

Department of Execution of Judgments
Council of Europe
Via Email dgi-execution@coe.int

Frankfurt am Main, 23.06.2025

Submission to the Committee of Ministers of the Council of Europe in the case of *H.T. v. Germany*

*The present PRO ASYL submission seeks to contribute to the work of the Committee of Ministers of the Council of Europe (hereafter “the Committee”) in supervising the execution of the judgment of the European Court of Human Rights (hereafter “the Court”) in *H.T. v. Germany and Greece*.¹ The case finding breach of Article 3 the Convention by Germany has been classified as a leading case.*

*The present contribution, submitted under Rule 9.2 of the Rules of the Committee, draws on observations of recent and current practice at German land borders in conjunction with case law and information collected from replies to parliamentary questions, public reports and media. We note that compliance with the requirements set by Article 3 of the Convention in the areas forming the subject matter of the *H.T.* judgment is inextricably linked to the implementation of standards and procedures set by European Union (EU) law, as detailed in this submission.*

Assessment of risks of treatment contrary to Article 3 prior to removal

*Recalling its Article 3 case law, the Court stressed in *H.T.* that the German authorities had a duty to assess the risk of the applicant being denied access to an adequate asylum procedure and exposed to refoulement prior to ordering his removal to Greece. It noted that the EU membership of the country of destination and the type of agreement or arrangement forming the basis of removal are immaterial to the assessment of Germany's obligations under Article 3 of the Convention.²*

*In *H.T.*, the Court paid particular regard inter alia to the fact that it could not be generally presumed that Greece maintained an adequate asylum procedure and conditions compliant with Article 3 based on available information.³ It also held that the German authorities did not perform an assessment of risks of ill-treatment prior to removing the applicant to Greece.⁴*

¹ *H.T. v. Germany and Greece*, App No 13337/19, 15 October 2024.

² *H.T. v. Germany and Greece*, para 138. Note also *Ilias and Ahmed v. Hungary*, App No 47287/15, 21 November 2019, para 134.

³ Note the *M.S.S. v. Greece* App No 30696/09 group of cases.

⁴ *H.T. v. Germany and Greece*, paras 147 and 150.

The Court identified factual differences between *H.T. and Ilias and Ahmed v. Hungary*, taking into account that removal of the asylum seeker in the former was performed under an administrative arrangement between Germany and Greece. It highlighted that removal of an asylum seeker outside the framework of an agreement between sending and receiving state may exacerbate the risks of denial of access to an asylum procedure.⁵

In its recent communication to the Committee, the German Federal Government confirmed that its “authorities do not apply a general presumption that persons in a similar situation as the applicant will have access to an adequate asylum procedure in Greece, protecting them against refoulement”.⁶

Germany has reintroduced controls on all its land borders with EU Member States in accordance with the EU Schengen Borders Code⁷ and maintains such controls until 15 September 2025. It can be assumed that the controls, some of which have been extended since 2015, will be extended further.⁸ Ensuing practice is discussed further below, with a notable change in Federal Government policy occurring since 7 May 2025.

Applicable EU law standards on removal to other European Union countries

We briefly examine the intersecting legal standards applicable in the above circumstances, as established in EU law binding on Germany:

- ❖ EU law explicitly provides that the rules laid down in its Schengen Borders Code are without prejudice to “the rights of refugees and persons requesting international protection”⁹ and must be applied in accordance therewith.¹⁰
- ❖ Any person expressing the intention to apply for asylum whilst being present – whether regularly or irregularly – on German territory or at German borders or in transit zones “makes” an asylum application and thereby holds “asylum seeker” status, subject to no administrative formality.¹¹ This is echoed in domestic law: The intention to seek asylum according to Section 13(1) of the German Asylum Act is submitted, if the written, verbal or other expression of will of the third-country national indicates that they are seeking protection in Germany from political persecution or international protection. According to established case law, it is neither necessary nor sufficient to use the word “asylum” or a similar expression. It must rather be evident from the statements made by the third-country national or from the actual circumstances that the third-country national is seeking protection in Germany. In case of doubt, an asylum application should be assumed. If an asylum application has been filed, the Federal Police has no right to examine it. The Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) is solely responsible for assessing the content.¹²
- ❖ Asylum seekers may not be removed from Germany until a decision is taken on their application.¹³ Any person “making” an asylum claim must have their application promptly registered, lodged and processed by the responsible national authority.¹⁴

⁵ *Ibid*, para 146.

⁶ DH-DD(2025)497, 6.

⁷ Article 25 Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) [2016] OJ L 77/1.

⁸ Consultation on the reintroduction of border controls: European Commission, 2025 *State of Schengen Report - Annex I*, COM(2025) 185, 23 April 2025, 15.

⁹ Article 3(a) Schengen Borders Code.

¹⁰ Article 4 and Recital 36 Schengen Borders Code.

¹¹ Article 2(c) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (APD) [2013] OJ L180/60; Article 3(13) Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union (APR) [2024] OJ L 22.5.2024. See also CJEU, C-823/21 *Commission v Hungary*, 22 June 2023, para 43; C-72/22 PPU *Valstybės sienos apsaugos tarnyba*, 30 June 2022, para 57; C-821/19 *Commission v Hungary*, 16 November 2021, para 136; C-808/18 *Commission v Hungary*, 17 December 2020, paras 97-98; C-36/20 PPU *Ministerio Fiscal*, 25 June 2020, para 93.

¹² Federal Government, Reply to parliamentary question 11, 20/5674, 15 February 2023, available [here](#).

¹³ Articles 2(c) and 9(1) APD; Article 3(13) APR.

¹⁴ Article 6 APD; Articles 26-28 APR.

- ❖ *People arriving or seeking asylum in Germany after having lodged an asylum claim in another EU Member State may only be removed from Germany to the EU country deemed responsible for the claim under the dedicated procedures set out in the Dublin Regulation¹⁵ and prospective Asylum and Migration Management Regulation (AMMR).¹⁶ Whether the claim in question is pending, suspended or rejected in the other Member State concerned is immaterial to the applicability of these rules. Persons seeking asylum only upon arrival in Germany after merely transiting through another Member State also fall within the scope of the Dublin Regulation and AMMR.¹⁷*

Even in the – unlikely – event where people would arrive at German borders without ever engaging with the asylum process either in Germany or in any other EU country, the following important constraints stem from EU law:

- ❖ *Refusal of entry in the meaning of Article 14 of the Schengen Borders Code does not apply to internal borders within the Schengen area. Even where they choose to reintroduce internal border controls, Member States must abide by the provisions of the Return Directive¹⁸ and may not rely on the derogations from the scope of the Directive when ordering removal of people apprehended at internal Schengen borders without a right to stay.¹⁹ In any event, the Schengen Borders Code expressly states that its refusal of entry provisions are superseded by EU law rules on the right to asylum,²⁰ discussed above.*
- ❖ *Following its 2024 amendment, the Schengen Borders Code foresees a special transfer procedure for persons apprehended at internal Schengen borders, upon condition that (i) they are neither asylum seekers nor beneficiaries of international protection, (ii) apprehension occurs in the context of bilateral cooperation between two neighbouring Member States, and (iii) there are clear indications that the person has no right to stay and has directly arrived from the neighbouring Member State in question.²¹ However, the Schengen Borders Code expressly excludes asylum seekers and beneficiaries of international protection from the scope of the newly introduced “procedure for transferring persons apprehended in internal border areas”.²² As regards asylum seekers apprehended in the context of such bilateral cooperation, the Schengen Borders Code expressly states that Dublin Regulation – and prospective Asylum and Migration Management Regulation (AMMR) – is the applicable instrument.²³*
- ❖ *Accordingly, removal of a person apprehended at German borders that has not applied for asylum either in Germany or in any other EU Member State is necessarily preceded by a return decision issued according to the Return Directive.²⁴*

In view of the above standards, EU law provisions binding on Germany set the following constraints:

1. *Germany may only remove asylum seekers to another EU Member State through the procedures set out in the Dublin Regulation and AMMR, regardless of the status of their application in that country. Germany cannot refrain from registering and lodging any application made by a person arriving at its*

¹⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) [2013] OJ L180/31.

¹⁶ Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management [2024] OJ L 22.5.2024.

¹⁷ Article 18 Dublin III Regulation; Article 36 AMMR.

¹⁸ 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 [2008] OJ L 348/98.

¹⁹ CJEU, C-444/17 *Arib*, 19 March 2019, paras 64 and 67.

²⁰ Article 14(1) Schengen Borders Code.

²¹ Article 23a(1) Schengen Borders Code.

²² Article 23a(1) and Recital 27 Schengen Borders Code.

²³ Recital 27 Schengen Borders Code.

²⁴ Note that under Section 57 German Residence Act, persons apprehended after irregularly crossing the border and in proximity thereto are readmitted, while Section 15 German Residence Act foresees that a refusal of entry may be ordered to persons at border-crossing points prior to the crossing of the border. Neither applies where the person requests asylum.

borders. It must also afford a right to remain and reception conditions until the asylum application is examined.

2. Germany may only remove people who have obtained asylum in another EU Member State under a return procedure under the Return Directive.
3. Even for persons arriving at its land borders who have never engaged with the asylum process in any EU country, Germany cannot order refusal of entry under the Schengen Borders Code since its land borders are not external Schengen borders. Nor can it rely on the transfer procedure of the Schengen Borders Code insofar as apprehensions of people arriving at its land borders do not take place in the context of bilateral cooperation with the neighbouring Member States in question.

Practice at land borders since May 2025

On 7 May 2025, the German Federal Ministry of Interior announced that asylum seekers apprehended at its land borders shall be turned away without being allowed access to an asylum procedure, citing domestic law provisions permitting refusal of entry to persons coming from a safe third country,²⁵ including EU Member States. No reference was made to the Dublin Regulation or to obligations under international law which supersede domestic law provisions. Exceptions were only envisaged for identifiable vulnerable cases, “where possible”.

This decision seems to have been taken unilaterally by the German Federal Government and not under an agreement with the countries to which affected persons are to be removed.²⁶ The refusals of entry in question do not therefore concern apprehensions of people in the context of bilateral cooperation between Germany and neighbouring Member States, as foreseen in the amended Schengen Borders Code.²⁷

Media outlets in various neighbouring countries report that third-country nationals who are denied access at Germany’s land borders are not always handed over to the authorities of the neighbouring Member State. This results in them being left on their own resources for an indefinite period of time, their access to the procedure remaining uncertain. Such a practice would support the conclusion that Germany is pursuing refusal of entry at its land borders without prior coordination with neighbouring countries’ authorities, as stated above.

- ❖ At the border with Luxembourg, it is reported that authorities there are informed about cases of refused entry at the border with Germany. However, in case the police is not ready to take them over, people cross the border themselves.²⁸ Another media report states that it is not mandatory for Luxembourg’s police to ‘welcome’ back applicants for asylum who have been denied entry by Germany and that they have to take care of themselves.²⁹
- ❖ Footage of a surveillance camera in the border town Venlo published by outlet De Limburger shows a person getting out of a German police van, receiving a suitcase and an envelope, and then being left there by German police officers. No Dutch officials are present on location.³⁰

The Federal Government justified its decision by referring to the existence of an extraordinary situation that would allow for the application of derogations from EU asylum rules according to Article 72 of the Treaty on the Functioning of the European Union (TFEU).³¹ In doing so, the Federal Government is taking a highly

²⁵ Section 18(2)(1) German Asylum Act.

²⁶ Deutsche Welle, ‘Dobrindt über Zurückweisungen an Grenze: “Rechtlich möglich”’, 7 May 2025, available [here](#).

²⁷ Article 23a Schengen Borders Code, introduced by Regulation (EU) 2024/1717 of the European Parliament and of the Council of 13 June 2024 [2024] OJ L 20.6.2024.

²⁸ RTL Letzebuerg, Schengener Buergermeeschter ass ‘immer genervt’, 14 May 2025, available [here](#).

²⁹ Luxemburger Wort, ‘40 Jahre Schengen: Die Party wird zur Trauerfeier’, 29 May 2025, available [here](#).

³⁰ De Limburger, ‘Duitse politie zet migrant uit busje in Venlo, gevolg van stenge grenscontroles: “Dit zijn illegal pushbacks”’, 5 June 2025, available [here](#).

³¹ State Secretary, Reply to parliamentary questions No 29 and 41, 21/237, 23 May 2025, available [here](#). Plenary protocol, 21. Election period, session six, 21.05.2025, answer by the state secretary to the question of Clara Bünger, p.411, [here](#).

*dubious legal position that runs directly counter to established case law of the Court of Justice of the European Union (CJEU).*³²

*According to available statistics, between 8 May 2025 and 4 July 2025 3,279 third-country nationals were refused entry, including 160 despite a registered intention to seek asylum.*³³

*On 9 May 2025, a 16-year-old girl and two young men from Somalia were amongst the people who were refused entry and were returned to Poland despite their attempt to seek asylum in Germany at the border-crossing point of Frankfurt / Oder. After their flight via Belarus and Lithuania, they were in very poor health condition; the minor in particular was barely able to move due to foot injuries. It was the third time the asylum seekers in question tried to cross the border with Germany. On two attempts before 7 May 2025, they had already been refused entry at the border. After being denied entry, they were on their own in Poland. Thanks to contact with civil society organisations such as PRO ASYL and civil society organisations in Poland, they were supported with accommodation and medical care. These organisations also put the asylum seekers in touch with legal representation.*³⁴

*On 2 June 2025, the Administrative Court of Berlin ruled in summary proceedings simultaneously in three chamber decisions on the refusal of entry of the Somali asylum seekers from 9 May 2025 and found that the practice of refusal of entry of asylum seekers at the borders is clearly unlawful.*³⁵ *With the ruling, the judges ordered the Federal Republic of Germany to allow the three applicants to cross the border and to undergo a so-called Dublin procedure to determine the Member State responsible for the asylum procedure.*

The Administrative Court of Berlin rejected the Federal Government's reference to national legislation (Section 18(2) of the German Asylum Act) and referred to the primacy of the Dublin Regulation, which supersedes national provisions. It elaborated that the Dublin Regulation lays down the obligation to complete the full procedure for determining the Member State responsible and upholds procedural rights such as the right to information and a personal hearing, as well as additional guarantees for minors. Recalling the general principle of the Regulation, the Administrative Court stressed that no Member State may take a purely negative decision on responsibility, but must always give positive reasons for the responsibility of another Member State before referring an asylum seeker thereto. In this procedure, applicants have the right to a determination of responsibility in a lawful procedure, including procedural rights such as the right to information, personal hearing and the right to review of the decision by a court. The procedure was not applied in these cases, thereby violating the rights of the people seeking protection. To justify the refusal of entry, the Federal Police, representing the Federal Republic of Germany in the court proceedings, had invoked Article 72 TFEU. The argument was dismissed by the Administrative Court of Berlin as well.

With reference to the 2019 ruling of the Administrative Court of Munich in a so-called "Seehofer Deal Case",³⁶ factually similar to that forming the subject matter of the Court's H.T. v. Germany and Greece judgment, the Administrative Court of Berlin held that even a preliminary examination to determine responsibility, for example akin to a "pre-Dublin procedure," is not permissible as it violates the procedural rights of the persons concerned.

In general, the Administrative Court of Berlin opposed the circumvention of the Dublin Regulation through bilateral agreements such as the "Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Poland on cooperation between police, border, and customs authorities of May 15, 2014" on the ground that EU law cannot be circumvented by individual Member States.

The Administrative Court of Berlin deemed it necessary to issue an urgent ruling and to prevent irreparable harm for the following reasons: (i) The applicants are in Poland without a right of residence and, lacking own financial resources, are dependent on temporary assistance from NGOs; (ii) There is a real risk that the applicants might face chain deportation to Belarus without a prior asylum procedure, as a return procedure was

³² CJEU, C-143/22 *ADDE and Others*, 21 September 2023, para 45; C-808/18 *Commission v Hungary*, 17 December 2020, paras 214-226; C-715/17 *Commission v Poland*, 2 April 2020, paras 146-147.

³³ RND, 'Bundespolizei hat 160 Asylsuchende an Grenze abgewiesen', 5 June 2025, available [here](#).

³⁴ PRO ASYL, 'Schlappe für Dobrindt und Merz: Verwaltungsgericht Berlin hält Zurückweisung für rechtswidrig', 3 June 2025, available [here](#).

³⁵ Administrative Court of Berlin, VG 6 L 191/25, 2 June 2025, available [here](#).

³⁶ Administrative Court of Munich, M 18 E 19.32238, 8 August 2019.

already initiated in Poland. We recall that the risk of chain refoulement stemming from circumvention of the Dublin Regulation was a matter also raised in the *H.T. v. Germany and Greece* case.

The Federal Government has announced its intention to pursue the policy of refusal of entry at Germany's land borders despite the domestic court rulings, per recent statements of the Federal Minister of Interior in the media.³⁷

Practice at land borders before May 2025

The extension of border controls in October 2023 and September 2024 was explicitly linked by the Federal Government to the goal of reducing the number of asylum seekers in Germany. For example, former Chancellor Olaf Scholz stated: "in general it is our intention to continue strictly controlling the German borders. We want to limit irregular migration, I have announced this. The numbers need to drop."

That said, the former German Federal Government ensured that third-country nationals who expressed their intention to apply for protection in Germany were to be referred to the reception facility for asylum applicants and the BAMF responsible for conducting the asylum procedure, and thus were not to be prevented from entering the country.³⁸

Even before the May 2025 directive of the Federal Minister of Interior, Section 18(2) of the German Asylum Act was used as justification for refusal of entry at internal borders, thereby disregarding primary EU law. Accordingly, those affected had no access to a procedure for determining the country responsible for their claim in accordance with Germany's international obligations. According to official statistics, from July to November 2024, 19 third-country nationals were refused entry based on Section 18(2) of the Asylum Act. Most affected were the following nationalities: Syria, Iraq, Sri Lanka.³⁹ Between August 2023 and July 2024, 65 third-country nationals were affected by refusal of entry on the same ground.⁴⁰

Statistical data and reports indicate further serious difficulties in accessing the asylum procedure already at this point. The Police Entry Statistics of the Federal Police (*Polizeiliche Eingangsstatistik der Bundespolizei, PES*) shows the following trend: After the introduction of internal border controls, the number of refusals of entry rises significantly while the number of registered intentions to seek asylum after interception at the border drops.⁴¹

At the land borders with Poland and Czechia, where border controls were initiated in October 2023, figures of refusals of entry and asylum applications evolved as follows:⁴²

³⁷ Euronews, 'Berlin court rules rejection of asylum seekers at borders unlawful', 3 June 2025, available [here](#).

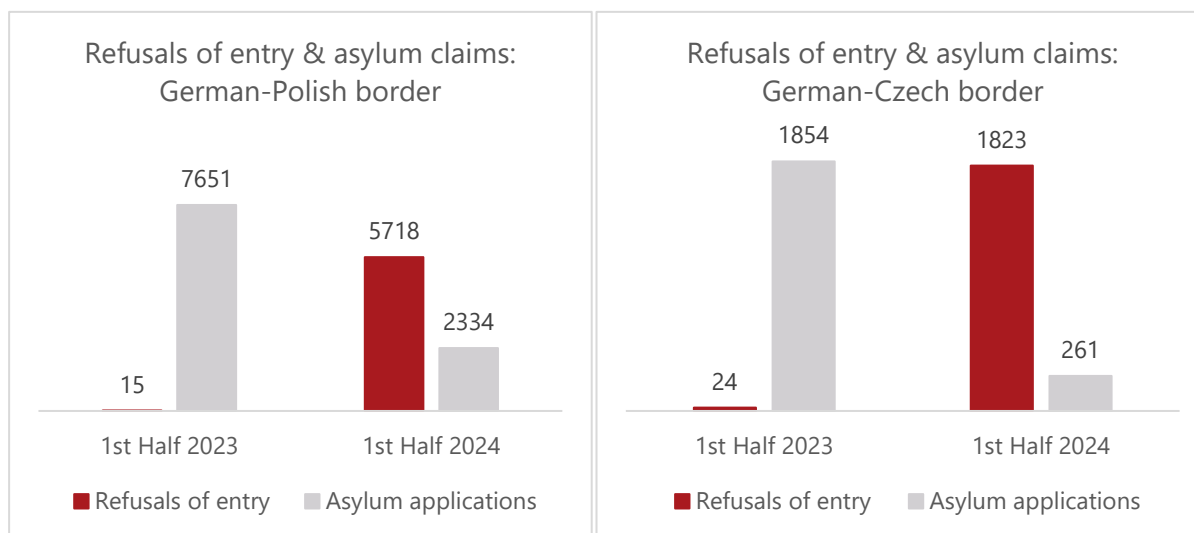
³⁸ Federal Ministry of Interior, 'Binnengrenzkontrollen an den Landgrenzen zu Polen, Tschechien und der Schweiz: Notifizierung bei der EU-Kommission erfolgt', 16 October 2023, available [here](#).

³⁹ Federal Government, Reply to parliamentary question 6, 20/14902, 5 February 2025, available [here](#).

⁴⁰ Federal Government, Reply to parliamentary question 6, 20/12827, 5 September 2024, available [here](#).

⁴¹ No statistics are currently available for the first half of 2025, which would be necessary to compare the situation after the last expansion of border controls in September 2024.

⁴² Federal Government, Reply to parliamentary question 6, 20/12827, 5 September 2024, available [here](#).



Generally throughout all of Germany's internal Schengen land borders, the number of refusals of entry per year has increased by 350% from 8,351 in 2021 to 37,491 to 2024. For its part, the number of asylum applications after interception at the border has dropped by 4.5% from 15,352 in 2021 to 14,675 in 2024.

The most common countries of origin of third-country nationals rejected at Germany's internal Schengen borders correspond to the main countries of origin of asylum seekers. In the second half of 2024, about 66% of the total of third-country nationals refused entry originated from one of the 15 most common countries of origin of asylum applicants in Germany or from Ukraine. Mostly affected were the following nationalities: Syria (17.7%), Ukraine (13.2%), Turkiye (8.4%), Afghanistan (8.4%).⁴³

Various media outlets and civil society organisations have published accounts of asylum seekers who were denied access to legal proceedings in Germany. In addition, PRO ASYL has been approached by a growing number of asylum seekers who report being denied access to the country despite their expressed intention to apply for asylum. PRO ASYL has also been approached by civil society organisations in Czechia and Austria that raised concerns over a growing number of accounts describing difficulties in access to the asylum procedure in Germany. We cite the following indicative examples of practice throughout recent years:

- ❖ German media and civil society organisations raised concerns about a case in August 2022 as follows: Two Yemeni citizens had been denied entry by the Federal Police in Görlitz, at the border with Poland. The Federal Police stated that an entry interview had been conducted and that the information provided had been assessed. As a result of this assessment, neither case met the criteria for an asylum application. One of the individuals concerned contradicts this account and states that he said several times that he wanted to apply for asylum and feared being returned to Yemen. However, instead of having his asylum application considered by the competent authority, the person concerned said he was pressured into signing several documents without clear understanding of their content, resulting in his return to Poland.⁴⁴
- ❖ In May 2023, a total of six testimonies from Syrian protection seekers who were denied access at the border with Germany were published by the Bavarian Refugee Council⁴⁵, Pushback Alarm Austria and the Border Violence Monitoring Network (BVMN).⁴⁶ The testimonies are remarkably similar. The people concerned described being intercepted during border controls while crossing from Austria to Germany

⁴³ Federal Government, Reply to parliamentary question 7c, 20/14902, 5 February 2025, available [here](#).

⁴⁴ Taz, 'An der Grenze der Legalität', 1 August 2022, available [here](#); Brandenburg Refugee Council, 'Gemeinsame Presseerklärung: Pushback-Vorwurf an der polnisch-deutschen Grenze muss aufgeklärt werden', 3 August 2022, available [here](#).

⁴⁵ Bavarian Refugee Council, 'Belege für systematische Pushbacks nun auch an der deutsch-österreichischen Grenze', 30 May 2023, available [here](#).

⁴⁶ BVMN, Testimonies, available [here](#).

between November and December 2022. Some report having fallen victim to this practice multiple times. According to the statements, they expressed their intention of seeking asylum in Germany during the control, usually in the presence of interpreters. However, still they were mostly returned the next day on the basis of a readmission agreement with Austria. Some were detained for one or two days before being returned to Austria. In none of the cases was an asylum procedure initiated in Germany. Instead, proceedings were initiated on the grounds of illegal entry, and entry and residence bans were imposed. The asylum seekers were then handed over to Austrian officials. In at least one case, the asylum application was also ignored in Austria and the person concerned was told to try elsewhere and left to fend for themselves.

Research conducted by *Der Spiegel* offers one plausible explanation for the questionably high proportion of third-country nationals from main countries of origin of asylum seekers among those rejected even before the directive issued by Federal Interior Minister Dobrindt in May 2025, as well as for the overall high level of refusals of entry. Reports published by the named outlet on 12 September 2024 unveiled that questioning for the reason of entry conducted by the Federal Police is based on questionnaires in which an application for asylum or a similar entry are not provided as an option.⁴⁷

In its 2023 annual report, the National Agency for the Prevention of Torture also confirms the existence and use of questionnaires for the determination of the reason for entry. As the National Agency for the Prevention of Torture did not see any such documentation during its on-site visits in 2023, it has not yet been able to assess the practice. The National Agency for the Prevention of Torture announced that it will increase its oversight of police practices in the context of border police duties in order to elaborate on standards to safeguard fundamental rights in this context in the future. This suggests an acknowledgment that such standards do not yet exist.⁴⁸

Though it is not mandatory to use the questionnaire, the President of the Federal Police, Mr Dieter Romann, confirmed that the questionnaire in question is translated into 63 languages and is used by the Federal Police. However, the Federal Police President pointed out that if there was any indication of an asylum application, a second questionnaire would have to be used for the interview which would also take “asylum” into account as a reason for entry.

Members of Parliament granted access to the questionnaires conclude that the second form does not alleviate the risk of unlawful rejections either. According to their assessment, this requires detailed information about the flight which should be recorded and assessed solely by the competent asylum authority (BAMF) and which far exceeds the powers and competences of the Federal Police.⁴⁹

The situation on the border with Switzerland differs from other border sections. At this border, border controls in rail transport by the German Federal Police are conducted in between the train station Basel SBB and Basel Baden on Swiss territory. The model is described as ‘exemplary’ by the former Federal Government.⁵⁰ Third-country nationals who do not meet the entry criteria will be escorted off the train at Basel Baden. People are either processed in a processing line in accordance with Article 20(4) of the Dublin Regulation at Basel Baden or, if capacity limits are reached, taken to the police station in Efringen-Kirchen, Germany. A processing line has been set up there, for the processing of those apprehended in the border controls on Swiss territory. Thereby, a “fiction of non-entry” into German territory in accordance with Article 13(2) of the German Residence Act applies, meaning that the persons apprehended and transferred for processing to Efringen-Kirchen are considered not to have entered Germany. According to media reports from 2023, the majority of third-country nationals apprehended and transferred to Efringen-Kirchen are Afghan nationals, one of the most common nationalities of asylum applicants in Germany. In case an asylum request is made during the processing in Efringen-Kirchen, this should result in the case being forwarded to the competent authority and thus

⁴⁷ Der Spiegel, ‘Name, Anschrift, Fangfrage’, 12 September 2024, available [here](#).

⁴⁸ National Agency for the Prevention of Torture, *Annual Report 2023*, 49 and 51, available [here](#).

⁴⁹ Die Linke, Parliamentary question, Preliminary remark on the question, 20/14902, available [here](#).

⁵⁰ Tagesschau, ‘Nancy Faeser, SPD/Bundesinnenministerin, zum Umgang mit hohen Flüchtlingszahlen’, 17 September 2023, available [here](#).

to entry into Germany of the third-country national.⁵¹ However, available reports point to a different direction and document obstacles to access to the procedure.⁵²

In the second half of 2024, 5,895 third country nationals were refused entry at the border with Switzerland. This amounts to about 30% of all refusals of entry at land borders (19,720), indicating that rejections at the Swiss border account for the largest share in the period.

Linguistic assistance & access to a lawyer

The Court highlighted in *H.T. v. Germany and Greece* that the applicant did not have access to a lawyer prior to being removed from Germany to Greece and was never informed in a language he understood about the basis of his removal.⁵³ These factors contributed to breach of Article 3 of the Convention.

Practice at land borders since May 2025

No relevant information on legal remedies or a list of lawyers had been provided beforehand by the Federal Police to persons refused entry such as the applicants in the cases ruled by the Administrative Court of Berlin on 2 June 2025. Therefore, persons turned back at the border had not been informed of their legal situation prior to being removed.⁵⁴

Practice at land borders before May 2025

Various civil society organisations in Germany and the neighbouring countries have confirmed in discussion with PRO ASYL that those affected have also complained to them about difficulties in communicating with the interpreters called in by the authorities.

In its 2023 annual report, the National Agency for the Prevention of Torture highlights that it cannot be taken for granted that third-country nationals who cross the internal borders with the intention of applying for asylum are informed sufficiently about their rights and duties according to the German Residence Act. In order to ensure access to the asylum procedure, the National Agency for the Prevention of Torture recommends that appropriate measures be taken to ensure that, upon first contact at the border, those affected are provided with multilingual information sheets and informed about the immediate steps to be taken.

In relation to access to linguistic assistance in case of interception by the Federal Police, the National Agency for the Prevention of Torture highlights that linguistic assistance is not provided in the immediate situation when the person is first apprehended at the border but only in the event of further processing at the Federal Police office. In its annual report, the National Agency for the Prevention of Torture points out that linguistic assistance is already needed immediately in the apprehension situation and calls for options to be examined for making linguistic assistance available at all times.⁵⁵

Civil society organisations describe major obstacles in accessing sufficient information and legal assistance in connection with rejections at border controls. Those affected report that they are not adequately informed about their rights and do not have the contact details of advice centres or lawyers. This makes it impossible for them to seek assistance. In addition, many are not aware that they are entitled to do so.

- ❖ In one case documented by the media outlet *Die Tageszeitung* concerning at least two third-country nationals from Yemen of whom at least one had the intention of seeking asylum in Germany, the report describes difficulties in communicating with the person called in by the authorities to offer interpretation services. The tone of the interpreter is described as harsh and unfriendly, and it is also stated that the person concerned felt pressured to sign several documents. The interpreter dismissed further

⁵¹ Federal Government, Reply to parliamentary question 13, 20/8274, 7 September 2023, available [here](#).

⁵² NZZ, 'In Basel liefern sich deutsche Polizisten und Migranten ein Katz-und-Maus-Spiel - Gewinner gibt es keine', 1 March 2023, available [here](#).

⁵³ *H.T. v. Germany and Greece*, paras 148 and 150.

⁵⁴ PRO ASYL, 'Schlappe für Dobrindt und Merz: Verwaltungsgericht Berlin hält Zurückweisung für rechtswidrig', 3 June 2025, available [here](#).

⁵⁵ National Agency for the Prevention of Torture, *Annual Report 2023*, 51 et seq., available [here](#).

questions with the remark that the person should not ask so many questions. In addition, the impression was gained that there were discrepancies between the statement made by the Federal Police and the content of the translation, as the length and number of questions asked did not correspond to the statements made by the Federal Police as perceived by the person concerned.

- ❖ *A lawyer who has undertaken representation of asylum seekers who were denied entry at the Austrian-German borders describes major problems in accessing police files. She reports delays of several months in granting access to files.*
- ❖ *As for the German-Swiss border, civil society organisations and specialist lawyers in the region describe the proceedings there as a 'black box'. So far, they are unable to contact anyone involved in the proceedings and have no information about them.*

Recommendations to the Committee

Based on the observations set out in the present contribution, PRO ASYL draws the attention of the Committee of Ministers to a real risk of breaches of the Convention stemming from Germany's persisting practice of refusing entry to asylum seekers at its internal Schengen land borders, without abiding by established EU standards and procedures and without prior assessment of the risk of ill-treatment in the country of removal, including risk of chain refoulement.

In light of the above, we urge the Committee to request concrete commitments and information from the German Federal Government on the establishment and implementation of general measures, aimed at ensuring that:

- ❖ *Asylum seekers are not turned away at land borders under refusal of entry orders and have their claims duly registered and processed in accordance with established standards binding on the German legal order, namely the Dublin Regulation and prospective AMMR.*
- ❖ *The aforementioned directive of 7 May 2025 is revoked without delay and effective measures are taken to ensure access to the asylum procedure.*
- ❖ *Adequate linguistic assistance and access to a lawyer are promptly and effectively guaranteed to persons subject to refusal of entry at land borders.*