for the editorial assistance they provided within the framework of their internships at BAMF.

2 Legislative and institutional framework of detention to enforce the requirement to leave the federal territory of third-country nationals

Detention is by law used as a last resort (ultima ratio) in forcefully terminating the residence of third-country nationals obliged to leave the federal territory and may also be ordered for enforcing the refusal of entry at an external border of the Federal Republic of Germany and for enforcing the refusal of an entry.

2.1 Categories of third-country nationals that can be detained, national provisions and grounds for detention (schema)

Table 1 provides an overview of the legal bases; on which certain groups of persons can be detained for the purpose of refusing or terminating their residence. The Table lists the legal bases; on which persons to whom the relevant residence status applies may perhaps be detained bearing the principle of proportionality in mind.

Filing an application for detention pending deportation comes under the remit of the Federal Länder (foreigners authorities, the police forces of the Federal Länder) as well as the authorities charged with carrying out the police control of cross-border traffic. Carrying out detention pending deportation falls exclusively within the remit of the Federal Länder. Some Federal Länder have issued supplementary administrative regulations or Land laws regulating detention pending deportation (cf. Annex A2).

2.2 Detention pending exit from the federal territory

Third-country nationals may only enter or stay in the federal territory if, amongst others, they are in possession of a recognised and valid passport or passport substitute which authorizes to cross the border (§ 3 of the Residence Act). If a third-country national entering the federal territory does not possess the required passport or passport substitute and if a third-country national does not possess the necessary visa pursuant upon entry[5] (§ 14 of the Residence Act), they shall be deemed to be attempting to enter the federal territory unlawfully. This may result in these persons being refused entry at the border by the competent border authorities in accordance with Article 13 of the Schengen Border Code (Regulation (EC) No 562/2006)[6] (§ 15 of the Residence Act). Persons who are enforceably refused entry do not face a ban on re-entry.

Persons who have filed an application for asylum and who come under the ban of deportation despite not

5 According to § 14 para. 2 of the Residence Act the authorities charged with carrying out the police control of cross-border traffic may issue exceptional visa and passport substitute documents. Herewith, requirements by Article 35 of the Visa Code need to be considered.

6 A further reason to refuse entry shall apply if "there is a well-founded suspicion that the foreigner does not intend to stay in the country for the stated purpose" (§ 15 para. 2 number 2 of the Residence Act).

Table 1: Legal basis for detention broken down into residence categories

Third-country nationals broken down into residence categories	Detention possible	Is it based on a law?	Legal basis for detention (For state-specific regulations, cf. Annex 2.4)
Applicants for international protection in ordinary procedures (first-time application and not involving the Dublin procedure)	Yes	Yes	§ 14 para. 3 Asylum Procedure Act (in case an application for asylum is filed out of detention) in conjunction with §§ 62 para. 2 and 3 and 62a of the Residence Act
Applicants for international protection in ordinary procedures (follow-up application not involving the Dublin procedure)	Yes	Yes	§ 71 para. 8 of the Asylum Procedure Act in conjunction with § 62 para. 2 and 3 and § 62a of the Residence Act
Applicants for international protection subject to Dublin procedures	Yes*	Yes*	§ 57 para. 2 in conjunction with § 62 para. 2 and 3 and § 62a of the Residence Act and Article 28 of Regulation (EU) No 604/2013
Rejected applicants for international protection	Yes	Yes	§ 62 para. 2 and 3 in conjunction with § 62a of the Residence Act
Other rejected applicants for residence permits (with and without family reunification)	Yes	Yes	§ 62 para. 2 and 3 in conjunction with § 62a of the Residence Act
Third-country nationals detained at the border to prevent illegal entry	Yes	Yes	§ 15 para. 5 sentence 1 of the Residence Act
Rejected asylum seekers after conclusion of an expedited airport procedure while procuring documents in place of a passport	Yes	Yes	§ 15 para. 6 or 5 in conjunction with § 62 para. 4 of the Residence Act; § 18a of the Asylum Procedure Act; In Dublin cases: Regulation (EU) No 604/2013
Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision	Yes	Yes	§ 57 para. 1 as well as §§ 62 and 62a of the Residence Act
Persons who have been issued a return decision	Yes	Yes	§ 62 para. 2-3 and § 62a of the Residence Act
Third-country nationals to be expelled	Yes	Yes	§§ 53-56 in conjunction with § 62 para. 2 and § 62a of the Residence
Third-country nationals who pose a "threat" or "terrorist threat" to the security of the Federal Republic of Germany	Yes	Yes	§ 58a in conjunction with §§ 62 para. 3 sentence 1 number 1a and 62a of the Residence Act

Source: Residence Act, General Administrative Regulations relating to the Residence Act, Asylum Procedure Act, Regulation (EU) No 604/2013, Directive 2008/115/EC.
* See rulings of the Federal Court of Justice from 26 June 2014 and 23 July 2014 (BGH AZ: V ZB 31/14).

being entitled to enter the federal territory are not refused entry because they may be persons in need of international protection (refugees under the Geneva Convention, persons entitled to asylum, persons seeking subsidiary protection). Generally, residence on the federal territory is permitted to asylum seekers during the procedure for granting the right of asylum (§ 55 para. 1 sentence 1 of the Asylum Procedure Act). They shall immediately be referred to the competent reception centre (§ 18 para. 1 of the Asylum Procedure Act). However, this measure does not apply for asylum seekers who enter the federal territory via a “safe country

of origin"[7] or who come under the jurisdiction of another country responsible for processing the asylum application by virtue of bilateral readmission agreements or the Dublin procedure, and when proceedings to admit or re-admit them are initiated. They are refused entry (§ 18 para. 2 of the Asylum Procedure Act).

In order to ensure that a refusal of entry is effective where a ruling to refuse entry has been issued and cannot be enforced immediately, the foreigner concerned is to be taken into custody (*detention pending exit from the federal territory*) (§ 15 para. 5 sentence 1 of the Residence Act). This shall not apply to foreigners who have reached the federal territory by air (§ 15 para. 6 of the Residence Act). Since detention is always intended to be the last resort, there must also be a "concrete threat that the foreigner will attempt to enter the federal territory (unlawfully) despite being refused entry" (Dienelt 2011: § 15 of the Residence Act margin number 15.5.1). According to the General Administrative Regulations[8] of the Federal Ministry of the Interior relating to the Residence Act (as at: 26 October 2009), foreigners cannot be refused entry immediately if, for instance, "authorities cannot be reached regarding urgently required information" or if they are in urgent need of medical treatment (General Administrative Regulations relating to the Residence Act 15.0.4). Other grounds may apply if the foreigner does not hold the necessary identification documents or exit documents and it is necessary to procure a passport substitute (General Administrative Regulations relating to the Residence Act 15.5.1). When an entry to the Federal territory is refused at the airport in the direction of a contractual state of the Chicago Convention on International Civil Aviation (ICA-Convention), the procuring of a passport substitute is not necessary, if the requested person accessed Germany via that specific state directly. After the border authorities directed the refusal of entry and decided on the necessity to take the person into custody, they subsequently apply to the Local Court on the deprivation of liberty (detention pending exit) according to § 417 para. 2 number 5 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. The justification of the application needs to include the obligation to leave the Federal territory of the person concerned as well as the preconditions and the feasibility of the refusal of entry. In urgent cases, the deprivation of liberty may be implemented as an interim order in accordance with § 427 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. The interim deprivation of liberty may not last longer than six weeks (§ 427 para. 1 sentence 2 of the Act on Procedure in Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction).

2.3 Detention used to enforce the obligation to leave the federal territory

There are different reasons why a third-country national's residence permit may lapse. This can be the case, for instance, if it has expired, the residence permit has been confiscated by the foreigners authorities, the residence permit is revoked or expulsion has been imposed (for instance, if the immigrant has legally binding been sentenced to a prison term at least three years pursuant to § 53 of the Residence Act).[9] A person shall be obliged to leave the federal territory in general if he or she does not possess or no longer possesses the necessary residence title (§ 50 para. 1 of the Residence Act). The third-country national shall be required "to leave the federal territory without delay or, if a period has been allowed for departure, by the end of this pe-

7 The EU Member States, and Norway and Switzerland are considered to be "safe countries of origin" (§ 26a para. 2 in conjunction with Annex I to § 26a of the Asylum Procedure Act). In principle, if an asylum seeker has entered the Federal Republic via a "safe country of origin", he is not recognized as a person who is entitled to asylum. Notwithstanding this, the asylum procedure is initiated in Germany once the person has entered the federal territory unless it has been established that another country is responsible for doing so. If, by contrast, there are indicators suggesting that another country is responsible for carrying out the procedure, the Dublin II procedure - and since 1 January 2014 the Dublin III Regulation applies to these cases. This means that in practice the country which the asylum seeker first entered is responsible for examining the application for asylum. Asylum seekers are then returned to or deported to these countries.

8 Administrative regulations are orders issued by a superior administrative body to subordinate administrative bodies and are binding on them. Administrative regulations are intended to safeguard uniform application of the law within public authorities resulting from discretionary scope, interpretation scope and specification scope of the law.

9 § 51 of the Residence Act contains an exhaustive list of reasons terminating the lawfulness of residence and the relevant exemptions.

riod" (§ 50 para. 2 of the Residence Act). The passport or passport substitute of an immigrant who is required to leave the federal territory should be taken into custody until the time of his or her departure (§ 50 para. 5 of the Residence Act). A third-country national who is required to leave the federal territory and who intends to change his or her address or to leave the district covered by the foreigners authority for more than three days shall be required to notify the foreigners authority beforehand accordingly (§ 50 para. 4 of the Residence Act).

In principle, persons required to leave the federal territory should be given enough time to ensure they leave the Federal Republic of Germany "voluntarily" and can make preparations to leave (cf. Dienelt 2011: § 50 of the Residence Act margin number 12).[10] As a rule, notice of intention to deport an immigrant is served by the foreigners authorities specifying a reasonable period of between seven and 30 days for voluntary departure (§ 59 of the Residence Act).

2.3.1 Detention pending deportation

§§ 62 and 62a of the Residence Act specify under what conditions and enforcement conditions third-country nationals can be forced to leave the federal territory by detaining them (detention pending deportation). Detention pending deportation is used to ensure the termination of a person's residence unless the person obliged to leave the federal territory can be forced to leave by alternative (coercive) means (cf. Hofmann/Hoffmann 2008, Hailbronner 2014: margin number 1148). First of all, reference is made to the need for proportionality according to which "custody awaiting deportation shall not be permissible if the purpose of the custody can be achieved by other, less severe means which are also sufficient" (§ 62 para. 1 sentence 1 of the Residence Act; cf. also Chapters 3.2 and 5). Furthermore, the detention shall be "limited to the shortest possible duration" (§ 62 para. 1 sentence 2 of the Residence Act).

2.3.2 Custody to prepare deportation

A third-country national, who is to be *expelled* for being sentenced to a prison term of several years, for having furnished false or incomplete information in order to obtain a German residence title or for endangering "the free and democratic constitutional system or the security of the Federal Republic of Germany" (expulsion order pursuant to §§ 53 to 56 of the Residence Act) may face so-called *custody to prepare deportation* which is imposed by judicial order "if a decision on deportation cannot be reached immediately and deportation would be much more difficult or impossible without such detention" (§ 62 para. 2 of the Residence Act). "The purpose of the detention is to give the authorities enough time to substantiate the obligation to leave the federal territory by issuing an expulsion order" (Winkelmann in Dienelt 2011, § 62 of the Residence Act, margin number 40). Custody to prepare deportation is permissible in particular, if the expulsion may be ordered within six weeks after commencing a prison sentence and if it may be enforced within this time frame (General Administrative Regulations relating to the Residence Act 62.1.1).

2.3.3 Custody to secure deportation

Other reasons why a person may be "placed in custody by judicial order for the purpose of safeguarding deportation" exist if, according to § 62 para. 3 sentence 1 of the Residence Act

1. "the foreigner is enforceably required to leave the federal territory on account of his or her having entered the territory unlawfully

1a. a deportation order has been issued pursuant to § 58a but is not immediately enforceable,

2. the period allowed for departure has expired and the foreigner has changed his or her place of residence without notifying the foreigners authority of an address at which he or she can be reached,

3. he or she has failed to appear at the location stipulated by the foreigners authority on a date fixed

10 The following criteria are considered to be indicators of "necessary preparations for departure": "the person must lodge and substantiate an appeal, terminate their employment and lease for a dwelling in the federal territory, prepare to return home, procure travel documents, search for accommodation and, if possible, be seeking employment in the home country" (Dienelt 2011: § 50 of the Residence Act margin number 15). Furthermore, special hardships in relation to deadlines set must be taken into account such as "family ties, spouse's employment, underage children attending school, pregnancy or illness of the person obliged to leave the federal territory or of their spouse, difficulties in finding accommodation and employment in the native country" (Dienelt 2011: § 50 of the Residence Act margin number 15).

for deportation, for reasons for which he or she is responsible,

4. he or she has evaded deportation by any other means or

5. well-founded suspicion exists that he or she intends to evade deportation".[11]

In order to be subject to detention ordered to secure deporation, the immigrant must be enforceably obliged to leave the federal territory and at least a certain likelihood and suspicion must exist in each individual case that the third-country national intends to evade deportation – a mere refusal to leave the country is not enough of a reason (cf. Federal Court of Justice, Ruling from 19/01/2012, V ZB 221/11, margin number 4). In the case of detention ordered to secure deportation, § 62 para. 3 sentence 4 says that custody to secure deportation shall not be permissible if it is established that it will not be possible to carry out deportation within the next three months for reasons beyond the immigrant's control. This is the case, for instance, if he or she is unable to travel owing to hospitalisation (cf. General Administrative Regulations relating to the Residence Act 62.2.0.2) or if he or she lacks a falsified passport and a passport substitute needs to be organised in cooperation with a specific state which denies or delays the issuance of the passport substitute, while the person obliged to leave the federal territory is willing to cooperate.

Custody to secure deportation may be ordered for up to six months. In cases in which the immigrant hinders his or her deportation, it may be extended by a maximum of twelve months" (§ 62 para. 4 sentence 1 of the Residence Act). This means that a person obliged to leave the federal territory can be detained for up to 18 months[12], although the average time they are detained in Germany in recent years has been less than one month. The longest detention period documented was 238 days or almost 8 months in 2011 (Selders 2013: 15; cf. for the duration of detention pending deportation Annex A3).

The authority responsible for the detention application may detain a person without a prior judicial order and place him or her in temporary custody[13] under certain conditions, although the third-country national must be brought before the court without delay and by the end of the following day at the latest for a decision on the order for custody to secure deportation (§ 62 para. 5 of the Residence Act and § 428 para. 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction).

In November 2011 residence-related directives of the European Union were transposed into the Residence Act and the Asylum Procedure Act, which also affect the provisions governing the detention of immigrants under EU law. The need for amendment resulted in particular on the basis of the EU Return Directive[14] (2008/115/EC). It determined for the first time grounds for detention (Article 15), the conditions of detention (Article 16) and special provisions governing minors and families (Article 17). It also defines "emergency situations" (Article 18).

2.3.4 Pre-removal detention

Pre-removal detention is another form of detention that is used to enforce the obligation to leave the federal territory (§ 57 para. 3 in conjunction with § 62 of the Residence Act). Unlike *refusal of entry* at the border which represents a measure that prevents residence, *removal* is a measure that actually terminates a person's residence (Hailbronner 2014: margin number 1088, Dienelt 2011: § 57 of the Residence Act margin number 2 and 3). A person who is intercepted in conjunction with unlawful entry into the federal territory across a border shall be removed from the federal territory (§ 57 para. 1 of the Residence Act). The person in

11 For reasons why suspicion may exist, cf. Chapter 3.2.

12 A period of custody to prepare deportation shall count towards the overall duration of custody to secure deportation (§ 62 para. 4 sentence 2 of the Residence Act).

13 § 62 para. 5 of the Residence Act: "The authority responsible for the detention application may detain a foreigner without a prior judicial order and place such foreigner in temporary custody where 1. there is a strong suspicion that the conditions pursuant to para. 3, sentence 1 apply, 2. it is not possible to obtain the judicial decision on the order for custody to secure deportation beforehand and 3. there is a well-founded suspicion that the foreigner intends to evade the order for custody to secure deportation. The foreigner shall be brought before the court without delay for a decision on the order for custody to secure deportation."

14 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

question is required to leave the federal territory from the moment they have entered the federal territory unlawfully (§ 58 para. 2 sentence 1 number 1 of the Residence Act) unless he or she has filed an application for asylum. By contrast, if the third-country national files an application for asylum, the asylum seeker may not be removed immediately even if he or she "does not fulfil the formal requirements for lawful entry" (Dienelt 2011: § 15 of the Residence Act margin number 3).

If a third-country national is apprehended by the Federal Police and does not file his or her application for asylum until the Federal Police have applied for pre-removal detention from the federal territory or if the third-country national's application is not forwarded to the Federal Office for Migration and Refugees until he or she has been taken into custody, the application is deemed to "have been filed while being in detention". This may result in the person having to remain in detention until a decision is taken on their application (cf. Deutscher Anwaltverein 2010: 13ff, Hailbronner 2014: RN 1104).

Furthermore, a third-country national, who entered the country unlawfully can be enforceably required to leave the federal territory, if he or she "is intercepted by the border authority in the vicinity of the border[15] in close chronological proximity to unlawful entry into the federal territory and there are indications that another state is responsible for conducting an asylum procedure by virtue of legislation of the European Union or of an international treaty, and an admission or readmission process is initiated" (§ 57 para. 2 of the Residence Act). This type of EU legal provision relates to the Dublin Regulation[16], according to which only one Member State is responsible for examining the application for asylum although in practise this is often the Member State in which the asylum seeker first filed an application for asylum or first entered and was first photographed and fingerprinted.[17] Up until 31 December 2013, asylum seekers were transferred to other Member States on the basis of the Dublin II Regulation (EC) No 343/2003, although there were no provisions for detaining third-country nationals in the Dublin procedure and detention was enforced based on the provisions laid down in national law.[18]

Meanwhile, the Dublin-III Regulation (EU) No 604/2013 also contains statutory provisions for detaining third-country nationals for the purpose of transfer in the Dublin procedure. The Dublin-III Regulation entered into force on 19 July 2013 and has been applicable in Germany since 1 January 2014. Article 28 of the Regulation specifies the grounds and time periods for detention, whereupon detention may only be considered as a coercive measure, if a considerable risk of absconding is given. The term "risk of absconding" is defined in Article 2 letter n of the Dublin-III-Regulation.[19]

The Federal Government examines the need for further adaptation and implementation of the newly established regulations to national law (Deutscher Bundestag 2014c: 9). The implementation of sufficient reasons – based on objective criteria defined by law

15 "In a corridor spanning 30 kilometres along the border to the EU neighbouring countries" (Habbe 2014: 4).

16 The Dublin-III Regulation (EU) No 604/2013 entered into force on 19 July 2013 and has applied since 1 January 2014. The Dublin-II Regulation (EC) No 343/2003 continues to apply to procedures initiated before 1 January 2014, if the request for recognition and transfer to another member state has been issued in 2013. In case the procedure started before 01 January 2014 but the request for recognition and transfer was not issued before 01 January 2014, the Dublin-III Regulation applies.

17 If an asylum seeker is apprehended in a Member State, the first step is an identity screening. This also involves taking the fingerprints of the person apprehended which are subsequently entered into the pan-European database (EURODAC) to which the competent authorities involved in the asylum procedure of all Member States have access. This means it is possible to ascertain whether a person has already filled an application for asylum in another Member State and whether they entered the federal territory via this state and whether this state allowed them to enter the federal territory. If this is the case, the Dublin procedure makes provision for the asylum seeker to be transferred to this Member State with the relevant time periods and exemptions being observed (for comprehensive information on the Dublin-II Procedure Regulation (EC) No 343/2003: Dolk 2011; for the Dublin-III Regulation (EU) No 604/2013: Bender/Bethke 2013).

18 For this procedure, § 57 of the Residence Act was invoked on the one hand and pre-removal detention was imposed if the person could not be removed from the federal territory immediately and if, pursuant to § 57 para. 3 of the Residence Act, the other requirements for detaining the persons were fulfilled in accordance with the provision set forth in §§ 62 and 62a of the Residence Act (see above).

19 In terms of Article 2 letter n of the Dublin-III Regulation the term „risk of absconding" is defined as, "the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third- country national or a stateless person who is subject to a transfer procedure may abscond."

– to believe that a person concerned may abscond, is already worked on.

2.4 Detention of particularly vulnerable persons

The situation of particularly vulnerable persons is to be considered adequately. They must be provided with special support services and a special infrastructure, as described below.

2.4.1 Families with underage children

The EU Return Directive identifies families with underage children as a vulnerable group of persons, specifying that they "shall only be detained as a measure of last resort and for the shortest appropriate period of time" (Article 17 para. 1 of Directive 2008/115/EC). The provisions set forth in the Return Directive have already been transposed in the German Residence Act, ensuring that "Minors and families with minors may be taken into custody awaiting deportation only in exceptional cases and only for as long as is reasonable taking into account the well-being of the child" (§ 62 para. 1 sentence 3 of the Residence Act).

Furthermore, the General Administrative Regulation specifies that, as a rule, an application for "detention pending deportation can only be filed for one parent" in families with underage children (62.0.5 General Administrative Regulations relating to the Residence Act). Decrees issued in the individual Federal Länder supplement this requirement. The Addendum to the General Administrative Regulations of the Bavarian Ministry of Home Affairs relating to the Residence Act, says that for instance[20], subject to certain exemptions, only the father of the family may be detained, although this rule can be waived under certain circumstances (Administrative Regulations of the Bavarian State Ministry of Home Affairs, Construction and Transport relating to the Foreigners Act (BayVVAuslR) 1.62a).

In addition, the Residence Act, the General Administrative Regulations relating to the Residence Act and decrees issued by the Federal Länder impose conditions for the accommodation of families with children. In Rhineland-Palatinate, the information on application of the law provided by the Ministry[21] of 15 August 2013 says that "the well-being of the child must be safeguarded" before the parents can be detained pending deportation (MIFKJF Rheinland-Pfalz 2013: 3). In Berlin, families with children "are detained for one night at most" which serves the purpose of not having to place them in the care of emergency child welfare services or youth welfare services (Deutscher Bundestag 2012b: 60).

2.4.2 Unaccompanied minors

The EU Return Directive identifies unaccompanied minors as a group of vulnerable persons, specifying that they "shall only be detained as a measure of last resort and for the shortest appropriate period of time" (Article 17 para. 1 of Directive 2008/15/EC). These provisions have been transposed into the German Residence Act so that minors "may be taken into custody awaiting deportation only in exceptional cases and only for as long as is reasonable taking into account the well-being of the child" (§ 62 para. 1 sentence 3 of the Residence Act). It specifically says in the General

20 Supplementary information on the General Administrative Regulations relating to the Residence Act in Bavaria: "In view of this, only one parent of families obliged to leave the federal territory can be taken into detention pending deportation. This corresponds to the common practice in relation to families with underage children in which only the father of the family can be taken into detention pending deportation. Separate accommodation arrangements are made for the wife together with her children prior to deportation. In some cases, they may be allowed to remain at their current home pending deportation (cf. ruling handed down by the Landtag on 11 October 1995, printed paper 13/2840). If absolutely necessary, the spouse who is not detained may be provided with accommodation at the transit zone of Munich airport for a short period (usually the night prior to their return)" (1.62a Administrative Regulations of the Bavarian State Ministry of Home Affairs, Construction and Transport relating to the Foreigners Act on § 62a of the Residence Act). Another exemption relating to deportation by air specifies the following: "This will not be affected by the need to issue a judicial order for all family members to the taken into detention ordered as a preventative measure in relation to deportations by air - as it may be necessary to accommodate the foreigners awaiting deportation at the airport (cf. IMS of 29 April 2010, ref.: IA2-2084.21-1) - (1.62a Administrative Regulations of the Bavarian State Ministry of Home Affairs, Construction and Transport relating to the Foreigners Act (BayVVAuslR) relating to § 62a of the Residence Act).

21 Application information provided by the Ministry for Integration, Family Affairs, Children, Youth and Women of Rhineland-Palatinate on detention pending deportation pursuant to § 62 of the Residence Act of 15 August 2013 (ref.: 19 344/725).

Administrative Regulations relating to the Residence Act that if the parents of minors who are obliged to leave the federal territory are not residing in the Federal Republic of Germany "the foreigners authorities must contact the competent youth welfare services to arrange accommodation for the foreigner until they can be deported" (General Administrative Regulations relating to the Residence Act 62.0.5). Generally, according to § 42 para. 1 sentence 1 number 3 of the Social Code Book VIII, Youth Welfare Services are obliged to take unaccompanied minors into care.

A large number of Federal Länder have imposed further-reaching regulations relating to the detention of minors in decrees and administrative regulations in relation to detention pending deportation. In principle, Berlin, Hesse, Saxony, Schleswig-Holstein and Thuringia say that minors under the age of 16 should not be taken into detention pending deportation (cf. Deutscher Bundestag 2012a: 47ff), although in some cases they are being detained, as, for instance, in Saxony (cf. Caritas 2014a: 228). In North Rhine-Westphalia on the basis of a decree, – unless they have committed a criminal offence – minors may not be detained if

- they are attending school, have a training position or a job or are still living with their parents or if
- they have been taken into care by the Youth Welfare Services in accordance with § 42 para. 1 of the Social Code Book VIII and can be accommodated in a suitable youth welfare facility or
- if there is no suitable place available at a prison that ensures the well-being of the minor, or
- if they are under the age of 16 (Directive on Detention pending Deportation of North Rhine-Westphalia (AHaftRL NRW) 2009).

In Rhineland-Palatinate, it is regulated that "an application for detention pending deportation should never be filed for young persons under the age of 18" (MIFKJF Rheinland Pfalz 2013: 3). There is a similar rule for Bavaria (cf. Deutscher Bundestag 2012b: 60). In Baden-Württemberg (Administrative Regulation on Asylum/Return (VwV Asyl/Rückführung) number 3.6.7.1), Bremen (Caritas 2014a: 195) and Saxony-Anhalt (Deutscher Bundestag 2012a: 46) by contrast, it is not permissible to detain minors under the age of 14. Irrespective of matters concerning detention, it is specific to Germany by international standards that unaccompanied minors seeking asylum are considered to be capable of performing procedural acts once they reach the age of 16[22] (§ 12 para. 1 of the Asylum Procedure Act and § 80 para. 1 of the Residence Act), whereas in accordance with § 2 of the Civil Code they do not reach the age of legal accountability until they are 18.[23] This means that 16 and 17-year-olds are capable of performing procedural acts in asylum and residence-related procedures and do not need a legal guardian (cf. Parusel 2009: 14). Apart from that, unaccompanied minors are supposed to be taken into care by the Youth Welfare Services and a legal guardian is to be assigned. According to the Coalition Agreement (CDU/CSU/SPD 2013: 110) "the legal capacity to act in the asylum procedure and under the Residence Act should be raised to 18".

2.4.3 Pregnant women and nursing mothers

The Residence Act has not provided any specifications concerning pregnant and/or nursing mothers so far. However, the General Administrative Regulations relating to the Residence Act specify that "in principle pregnant women and mothers may not be detained pending deportation" within the statutory measures concerning the protection of women during pregnancy and motherhood (General Administrative Regulations relating to the Residence Act 62.0.5). A decree issued in North Rhine-Westphalia expands the protective regulation to "nursing mothers" who may not be taken into detention pending deportation unless they have committed a criminal offence. Irrespective of this, "it must always be certified by a physician (preferably a female physician) that pregnant women are well enough to be detained" (Directive on detention pending deportation of North Rhine-Westphalia 2009). In Brandenburg, women who have passed their sixth month of pregnancy are not detained "since it is no longer possible to deport them by air and it is not

22 "A foreigner who is at least 16 years of age shall be capable of performing procedural acts in accordance with this Act, unless he has no legal capacity according to the terms of the Civil Code or unless he would have to be offered assistance or be subject to a reservation of consent in this matter if he had reached the age of full legal accountability" (§ 12 para. 1 of the Asylum Procedure Act).

23 An overview on the admission, general legal conditions and the return of unaccompanied foreign minors to and from Germany is provided, inter alia, by Parusel 2009 and Caritas 2014a.

possible for them to give birth within the prison facility. At the pre-removal detention centre in Eisenhüttenstadt, women who have passed their 29th week of pregnancy are no longer detained" (Deutscher Bundestag 2012b: 23).

2.4.4 Elderly persons

Although the Residence Act does not explicitly identify older persons as vulnerable persons, the relevant administrative regulation does contain the passage which says that in principle, foreign nationals "who have reached the age of 65 [...], may not be detained pending deportation" (62.0.5 General Administrative Regulations relating to the Residence Act). The Federal Länder use this rule as a guideline although the term "in principle" always opens the door for exemptions.

2.4.5 Persons with serious illnesses, mental disorders, who have been subjected to serious forms of violence and victims of human trafficking

In Germany, there is not yet any regulation at national level regarding the detention of persons with serious illnesses, who have been subjected to serious forms of violence or who are traumatised. Notwithstanding this, some of the Federal Länder have issued decrees and administrative regulations governing the treatment of the above mentioned persons. In Bremen, persons "suffering from medically-certified mental problems or obvious mental illness" are not detained or are only detained in exceptional circumstances[24] (Freie Hansestadt Bremen 2013). In North Rhine-Westphalia, a decree issued by the Ministry of Home Affairs on 19 January 2009 says that "in principle", persons should not be detained pending deportation "if there are any doubts whether they are fit to be detained if the foreigner is suffering from a physical or mental illness" and that this must be certified by a physician (Directive on detention pending deportation of North Rhine-Westphalia (AHaftRl NRW) 2009). In Rhineland-Palatinate, "persons who are seriously ill" must undergo a "particularly careful examination". This applies in particular to persons suffering from severe forms of mental or physical illness, persons who have been the victim of sexual abuse or who have experienced some kind of trauma. In their case there is a special obligation to procure information and a special duty of care (MIFKJF Rheinland-Pfalz 2013: 3, cf. Chapter 3 on the procedural consequences).

2.4.6 Persons with disabilities

There is no reference in national law in relation to detention pending deportation of persons with disabilities. However, some Federal Länder highlight the vulnerability of persons with a disability and draw relevant consequences for their detention. In Bremen, a decree specifies that persons with a "recognised serious disability" may not be detained or may only be detained in exceptional circumstances (see above) (Directive on detention pending deportation of North Rhine-Westphalia (AHaftRL NRW) 2009). In Rhineland-Palatinate, it is mandatory to "carry out a very careful examination" in respect of "persons with disabilities" and there is a "special need for information and duty of care" (MIFKJF Rheinland-Pfalz 2013: 3). In Berlin, the rule applies that "persons who are permanently and seriously impaired by a severe disability [...] may not, in principle, be taken into detention pending deportation". "Persons who claim to have a disability can also request to be examined by the Police Medical Service voluntarily to establish whether or not they are fit for detention" (Deutscher Bundestag 2012b: 38).

2.4.7 Single parents (gender non-specific)

There is no reference in national law in relation to detention pending deportation of single parents. According to a decree issued by the Home Affairs Senator of Bremen on 15 May 2013, single parents are considered to be vulnerable persons. They may not be taken into detention or if so only in exceptional cases (see above) (Freie Hansestadt Bremen 2013). In North Rhine-Westphalia, single parents with children under the age of 14 may not be taken into detention pending deportation – unless they have committed a criminal offence (Directive on detention pending deportation of North Rhine-Westphalia (AHaftRl NRW) 2009). In Rhineland-

24 "However, an application for detention pending deportation can be filed for the following persons: 1. if the foreigner could not be deported directly from prison despite the urgency involved and for this reason the foreigner is to be deported directly after committing a criminal offence for reasons beyond the control of the competent authorities by virtue of expulsion pursuant to § 53 or § 54 of the Residence Act (so-called additional detention) and if they continue to pose a special danger to the security of the Federal Republic of Germany or 2. if a deportation order has been issued pursuant to Section 58a but cannot be enforced immediately" (Freie Hansestadt Bremen 2013).

Palatinate, the information on application of the law says that "it must be ensured children are looked after" before the parents can be detained pending deportation (MIFKJF Rheinland-Pfalz 2013: 3).

2.5 Number of persons in detention pending deportation, in pre-removal detention and in detention pending exit from the federal territory in Germany (2008-2013)

There has been a steady decline in the number of persons taken into detention pending deportation since 2008, whereat the data presented in the following includes persons taken into detention pending deportation, as well as pre-removal detention and detention pending exit from the federal territory. Whereas in 2008 there were 8,805 persons in detention pending deportation, pre-removal detention and detention pending exit from the federal territory throughout Germany, the number had dropped by around 50 percent to 4,309 by the year 2013 – with no statistics provided by the Federal State of Hesse. The number of persons in detention has dropped by 500 to 1,000 a year in this period (cf. Table 2). However, the number of persons in detention listed does not only include the number of persons actually deported after detention but in fact, also includes those who were released from detention prior to deportation, removal or refusal of entry (cf. Table 4).

Table 2: Number of persons in detention pending deportation, pre-removal detention or detention pending exit from the federal territory in Germany (2008-2013)

2008	2009	2010	2011	2012*	2013*
8,805	8,366	7,495	6,466	5,064	4,309

Sources: 2008-2011: Deutscher Bundestag: 2012 and 2013 Statistics provided by the Ministries of the Federal, Bürgerschaft Hamburg 2013a+b, Landtag Sachsen-Anhalt 2014.

* 2012, 2013: not including Hesse (2011: 752) and 2013: Hamburg up to and including 9 December 2013.

However, the decline in the number of detainees is not evenly distributed across all Federal Länder (cf. Table 3).

Table 3: Number of persons in detention pending deportation, pre-removal detention or detention pending exit from the federal territory in the individual Federal Länder (2008-2013)

	2008	2009	2010	2011	2012	2013
Baden-Württemberg	596	605	477	446	454	520
Bavaria	1,460	1,623	1,414	1,125	1,186	1,105
Berlin	1,142	779	690	546	326	221
Brandenburg	350	357	281	238	340	265
Bremen	67	70	77	34	32	17
Hamburg*	428	379	304	173	149	112
Hesse	1,121	935	780	752	N/A	N/A
Mecklenburg-Western Pomerania	112	120	139	67	59	86
Lower Saxony	434	402	356	284	310	151
North Rhine-Westphalia	1,843	1,885	1,754	1,673	1,408	1,193
Rhineland-Palatinate	197	220	192	164	122	31
Saarland	119	129	118	150	87	60
Saxony	519	383	487	415	189	203
Saxony-Anhalt	52	98	90	76	62	63
Schleswig-Holstein	305	345	298	298	317	254
Thuringia	60	36	38	25	23	28

Sources: 2008-2011: Deutscher Bundestag 2012a+b; statistics for 2012 and 2013: Statistics provided by the competent Ministries of the Federal Länder, Bürgerschaft Hamburg 2013a+b, Landtag Sachsen-Anhalt 2014.

* 2013 as at: 9 December 2013 in Hamburg

Table 4: Persons in detention pending deportation, pre-removal detention or detention pending exit from the federal territory, deportations, removals and refusals (2008-2013)

Year	Persons in detention pending deportation, pre-removal detention or detention pending exit from the federal territory (total)	Number of deportations, removals and refusals of entry		Total
2008	8,805	Deportations	8.394	21.373
		Removals	5.745	
		Refusals of entry	7.234	
2009	8,366	Deportations	7.830	20.917
		Removals	9.782	
		Refusals of entry	3.305	
2010	7,495	Deportations	7.558	19.533
		Removals	8.416	
		Refusals of entry	3.559	
2011	6,466	Deportations	7.917	16.576
		Removals	5.281	
		Refusals of entry	3.378	
2012	5,064*	Deportations	7.651	15.897
		Removals	4.417	
		Refusals of entry	3.829	
2013	4,309*	Deportations	9.156	17.510
		Removals	4.498	
		Refusals of entry	3.856	

Sources: Deportations, removals, refusals of entry: Deutscher Bundestag 2014b, 2013, 2012c, 2011a, 2010, 2009; expulsions: Central Register of Foreigners; persons in detention pending deportation, pre-removal detention or detention pending exit from the federal territory: 2008-2011: Deutscher Bundestag 2012a+b; 2012-2013: Statistics provided by the Ministries of the Federal, Bürgerschaft Hamburg 2013a+b, Landtag Sachsen-Anhalt 2014.

* 2012, 2013: not including Hesse; 2013: Hamburg statistics, as at: 9 December 2013

Juxtaposing the numbers of enforced deportations, removals and refusals of entry per year with the numbers of those who were taken into detention pending deportation, pre-removal detention or detention pending exit from the federal territory it becomes apparent that until 2012 the numbers of the former were declining as well (cf. Table 4). Furthermore, it becomes apparent that a considerable part of deportations, removals and refusals of entry was enforced without taking the persons concerned into detention. Further conditions may not be determined as not all persons, who were detained pending deportation were also deported, removed or refused entry, but also released from detention.[25]

25 For example, in the five Federal Länder, for which statistics are available, the share of persons in detention pending deportation who have actually been released from detention accounted for between 20 and 30 percent in 2013 (Brandenburg, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Schleswig-Holstein and Thuringia). Reasons for the release from detention pending deportation are specified by correspondent court rulings, e. g. insufficient explanation in the application for detention (for instance, the planned duration of and/or need for detention is missing), the infringement of the legal right to be heard (e. g. persons in detention pending deportation were not provided with the application for detention (in good time) or the application was not translated), the separation requirement of persons pending deportation from ordinary prisoners serving criminal sentences was not considered adequately or detention pending deportation was judged as disproportionately, e.g. separating families, detention of unaccompanied minors or taking a person (and their family members) into detention even though they are willing to leave the federal territory voluntarily and have said they have no intention of absconding (cf. e. g. BGH 19.12.2013 - V ZB 145/13, BGH 12.12.2013 V ZB 214/12, BGH 06.12.2012 – V ZB 218/11).

3 Assessment procedures and criteria for the placement of third-country nationals in detention

A third-country national may not be placed in custody without judicial order for the purpose of safeguarding deportation pursuant to Article 104 para. 2 sentence 1 of the Basic Law and § 62 para. 2 and 3 of the Residence Act. "Custody awaiting deportation shall not be permissible if the purpose of the custody can be achieved by other, less severe means which are also sufficient" (§ 62 para. 1 sentence 1 of the Residence Act).

3.1 Competencies and assessment procedures

The factual competence and the procedural structures for the detention of third-country nationals for the purpose of deportation, removal and refusal of entry are regulated nationwide by the Residence Act (in particular § 71 of the Residence Act) and in the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (§ 106 para. 2 of the Residence Act refers to Book 7 pursuant to Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction).

3.1.1 Arrests and applications for detention

A court may order the deprivation of liberty only upon application of the competent administrative authorities (§ 417 para. 1 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). The foreigners authorities[26] (§ 71 para. 1 of the Residence Act), the police forces of the Federal Länder[27] (§ 71 para. 5 of the Residence Act) and the authorities charged with policing cross-border traffic (§ 71 para. 3 number 1e of the Residence Act) are responsible for arrests and applying for detention. Pursuant to § 2 para. 2 number 2 of the Federal Police Act (Bundespolizeigesetz), in principle, the Federal Police are charged with policing cross-border traffic. In the Federal Länder Hamburg (Hamburg Port) and Bremen (Bremen Port and Bremerhaven Port) and in Bavaria at the airports (with the exception of Munich airport), the police force of the respective Federal State is charged with policing cross-border traffic.

§ 417 para. 2 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction defines the facts an application for detention needs to consist, concerning its justification:

1. the identity of the person concerned,

2. the habitual residence of the person concerned,

26 To ascertain which foreigners authorities in the respective federal state are responsible for which persons in detention pending deportation, cf. Ministry for Integration, Family Affairs, Children, Youth and Women of Rhineland-Palatinate (MIFKJF Rheinland-Pfalz) 2013: 17f.

27 § 71 para. 5 of the Residence Act: "The police forces of the Länder shall also be responsible for carrying out removal, for enforcing the obligation to leave the federal territory pursuant to § 12 para. 3, for implementing deportation and, where necessary for the purposes of preparing and safeguarding these measures, for effecting arrest and applying for custody." However, the police forces of the Federal Länder are not responsible for threatening, announcing or ordering deportation. This task is incumbent upon the foreigners authorities (General Administrative Regulations relating to the Residence Act 71.5.2.1).

3. the necessity of deprivation of liberty,

4. the necessary time frame of the deprivation of liberty,

5. in cases of detention pending deportation, pre-removal detention and detention pending exit from the federal territory in Germany, the obligation by the person concerned to leave the federal territory as well as the preconditions and feasibility of the deportation, removal of refusal of entry.

Furthermore, the competent authorities are also responsible for preparing deportations or removals (e.g. procuring documents entitling foreigners to travel home, requiring the foreigner to appear in person at the diplomatic mission, making travel arrangements for the foreigner's return home, issuing a notice on benefits to which the foreigner is entitled, providing transport to the border, prison or airport) (General Administrative Regulations relating to the Residence Act 71.1.1.1. and 71.5.1.1).

§ 71 para. 4 of the Residence Act is to be considered in cases of the termination of residence, as it orders the involvement of the body of public prosecutors in specific cases (Von Borstel 2013: 67; cf. also Annex A2).

3.1.2 Grounds for detention

A third-country national can only be detained as a last resort in order to enforce his departure from the federal territory. When a third-country national is detained, the reasons why no alternative for detention pending deportation is suitable (§ 62 para. 1 of the Residence Act) to enforce the deportation, must be given. Furthermore, a ground for detention needs to be given according to § 62 para. 3 sentence 1 of the Residence Act, such as a well-founded suspicion that the person concerned intends to evade deportation (§ 62 para. 3 of the Residence Act).

The General Administrative Regulations relating to the Residence Act and court rulings provide an overview on what indicators justify the suspicion that the person concerned intends to evade deportation and detention to secure deportation can be ordered. This includes, for instance, breaches of the provisions set forth in the Residence Act such as the obligation to notify the foreigners authorities accordingly beforehand, if a person intends to leave the district covered by the foreigners authority for more than three days (General Administrative Regulations relating to the Residence Act: 62.2.1.6.1.4, in accordance with § 50 para. 4 of the Residence Act). Additionally, the following arguments may also be used to justify the suspicion that the person concerned intends to evade deportation (e. g. absconding), whereat frequently a combination of several arguments proves the intention to evade deportation:

> "Hiding the documents entitling to leave the country; Giving ones travel documents away before one was detained; Refusing to hand over one's passport; Having made substantial payments to human traffickers; Residing in ‚church asylum'; Refusing to leave the federal territory categorically and this is confirmed by certain behaviour; Leaving the place of residence assigned to him or her unlawfully on several occasions; ‚Absconding' in similar situations in the past; Having no ties whatsoever in Germany; Involvement in drugs trafficking; Considerable criminal energy of a ‚roaming criminal'; Committing serious criminal offences and going on hunger strike (Dienelt 2011: § 62 of the Residence Act margin number 20; cf. ; Hailbronner 2012: § 62 of the Residence Act margin number 59-80).

However, the mere denial of a voluntary departure, the denial of a prolongation of one's passport, the necessity to deport someone on the air path or claiming legal remedy against one's deportation or expulsion are no sufficient grounds for detaining a person (Dienelt 2011: § 62 of the Residence Act margin number 20; cf. Hailbronner 2012: § 62 of the Residence Act margin number 59-80);

The Federal Police is of particular relevance concerning the enforcement of removals according to § 62 para. 3 sentence 1 number 5 of the Residence Act. In many cases, persons being removed from the federal territory fall under the remit of the Dublin-III Regulation and therewith shall be transferred to another member state responsible for conducting the asylum procedure. In addition to the before mentioned criteria to decide on the suspicion that a person might abscond, EURODAC hits in one or more countries point to the fact that a person concerned has entered the federal territory through another member state of the EU unlawfully, respectively applied for asylum in another state.

If the application for asylum is not filed until the immigrant has been detained or if the Federal Police does not forward the application for asylum to the Federal Office for Migration and Refugees until the application for detention has been filed, the application is deemed to have been filed while the foreigner was in detention and an application for asylum shall not hinder the ordering or continuation of detention pending deportation or pre-removal detention (§ 14 para. 3 of the Asylum Procedure Act). If grounds for taking someone into detention pending deportation are given according to § 62 para. 3 sentence 1 number 1 of the Residence Act ("unlawful entry"), the before mentioned only applies in case the person concerned has stayed on the Federal territory unlawfully for more than one month.

The Federal Court of Justice decided in its ruling from 26 June 2014, that in the individual case of a person who is subject to a transfer procedure, sufficient reasons – based on objective criteria defined by law – need to exist, to believe that the person concerned may abscond.[28]

28 On 26 June 2014 and on 23 July 2014 the Federal Court of Justice decided in its judgement, that § 61 para. 3 sentence 1 number 5 of the Residence Act does not correspond to Article 2 letter n of the Dublin III Regulation (EU) No 604/2013, which demands objective criteria defined by law on reasons to believe that a third-country national may abscond. Due to the court's ruling, a third-country national may not be taken into detention on the basis of Article 28 para. 2 of the Dublin III Regulation in conjunction with § 61 para. 3 sentence 1 number 5 of the Residence Act, in order to transfer him to the Member State which is responsible to decide on his application for asylum. "These criteria need to be defined in formal law. [...] Hence, the European regulation forces the national legislator to define calculable, measurable and checkable grounds, which make believe that a third- country national, who is subject to a transfer procedure, may abscond. Following the jurisdiction by the Common Senate, the reasonable suspicion that a person will try to abscond, requires specific behavior, particularly expressions or attitudes by the foreigner, which under a certain probability point to the fact, that he intends to abscond or will hinder the deportation in such a way, that the deportation would not be enforceable without the deprivation of liberty" (BGH 2014: 10f.). Though, following the rulings by the Federal Court of Justice, detention pending transfer may still be ordered "if grounds for taking a person into detention are shaped in such a way in national law that they only carry into effect, if objective criteria are defined by law which justify the assumption of the risk of absconding. Currently, in Germany this is the case only with the two grounds mentioned in § 62 para. 3 sentence 1 number 2 and 3 of the Residence Act (leaving the district without informing the competent foreigners authority about the new place of residence; nonappearance at the place and date of the transfer set by the competent authorities)" (BGH 2014a: 13f. And BGH 2014b: 3).

The individual Federal Länder are responsible for accommodating persons in detention pending deportation for whom the Federal Police file an application for.

3.1.3 Detention order by the competent Local Court

The deprivation of liberty can only be ordered by the competent Local Court after an application has been filed by the competent administrative authorities (§§ 416 and 417 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). In urgent cases, the Local Court in whose district the need for detention arises is also responsible (§ 50 para. 2 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). However, the Local Court does not examine whether the deportation warning is lawful or not, it examines exclusively whether detention is justified for the purpose of terminating a third-country national's residence (cf. Graebsch/Selbers 2013: 85ff). In exceptional cases, a person obliged to leave the federal territory may be detained temporarily (taken into police custody) even without a judicial order – for instance, if they are apprehended by the police authorities during the night when no Local Court is available. As a rule, persons taken into police custody are detained in cells at the police station. "The foreigner shall be brought before the court without delay and on the following day at the latest for a decision on the order for custody to secure deportation, otherwise he must be released" (§ 62 para. 5 of the Residence Act and § 428 para. 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction).

3.1.4 Consultation of the Federal Office for Migration and Refugees

The competent authorities must consult the Federal Office for Migration and Refugees (BAMF) within the framework of the process involving (detention pending) deportation if it involves reasons why an immigrant may not be deported to the destination country pursuant to § 60 para. 5 or 7 of the Residence Act in the country to which the immigrant is to be deported (§ 72 para. 2 of the Residence Act). If any such prohibition

of deportation exists, the foreigners authorities will impose a ban on deportation (pursuant to "§ 60 para. 5 or 7 of the Residence Act). If a third-country national applies for asylum, he or she is to be transferred to the next reception centre (§ 19 para. 1 of the Asylum Procedure Act); afterwards, the Federal Office for Migration and Refugees decides on the application for asylum or the deportation ban (cf. also § 14 para. 3 of the Asylum Procedure Act). Referring to § 14 para. 3 of the Asylum Procedure Act an application for asylum does not hinder the ordering or continuation of custody awaiting deportation if the immigrant is

"1. in detention pending trial

2. prison

3. custody preparatory to deportation pursuant to § 62 para. 2 of the Residence Act,

4. detention pending deportation pursuant to § 62 para. 3 first sentence, number 1 of the Residence Act because he has stayed in the Federal territory for longer than one month without a residence permit after entering the country illegally,

5. detention ordered as a preventative measure pursuant to § 62 para. 3 sentence 1 numbers 1a to 5 of the Residence Act".

The third-country national

> "shall be given an opportunity without delay to contact a legal adviser of his choice unless he has already secured legal counsel. Custody awaiting deportation shall be terminated as soon as the decision of the Federal Office has been delivered and no later than four weeks after the Federal Office has received the application for asylum, 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 because it is to be disregarded or is manifestly unfounded" (§ 14 para. 3 of the Asylum Procedure Act; cf. also Chapter 3.1.2).

3.1.5 Briefing of immigrants in detention on their rights

The competent court must notify the third-country national if an application for detention pending deportation or an application to prolong deportation is filed (§ 23 para. 2 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). The person concerned must be furnished with a copy of the application for detention in good time before they are interviewed. If necessary, it may need to be translated in order to safeguard their right to a legal hearing (Federal Court of Justice, decision handed down on 21 July 2011, V ZB 141/11). Furthermore, pursuant to § 420 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction, the court must interview the third-country national prior to his detention and must always send its decision to a relative of the person in question or to a person whom he trusts (for instance, a member of his family or a lawyer) (§ 432 Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). Applications to prolong detention must be filed early enough to ensure "the foreigner can be interviewed before the court ordering detention has taken its decision" (General Administrative Regulations relating to the Residence Act 62.0.3.6). Detainees awaiting deportation must be informed about their legal rights and duties, as well as the right to contact non-governmental organisations while they are in detention pending deportation (§ 62a para. 5 of the Residence Act in accordance with Article 16 para. 5 sentence 2 of Directive 2008/115/EC).[29]

29 In practice, arrangements for notifying foreigners in pre-removal detention facilities differ. At some pre-removal detention centres, foreigners are furnished with an information sheet in several languages or there is a relevant notice on the wall (Baden-Württemberg, Berlin, Bremen, Lower Saxony, Saxony-Anhalt, Thuringia). At other pre-removal detention centres, the information is provided during the initial talks when the foreigner is first detained (Bavaria, Brandenburg, Hamburg, Hesse, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Saxony-Anhalt, Schleswig-Holstein). In Brandenburg and North Rhine-Westphalia, reference is (also) made to the internal regulations (Deutscher Bundestag 2012b: 40ff.). The fact that persons in detention speak different languages as in the case of Schleswig-Holstein means that the internal regulations had to be translated into nine languages: Arabic, Arabic-Kurdish, Albanian, English, French, Persian (Dari), Russian, Turkish and Vietnamese (JVA Kiel 2011: 8).

3.1.6 Identification of particularly vulnerable persons

There are statutory provisions in place for certain groups of persons who are considered to be vulnerable (cf. Chapter 2.4) It is incumbent upon the Federal Länder to organise the examination of and support for detainees upon entry and exit from detention in such a way that it is possible to identify vulnerable persons. Examinations of special vulnerability are not carried out as a matter of routine at the majority of pre-removal detention centres - at least not as far as mental illness is concerned (cf. Deutscher Bundestag 2012b: 19ff). Medical examinations carried out on persons entering pre-removal detention centres focus mainly on physical symptoms. If necessary, interpreters are used to overcome language barriers.

Difficulties arise in particular in identifying persons who are the victims of human trafficking, with non-state players playing a particular role:

> "Specialised advisory agencies frequently play a pioneering role at pre-removal detention centres in identifying persons who are the victims of human trafficking. They tend to be in much closer contact with these persons than the employees of the pre-removal detention centres. This is because these facilities are overstretched, there is an imbalance between support staff and detainees and the latter find it difficult to trust the staff of state authorities. Detainees are looked after and provided with advice in their mother tongue direct or with the help of interpreters" (Hoffmann 2013: 27).

As a rule, the staff of the specialised advisory agencies travel to the pre-removal detention centres[30] or have an office of their own on the premises of the pre-removal detention centres (e.g. for Amnesty International and JRS at the prison in Munich; cf. Deutscher Bundestag 2012b: 157). Once information comes to light that a person is vulnerable, this person is informed about his rights, the medical care and psychological support services available, and, if applicable, the possibilities of release.

Talks conducted within the framework of this study with staff of pre-removal detention centres and the Ministries of the Federal Länder responsible for pre-removal detention centres showed that non-governmental agencies (such as refugee councils, Amnesty International, Diakonie, Caritas, AWO etc.) frequently inform staff at pre-removal detention centres about the vulnerability of persons in their care. This means that staff at pre-removal detention centres can, within the limits of their possibilities, take the vulnerability of these persons into account before they are released from detention.

3.2 Legal means against detention

Contrary to prisoners who are entitled to a public defender, persons in detention pending deportation have no legal entitlement to legal counsel (cf. Abgeordnetenhaus Berlin 2013a). However, detainees awaiting deportation shall be permitted to establish contact with legal representatives (§ 62a para. 2 of the Residence Act, § 14 para. 3 sentence 2 of the Asylum Procedure Act) and to commission a lawyer to appeal their detention.

3.2.1 Level of jurisdiction

Immigrants against whom detention pending deportation has been issued by the Local Court can lodge an appeal against the ruling within one month in the regular procedure and within two weeks in respect of interim injunctions by themselves or through their legal representatives (§§ 63 and 64 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). The Regional Court takes a decision on the appeal. In the event that the complaint is dismissed, the immigrant can lodge an appeal with the Federal Court of Justice within one month (§ 70 para. 3 number3 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction). When an appeal is filed with the Federal Court of Justice, it must be taken into account that the appel ant needs to be substituted by one of the 40[31] lawyers registered with the Federal Court of Justice to deal

30 The "Berlin Network for particularly vulnerable refugees" that is promoted by the European Refugee Fund can be mentioned as one example within the framework of which since 1 September 2009, "a multi-phase system has been developed to identify, diagnose and provide care to particularly vulnerable refugees". Within the first year almost 1,400 vulnerable persons received advice (Majer 2011: 10).

31 As at: 1 January 2014.

with detention cases as contrary to criminal cases, only selected lawyers can deal with detention according to Civil Law (detention pending deportation is a civil matter not a criminal sentence). An admission by the court of appeal as the second instance ("Beschwerdegericht") is not needed for such an appeal; in practice, lawyers choose this path only if it involves basic legal issues. Furthermore, as the proceedings tend to be very lengthy, in the meantime the immigrant may have been released or deported. Only in exceptional cases does the Federal Court of Justice suspend the enforcement of the deportation order until a decision has been taken (cf. Graebsch/Selders 2013: 89ff; cf. also for a detailed description of the appeal procedure: Winkelmann 2012 and Köppen 2013).

3.2.2 Costs of initial legal advice

The costs of initial legal advice have to be borne by the immigrants themselves, depending on which federal state they are in. However, some Federal Länder cover the costs of legal advice or subsidise them. Furthermore, in a large number of Federal Länder, persons in detention can avail themselves of legal advice provided free of charge by staff of Church social organisations (who provide their services free of charge) such as Caritas or Diakonie, welfare associations such as the Workers' Welfare Association, non-governmental organisations such as Amnesty International and regional refugee councils or by the bar association (§ 62a para. 4 of the Residence Act; cf. Annex 1 and Deutscher Bundestag 2012a: 59ff for organisations providing advise broken down by Federal Länder).

In appellate proceedings against the deprivation of liberty, persons concerned can apply for legal aid under §§ 76ff of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction in conjunction with 114ff of the Code of Civil Procedure, however, in order to qualify for legal aid, it must be likely that their appeal will be successful (cf. Abgeordnetenhaus Berlin 2013a).

4 Types of detention facilities and conditions of detention

The accommodation and enforcement of detention pending deportation in Germany comes exclusively under the remit of the Federal Länder. Accordingly, the types of accommodation and conditions at pre-removal detention centres of the Federal Länder (as at: 25 July 2014) differ – ranging from accommodation in separate pre-removal detention sections within regular prisons or special pre-removal detention centres, right up to the organisation of visiting times and out-of-cell times.

4.1 Types of detention facilities in Germany

In early 2014, six of the 16 Federal Länder had special pre-removal detention centres that are run separately from regular prisons (cf. Table 5). They include the pre-removal detention centres in Berlin-Köpenick, Eisenhüttenstadt (Brandenburg), Rendsburg (Schleswig-Holstein), police custody in Bremen, the pre-removal detention centre in Ingelheim am Rhein (Rhineland-Palatinate) and since early 2014 also the prison at Mühldorf am Inn (Bavaria). Saarland has not run any pre-removal detention centre since 1999. Instead, persons in detention pending deportation are detained at the pre-removal detention centres of other Federal Länder by way of administrative assistance (see below).

In 2013, ten Federal Länder had separated special pre-removal detention quarters within the state's regular prison facilities. The prison in Büren in North Rhine-Westphalia represents an exception in terms of the requirement to separate persons in detention pending deportation from ordinary prisoners as it is, by and large, a special pre-removal detention centre that also accommodates prisoners sentenced to less than 3 months' imprisonment.

4.1.1 Ministerial competencies for the enforcement of detention pending deportation

The Ministerial competencies for the enforcement of detention pending deportation also vary in the Federal Länder. In Baden-Württemberg, Hamburg, Lower Saxony, Hesse, Mecklenburg-Western Pomerania, North Rhine-Westphalia, Saarland (in cooperation with Rhineland-Palatinate), Saxony, Saxony-Anhalt and Schleswig-Holstein, detention pending deportation is carried out by way of administrative assistance by the Ministry of Justice at the pre-removal detention centres; in Bavaria, Berlin, Brandenburg, Bremen and Thuringia, detention pending deportation is enforced by the Ministry for Home Affairs respectively the administration of the Senate of the Interior and in Rhineland-Palatinate by the Ministry for Integration.

4.1.2 Cooperation of the individual Federal Länder with the accommodation of immigrants in detention facilities

The authorities of the Federal Länder responsible for pre-removal detention centres may ask other Federal Länder to accommodate their persons in detention pending deportation by way of administrative assistance or administrative agreement. This can be a permanent or temporary arrangement. Permanent cooperations on detention pending deportation existed at the beginning of 2014 between Saarland and Rhineland-Palatinate[32] as well as between Hamburg, Mecklenburg-Western Pomerania, Schleswig-Holstein, Brandenburg and the special pre-removal detention

32 Saarland does not have any pre-removal detention centre of its own and uses the "pre-removal detention centre for persons obliged to leave the federal territory" at Ingelheim am Rhein on the basis of an administrative agreement concluded between Saarland and Rhineland-Palatine on 20 April 1999.

Table 5: Types of pre-removal detention centres in the Federal Länder

as at: 31.12.2013	Pre-removal detention centres in prisons*	Special pre-removal detention centre
Baden-Württemberg	Mannheim Prison	
Bavaria	Nuremberg Prison and Munich Prison (both of which were closed in January 2014)	Mühldorf am Inn Prison (since January 2014)
Berlin		Pre-removal detention centre Berlin Köpenick
Brandenburg		Pre-removal detention centre Eisenhüttenstadt**
Bremen		Police custody in Bremen and Bremerhaven local police force
Hamburg	Hamburg-Billwerder Prison (men)**	
Hesse	Frankfurt Prison	
Mecklenburg-Western Pomerania	Bützow Prison (men)**	
Lower Saxony	Hanover Prison	
North Rhine-Westphalia	Büren Prison	
Rhineland-Palatinate		Detention facility for persons obliged to leave the federal territory in Ingelheim am Rhein
Saarland***	-	-
Saxony	Dresden Prison (men, up to the end of 2013)	
Saxony-Anhalt	Volkstedt Prison (men) and Halle Prison (women)	
Schleswig-Holstein		Pre-removal detention centre Rendsburg (men)**
Thuringia	Volkstedt Prison (men)**	

* Following a decision taken by a Local Court (Mannheim Local Court 4 XIV 324/13 B) on 25 November 2013, no persons were allowed to be detained pending deportation at the prison in Mannheim owing to a lack of fire protection at the "container building" used to accommodate them. Some of the persons in detention pending deportation were moved temporarily to the pre-removal detention centre in Rhineland-Palatinate by way of administrative assistance. Meanwhile, the prison in Mannheim could be used again with reduced capacity. Though, on behalf of current jurisdictions by the Regional Courts of Mannheim, Stuttgart et cetera as well as the rulings by the European Court of Justice, detention may not be enforced in the prison of Mannheim due to a lack of separation of persons taken into detention pending deportation and regular prisoners.

** Schleswig-Holstein, Hamburg and Mecklenburg-Western Pomerania cooperate in arranging accommodation for women in detention pending deportation and for couples with the special pre-removal detention centre at Eisenhüttenstadt in Brandenburg. Since Saxony ceased running its own pre-removal detention centre in late 2013, women in detention pending deportation have been detained at the pre-removal detention centre in Eisenhüttenstadt and men are detained at the pre-removal detention centre in Berlin-Köpenick. Thuringia is also planning to accommodate women in detention pending deportation in Eisenhüttenstadt. Until 2013, it had a cooperation with the Reichenhain section of the prison for female prisoners at the prison in Chemnitz (Saxony).

*** Saarland no longer runs any pre-removal detention centre of its own. Since 20 April 1999, it has been cooperating with Rhineland-Palatinate on the basis of an administrative agreement and has been accommodating persons in detention pending deportation at the special pre-removal detention centre at Ingelheim am Rhein.

centre in Eisenhüttenstadt (Brandenburg) for women and couples in detention pending deportation. Although couples are not provided with shared accommodation in Eisenhüttenstadt, they are permitted to meet on the premises of the pre-removal detention centre during out-of-cell hours. Preliminary cooperation on detention pending deportation existed at the beginning of 2014 by way of administrative assistance between Saxony and Berlin (for male prisoners) and Saxony and Brandenburg (for female prisoners). Thuringia too is currently planning to accommodate its female detainees pending deportation in Brandenburg, having cooperated with Saxony in the past to make relevant arrangements.

4.2 Implementation of the EU Return Directive into the German Residence Act

For quite some time the question has been raised, whether it is permissible to use accommodation in specialised pre-removal detention sections within regular prisons in Germany. The background is provided by the EU Return Directive (Directive 2008/115/EC). It specifies the following in relation to accommodation:

> "Detention shall take place as a rule in specialised detention facilities. Where a Member State cannot provide accommodation in a specialised detention

facility and is obliged to resort to prison accommodation, the third-country nationals in detention shall be kept separated from ordinary prisoners" (Article 16 para. 1 of Directive 2008/115/EC).

This paragraph was transposed into the German Residence Act by the Law implementing EU Directives regarding residence law and conforming German law to the EU visa codex of 22 November 2011 It says[33], for instance, in § 62a para. 1 sentence 1 and 2 of the Residence Act:

"As a general principle, custody awaiting deportation shall be enforced in specialised detention facilities. If a Land has no specialised detention facilities, custody awaiting deportation may be enforced in other custodial institutions in that Land; in such cases the persons in detention awaiting deportation shall be accommodated separately from prisoners serving criminal sentences."

Therewith the wording of the Residence Act refers explicitly to the federal structure of the Federal Republic, while the wording of the EU Return Directive refers to the member state as a whole only.

On 11 July 2013, the Federal Court of Justice (AZ: V ZB 40/11) and on 26 September 2013 the Munich Regional Court I (AZ: 13 T 20899/13) referred a matter relating to the Return Directive to the European Court of Justice for a preliminary decision[34], in order to clarify the potential conflict. The wording of the question referred by the Federal Court of Justice was as follows:

"Does it ensue from Article 16 para. 1 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 [...] that Member States are, in principle, also obliged to resort to prison accommodation if any such facilities are only available in part of the federal sub-structure of this Member State but not in others?"(BGH - V ZB 40/41: 1; cf. almost identical wording of the request for a preliminary ruling of the Munich Regional Court I: EuGH Rs. C-514/13).

In the statement of reasons for the referral of the Federal Court of Justice, it says that pursuant to Article 4 para. 2 sentence 1 of the EU Treaty "the European Union shall respect the federal structure of the Member States" (BGH - V ZB 40/41: 6). On the other hand, reference is made to the wording in Article 16 para. 1 sentence 2 of the Directive, according to which the regulation refers explicitly to "the Member State as a whole" (ibid.: 7).

The European Court of Justice decided in its judgements from 17 July 2014 that,

"the obligation, laid down in the first sentence of Article 16(1) of Directive 2008/115, requiring detention to take place as a rule in specialised detention facilities is imposed upon the Member States as such, and not upon the Member States according to their respective administrative or constitutional structures. The national authorities responsible for applying the national legislation transposing Article 16 of Directive 2008/115 must therefore be able to detain third-country nationals in specialised detention facilities. This interpretation of Article 16(1) of Directive 2008/115 nevertheless does not mean that a Member State which, like the Federal Republic of Germany, has a federal structure is obliged to set up specialised detention facilities in each federated state. However, it must be ensured, inter alia pursuant to agreements providing for administrative cooperation, that the competent authorities of a federated state that does not have such facilities can

33 Regulations for the enforcement of the deprivation of liberty according to § 422 para. 4 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction were adjusted accordingly for cases of detention pending deportation and detention pending removal.

34 The Federal Court of Justice referred a matter to the European Court of Justice pursuant with Article 267 of the Treaty on the Functioning of the European Union: The European Court of Justice shall decide by way of a preliminary decision
a) on the interpretation of the Treaties,
b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union,
Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court. If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay."

provide accommodation for third-country nationals pending removal in specialised detention facilities located in other federated states" (EuGH 2014).

Furthermore, a Member State is not permitted to detain a third-country national for the purpose of removal in prisons together with ordinary prisoners even if the third-country national consents thereto (EuGH 2014, case "Pham").

Subsequently, the competent ministries will evaluate which consequences on the enforcement of detention pending deportation need to follow the rulings by the European Court of Justice on the level of the Federal Länder. By the time finishing this study, no concrete measures had been taken, yet (as at: 25 July 2014). Though, several of the Federal Länder had changed the way of enforcing detention pending deportation on the state level already prior to the ruling, as documented in the following chapter.

4.3 Developments within individual Federal Länder

Both the implementation of the EU Return Directive into national law and the relevant decisions handed down by the Local and Regional Courts to release persons awaiting deportation from detention and the referrals to the European Court of Justice led to changes in accommodation in several Federal Länder already before the rulings of the European Court of Justice. In addition to the Federal Länder that had set up special facilities for persons in detention pending deportation before the European Court of Justice was involved in the matter, developments in Bavaria, Mecklenburg-Western Pomerania, Lower Saxony, Saxony and Schleswig-Holstein deserve special mention.

In November 2013, construction work began in Bavaria to adapt the prison in Mühldorf into a special pre-removal detention centre. It has been used as such since January 2014. Persons in detention pending deportation were previously accommodated routinely in prisons in Bavaria separately from the prisoners on the basis of § 422 para. 4 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction. Persons in detention pending deportation ceased being accommodated routinely, by and large, in prisons in Bavaria in early January 2014. Notwithstanding this, the Bavarian Ministry of State for Justice issued the proviso that men in detention pending deportation at Nuremberg prison can continue being accommodated at a separate section for persons in detention pending deportation "in order to avoid capacity bottlenecks" (StMI Bayern 2014: 42). The amended Administrative Regulation of the Bavarian State Ministry of Home Affairs, Construction and Transport states, relating to the Foreigners Act (BayVVAuslR) of 3 March 2014, says that in the run-up to the restructuring there had been an increase in the number of detainees released from the pre-removal detention centres and in the number of refusals of applications for detention pending deportation by Bavarian courts. The latter had stated as reasons the matter of the requirement to provide specialised detention facilities referred by the Federal Court of Justice to the European Court of Justice (BayVVAuslR 2014: 1.62a).

The way in which detention pending deportation is carried out in Mecklenburg-Western Pomerania at the prison in Bützow was called into question by the Minister for Home Affairs of Mecklenburg-Western Pomerania at the beginning of 2014. As it is potentially incompatible with the EU Return Directive (2008/115/EC) to accommodate persons in detention pending deportation in separate sections of prisons accommodating ordinary prisoners, the Ministry has made arrangements for men in detention pending deportation to be accommodated at the special pre-removal detention centre in Brandenburg. It had already made similar arrangements for women in detention pending deportation. It is also being examined whether a long-term cooperation between Mecklenburg-Western Pomerania and Brandenburg could be entered into an agreement to also accommodate men in detention pending deportation (cf. Landtag Mecklenburg-Vorpommern 2014a: 2f.).

In the wake of the state parliamentary elections in Lower Saxony of 20 January 2013 and the switch from a CDU-FDP government to a government coalition between the SPD and Alliance 90/The Greens, the decision was taken to cease accommodating persons in detention pending deportation at Hanover prison and to turn the Department Langenhagen into a specialised pre-removal detention centre. A working group was set up to draw up the "recommendations to revamp the enforcement of detention pending deportation". Furthermore, the "long-term goal" is to "abolish detention pending deportation or to avoid it entirely" (Niedersächsische Staatskanzlei 2014: 23).

In December 2013, the state-owned sections for pre-removal detention at the prisons in Saxony were closed down. A decision was then taken to enter into cooperation with the pre-removal detention centre in Berlin-Köpenick to carry out detention pending deportation for men and to accommodate women at the pre-removal detention centre in Eisenhüttenstadt in Brandenburg (Sächsischer Flüchtlingsrat o. A.).

According to the coalition agreement in Schleswig-Holstein, concluded between the SPD, Alliance 90/The Greens and the South Schleswig Voters' Association (SSW), who form the federal state government since 2012, the coalition partners are planning to seek to gain support for the nationwide abolition of detention pending deportation (SPD/ Bündnis 90/Die Grünen/ SSW 2012: 55). Until this is achieved, the special pre-removal detention centre in Rendsburg is to be closed down at state level. It is not permissible to accommodate persons being detained pending deportation at a prison. Generally speaking, young people under the age of 18 are no longer to be detained pending deportation. The existing cooperation with the special pre-removal detention centre in Eisenhüttenstadt in the federal state of Brandenburg – which accommodates women detainees – will continue for the time being (SPD/Bündnis 90/Die Grünen/SSW 2012: 55). Changes in accommodation of persons awaiting deportation from detention, which may result from the rulings of the European Court of Justice from 17 July 2014, could not be incorporated due to the date of completion of this study.

4.4 Conditions of detention in the Federal Länder

The Residence Act and the General Administrative Regulations relating to the Residence Act provide the regulations governing the conditions for accommodating persons being detained pending deportation on the national level. The Federal Länder are responsible for enforcing detention pending deportation and for accommodating persons in detention pending deportation. Some of the Federal Länder have issued relevant decrees and supplementary administrative regulations, others have not. One consequence of the federal structure is the difference in some conditions at the pre-removal detention centres of the Federal Länder. Generalisations are only possible to a limited extent. This is demonstrated, for instance, by the visiting arrangements and frequency of visits at the pre-removal detention centres (cf. Table 6). To what extent the rulings by the European Court of Justice (see above) may result in changes in accommodation of persons awaiting deportation from detention, remains to be seen.

Table 6: Visiting arrangements at the pre-removal detention centres of the Federal Länderr

As at: 31.12.2013	Visiting arrangements and frequency of visits
Baden-Württemberg (Mannheim Prison)	Once a week
Bavaria (Munich Prison, up to January 2014)	4 hours per month, to be divided up, if necessary
Berlin (police custody Berlin-Köpenick)	1 hour daily per visitor, as the case may be also, longer
Brandenburg (Eisenhüttenstadt)	No restrictions during out-of-cell times
Bremen (police custody Bremen)	Every day from 2:30 pm to 6:30 pm, at least 30 minutes
Hamburg (Hamburg-Billwerder Prison, men)	Several visits per week, up to 6 hours per week
Hesse (Frankfurt Prison)	Once a week
Mecklenburg-Western Pomerania (Bützow Prison, men)	Several visits per week, up to 6 hours per week allowed
Lower Saxony (Hanover Prison)	Several visits per week, up to 6 hours per week allowed
North Rhine-Westphalia (Büren Prison)	Unlimited visits during visiting hours
Rhineland-Palatinate (pre-removal detention centre at Ingelheim am Rhein)	Depending on how many persons are detained, Several visits per week possible
Saxony (Chemnitz Prison, up to December 2013, women)	6 hours per month, to be divided up, if necessary
Saxony-Anhalt (Volkstedt Prison)	1 hour twice a month
Schleswig-Holstein (Pre-removal detention centre Rendsburg)	Several visits during the week and at the weekend
Thuringia (Goldlauter Prison)	2 visits per month of 1.5 hour's duration or if the visitor has to travel a long distance can visit once for 3 hours

Sources: inter alia Deutscher Bundestag 2012a+b, Baumann 2013, Pro Asyl 2013 (cf. Annex 1 for more detailed information)

In the following, Table 7 provides a comprehensive outline of other conditions at pre-removal detention centres as well as relevant legal conditions at federal level and state level – unless there are relevant regulations in place (see also detailed outline at state level in the Annex A1).

Table 7: Conditions at the pre-removal detention centres – part I (as at: 31.12.2013)

Conditions at the pre-removal detention centres*	Detention conditions	General statutory conditions
Square metres per person	*General information: No m² specified per person – similar to ordinary prisoners. In a ruling handed down by the Federal Court of Justice (1 BvR 409/09) on 20 February 2011 it was merely specified that 8 m² and a volume of 20 m³ (incl. toilet) are not sufficient for two detainees. Example: pre-removal detention centre Rendsburg: Room with 1 bed: 5.93 m² - 9.43 m²; room with two beds: 10.24 m² - 13.48 m²*	None
Number of persons per room	As a rule, cells have one or two beds, however, some rooms have three to six beds.	None
Accommodation for families (with children)	As a rule, families are not detained together, only one parent (generally the husband) is detained. The prisons in Büren (North Rhine-Westphalia) and in Berlin have "family rooms".	§ 62a para. 1 sentence 3 and 4 of the Residence Act: "If several members of a family are detained, they shall be accommodated separately from other detainees awaiting deportation. They shall be guaranteed adequate privacy."
Accommodation of single women/men	Single women/men are accommodated separately.	*For the airport procedure*, cf, the General Administrative Regulations relating to the Residence Act 65.2: "Men and women must be accommodated separately".
Are unaccompanied minors accommodated separately from adults?	Generally speaking, minors are not accommodated at many pre-removal detention centres, instead there is cooperation with youth welfare services; at other pre-removal detention centres, there are no separate facilities available for minors; only a few pre-removal detention centres have separate facilities for young people (e.g. Hesse and Schleswig-Holstein).	There are no national regulations in place, some Federal Länder have issued decrees in relation to the accommodation of accompanied and unaccompanied minors, e.g. Decree No 11/2013: Brandenburg foreigners legislation;
Supervised time spent in the fresh air	Supervised time spent in the fresh air 1 to 1.5 hours each day at most pre-removal detention centres.	None
Number of visits permitted	Ranges between four hours per month (Munich Prison), to several visits per week (Hamburg Prison), to all-day visits and unlimited visiting rights (pre-removal detention centre Eisenhüttenstadt).	Land decrees and house rules of the respective pre-removal detention centres (prisons)
Contact possibilities outside the pre-removal detention centre	At all pre-removal detention centres, persons in detention pending deportation are allowed to contact lawyers, family members, NGOs and consular authorities. *Telephones* are available, but detainees must generally pay for their calls. *Use of mobile phones* is permitted in Rhineland-Palatinate, Berlin, Brandenburg and Schleswig-Holstein (however, only phones without a camera and video recording function). *Internet* access is allowed only in Schleswig-Holstein and Bremen.	§ 62a para. 2 of the Residence Act: "Detainees awaiting deportation shall be permitted to establish contact with legal representatives, family members and the competent consular authorities."

Table 7: Conditions at the pre-removal detention centres – part II (as at: 31.12.2013)

(Further) education courses for young people and adults	There are no institutional educational courses available to persons in detention, some pre-removal detention centres offer a number of courses which are delivered by social workers or free of charge by organisations, nearly all pre-removal detention centres have libraries, the prison at Büren (North Rhine-Westphalia) offers German language courses.	None
Leisure facilities	Nearly all pre-removal detention centres offer television, table tennis and board games and football and basketball during periods of outdoor activity; some also give access to a gym, kicker, DVDs or the like Possibility to rent video games	None
Possibilities to spend time outside of the pre-removal detention centre	No day release outside the pre-removal detention centre as they are closed facilities.	General Administrative Regulations relating to the Residence Act 62.0.6: "There is no scope for release, temporary release and time spent outside the pre-removal detention centre or for accommodation in open prisons in accord-ance with the scope of the law."
Times in which detainees are locked in their rooms	At some pre-removal detention centres, detainees are only locked in their rooms at night (e.g. 10:00 pm to 07:00 am), at others they are locked in their rooms from early evening (e.g. 06:00 pm to 08:00 am), at some pre-removal detention centres, they may be locked in their rooms for several hours per day.	None
Access to and costs of legal advice	Access to legal advise is given at all pre-removal detention centres, however, it is only free of charge in some Federal Länder and financed by the federal state (Brandenburg, Hamburg, North Rhine-Westphalia); Rhineland-Palatinate offers some financial assistance; otherwise NGOs frequently offer legal advice free of charge.	*Access to legal advice:* § 62a para. 2, 4 and 5 of the Residence Act *Assumption of costs:* There are no regulations governing detention pending deportation under federal laws, however partial assumption of costs possible outside of a court procedure for persons in need under the Legal Aid Act and within a court procedure pursuant to §§ 76 ff. of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction in conjunction with 114 ff. of the Code of Civil Procedure (Zivilprozessordnung) (ZPO).
Use of interpreters	If there are communication difficulties, other multilingual detainees may be asked to help out or the services of an interpreter may be enlisted. Any judicial orders on the extension of or release from detention must be translated into the detainee's native language. The immigrant shall have the right to call in, at his own expense, a suitable interpreter/translator of his choice in other situations. This is subject to the person having sufficient funds to do so.	*In court:* § 420 para. 1 sentence 1 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction "The Court shall arrange a hearing with the foreigner before issuing a detention order." And: "The costs of interpreters shall be waived for persons who do not have a sufficient command of the German language pursuant to § 81 para. 1 sentence 2 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction" (BGH, 4 March 2010 - V ZB 222/09). Also § 17 of the Asylum Procedure Act.
Access to medical care	Most pre-removal detention centres (particularly those at prisons) have physicians and/or nurses on duty – some have their own sick bay, some have medical staff on duty for several hours a day, external physicians may also be consulted, however, medical examinations are generally not initiated at their own initiative but are subject to the approval of the management of the pre-removal detention centre.	For *asylum seekers,* persons obliged to leave the Federal territory as well as those, whom entry was denied, § 4 para. 1 of the Asylum Seekers Benefits Act says: "The necessary medical and dental treatment shall be available to persons suffering from acute illnesses and painful conditions, including medication, bandages and any other facilitiess needed for recuperation, improvement or alleviation of illnesses or the results of any such illnesses."

Table 7: Conditions at the pre-removal detention centres – part III (as at: 31.12.2013)

Conditions for particularly vulnerable persons	*General information:* Many pre-removal detention centres offer access to social workers and physicians during the day	Basic provisions: EU Directive 2008/115/EC
	Unaccompanied minors: Detainees may request a single room (e.g. Brandenburg); some of these rooms are in youth detention facilities (such as Hesse)	*Unaccompanied minors and families:* § 62a para. 1 sentences 3 and 4, para. 3 of the Residence Act and the General Administrative Regulations relating to the Residence Act 62.0.5; at federal state level, inter alia Administrative Regulations of the Bavarian State Ministry of Home Affairs, Construction and Transport relating to the Foreigners Act 1.62a, Application information § 62 of the Residence Act Rhineland-Palatinate, Directive on Detention prior to Deportation of North Rhine-Westphalia 2009, Administrative Regulation relating to Asylum/Returns No 3.6.7.1 Baden-Württemberg
	Families: Some pre-removal detention centres have so-called "family rooms" with age appropriate toys and sleeping facilities"	
	Single parents (regardless of gender): In some Federal Länder, single parents are not detained as a matter of principle. Alternatively, special conditions are imposed, as in Rhineland-Palatinate where "it must be ensured there are childcare facilities available"	*Single parents (regardless of gender):* at state level, inter alia, Directive on Detention prior to Deportation of North Rhine-Westphalia 2009, decree e13-05-01 Bremen, application information on § 62 of the Residence Act by Rhineland-Palatinate
	Pregnant women and (nursing) mothers: "Accommodation in single rooms with medical care" (Brandenburg) or transfer to a women's prison offering "gynaecological care from the 7th month of pregnancy" (Bavaria)	*Pregnant women and (nursing) mothers:* General Administrative Regulations relating to the Residence Act 62.0.5; at state level, inter alia, Directive on Detention prior to Deportation of North Rhine-Westphalia 2009
	Women: In Saxony, women were detained in closed prisons separated from ordinary female prisoners until 2013. Owing to the low number of cases, conditions are similar to detention in isolation. They may ask for permission to attend events with ordinary prisoners	*Women:* *see above*
	Persons with disabilities: Some pre-removal detention centres are equipped for the disabled (e.g. Hesse and Saxony); in principle, persons with disabilities are only detained in exceptional circumstances	*Persons with disabilities:* at state level, inter alia, Directive on Detention prior to Deportation of North Rhine-Westphalia 2009
	Elderly persons: In principle, persons over the age of 65 are not detained	*Elderly persons:* 62.0.5 of the General Administrative Regulations relating to the Residence Act

Sources: Deutscher Bundestag 2012a+b, various decrees issued by the Federal Länder, Baumann 2013, Pro Asyl 2013 and circa 40 other printed papers of the Federal Government and Federal Länder, studies and self-descriptions of the pre-removal detention centres (cf. Annex A1).

* see detailed information in Annex 1.

4.5 Short overview of the discussions about several aspects of detention pending deportation

The different types of detention (special pre-removal detention centres or within prisons), the detention of certain groups of persons as well as the often considerable differences in the detention conditions are, to some extent, the focus of critical debates. Refugee and human rights organisations like Pro Asyl, refugee councils, the Humanist Union and the German Bar Association, Church organisations such as the Jesuit Refugee Service, Diakonie and Caritas and indeed political parties, in particular Alliance 90/The Greens, The Left and The Pirate Party have been particularly vocal in their criticism. Some organisations criticise the maximum duration of detention of six to 18 months as disproportionate (Weber/Selder 2013, Cremer 2011, Diakonie 2011). In 2011, the federal state of Berlin submitted a bill to the Bundesrat to amend the Residence Act that would reduce the maximum duration of detention from 18 months to 6 months. The bill was rejected (Bundesrat 2011: 2). In turn, other studies and reports broach the issue of certain conditions at individual pre-removal detention centres (cf. Nationale Stelle zur Verhütung von Folter 2014,

Habbe 2014, Pelzer/Sextro 2013, Weber/Selders 2013, Flüchtlingsrat Brandenburg/Flüchtlingsrat Schleswig-Holstein/Humanistische Union 2013, FRA 2012, Human Rights Council 2012, Sextro/Nissen 2012, Diakonie 2011).

Alongside, the Working Group of the Federal Government and the Federal Länder on "Returns" (AG Rück) comprising representatives of the Federal Foreign Office, the Ministries of Home Affairs of the Federal Länder, the Federal Police and the Federal Office for Migration and Refugees criticised the quota of persons actually deported in a report published in 2011. In this report, it says there are many "enforcement deficits" in relation to immigrants obliged to leave the federal territory,

> "these shortcomings can be assigned both to the area of internal organisation, arising from the application of the law, the lack of determination to enforce and failure in enforcing deportation orders caused by failure to establishing their identity and procuring passport substitute documents [...] that can ultimately be blamed on the lack of willingness to cooperate on the part of the countries of origin" (Clearingstelle Trier 2011: 3).

In relation to detention pending deportation, the Working Group on Returns criticised the lack of efficiency of detention pending deportation as a coercive instrument, blaming this on the "high legal requirements and procedural requirements that have to be met before an order for detention pending deportation can be issued" (Clearingstelle Trier 2011: 12).

The National Agency for the Prevention of Torture, which was established under the Optional Protocol to the United Nations Convention against Torture and other cruel, inhuman or degrading treatment or punishment and which shall regularly visit places of detention and to report each year to the Federal Government, the Länder Governments, the Federal Parliament, and the State Parliaments on its activities, highlighted several positive accommodation conditions at pre-removal detention centres in its 2013 Annual Report. This report highlights aspects such as long supervised times spent in the fresh air, comprehensive visiting hours, a wide range of occupational schemes and leisure facilities, further education schemes, the possibility to spend all day outdoors, Internet access and the use of one's own mobile phone. In one particular case, it is described as positive that the detention rooms have their own separate toilets and partitions between the shower cubicles in shower rooms which, according to the Evaluation Report, is not the case in other pre-removal detention facilities. The study also highlights some positive aspects of accommodating persons pending deportation in separate sections of prisons compared to special pre-removal detention centres:

> "There are certainly some benefits to accommodate persons in detention pending deportation in prisons, for instance, detainees pending deportation have access to a good infrastructure. Prisons usually have specialist services available on-site (above all physicians and psychologists) and they often have a wide range of leisure facilities and occupational schemes on offer. Accommodating persons in detention pending deportation in prisons also gives them greater proximity to their relatives in many cases" (Nationale Stelle zur Verhütung von Folter 2014: 22).

Another matter which the organisations criticised relates to the restrictions on freedom resulting from accommodation particularly in prisons for structural reasons (cf. Nationale Stelle zur Verhütung von Folter 2014: 22). In talks with individual Ministries of the Federal Länder responsible for detention pending deportation that were conducted within the framework of this study, it was highlighted that it is extremely difficult to ease detention conditions specifically at pre-removal detention facilities that are linked to prisons compared to the conditions that are available to ordinary prisoners. The reason given is the proximity to ordinary prisoners and the difficulty in explaining to them why persons in detention pending deportation should benefit from special or less strict prison conditions. What is more, it is not possible to implement less stringent conditions in some prisons for reasons of general prison safety. The accommodation at special pre-removal detention centres in particular in the Federal Länder that accommodate certain groups of persons or indeed all persons in detention pending deportation in different Federal Länder can entail long bus journeys for their visiting friends and family and make it extremely difficult for those who have residence restrictions (residency requirement) to visit them in the first place. All lawyers providing advice to persons in detention pending deportation and who are representing them are also required to travel the extra distance if these persons are transferred to another federal state (cf. Habbe 2014: 5).

5 Legislative and institutional framework of the alternatives to detention

The purpose of detention is to enforce the obligation to leave the federal territory. Custody awaiting deportation may only be permissible as a last resort. In order to apply less severe means, they need to be sufficiently appropriate to safeguard deportation. The individual reasons why the competent authorities may order the detention of a third-country national for the purpose of deporting him or her are documented in Chapter 3.2, though the existence of grounds for detention does not exclude the possibility to apply alternatives to detention, if the grounds for detention (e. g. the person concerned intends to evade deportation) allow to apply other coercive measures (e. g. administrative orders according to § 46 para. 1 of the Residence Act).

The costs of detention pending deportation and the costs of deportation must be borne by the immigrant himself in the event that he is deported (§§ 66 para. 1 and 67 para. 1 number 2 of the Residence Act). "In order to be permitted to re-enter the federal territory even after the ban on re-entry has expired, the foreigner must have paid these costs which are frequently substantial" (Selders 2013: 18).[35]

According to information provided by staff of the competent authorities within the framework of this study, informing the immigrant obliged to leave the country of the long-term consequences of deportation (ban on re-entry, the obligation to pay costs incurred) in addition to the threat of deportation often persuades them to leave the federal territory voluntarily.

This applies in particular to third-country nationals from direct EU neighbouring countries.

The general conditions relating to the alternatives to detention will be outlined in the following although they will not involve measures aimed at voluntary departures or returns but rather coercive measures and requirements that interfere less in the right of freedom than detention.

5.1 Alternatives to detention

The regulatory framework of alternatives to detention pending deportation set forth in the Residence Act and the correspondent General Administrative Regulations relating to the Residence Act. Furthermore, some Federal Länder have issued their own decrees and laws to supplement and specify the provisions set forth in the Residence Act and the General Administrative Regulations relating to the Residence Act, as shown in table 8.

35 Concerning the assumption of costs, an exception is made within the Dublin-III Regulation and the transfer of a person to another member state. Therewith, the member state which transfers the person concerned needs to bear the costs: „Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers" (Article 30 para. 3 of the Regulation (EU) No 604/2013).

Table 8: Use and organisation of alternatives to detention pending deportation

Alternatives to detention pending deportation	Use and organisation	Relevant groups of persons	General statutory conditions
Reporting requirements	1. The obligation to periodically inform the foreigners authorities within the monitoring of one's residence. 2. The foreigners authorities must be notified if the immigrant plans to leave the district for more than 3 days.	1. Selected persons by the authorities 2. All persons obliged to leave the federal territory	1. § 46 para. 1 of the Residence Act and 46.1.4.1 of the General Administrative Regulations relating to the Residence Act 2. § 50 para. 4 of the Residence Act
Obligation to surrender passport or travel documents	The foreigners authorities keep the passport of a person obliged to leave the federal territory until the moment of departure. The police forces of the Federal Länder and the Federal Police can confiscate the passport and hand it over when the immigrant is leaving the federal territory as the document entitling them to cross the border; certified copy of the passport is handed over to the person obliged to leave the federal territory.	All persons obliged to leave the federal territory with the exception of nationals referred to the Annex 2 to Regulation (EC) No 539/2001 and nationals of the so-called "positive countries" who have a visa exemption" (Abl. EU 2001 No L 81 S. 1).	§ 50 para. 5 of the Residence Act Exceptions based on: General Administrative Regulations relating to the Residence Act 50.6.2
Requirement to reside at a specific address (strict residence requirement)	1) Limited to the Federal State 2. Obligation to reside at a specific address or in a specific accommodation which is chosen by the foreigners authorities 3) Limited to the district of the last responsible foreigners authorities 4) Accommodation at a "departure facility" (Bavaria, Lower Saxony, Schleswig-Holstein)	1) All persons obliged to leave the federal territory 2. All persons obliged to leave the federal territory 3) Persons whose refusal of entry or deportation was unsuccessful 4) All persons obliged to leave the federal territory in the three Federal Länder, provided there is enough capacity available	1) § 61 para. 1 sentence 1 of the Residence Act 2. § 46 para. 1 of the Residence Act and 46.1.4.4 of the General Administrative Regulations relating to the Residence Act 3) § 61 para. 1a in conjunction with § 60a para. 2a of the Residence Act 4) § 61 para. 2 of the Residence Act
Bail	1. Obligation to save money according to amount in order to finance one's return without falling below the absolute minimum income needed to exist. That amount needs to be transferred to a blocked account of the foreigners authorities. 2. Since the end of 2013, it has been examined in Brandenburg, inter alia, if a less severe measure could be considered such as "agreeing that a surety would be paid or a guarantee made by a person of trust" (a similar rule applies to Bremen).	1. Selected persons by the authorities 2. No definition available	1. § 46 para. 1 of the Residence Act and 46.1.4.3 of the General Administrative Regulations relating to the Residence Act 2. Decree No 11/2013: Foreigners Act, Brandenburg, Decree e13-05-01 Bremen
Electronic tags	Schleswig-Holstein is considering to introduce "electronic residence monitoring", which would not mean using "electronic tags" exclusively but also the obligation to phone the authorities and to use voice detection sys-tems". Electronic tags shall only be used "in agreement with the immigrant".	No definition available	Innenministerium Schleswig-Holstein 2014a: 3ff.
Sureties	See above bail	See above bail	See above bail

Transfer to the area of competence of social workers, Youth Welfare Services, migrant organisations and other NGOs	1) Nationwide: Unaccompanied minors are generally taken into care of a youth welfare facility that comes under the remit of the Youth Welfare Services.	1) Unaccompanied minors	1) General Administrative Regulations relating to the Residence Act 62.0.5 in conjunction with § 62 para. 1 sentence 3 of the Residence Act; § 42 para. 1 sentence 1 number 3 Social Code Book VIII
	2) North Rhine-Westphalia: If an immigrant has been detained pending deportation for three months and the prolonging needs to be acknowledged by the Local Court, whether it will be possible to carry out deportation within the next three months for reasons beyond the immigrant's control, the immigrant may be released if: a third person whom the immigrant in detention pending deportation has confidence in and who has the trust of the foreigners authorities (chaplain, a social worker focusing on psycho-social care or a person offering their services free of charge at the pre-removal detention centre) declares his intention to look after the immigrant after he has been released from detention and other prerequisites are mentioned.	2) Immigrants in detention pending deportation in North Rhine-Westphalia, who fulfill certain requirements (see above).	2) 1.2.1 (principle of proportionality) in conjunction with 4.1 (premature termination of detention) Directive on Detention Pending Deportation issued by North Rhine-Westphalia (AHaftRL NRW) of 19 January 2009
Obligatory return counselling	Requirement to attend a special counseling for returnees	Selected persons by the authorities	§ 46 para. 1 of the Residence Act and 46.1.4.2 of the General Administrative Regulations relating to the Residence Act

Source: Residence Act, General Administrative Regulations relating to the Residence Act, JRS 2011, Innenministerium Schleswig Holstein 2014, Directive on Detention Pending Deportation issued by North Rhine-Westphalia (AHaftRL NRW) in 2009, Decree No 11/2013: Foreigners legislation Brandenburg, Decree e13-05-01 Bremen.

§ 62 para. 1 sentence 1 of the Residence Act states, that custody awaiting deportation "shall not be permissible if the purpose of the custody can be achieved by other, less severe means which are also sufficient". § 46 para. 1 sentence 1 concretizes such less severe means:

> „The foreigners authority may undertake measures to facilitate the departure of a foreigner who is enforceably required to leave the Federal territory; in particular, it may oblige the foreigner to take up his or her residence at a place of its designation."

Further alternatives are set forth in the corresponding regulations to § 46 of the General Administrative Regulations relating to the Residence Act. The therein listed administrative orders also underlie the principle of proportionality. This is why for example "the instruction to reside at a specific address comes with the constraint to protect the unity of the nuclear family, if they reside on Federal territory (46.1.3 of the General Administrative Regulations relating to the Residence Act). Ultimately, the General Administrative Regulations relating to the Residence Act name at least six administrative orders, which shall "promote the departure" (46.1.4 of the General Administrative Regulations relating to the Residence Act):

"46.1.4.1 the obligation to periodically inform the foreigners authorities within the monitoring of one's residence,

46.1.4.2 the obligation to attend a special counseling for returnees,

46.1.4.3 the obligation to save money according to amount in order to finance one's return without falling below the absolute minimum income needed to exist. That amount needs to be transferred to a blocked account of the foreigners authorities.

46.1.4.4 the obligation to reside at a specific address or in a specific accommodation which is chosen by the foreigners authorities (cf. 61.2.1),

46.1.4.5 the obligation not to leave a specific spatial area (cf. also § 61),

46.1.4.6 the obligation to hand over such papers to the foreigners authority, which in case of an identity check might lead to the false impression, that the foreigner is entitled to reside respectively not obliged to enforceably leave the Federal territory; This applies especially for provisional residence documents issued after the application for a residence permit has been denied."

As the overview shows, on the one hand most of the alternatives to detention pending deportation involve institutionalised procedures that apply either to all persons obliged to leave the federal territory (whose passports have been confiscated) or to certain groups of persons (unaccompanied minors). On the other hand, staff at the public authorities may also determine further alternative coercive measures (administrative provisions) in individual cases (for instance, to provide a surety). In addition, in several Federal Länder the staff at the public authorities has further alternative coercive measures at its disposal (for instance, payment of a guarantee or the handover in the area of responsibility of a person of trust) or might have further alternatives available in the future (for instance, electronic tags; cf. Innenministerium Schleswig Holstein 2014).

Though, with each of the partially discussed alternative coercive measures to detention pending deportation (vgl. cf. Innenministerium Schleswig-Holstein 2014) the question must be asked, to what extent they suit the purpose safeguarding a deportation.

5.2 Organisation and institutional competencies

The decision which measure should be used as an alternative to detention is, by and large, taken by the Federal Länder and specifically by the staff at the foreigners authorities and also by the staff of the so-called departure facilities in Bavaria, Lower Saxony and Schleswig-Holstein. Furthermore, the so called Administrative provisions may "also be issued by authorities charged with carrying out the police control of cross-border traffic with the authorization of the interior ministry" (46.1.2 of the General Administrative Regulations relating to the Residence Act).[36] By contrast, the Local Courts decide whether the deprivation of freedom is reasonable and justified in individual cases, and do also consider whether less severe but also sufficient measures may serve the purpose of forcefully terminating a residence (cf. inspection catalogue Annex A5) .

5.2.1 Consequences of violations against individual conditions and obligations

If a person fails to fulfil individual conditions or to meet obligations, this is generally deemed as an administrative offence (46.1.5 of the General Administrative Regulations relating to the Residence Act) as well as an attempt to avoid having to leave the federal territory. As the suspicion that a person who is obliged to leave the federal territory may avoid doing so by absconding, for instance, represents the key grounds for monitoring his departure, an application for detention of the person in question may generally be filed.

5.2.2 Particularly vulnerable persons

If a person is recognised as being vulnerable, this person is not detained in the majority of Federal Länder (ef. chapter 2.4). In the case of unaccompanied minors, for instance, finding accommodation for them at a youth welfare facility in cooperation with the Youth Welfare Services can be regarded as an alternative to detention pending deportation (cf. JRS 2011).

36 Bavaria, Lower Saxony and Brandenburg have established so-called departure facilities pursuant to § 61 para. 2 of the Residence Act for "foreigners who are enforceably required to leave the federal territory": Bavaria with the two Central Return Agencies Southern Bavaria in Munich and the Central Return Agency of Northern Bavaria in Fürth, Lower Saxony with the regional reception authorities in Braunschweig, and Schleswig-Holstein with the Land Agency for Foreigners Affairs in Neumünster. In the non-city states, the departure facilities perform several tasks within the framework of organizing departure on behalf of the decentral foreigners authorities in the respective Federal Land: "At the departure facilities, foreigners are to be encouraged through care and advice to leave the federal territory voluntarily, ensuring that they have access to the authorities and the courts and that their departure can be enforced (Innenministerium Schleswig-Holstein 2014a: 4).

6 Conclusion

The organisation and conditions of detention pending deportation are shaped by the complexity of the federal structure and the multiplicity of actors in the field and have undergone many changes in recent years. This has been caused, inter alia, by European harmonisation at the level of the common migration and asylum policy that have been incorporated into German regulations governing detention pending deportation in the form of regulations and directives.

The enforcement of detention pending deportation is organised by the Federal Länder in Germany which has a federal structure. Whereas some Federal Länder have issued their own decrees and laws to supplement and specify the general provisions in the Residence Act and in the General Administrative Regulations relating to the Residence Act and any omissions therein, other Federal Länder have not. All in all, in 2013, more than 4,300 persons were detained pending deportation in the Federal Länder over the course of the year (not including Hesse).

To date, persons in detention pending deportation have been accommodated in separate sections of prisons reserved specifically for them whereas other Federal Länder have set up specialised pre-removal detention centres already years ago.

The conditions at the individual pre-removal centres of the Federal Länder vary. There is a visible trend towards easing detention conditions. Owing to the increase in cooperation between the Federal Länder in relation to detention, more detainees are being accommodated at special pre-removal detention centres. The single Federal Länder, which have accommodated persons pending deportation in separate sections of prisons, are currently working on the implementation of the ruling of the European Court of Justice from 17 July 2014. What the concrete implementations and adaptations look like was not foreseeable at the time of finishing this study (as at: 25 July 2014).

Alternatives to detention pending deportation are applied either to all persons required to leave the federal territory (who have their passports confiscated), to certain groups of persons (unaccompanied minors) or the staff at the public authorities may also determine further alternative coercive measures in individual cases (for instance, to provide a surety). In addition, in several Federal Länder the staff at the public authorities has further alternative coercive measures at its disposal (for instance, payment of a guarantee or the handover in the area of responsibility of a person of trust). Though, with each of the alternatives the question needs to be asked, to what extent they suit the purpose of safeguarding deportation.

Annex

A 1. Detailed overview of detention conditions in the individual Federal Länder

As at: 31 December 2013	Responsible for running the facility	Accommodation for families with children	Separation of single women and men?	Separate accommodation of unaccompanied minors (UMR)?	Any other consideration for vulnerable persons
Baden-Württemberg (Mannheim Prison)	Prison officers	Families with children: only the father or children over 18 are detained[33]	as a rule yes[2]	Children under the age of 14 are not detained	No accommodation in detention pending deportation[3]
Bavaria (Munich Prison, (up to January 2014)	Prison officers and employees	In the case of families with children, only the father is detained[33]		No, together with prisoners serving criminal sentences[5]	Support is offered by staff of Social Services as well as physicians, psychologists, prison teachers or clerics[4]
Berlin (police custody Berlin-Köpenick)	Police officers + employees	Members of the same family may ask for shared accommodation[10]	Yes[10]	No[7]	Persons who have been traumatised having suffered physical or emotional violence are not detained, but are offered psycho-social support[7]
Brandenburg (pre-removal detention centre Eisenhüttenstadt)	Prison officers & private security services[21]	Parents with underage children are not detained[33]	Yes[21]	UMR are rarely detained (if so: room to themselves)[33]	Traumatised persons are not detained[33]
Bremen (police custody Bremen)	State employees	In the case of families with underage children, only one parent is detained[33]	Yes[22]	No accommodation for minors[35]	Not detained: minors, persons > 65, pregnant women, single parents, parents with underage children, persons with mental disorders & persons with disabilities[35]; social workers offer support[33]
Hamburg (Hamburg-Billwerder Prison, men only)	Prison officers and private security service	Parents with underage children are not detained[33]	men only (women in Eisenhüttenstadt)[18]	No accommodation for minors[18]	Traumatised persons have access to support services (physicians, psychological assistance, chaplain etc.)
Hesse (Frankfurt Prison)	Prison officers	Parents with underage children are not detained[33]	Yes[33]	Yes (accommodated at Wiesbaden + Rockenberg Prison)[33]	Psychological support possible[33]
Mecklenburg-Western Pomerania (Bützow Prison, men only)	Prison staff	Parents with underage children are not detained[33]	men only (women in Eisenhüttenstadt)[19]	In exceptional cases and if Youth Welfare Service cannot take them into care[34]	Women and parents with underage children are not accommodated, sick bay available for detainees[33]
Lower Saxony (Hanover Prison)	Prison staff	Separate quarters for men and women[33]	Yes[33]	Youth Welfare Services examines whether accommodation outside the prison possible[33]	Pregnant women are not detained, psychological support is available for traumatised persons, external counselling possible[33]
North Rhine-Westphalia (Büren Prison)	Prison officers & private security services[37]	Family rooms for parents + underage children, as a rule only one parent detained[33]	Yes[45]	People < 16 are accommodated at youth welfare facilities[4]; people > 16 at Büren Prison	Psychological support, support from a chaplain[33]
Rhineland-Palatinate (detention centre in Ingelheim am Rhein)	State employees and private security service	Shared rooms for couples[32]; for parents with underage children, as a rule only one parent is detained[33]	Yes[32]	Taken into custody of Youth Welfare Services[24]; detained only under extremely limited circumstance[31]	Consideration for traumatised persons[32]; pregnant women only if committed a criminal offence[33]; persons < 18 and > 65 only in exceptional cases & applications for detention must be submitted to Ministry[36]
Saxony (Chemnitz Prison, (up to December 2013)	Prison staff	In the case of families with children, only one parent is detained[33]	Women only (men at Dresden Prison)[33]	Unaccompanied minor refugees are not detained[33]	Pregnant women receive additional food & gynaecological care only in exceptional cases, persons furnishing proof they have been traumatised: not detained[33]
Saxony-Anhalt (Volkstedt Prison)	Prison staff	N/A	Men only (women in Halle prison)	N/A	N/A
Schleswig-Holstein (Rendsburg pre-removal detention centre)	Civil servants and private security service[29]	Parents/women with underage children are not detained[33]	Men only over 16 (women in Eisenhüttenstadt)[21]	16- to 18-year-olds have been provided with separate accommodation at Rendsburg Prison since 1 January 2008[33]	Persons medically certified as suffering from mental illness and traumatised persons should not be detained, talks with social workers possible, psychological assistance is available in individual cases[29]
Thuringia (Goldlauter Prison)	Prison officer + one public service employee[41]	In the case of families with children, only one parent is detained[33]	Men only[33]	Children under the age of 16 are not detained[33]	Traumatised persons have access to medical care, psychologists and a psychiatrist[33]

As at: 31 December 2013	Number of persons per room (Number of beds per room)	Visiting rights	Frequency of visits for family and friends	Supervised time spent in the fresh air (e.g. walk in the courtyard)	Times detainees are locked in their rooms
Baden-Württemberg (Mannheim Prison)	Rooms with 2 beds[2]	Weekly[2]; relief and support organisations within visiting hours[34]	for families: Monday to Friday: 8:00 am to 11:00am, lawyers also Monday to Friday: 12:30 pm to 3:30 pm subject to appointment[43]	1 to 2 hours supervised time in the fresh air[2]; between 1:00 pm and 2:30 pm	5:00 pm to 7:00 am ("detainees are locked in nearly all day long except during meal times and supervised time spent in the fresh air")[43]
Bavaria (Munich Prison, up to January 2014)	Mainly rooms with 1 bed, otherwise rooms with 2 or 3 beds	Detainees can contact Amnesty International + Jesuit Refugee Service[34]	4 hours per month, to be divided up, if necessary	9:00 am to 10:00 am walk in the courtyard[43]	Mondays to Thursdays: 11:00 am to 1:00 pm, 4:00 pm to 4:40 pm, 5:30 to 7:00 pm, Friday to Sunday: 11:00 am to 1:00 pm, 2:30 pm to 7:00 am
Berlin (police custody Berlin-Köpenick)	Rooms with 1, 4 and 6 beds (beds not always full)	Allowed for most organisations[34]	1 hour daily per visitor, in some cases longer	Daily exercise between 8:00 am and 6:00 pm at least 90 minutes in the recreational grounds[10]	max. 15 minutes around 6:00 pm for head count
Brandenburg (pre-removal detention centre Eisenhüttenstadt)	Rooms with 3 beds[21]	Organisations, members of human rights organisation of the UN + EU at any time[34]	No restrictions	1 hour outdoors for each part of the facility[34]	10:00 pm to 7:00 am
Bremen (police custody Bremen)	Rooms with 1 beds	Organisations[34]	Every day from 2:30 pm to 6:30 pm, at least 30 minutes	Supervised time in the fresh air between 2:30 pm and ca. 9:00 pm[34]	1:00 am to 10:00 am
Hamburg (Hamburg-Billwerder Prison, men only)	Rooms with 1 bed[17]	Organisations, subject to arrangement[34]	Several visits per week possible; up to 6 hours per week[25]	Supervised time in the fresh air during out-of-cell times[17]	6:00 pm to 8:00 am, 11:30 am to 1:00 pm
Hesse (Frankfurt Prison)	As a rule, rooms with 2 beds	Representatives of NGOs, lawyers consular representatives can visit any time[34]	Once a week	8:00 am: 1 hour Courtyard, 1:00 pm: 2 hours supervised time in the fresh air[34]	8:00 pm to 6:30 am
Mecklenburg-Western Pomerania (Bützow Prison, men only)	Rooms with 2 beds	Flexible visits by relief organisations and NGOs[34]	Several visits during the week possible	Supervised time in the fresh air between 8:00 am and 9:00 am	6:00 pm to 8:00 am
Lower Saxony (Hanover Prison)	Rooms with 1 bed, 2 beds and 4 beds	NGOs, to be coordinated with the Ministry of Justice or prison management[34]	Several visits per week	Afternoons	8:00 pm to 6:00 am
North Rhine-Westphalia (Büren Prison)	Rooms with 1 bed, 4 beds and 6 beds	Relief and support organisations or individuals[16]	Unrestricted during visiting hours[42]	Up to 1.5 hours per day [12]	Women: 9:00 pm to 7:30 am
Rhineland-Palatinate (detention centre in Ingelheim am Rhein)	As a rule, rooms with 1 bed	Organisations can visit any time[34]	Depends on the number of visitors, several visits per week	Supervised time in the fresh air daily 9:00 am to 10:30 am[34]	Men: 9:00 pm until the alarm goes off
Saxony (Chemnitz Prison, up to December 2013)	Rooms with 1 or two beds	Organisations can visit detainees during visiting hours[34]	6 hours per month, to be divided up, if necessary	N/A	10:00 pm to 7:00 am
Saxony-Anhalt (Volkstedt Prison)	N/A	Relief organisations at any time	1 hour twice a month	Yes[43]	During the week: 9:00 pm to 6:00 am, at the weekend: 3:45 pm to 8:00 am
Schleswig-Holstein (Rendsburg pre-removal detention centre)	Room with 1 bed, upon request rooms with 2 beds; single cell: 5.93 m^2-9.43 m^2; double room: 10.24 m^2-13.48 m^2 [39]	Detainees can seek advice from NGOs[34]	Several times during the week and at the weekend[30]	Daily supervised time in the fresh air[29]	Monday to Friday: 6:00 pm to 8:00 am, Saturdays and Sundays 4:30 pm to 8:30 am 09:00 pm to 7:00 am, 12:40 pm -2.00 pm, 20 minutes for meals: 08:00 am, 12:00 noon to 6:00 pm
Thuringia (Goldlauter Prison)	Normally room with 2 beds, upon request room with 1 bed	Visiting rights issued by the prison management[38]; visiting right for NGOs[34]	2 visits per month of 1.5 hour's duration or one 3-hour visit if the visitor has to travel a long distance	daily 11:55 am to 12:55 pm[34]	Mainly during hours they are locked into their rooms

As at: 31 December 2013	Access to religious representatives	Legal advice on site	Use of mobile phone	Other telephone (costs)	Internet access
Baden-Württemberg (Mannheim Prison)	Protestant + Catholic chaplain	Yes, by social works of the Diakonisches Werk[33]	No	One telephone per floor, detainees must top up their telephone account	N/A
Bavaria (Munich Prison, up to January 2014)	Yes	Yes by staff of Amnesty International (AI) or Jesuit Refugee Service (JRS)[33]	No	1 hour telephone each day per floor (subject to registration); phonecards for sale at prison kiosk or by the Jesuit Refugee Service - co-financed by the Social Section Munich	N/A
Berlin (police custody Berlin-Köpenick)	Protestant, Catholic and Muslim chaplain; requests for religion-specific chaplains may not be refused[10]	Yes, every week by the Republican Bar Association[33]	Yes (without a camera or Internet access)[10]	Cardphones[10]	No[10]
Brandenburg (pre-removal detention centre Eisenhüttenstadt)	N/A	Yes, one session with a lawyer at the expense of the Federal Land[21]	Yes (with a camera)	Payphones available in the corridors + spare mobile if detainee's own mobile is confiscated	N/A
Bremen (police custody Bremen)	Subject to demand	Yes, weekly by the "Association for Legal Aid at Prisons in the Federal State of Bremen" (Verein für Rechtshilfe im Justizvollzug des Landes Bremen e. V.)[33]	Yes[22]	Cardphone/payphone, available: 10:00 am to 1:00 pm[22], calls to lawyers and Embassies from prison phones possible	Can be used via own computer/smartphone, detainee must pay costs[22]
Hamburg (Hamburg-Billwerder Prison, men only)	Protestant chaplain	Free legal advice provided by the "Public Legal Information and Comparative Agency) (Öffentliche Rechtsauskunft und Vergleichsstelle) (ÖRA)[25]	No	So-called TelCo system available: Detainees (who have financial problems) need to have €20 credit on their card	Establishment of Internet access is currently being considered[25]
Hesse (Frankfurt Prison)	Protestant + Catholic chaplain	Yes, legal aid or arranged by chaplain[33]	No	During out-of-cell hours	N/A
Mecklenburg-Western Pomerania (Bützow Prison, men only)	Subject to demand	No free advice[33]	No	available in the detention section, use subject to arrangement and prepaid card	N/A
Lower Saxony (Hanover Prison)	Subject to demand	No free advice, potentially via the Legal Aid Act[33]	No	Payphones available in the detention section, available any time during out-of-cell times	N/A
North Rhine-Westphalia (Büren Prison)	Protestant + Catholic chaplain	Yes by the local bar association pursuant to Section 3 subsection 1 of the Legal Aid Act[15 and 33]	No[11]	Cardphones available during out-of-cell hours	No[13]
Rhineland-Palatinate (detention centre in Ingelheim am Rhein)	Protestant and Catholic chaplain; prayer room for women, otherwise in the open men's corridor[32]	Yes, 2 hours per week by Diakonie and Caritas, with the federal state providing financial support[33]	Yes (without a camera), rental possible[32]	Cardphones available in the hallway between 9:00 am and 4:00 pm	Skype in the social worker's office, other Internet access is being considered[32]
Saxony (Prison Chemnitz, up to December 2013)	Protestant + Catholic chaplain	Yes, at Dresden Prison through the "Contact group for persons in detention pending deportation", at Chemnitz Prison by the "Working Group for Germans and Foreigners Chemnitz"[33]	No	During out-of-cell hours	N/A
Saxony-Anhalt (Volkstedt Prison)	Protestant	Yes, by the Protestant Church, Caritas or AWO[33]	No	Landline telephone (costs may be borne by Caritas)	N/A
Schleswig-Holstein (Rendsburg pre-removal detention centre)	Once a week	Yes, by the Refugee Council; legal aid via the Legal Advice Act and Section 114 sentence 1 of the Code of Civil Procedure (ZPO)[33]	yes (without a camera or recording function) -rental €15[27]	2 public cardphones[27]	1 PC with Internet access available free of charge, with videotelephony[27]
Thuringia (Goldlauter Prison)	Protestant, Catholic and Russian Orthodox chaplain[38]	Yes by the Protestant Churches' Association "Henneberger Land"[33]	No	subject to payment: 5 numbers can be activated per detainee for calls	N/A

As at: 31 December 2013	Educational courses	Employment opportunities	Leisure facilities	Costs: Detainee per day
Baden-Württemberg (Mannheim Prison)	No, in the Diakonie office, international books for unaccompanied minor refugees spending lengthy periods[4]	if possible, handing out meals or cleaning jobs[2]	Supervised time in the fresh air: table tennis, outdoor chess, basketball, football; Fridays: Prison sports hall, Tuesdays and Thursdays, 10 to 15 persons, 2 hours kicker, darts, chess; TV (international stations); leisure groups[2]	ca. €80
Bavaria (Munich Prison, up to January 2014)	in isolated cases[34]	Only for few, no pay but more freedom of movement	Once to twice a week Weight lifting, board games, once a week: creative arts; individual- + community TV[4]	ca. €75
Berlin (police custody Berlin-Köpenick)	No[34]	Limited paid employment available[10]	Football, basketball, handball, table tennis during out-of-cell hours + table tennis, kicker in recreational rooms, games and art courses, books, TV in individual cases[10]	€65[7]
Brandenburg (pre-removal detention centre Eisenhüttenstadt)	JRS: Language-learning material	Yes, but to a very limited extent for € 1/h	Supervised time in the fresh air: Volleyball, football; in future: Table tennis, playstation, library, video, video games[21], TV[34]	ca. €65 to €120; €64-€239[21]
Bremen (police custody Bremen)	At the detainee's request, using books or a social worker	No, only occupation in the forms of arts and crafts	Sports room, football, basketball, table tennis, a social worker provide occupational activities; TV in the recreational area[34]	Board and lodging: €42.12
Hamburg (Hamburg-Billwerder Prison, men only)	No	No	Sporting grounds, table tennis, books, newspapers, football, foosball, board games[17]; use of the sports hall once a week[25]	€110
Hesse (Frankfurt Prison)	No	Yes (€8 /day)	Sport several times a week	ca. €100
Mecklenburg-Western Pomerania (Bützow Prison, men only)	No	No	Sports room available but it can only be used to a very limited extent, TV freely accessible[33]	ca. €80
Lower Saxony (Hanover Prison)	No	No	Sports room, television[34]	ca. €100
North Rhine-Westphalia (Büren Prison)	Yes: German lessons and library[40]	Work in the prison workshop, auxiliary work available. - remuneration ca. €10/day[12]	At least leisure activity once a day: Football, volleyball, basketball, weight lifting; workshops: painting, arts and crafts, cookery courses, music groups, library: own TV station in on the premises[12]	2010: ca. €70
Rhineland-Palatinate (detention centre in Ingelheim am Rhein)	No	To a very limited extent: Renovation and cleaning, landscaping, payment in accordance with the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz)	During supervised time in the fresh air: football + table tennis, once a week Various activities provided by the local sports club, by, football, books, newspapers, DVD rental, computers in the open men's hall[32] ; television[34]	€70 - €110
Saxony (Chemnitz Prison, up to December 2013)	No	No	Leisure groups, e.g. drawing course, volleyball, cookery course, aerobics etc, handicrafts, choir, discussion group, origami, pottery, arts and crafts, painting	€85.12
Saxony-Anhalt (Volkstedt Prison)	N/A	N/A	Table tennis, outdoor sporting activities	€ 70.60
Schleswig-Holstein (Rendsburg pre-removal detention centre)	No	No[29]	Depending on the number of guards on duty, foosball and table tennis, 2010: once a week painting, newspapers in different languages[30]; 20 satellite stations available[29]	ca. €100 ; €162,35 (year: 2010)[26]
Thuringia (Goldlauter Prison)	None, library	No[38]	During out-of-cell time: use of a small gym; TV[34]	€96.30[34]

Sources: Without any additional reference: Pro Asyl 2013; a semicolon separation information provided by several sources; [2]Landtag von Baden-Württemberg 2013; [3]Bündnis 90/Die Grünen Baden-Württemberg/SPD Baden-Württemberg 2011; [4]Bayerischer Landtag 2011a; [5]Bayerischer Landtag 2011b; [6]Bayerischer Landtag 2014; [7]Abgeordnetenhaus Berlin 2012a; [8]Abgeordnetenhaus Berlin 2012b; [9]Abgeordnetenhaus Berlin 2013b; [10]Senatsverwaltung für Inneres und Sport Berlin 2008; [11]Landtag Nordrhein-Westfalen 2012; [12]Landtag Nordrhein-Westfalen 2011b; [13]Landtag Nordrhein-Westfalen 2011d; [14]Landtag Nordrhein-Westfalen 2011c; [15]Landtag Nordrhein-Westfalen 2011a; [16]MIK - Nordrhein-Westfalen 2014; [17]Bürgerschaft der Freien und Hansestadt Hamburg 2011; [18]Bürgerschaft der Freien und Hansestadt Hamburg 2013a; [19]Landtag Mecklenburg-Vorpommern 2014; [20]Niedersächsischer Landtag 2011; [21]Landtag Brandenburg 2013; [22]Bremische Bürgerschaft 2013; [23]SMI 2014; [24]Landtag des Saarlandes 2011; [25]Bürgerschaft der Freien und Hansestadt Hamburg 2013b; [26]Schleswig-Holsteinischer Landtag 2011; [27]Schleswig-Holsteinischer Landtag 2013a; [28]Schleswig-Holsteinischer Landtag 2013b; [29]Landesbeirat für den Vollzug der Abschiebungshaft in Schleswig-Holstein 2013; [30]Justizministeriums Schleswig-Holstein (o. A.); [31]MIFKJF Rheinland-Pfalz 2013b; [32]MIFKJF Rheinland-Pfalz 2013a; [33]Deutscher Bundestag 2012a; [34]Deutscher Bundestag 2012b; [35]Freie Hansestadt Bremen 2013; [36]MIFKJF Rheinland-Pfalz 2013c; [37]JVA Büren 2014b; [38]Freistaat Thüringen 2013; [39]JVA Kiel 2011; [40]Nationale Stelle zur Verhütung von Folter 2014; [41]Baumann 2013; [42]JVA Büren 2014a; [43]Humanistische Union 2013.

A 2. Legal basis for detention pending deportation of the Federal Länder

Filing an application for and enforcing detention pending deportation comes under the remit of the Federal Länder and, in compliance with § 71 para. 3 of the Residence Act, the authorities charged with carrying out the police control of cross-border traffic. Some Federal Länder have issued supplementary administrative regulations or Land laws regulating detention pending deportation (cf. Table 9).

Table 9: Regulations governing detention pending deportation of the Federal Länder (as at: March 2014)

Federal Länder	Regulations governing detention pending deportation of the Federal Länder
Baden-Württemberg	Administrative Regulations of the Ministry of Home Affairs relating to the Foreigners Act (VwV. AuslR-IM), Administration Regulations on the implementation of the Asylum Procedure Act, Administration Regulations on the termination of residence of asylum seekers whose applications for asylum have been rejected and of other foreigners obliged to leave the federal territory by the state authorities (Administrative Regulations on Asylum/Returns (VwV Asyl/Rückführung)) and Administrative Regulations of the Ministry of Justice on the Implementation of Detention pending deportation (VwV-Vollzug Abschiebungshaft)
Bavaria	Administrative Regulations of the Bavarian State Ministry of Home Affairs, Construction and Transport relating to the Foreigners Act (BayVVAuslR) of 3 March 2014
Berlin	Procedural information provided by the foreigners authorities in Berlin (VAB); Act on detention pending deportation in the federal state of Berlin; Regulations governing detention pending deportation in the federal state of Berlin of 15 October 2008 (Regulations on detention (Gewahrsamsordnung))
Brandenburg	Organisational decree issued by the Ministry of Home Affairs on the implementation of the Asylum Procedure Act in Brandenburg of 7 March 1997, Act governing the implementation of detention pending deportation of the federal state of Brandenburg of 19 March 1996, Detention Regulations of the Federal State of Brandenburg of 14 January 2010; First Act Amending the Act governing the implementation of detention pending deportation of 7 November 2013, Decree no 11/2013 foreigners legislation: Principle of proportionality in applying for detention ordered as a preventative measure pursuant to § 62 of the Residence Act
Bremen	Act on detention pending deportation of 4 December 2001, Decree on the implementation of detention pending deportation at custodial facilities of the law enforcement authorities (Custodial Regulations) of the Senator for Home Affairs of 6 June 2002 (version of 10 July 2008), Decree on detention pending deportation; Special Regulations governing certain groups of persons of 30 December 2009 of the Senator for Home Affairs and Sport (e09-12-09); decree on Section 62 of the Residence Act - detention to secure deportation - principle of proportionality of 15 May 2013 (e13-05-01)
Hamburg	None
Hesse	None
Mecklenburg-Western Pomerania	None
Lower Saxony	None
North Rhine-Westphalia	Guidelines on detention pending deportation (AHaftRL), principles governing the reimbursement of costs in connection with the deportation of third-country nationals, Decree issued by the Ministry of Home Affairs - 15-39.22.01-5 - of 5 December 2008
Rhineland-Palatinate	Application information provided by the Ministry for Integration, Family Affairs, Children, Youth and Women on detention pending deportation pursuant to § 62 of the Residence Act of 15 August 2013 (ref.: 19 344/725) and § 5 of the State Admission Act (Landesaufnahmegesetz)
Saarland	None
Saxony	None
Saxony-Anhalt	None
Schleswig-Holstein	Decree issued by the Ministry for Justice, Equality and Integration of 2 May.2012 (II 435 – 212-29.111.3-62). Enforcement of detention pending deportation: Guidelines of 15 November 2002 (II 213/4421– 43 SH, SchlHAnz 2002, 279, amended on 27 December 2007, SchlHAnz 2008, 13), Decrees issued by the Ministry for Justice of 15 November 2002: Land Advisory Council for the implementation of detention pending deportation in Schleswig-Holstein, II 213/4421– 43 SH –, SchlHAnz 2002, 281; of 16 December 2003: Procedural advice for persons in detention pending deportation by representatives of NGOs., II 213/4421 43 SH, SchlHAnz 2004, 12; of 24 February 1995: Procedure for persons unfit for detention pending deportation , - 4550 - 19015.11.2002, -IV 213 /4421 -43 SH -, amended by decree of 27 December 2007 – II 205/ 4421 - 43SH
Thuringia	Administrative regulation "Brief for foreigners authorities": Guidelines for pre-removal detention and detention pending deportation

Source: Deutscher Bundestag 2012a: 4ff, various printed papers of the Federal Länder published recently (see bibliography)

A 3. Duration of detention pending deportation

The average duration of detention in the individual Federal Länder in 2012 ranged between 10.5 days in Bremen and 49 days in Thuringia. In 2013, the difference between the Federal Länder was slightly lower, ranging from 17.5 days detention on average in Berlin and 37 days in Mecklenburg-Western Pomerania. In those Federal Länder, which do not provide any statistics, the average duration of detention is either not covered at all or only at a due day per year, which in turn does not allow to draw valid conclusions on the average duration of detention for all detainees per year.

Table 10: Average duration of detention in the Federal Länder (2012-2013)

	Average duration of detention in days	
Federal State	**2012**	**2013**
Baden-Württemberg	31,5	35,5
Bavaria	-	-
Berlin	-	17,5
Brandenburg	25	24
Bremen	10,5	21,5
Hamburg	-	-
Hesse	-	-
Mecklenburg-Western Pomerania	-	37
Lower Saxony	-	-
North Rhine-Westphalia	35	31
Rhineland-Palatinate	29	22
Saarland	29	22
Saxony	-	-
Saxony-Anhalt	-	-
Schleswig-Holstein	28	25
Thuringia	49	28

Source: Statistics provided by the competent Ministries and Senate Administrations of the Federal Länder; figures rounded up or down to 0.5

Table 10 does not provide any information on the reasons for taking a person into detention pending deportation (e. g. pre-removal detention in the framework of the Dublin-procedure), whether detention has lead to an enforcement of a person's obligation to leave the federal territory, nor how cooperative the detained person or the diplomatic representation were. All these factors have substantial impact on the duration of detention, though.

A 4. Costs of detention pending deportation

Given that the Federal Länder are responsible for enforcing detention pending deportation, the different types of pre-removal detention centres and the varying number of persons in detention pending deportation, there is very little reliable and general information available about the costs incurred by detention pending deportation in Germany. The average costs per day for a person in detention pending deportation is the only parameter that applies to nearly all Federal Länder (cf. Table 11). They range between €42 and €239 depending on what costs are included. The majority of costs per day range between €70 and €110.

Tabelle 11: Costs of pre-removal detention centres as a whole and costs per person per day in detention pending deportation

Federal State	Costs per detainee per day (2011)
Baden-Württemberg[1]	ca. 124 €
Bavaria (Munich Prison)	ca. 75 €***
Berlin (police custody Berlin-Köpenick)	ca. 65 €*
Brandenburg (pre-removal detention centre Eisenhüttenstadt)	ca. 194 €; 64-239 €**
Bremen (police custody Bremen)[3]	ca. 42 €***
Hamburg (Hamburg-Billwerder Prison , men)[4]	ca. 110 €***
Hesse (Frankfurt am Main I Prison)[5]	ca. 87 €
Mecklenburg-Western Pomerania (Bützow Prison, men)	ca. 90 €
Lower Saxony (Hanover Prison)	ca. 107 €
North Rhine-Westphalia (Büren and Düsseldorf Prison)	ca. 80 €
Rhineland-Palatinate (pre-removal detention centre for persons obliged to leave the federal territory in Ingelheim am Rhein)	ca. 91 €
Saxony (average of all pre-removal detention centres)[6]	ca. 85 €
Saxony-Anhalt (Volkstedt Prison)	ca. 71 €
Schleswig-Holstein (Rendsburg pre-removal detention centre)	ca. 162 € (2010)****
Thuringia (Goldlauter Prison)	ca. 96 €[34]

Sources: Deutscher Bundestag 2012b: 160ff;
* Abgeordnetenhaus Berlin 2012a;
** Landtag Brandenburg 2013;
*** Pro Asyl 2013;
**** Schleswig-Holsteinischer Landtag 2011.

1 Baden-Württemberg: The prisons do not conduct a separate survey with a breakdown of the respective prisons.
2 Berlin: The average costs per person calculated are not valid. The costs are calculated on the basis of the respective valid costs per day multiplied by the duration of detention, with any individual travel expenses and, for instance, medical costs (and interpreter costs) also added. In theory, the average costs per day and place at the pre-removal detention centre are approx. €206.
3 Bremen: The costs include board and lodging only, not staff costs or air travel expenses.
4 Hamburg: Owing to the changes in competencies for detention pending deportation, it was not possible to provide data on all pre-removal detention facilities.
5 Hesse: There are no statistics available on the costs incurred by the enforcement of detention pending deportation. The way in which the infrastructure of prisons is designed, for instance, safety facilities, employment and training workshops, social therapy, the central hospital, sports halls etc. depends on the type of building varies according to the type of building, level of safety and type of detention. This explains why the costs of detention per day vary between pre-removal detention centres. On average, the costs are ca. €100.
6 Saxony: Not including the rate of building costs.

A 5. Information that must be provided on an application for detention to secure deportation according to an example by the Ministry for integration, family matters, children, youth and women of Rhineland-Palatinate

Application for detention to secure deportation pursuant to § 62 para. 3 sentence 1 of the Residence Act (Maximum detention to secure deportation)

The application must indicate that detention to secure deportation pursuant to § 62 para. 3 sentence 1 of the Residence Act (maximum detention to secure deportation) is being applied for. The individual reasons for detention must be indicated. Detention must be applied for a specific length of time. The application must be comprehensively and plausibly substantiated and contain the following facts:

- Identity of the foreigner (§ 417 para. 2 sentence 1 No 1 of the Act on Procedure in Family Matters and Non-Contentious Matters)
- Usual place of residence (§ 417 para. 2 sentence 1 No 2 of the Act on Procedure in Family Matters and Non-Contentious Matters)
- Identity of the foreigner (§ 417 para. 2 sentence 1 No 5 of the Act on Procedure in Family Matters and Non-Contentious Matters)
  - Explanation of the circumstances definitely leading the enforceable obligation to leave the federal territory.
- Requirements for deportation (§ 417 para. 2 sentence 1 No 5 of the Act on Procedure in Family Matters and Non-Contentious Matters)
  - Explanation that the requirements set forth in § 58 para. 1 of the Residence Act are fulfilled.
- Reasons why deportation is deemed appropriate.
  - Explanation that the requirements set forth in § 58 para. 3 of the Residence Act are fulfilled.
- Requirements for deportation (§ 417 para. 2 sentence 1 No 5 of the Act on Procedure in Family Matters and Non-Contentious Matters)
  - Explanation that there are no permanent obstacles to deportation and that the foreigner can be deported in the foreseeable future.
- Consultation with the public prosecutor's office pursuant to § 72 para. 4 of the Residence Act
  - Information about any legal proceedings instituted by a public authority or preliminary investigations instituted under criminal law and agreement of the public prosecutor's office in the individual case or the granting of general deportation approval by the competent public prosecutor's office.
- Need for deprivation of freedom (§ 417 para. 2 sentence 1 No 3 of the Act on Procedure in Family Matters and Non-Contentious Matters)
  - The need for detention ensues from there being grounds for detention. The grounds for detention must be indicated (§ 62 para. 3 of the Residence Act). It must also be indicated that the foreigner failed to credibly assert that he or she does not intend to evade deportation.
- Proportionality of detention
  - Examination of less severe means. It must be ensured that the purpose of detention could not be achieved with less severe, sufficient means.
- It may be necessary to provide further information about proportionality if the circumstances of the individual case render it necessary to do so. This is in particular the case if detention pending deportation is applied for after a lengthy prison sentence or in case scenarios in which no application for detention pending deportation is generally filed and in exceptional circumstances.
- Required duration of deprivation of freedom (§ 417 para. 2 sentence 1 No 4 of the Act on Procedure in Family Matters and Non-Contentious Matters)
  - Detention can only be applied for the length of time needed to enforce deportation. This explains why detailed information needs to be provided on the period of time that will likely be required to enforce the deportation in the actual case at hand. In particular, the Court must be in a position to make its own predictory decision pursuant to § 62 para. 3 sentence 4 of the Residence Act.
- Any other information about the individual case that is important for examining the application for detention such as the filing of a follow-up application for asylum.

The foreigner's file should be submitted with the application.

Source: MIFKJF Rheinland-Pfalz 2013: 20f.

Bibliography

Abgeordnetenhaus Berlin (2012a): Antwort auf die Kleine Anfrage der Abgeordneten Canan Bayram (GRÜNE). Endlich Alternativen zur Abschiebungshaft in Berlin schaffen!, 17. Wahlperiode, Drucksache 17/10501.

Abgeordnetenhaus Berlin (2012b): Antwort auf die Kleine Anfrage des Abgeordneten Fabio Reinhardt (PIRATEN). Verzweiflungstaten: Suizide, Suizidversuche und Selbstverletzungen von Menschen im Asylverfahren im Land Berlin, 17. Wahlperiode, Drucksache 17/11318.

Abgeordnetenhaus Berlin (2013a): Antrag der Piratenfraktion: Rechtsberatung und -vertretung für Abschiebungshäftlinge verbessern, 17. Wahlperiode, Drucksache 17/1048.

Abgeordnetenhaus Berlin (2013b): Antwort auf die Kleine Anfrage des Abgeordneten Fabio Reinhardt (PIRATEN). »Bread & butter« - Verpflegung im Abschiebeknast Köpenick, 17. Wahlperiode, Drucksache 17/12336.

BAMF - Bundesamt für Migration und Flüchtlinge (2012): Das deutsche Asylverfahren – ausführlich erklärt. Zuständigkeiten, Verfahren, Statistiken, Rechtsfolgen, Nürnberg: BAMF.

BAMF/EMN – Bundesamt für Migration und Flüchtlinge/Europäisches Migrationsnetzwerk (2014): Politikbericht 2013 der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN), Nürnberg: BAMF.

Baumann, Sabrina (2013): Bedingungen der Abschiebungshaft im Ländervergleich. Humanistische Union. Online: http://www.humanistische-union.de/fileadmin/hu_upload/doku/2013/AH-TAB2013_vers1.pdf (25.03.2014).

Bayerischer Landtag (2011a): Antwort des Staatsministeriums des Innern auf die Schriftliche Anfrage der Abgeordneten Claudia Stamm (Bündnis 90/Die Grünen). Unbegleitete Minderjährige in Abschiebungshaft, 16. Wahlperiode, Drucksache 16/9644.

Bayerischer Landtag (2011b): Antwort des Staatsministeriums der Justiz und für Verbraucherschutz auf die Schriftliche Anfrage der Abgeordneten Claudia Stamm, Renate Ackermann und Susanna Tausendfreund (Bündnis 90/Die Grünen). Mögliche Pläne zur Neugestaltung des Vollzugs der Abschiebungshaft in Bayern, 16. Wahlperiode, Drucksache 16/10339.

Bayerischer Landtag (2014): Antwort des Staatsministeriums des Innern, für Bau und Verkehr auf die Schriftliche Anfrage der Abgeordneten Christine Kamm (Bündnis 90/Die Grünen) Abschiebungen in Bayern, 17. Wahlperiode, Drucksache 17/352.

Bender, Dominik/Bethke, Maria (2013): »Dublin III«, Eilrechtsschutz und das Comeback der Drittstaatenregelung – Elf Thesen zu den aktuellen Änderungen bezüglich innereuropäischer Abschiebungen, in: Asylmagazin, Zeitschrift für Flüchtlings- und Migrationsrecht, 11/2013, 358-367.

BGH – Bundesgerichtshof (2013): Beschluss V ZB 40/11 vom 11. Juli 2013 in der Abschiebungshaftsache, Frankfurt (a. M.).

BGH – Bundesgerichtshof (2014a): Beschluss vom 26. Juni 2014 in der Überstellungshaftsache, V ZB 31/14.

BGH – Bundesgerichtshof (2014b): Beschluss vom 23. Juli 2014 in der Überstellungshaftsache. Berichtigter Leitsatz, V ZB 31/14.

Bremische Bürgerschaft (2013): Antwort des Senats auf die Kleine Anfrage der Fraktion Bündnis 90/Die Grünen. Telefonkosten in der JVA, 18. Wahlperiode, Drucksache 18/1082.

Bundesrat (2011): Gesetzesantrag des Landes Berlin. Drucksache 375/11. Entwurf eines Gesetzes zur Änderung des Aufenthaltsgesetzes, Berlin.

Bündnis 90/Die Grünen Baden-Württemberg/SPD Baden-Württemberg (2011): Der Wechsel beginnt. Koalitionsvertrag zwischen Bündnis 90/Die Grünen und der SPD Baden-Württemberg. Baden-Württemberg 2011-2016, Stuttgart.

Bürgerschaft Hamburg - Bürgerschaft der Freien und Hansestadt Hamburg (2011): Antwort des Senats auf die Schriftliche Kleine Anfrage des Abgeordneten Mehmet Yildiz (DIE LINKE). Suizidversuch eines 25-jährigen Vietnamesen aus Verzweiflung, 20. Wahlperiode, Drucksache 20/1914.

Bürgerschaft Hamburg - Bürgerschaft der Freien und Hansestadt Hamburg (2013a): Antwort des Senats auf die Schriftliche Kleine Anfrage der Abgeordneten Antje Möller (GRÜNE). Abschiebehaft für Personen in Hamburger Zuständigkeit, 20. Wahlperiode, Drucksache 20/7136.

Bürgerschaft Hamburg - Bürgerschaft der Freien und Hansestadt Hamburg (2013b): Antwort des Senats auf die Schriftliche Kleine Anfrage der Abgeordneten Christiane Schneider (DIE LINKE). Abschiebehaft in Hamburg, 20. Wahlperiode, Drucksache 20/10236.

Caritas – Deutscher Caritasverband/Referat Migration und Integration (2014a): Unbegleitete minderjährige Flüchtlinge in Deutschland. Rechtliche Vorgaben und deren Umsetzung, Freiburg im Breisgau: Lambertus-Verlag.

Caritas – Deutscher Caritasverband e. V. (2014b): Flughafenverfahren. In: Flucht Punkte. Fakten – Positionen – Lösungen, Freiburg: Deutscher Caritasverband e. V.

CDU/CSU/SPD (2013): Deutschlands Zukunft gestalten. Koalitionsvertrag zwischen CDU, CSU und SPD, 18. Legislaturperiode.

Cremer, Hendrik (2011): Abschiebungshaft und Menschenrechte. Zur Dauer der Haft und zur Inhaftierung von unbegleiteten Minderjährigen in Deutschland, Policy Paper, Nr. 17, Berlin: Deutsches Institut für Menschenrechte.

Deutscher Bundestag (2009): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Sevim Dağdelen, Jan Korte, Petra Pau und der Fraktion DIE LINKE. Drucksache 16/12397. Abschiebungen im Jahr 2008, 16. Wahlperiode, Drucksache 16/12568.

Deutscher Bundestag (2010): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE. Drucksache 17/459. Abschiebungen im Jahr 2009, 17. Wahlperiode, Drucksache 17/644.

Deutscher Bundestag (2011a): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE. Drucksache 17/5278. Abschiebungen im Jahr 2010, 17. Wahlperiode, Drucksache 17/5460.

Deutscher Bundestag (2011b): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE. Drucksache 17/7870. Aufbau von Aufnahmeeinrichtungen zur Durchführung von Flughafenverfahren auf dem Flughafen Berlin Brandenburg International, 17. Wahlperiode, Drucksache 17/8095.

Deutscher Bundestag (2012a): Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Agnes Alpers, Matthias W. Birkwald, Dr. Martina Bunge, Sevim Dağdelen, Klaus Ernst, Nicole Gohlke, Diana Golze, Annette Groth, Heidrun Dittrich, Inge Höger, Katja Kipping, Jutta Krellmann, Cornelia Möhring, Kornelia Möller, Petra Pau, Jens Petermann, Yvonne Ploetz, Dr. Ilja Seifert, Kathrin Senger-Schäfer, Raju Sharma, Frank Tempel, Kathrin Vogler, Halina Wawzyniak, Harald Weinberg, Katrin Werner, Jörn Wunderlich, Sabine Zimmermann und der Fraktion DIE LINKE. Drucksache 17/7446. Umsetzung der Abschiebungsrichtlinie der Europäischen Union und die Praxis der Abschiebungshaft, 17. Wahlperiode, Drucksache 17/10597.

Deutscher Bundestag (2012b): Antwort der Bundesregierung auf die Große Anfrage der Abgeordneten Josef Philip Winkler, Memet Kilic, Volker Beck (Köln), weitere Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN. Drucksache 17/7442. Situation in deutschen Abschiebungshaftanstalten, 17. Wahlperiode, Drucksache 17/10596.

Deutscher Bundestag (2012c): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE. Drucksache 17/8557. Abschiebungen im Jahr 2011, 17. Wahlperiode, Drucksache 17/8834.

Deutscher Bundestag (2013): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE. Drucksache 17/12148. Abschiebungen im Jahr 2012, 17. Wahlperiode, Drucksache 17/12442.

Deutscher Bundestag (2014a): Antwort auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Jan van Aken, Sevim Dağdelen, weitere Abgeordneter und der Fraktion DIE LINKE. Drucksache 18/156. Gefahr von rechtswidrigen Inhaftierungen in Abschiebungshaft, 18. Wahlperiode, Drucksache 18/249.

Deutscher Bundestag (2014b): Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Sevim Dağdelen, weiterer Abgeordneter und der Fraktion DIE LINKE. Drucksache 18/662. Abschiebungen im Jahr 2013, 17. Wahlperiode, Drucksache 18/782.

Deutscher Bundestag (2014c): Antwort des Parlamentarischen Staatssekretärs Dr. Ole Schröder auf die schriftliche Frage von Ulla Jelpke (Die Linke) zur Überstellungshaft im Rahmen des Dublin-Überstellungsverfahrens, in: Deutscher Bundestag (Hrsg.): Schriftliche Fragen mit den in der Woche vom 17. März 2014 eingegangenen Antworten der Bundesregierung, 18. Wahlperiode, Drucksache 18/886, 9.

Deutscher Anwaltverein (2010): Stellungnahme des Deutschen Anwaltvereins durch den Ausschuss Ausländer- und Asylrecht zum Entwurf eines Gesetzes zur Umsetzung aufenthaltsrechtlicher Richtlinien der Europäischen Union und zur Anpassung nationaler Rechtsvorschriften an den EU-Visakodex. Online: http://anwaltverein.de/downloads/stellungnahmen/SN-10/SN67-10.pdf (26.03.2014).

Diakonie (2011): Abschiebungshaft in Deutschland. Positionen und Mindestanforderungen der Diakonie. Positionspapier 03/2011, Stuttgart: Diakonisches Werk der Evangelischen Kirche in Deutschland e. V.

Dienelt, Klaus (2011): § 15 Aufenthaltsgesetz, in: Bergmann, Jan/Dienelt, Klaus/Röseler, Sybille (Hrsg.): Renner – Ausländerrecht – Kommentar, München: Verlag C. H. Beck, 349-375.

Dienelt, Klaus (2014): Gesetzentwurf zur Neuordnung des Ausweisungs- und des Bleiberechts vorgelegt. Online: http://www.migrationsrecht.net/nachrichten-auslaenderrecht-politik-gesetzgebung/bleiberecht-ausweisung-gesetzentwurf-2014.html (12.06.2014).

Dolk, Klaudia (2011): Das Dublin-Verfahren. Im Spannungsfeld einer menschenwürdigen und solidarischen Verantwortung für Flüchtlinge in Europa, Berlin: Friedrich-Ebert-Stiftung.

EuGH – Europäischer Gerichtshof (2014): Urteile in den verbundenen Rechtssachen C-473/13 und C-514/13 sowie in der Rechtssache C-474/13 Adala Bero/Regierungspräsidium Kassel, Ettayebi Bouzalmate/Kreisverwaltung Kleve und Thi Ly Pham/Stadt Schweinfurt., Luxemburg. Online: http://curia.europa.eu/juris/document/document.jsf?text=&docid=155112&pageIndex=0&doclang=DE&mode=req&dir=&occ=first&part=1&cid=177145 (18.07.2014).

Flüchtlingsrat Brandenburg/Flüchtlingsrat Schleswig-Holstein/Humanistische Union (2013) (Hrsg.): Haft ohne Straftat. Fakten und Argumente gegen Abschiebungshaft, Berlin.

FRA – Agentur der Europäischen Union für Grundrechte (2012): Inhaftnahme von Drittstaatsangehörigen in Rückführungsverfahren, Luxemburg.

Freie Hansestadt Bremen (2013): Der Senator für Inneres und Sport. Erlass e13-05-01 vom 15.05.2013. § 62 Aufenthaltsgesetz (AufenthG) – Sicherungshaft – Grundsatz der Verhältnismäßigkeit.

Girth, Ernst (2012): Kommentar zum Asylverfahren – Abschiebehindernis Arzt, in: Deutsches Ärzteblatt, Heft 44, o. A.

Graebsch, Christine/Selders, Beate (2013): „Der Zugang zum Bundesgerichtshof ist das geringste Problem." – Interview mit Christine Graebsch von Beate Selders, in: Flüchtlingsrat Brandenburg/Flüchtlingsrat Schleswig-Holstein/Humanistische Union (Hrsg.): Haft ohne Straftat. Fakten und Argumente gegen Abschiebungshaft, Berlin, 85-94.

Habbe, Heiko (2014): Abschiebungshaft – Aktuelle Entwicklungen und Alternativen, in: neue caritas Migration und Integration – Info, Nr. 2, 4-5.

Hailbronner, Kay (2012): Ausländerrecht – Kommentar, 75. Aktualisierung, Januar 2012, Heidelberg, München, Landesberg, Frechen, Hamburg: C. F. Müller.

Hailbronner, Kay (2014): Asyl- und Ausländerrecht. SR-Studienreihe Rechtswissenschaften. Stuttgart: Kohlhammer.

Hoffmann, Ulrike (2013): Die Identifizierung von Opfern von Menschenhandel im Asylverfahren und im Fall der erzwungenen Rückkehr. Fokus-Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN), Working Paper 56, Nürnberg: BAMF.

Hofmann, Rainer M./Hoffmann, Holger (2008): Handkommentar Ausländerrecht, Baden-Baden: Nomos.

Human Rights Council (2012): Report of the Working Group on Arbitrary Detention. Mission to Germany. In: United Nations – General Assembly, A/HRC/19/57/Add.3. Online: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/107/34/PDF/G1210734.pdf?OpenElement (18.03.2014).

Humanistische Union (2013): Bedingungen der Abschiebungshaft im Ländervergleich. Online: http://www.humanistische-union.de/fileadmin/hu_upload/doku/2013/AH-TAB2013_vers1.pdf (18.03.2014).

Innenministerium NRW (2009): Richtlinien für den Abschiebungsgewahrsam im Land Nordrhein-Westfalen (Abschiebungshaftrichtlinien – AhaftRL). Runderlass des Innenministeriums, 15-39.21.01-5-AHaftRL, 19.01.2009 mit Stand 21.02.2014.

Innenministerium Schleswig-Holstein (2014a): Interministerielle Arbeitsgruppe (IMAG) „Alternative Abschiebungshaft". Zusammenfassung der Ergebnisse (Stand 25.03.2014).

JRS – Jesuite Refugee Service Europe (2011): From Deprivation to Liberty. Alternatives to detention in Belgium, Germany and the United Kingdom, Brüssel.

JRS – Jesuite Refugee Service Europe (2012): Abschiebungshaft vermeiden. Alternativen in Belgien, Deutschland und dem Vereinigten Königreich, Berlin: Jesuiten-Flüchtlingsdienst Deutschland.

Justizministerium Schleswig-Holstein (2003): Richtlinien für den Vollzug der Abschiebungshaft in Schleswig-Holstein, o. A.

JVA Büren - Justizvollzugsanstalt Büren (2014a): Besuchsregelung, Online: http://www.jva-bueren.nrw.de/service/besuchsregelung/index.php (24.03.2014).

JVA Büren - Justizvollzugsanstalt Büren (2014b): Freizeitangebote, Online: http://www.jva-bueren.nrw.de/aufgaben/freizeit/index.php (24.03.2014).

JVA Kiel – Justizvollzugsanstalt Kiel, Abschiebungshafteinrichtung Rendsburg (2011): Konzeption der Abschiebungshafteinrichtung Rendsburg, A/130/44.149.

Kohls, Martin (2014): Rückkehrmigration – Wirksamkeit von Wiedereinreisesperren und Rückübernahmeabkommen. Fokusstudie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN), Working Paper 58, Nürnberg: BAMF.

Köppen, Arno (2013): Rechtliche Aspekte der Abschiebungshaft, in: Landesbeirat für den Vollzug der Abschiebungshaft in Schleswig-Holstein (Hrsg): Jahresbericht 2012, Rendsburg, S. 10f., Online: http://www.diakonie-sh.de/fix/files/doc/Jahresbericht%20Landesbeirat%20Abschiebungshaft%202012%20-%20Endversion%20100413.2.pdf (13.03.2014).

Kretschmer, Joachim (2014): Reform des Aufenthaltsrechts. Abschiebungshaft für alle, in: Legal Tribune vom 14.05.2014, Online: http://www.lto.de/recht/hintergruende/h/reform-aufenthaltsrecht-abschiebungshaft/ (12.06.2014).

Landesbeirat für den Vollzug der Abschiebungshaft in Schleswig-Holstein (2013): Jahresbericht 2012, Rendsburg. Online: http://www.diakonie-sh.de/fix/files/doc/Jahresbericht%20Landesbeirat%20Abschiebungshaft%202012%20-%20Endversion%20100413.2.pdf (13.03.2014).

Landtag Baden-Württemberg (2013): Beschlussempfehlungen und Berichte des Petitionsausschusses zu verschiedenen Eingaben. Petition 14/4962 betr. Abschiebungshaft, 15. Wahlperiode, Drucksache 15/3708.

Landtag Brandenburg (2013): Abschiebungshaft - Konzept für die Organisation der Abschiebungshaft vom 29. April 2013, in: Protokoll 44. Sitzung (öffentlich), 5. Wahlperiode, P-AI 5/44.

Landtag Mecklenburg-Vorpommern (2014a): Antwort der Landesregierung auf die Kleine Anfrage des Abgeordneten Jürgen Suhr, Fraktion Bündnis 90/Die Grünen. Abschiebungshaft in der JVA Bützow, 6. Wahlperiode, Drucksache 6/2794.

Landtag Mecklenburg-Vorpommern (2014b): Antwort der Landesregierung auf die Kleine Anfrage des Abgeordneten David Petereit (Fraktion der NPD). Asylbewerber, ehemalige Asylbewerber mit Duldung und illegale Ausländer - Monat September 2013, 6. Wahlperiode, Drucksache 6/2442.

Landtag Nordrhein-Westfalen (2011a): Sachverständigengespräch zum Antrag der Fraktion DIE LINKE: „Abschiebehaft abschaffen". Stellungnahme Justizvollzugsanstalt Büren, 15. Wahlperiode, Drucksache 15/950.

Landtag Nordrhein-Westfalen (2011b): Öffentliche Anhörung im Innenausschuss: Abschiebehaft abschaffen! Antrag der Fraktion DIE LINKE. Drucksache 15/1683. 15. Wahlperiode, Ausschussprotokoll APr 15/306.

Landtag Nordrhein-Westfalen (2011c): Sachverständigengespräch zum Antrag der Fraktion DIE LINKE: „Abschiebehaft abschaffen". Stellungnahme Stadt Köln, Amt für Öffentliche Ordnung – Ausländerangelegenheiten, 15. Wahlperiode, Drucksache 15/937.

Landtag Nordrhein-Westfalen (2011d): Sachverständigengespräch zum Antrag der Fraktion DIE LINKE: „Abschiebehaft abschaffen". Schriftliche Stellungnahme durch Hilfe für Menschen in Abschiebehaft Büren e. V., 15. Wahlperiode, Drucksache 15/960.

Landtag Nordrhein-Westfalen (2012): Beschlussempfehlung und Bericht des Innenausschusses zu dem Antrag der Fraktion DIE LINKE. Drucksache 15/1683. Abschiebehaft abschaffen! Drucksache 15/3739.

Landtag Saarland (2011): Antwort zu der Anfrage des Abgeordneten Dr. Magnus Jung (SPD). Verbleib der ausreisepflichtigen Ausländer aus dem Saarland in der Gewahrsamseinrichtung in Ingelheim (Rheinland-Pfalz), 14. Wahlperiode, Drucksache 14/534.

Landtag Sachsen-Anhalt (2014): Antwort der Landesregierung auf eine Kleine Anfrage der Abgeordneten Henriette Quade (DIE LINKE). Drucksache KA 6/8129. Zur Situation der Abschiebungshaft in Sachsen-Anhalt, 6. Wahlperiode, Drucksache 6/2752.

Majer, Noemi (2011): Das Berliner Netzwerk für besonders schutzbedürftige Flüchtlinge, in: Berliner Netzwerk für besonders schutzbedürftige Flüchtlinge (Hrsg.): Dokumentation der Fachtagung „Ansprüche besonders schutzbedürftiger Flüchtlinge durchsetzen" Berlin , 27.September 2011, Zentrum für Flüchtlingshilfen und Migrationsdienste (zfm), Berlin, 8-10.

MIK - Ministerium für Inneres und Kommunales Nordrhein-Westfalen (2014): Richtlinien für den Abschiebungsgewahrsam im Land Nordrhein-Westfalen (Abschiebungshaftrichtlinien - AHaftRL).

MIFKJF Rheinland-Pfalz - Ministerium für Integration, Familie, Kinder, Jugend und Frauen des Landes Rheinland-Pfalz (2013a): Haft vermeiden – Haft humanitär gestalten. Neues Konzept für die Abschiebungshaft in Rheinland-Pfalz, Mainz.

MIFKJF Rheinland-Pfalz - Ministerium für Integration, Familie, Kinder, Jugend und Frauen Rheinland-Pfalz (2013b): Sitzung des Ausschusses für Integration, Familie, Kinder und Jugend am 29. August 2013. TOP 6 „Gemeinsames Europäisches Asylsystem", Vorlage 16/2879.

MIFKJF Rheinland-Pfalz - Ministerium für Integration, Familie, Kinder, Jugend und Frauen Rheinland-Pfalz (2013c): Anwendungshinweise des Ministeriums für Integration, Familie, Kinder, Jugend und Frauen zur Abschiebungshaft nach § 62 des Aufenthaltsgesetztes (AufenthG) vom 15. August 2013, Az.: 19 344/725.

Nationale Stelle zur Verhütung von Folter (2014): Jahresbericht 2013 der Bundesstelle und der Länderkommission, Wiesbaden.

Niedersächsischer Landtag (2011): Antwort des Justizministeriums auf die Frage 27 der Abgeordneten Filz Polat und Helge Limburg (GRÜNE). Trennung von Abschiebungshaft und Straf-/Untersuchungshaft, 16. Wahlperiode, 124. Plenarsitzung.

Niedersächsische Staatskanzlei (2014): Innovative Politik für Niedersachsen. Februar 2013 – Februar 2014, Hannover.

Parusel, Bernd (2009): Unbegleitete minderjährige Migranten in Deutschland - Aufnahme, Rückkehr und Integration. Studie II/2008 der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN), Working Paper 26. Nürnberg: BAMF.

Pelzer, Marei/Sextro, Uli (2013): Schutzlos hinter Gittern. Abschiebungshaft in Deutschland, Frankfurt (a. M.): Pro Asyl e. V. und Diakonisches Werk in Hessen und Nassau e. V.

Pro Asyl (2013): Situation in den bundesdeutschen Abschiebegefängnissen, Stand: April 2013. Online: http://www.proasyl.de/fileadmin/proasyl/12-04-13_A-Haftbedingungen_-_PRO_Asyl_2__Quartal_2013_01.pdf (01.03.2014).

Sächsischer Flüchtlingsrat (o. A.): Abschiebungshaft wird nicht mehr in Sachsen durchgeführt: seit Dezember 2013 in Berlin Köpenick und Eisenhüttenstadt, Online: http://www.saechsischer-fluechtlingsrat.de/30.html (01.04.2013).

Sack, Michael (2013): Das Elend der Abschiebungshaft, in: Flüchtlingsrat Brandenburg/Flüchtlingsrat Schleswig-Holstein/Humanistische Union (Hrsg.): Haft ohne Straftat. Fakten und Argumente gegen Abschiebungshaft, Berlin, 79-84.

Schleswig-Holsteinischer Landtag (2011): Antwort der Landesregierung – Minister für Justiz, Gleichstellung und Integration auf die Kleine Anfrage des Abgeordneten Heinz-Werner Jezewski (DIE LINKE). Abschiebungshaft in Schleswig-Holstein, 17. Wahlperiode, Drucksache 17/1999.

Schleswig-Holsteinischer Landtag (2013a): Antwort der Landesregierung – Ministerin für Justiz, Kultur und Europa auf die Kleine Anfrage des Abgeordneten Wolfgang Dudda (PIRATEN). Kosten und Organisation der Telekommunikation und Internetnutzung von Inhaftierten und Untergebrachten, 18. Wahlperiode, Drucksache 18/1009.

Schleswig-Holsteinischer Landtag (2013b): Gesetzentwurf der Landesregierung. Entwurf eines Gesetzes über die Feststellung eines Haushaltsplanes für das Haushaltsjahr 2014 (Haushaltsgesetz 2014), 18. Wahlperiode, Drucksache 18/941.

Schneider, Jan/Kreienbrink, Axel (2010): Rückkehrunterstützung in Deutschland. Programme und Strategien zur Förderung von unterstützter Rückkehr und zur Reintegration in Drittstaaten. Studie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). Working Paper 31, Nürnberg: BAMF.

Selders, Beate (2013): Haft ohne Strafe – eine Einführung, in: Flüchtlingsrat Brandenburg/Flüchtlingsrat Schleswig-Holstein/Humanistische Union (Hrsg.): Haft ohne Straftat. Fakten und Argumente gegen Abschiebungshaft, Berlin, 15-27.

Selders, Beate/Dallek, Andrea/Lenz, Helga (2013): Möglich und nötig! Schritte zur Abschaffung von Abschiebungshaft, in: Flüchtlingsrat Brandenburg/Flüchtlingsrat Schleswig-Holstein/Humanistische Union (Hrsg.): Haft ohne Straftat. Fakten und Argumente gegen Abschiebungshaft, Berlin, 193-207.

Senatsverwaltung für Inneres und Sport Berlin (2008): Ordnung für den Abschiebungsgewahrsam im Land Berlin (Gewahrsamsordnung), InnSport III B 3 We, Berlin.

Sextro, Uli/Nissen, Silke (2012): Abschiebungshaft in Deutschland: Dokumentation und Kommentierung der Haftbedingungen in Hinblick auf die Bestimmungen der EU-Rückführungsrichtlinie, Ingelheim, Rendsburg: Pro Asyl und Martin Niemöller Stiftung.

SMI - Sächsisches Staatsministerium des Innern (2014): Antwort im Auftrag der Sächsischen Staatsregierung auf die Kleine Anfrage der Abgeordneten Frau Elke Herrmann (Fraktion BÜNDNIS 90/DIE GRÜNEN), Drucksache 5/13572.

SPD/Bündnis 90/Die Grünen/SSW - Südschleswigscher Wählerverband (2012): Bündnis für den Norden. Neue Horizonte für Schleswig-Holstein. Koalitionsvertrag 2012 bis 2017, Kiel, Flensburg.

STMI Bayern – Bayerisches Staatministerium für Inneres, Bau und Verkehr (2014): Ausländer- und Asylrecht; Verwaltungsvorschriften des Bayerischen Staatsministeriums des Innern, für Bau und Verkehr zum Ausländerrecht (BayVVAuslR) in der Fassung vom 03.03.2014, AZ 261-I.

Von Borstel, Martin (2013): Von Verfahrensfehlern und rechtswidrigen Haftanordnungen. Die Einführung des FamFG und ihre Konsequenzen, in: Flüchtlingsrat Brandenburg/Flüchtlingsrat Schleswig-Holstein/Humanistische Union (Hrsg.): Haft ohne Straftat. Fakten und Argumente gegen Abschiebungshaft, Berlin, 63-78.

Weber, Jürgen/Selders, Beate (2013): Albtraum in Eisenhüttenstadt – eine Dokumentation über die Entrechtung von Flüchtlingen. Postdam: Flüchtlingsrat Brandenburg.

Winkelmann, Holger (2012): Das Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) und seine verfahrensrechtlichen Auswirkungen, in: Migrationsrecht.net (Hrsg.): Arbeitsmaterialien. Stand der Kommentierung: 20.02.2012.

Winkelmann, Holger (2013): § 13 Aufenthaltsgesetz, in: Migrationsrecht.net (Hrsg.): Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz - AufenthG) – Kommentar. Online: http://www.migrationsrecht.net/component/com_joomlaw/Itemid,232/id,36/layout,comment/view,comment/ (18.03.2014).

Abbrevations

AG Rück	Working Group on Return (Arbeitsgruppe Rückführung)
AHaftRL	Directive on detention pending deportation of North Rhine-Westphalia (Abschiebungshaftrichtlinie)
BAMF	Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge)
BayVVAuslR	Administrative Regulations of the Bavarian State Ministry of Home Affairs, Construction and Transport relating to the Foreigners Act (Verwaltungsvorschriften des Bayerischen Staatsministeriums des Innern, für Bau und Verkehr zum Ausländerrecht)
BGH	Federal Court of Justice (Bundesgerichtshof)
CDU	Christian Democratic Union (Christlich Demokratische Union)
CSU	Christian Social Union of Bavaria (Christlich-Soziale Union)
EMN	European Migration Network
EU	European Union
EuGH	European Court of Justice (Europäischer Gerichtshof)
FRA	European Union Agency for Fundamental Rights
JRS	Jesuite Refugee Service Europe
JVA	Prison (Justizvollzugsanstalt)
MIFKJF/ Rheinland-Pfalz	Ministry for Integration, Family Affairs, Children, Youth and Women of Rhineland--Palatinate (Ministerium für Integration, Familie, Kinder, Jugend und Frauen Rheinland-Pfalz)
No	Number
Para	Paragraph
SPD	Social Democratic Party of Germany (Sozialdemokratische Partie Deutschlands)
SSW	South Schleswig Voters' Association (Südschleswigsche Wählerverband)
VwV	Administrative Regulation (Verwaltungsvorschrift)
ZPO	Code of Civil Procedure (Zivilprozessordnung)

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