

Implementation by Germany of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

[Parallel Report of PRO ASYL e.V.](#)

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PRO ASYL is a non-governmental association and an independent voice for human rights and refugee protection in Germany and Europe.

PRO ASYL advocates for the access to asylum in Europe and Germany, fair asylum procedures and decent living conditions of asylum seekers and refugees. For this PRO ASYL organizes political campaigns and public events, lobbies the national government and offers judicial expertise. PRO ASYL also supports individual asylum seekers and refugees with practical and legal assistance. Another important pillar of PRO ASYL's work is the collaboration with national and international human rights groups and aid agencies. PRO ASYL's work is financed by membership fees, donations and grants from its own foundation as well as from other foundations.

Since Germany's reply to the Committee against Torture's list of issue in 2017,¹ there have been several worrying developments concerning issues raised back then, such as the resumed transfers under the Dublin Regulation to Greece and the continuing transfers to Italy,² deportations to countries like Afghanistan, and detention for deportation.³

The following document will however highlight the lack of systematic access to independent, qualified and free-of-charge procedural legal counseling prior to the asylum interview in Germany. Such counseling is important to ensure the recognition of protection needs to prevent a violation of Art. 3 of the Convention.

Issue: Non-refoulement of asylum seekers

Art. 3 CAT: Art. 3 of the Convention; General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22 (CAT/C/GC/4)

Explanatory Note:

According to Art. 3 (1) of the Convention no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture or other ill-treatment.⁴ **Asylum seekers must be given access to a fair**

¹ Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure, Sixth periodic report of States parties due in 2015, Germany, 08/08/2017, CAT/C/DEU/6.

² See also CAT/C/DEU/6, para. 77 et seq.

³ See also CAT/C/DEU/6, para. 124 et seq.

⁴ Equally, State parties should refrain from deporting individuals to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture or other ill-treatment at the hands of non-State entities, including groups that are unlawfully exercising actions that inflict severe pain or suffering for purposes prohibited by the Convention, and over which the receiving State has no or only partial de facto control, or whose acts it is unable to prevent or whose impunity it is unable to counter, see CAT/C/GC/4, para. 30.

asylum procedure in order to determine protection needs, to prevent refoulement and to identify persons concerned. According to the General Comment No. 4, each case should be examined individually, impartially and independently by the State party through competent administrative and/or judicial authorities, and amongst other things, in conformity with essential procedural safeguards.⁵ States parties should not adopt dissuasive measures or policies, such as cutting funds for assistance programmes for asylum seekers.⁶ Moreover, States parties should take legislative, administrative, judicial and other preventive measures against possible violations of the principle of “non-refoulement”, including – *inter alia* – ensuring the right of each person concerned to have the case examined individually and not collectively. The person has to be fully informed of the reasons why he or she is the subject of a procedure that may lead to a decision of deportation and of the rights legally available to appeal such a decision.⁷ Lastly, the person must be able to contact a lawyer, the State party has to provide free legal aid and the State party must guarantee access to representatives of relevant international organizations.⁸

In Germany, access to free legal aid and access to a lawyer is in fact restricted for asylum seekers:

- a) Legal assistance is not systematically available to asylum seekers in Germany. Welfare organizations and other NGOs offer free advice services which include basic legal advice. However, such advice services are not available in all initial reception centers and not all of the time, so very often interviews take place before asylum seekers had a chance to contact an NGO or a lawyer. There is no mechanism which ensures that asylum seekers receive legal advice from an independent institution before the interview. Once asylum seekers have left the initial reception centers and have been transferred to other accommodation, the accessibility of legal advice depends strongly on the place of residence.⁹
- b) In its reply to the Committee’s list of issues in 2017, the Federal Republic of Germany refers to a three-month pilot project during which consultancy on asylum proceedings was provided to asylum seekers at the locations that were part of the project.¹⁰ The objective of the project was to test model counseling that is **free-of-charge** and takes account of the **individual situation of the asylum seeker**. This consultancy on asylum proceedings was intended to lend support to asylum seekers so that they are able to obtain qualified information and consultancy at an early stage of the asylum proceedings regarding its content and course, and the rights and obligations they have in this regard.¹¹ The pilot project was implemented by three of the large German welfare organization, these being Deutscher Caritasverband, Deutsches Rotes Kreuz, and Diakonie Deutschland Evangelischer Bundesverband. In providing the services, the welfare organizations were supported by attorneys in accordance with the Legal Services Act (*Rechtsdienstleistungsgesetz*, RDG), who were responsible for giving technical instruction to the consultants providing advice on the asylum proceedings and for lending support to them. Furthermore, the welfare organizations would also closely cooperate with the bodies providing consultancy services of other types

⁵ CAT/C/GC/4, para. 13.

⁶ CAT/C/GC/4, para. 14.

⁷ CAT/C/GC/4, para. 18(a).

⁸ CAT/C/GC/4, para. 18(b).

⁹ See Asylum Information Database (AIDA), Country Report: Germany 2017 update, March 2018, https://www.asylumineurope.org/sites/default/files/report-download/aida_de_2017update.pdf, accessed on 22/03/2019.

¹⁰ CAT/C/DEU/6, paras. 74 et seq.

¹¹ CAT/C/DEU/6, para. 74.

when necessary.¹² Moreover, the Federal Republic of Germany states that the pilot project would be evaluated by the research center of the Federal Office for Migration and Refugees (BAMF) and UNHCR Germany: **“The effect of the consultancy services provided will be evaluated in terms of the asylum proceedings’ compliance with the principle of the rule of law as well as their fairness, quality, and efficiency. The evaluation will also consider the effectiveness of the consultancy model.”**¹³

In the meantime, the pilot project has been completed (March-May 2017). Although this project led to highly impressive positive results,¹⁴ the evaluation by BAMF and UNHCR Germany has never been published officially.¹⁵ **Key findings** of the pilot project according to the evaluation draft by BAMF and UNHCR Germany are:¹⁶

- There is a big lack of information amongst asylum seekers. The general information provided by BAMF is not sufficient, because asylum seekers can often not understand them nor apply them to their circumstances.
- Counseling on the asylum procedure helps the asylum seeker to understand every step of the procedure and their importance, to know their rights and to comply with their obligations. This thus improves effective access to procedural guarantees and legal protection. The provision of such counseling can also help in identifying special protection needs at an early stage.
- The independence of the counseling is of great importance to the asylum seekers and is beneficial for ensuring that all facts are presented correctly during the counseling but also during the asylum interview.
- The evaluation finds that as planned, the project reached primarily asylum seekers located in centers with fast-tracked procedures. It was not possible to reach all asylum seekers at an early stage, only a quarter were counseled before lodging the asylum request and only 40% before the asylum interview. One possible factor for this is the speed with which the procedures are processed in the centers.
- A future implementation of this model should be oriented towards counseling all newly arrived asylum seekers as early as possible.

Despite these positive results of the pilot project, especially regarding the impact on effective access to legal aid and access to a lawyer, corresponding practical consequences have not been implemented yet.

- c) In 2018, the new Federal Government indeed promised to introduce a nationwide, independent asylum procedure counseling.¹⁷ But in fact, the new Federal Interior Minister Horst Seehofer created a new concept of legal counseling within the so called “anchor”-centers in August 2018.¹⁸ The new concept foresees general basic legal counseling offered by

¹² CAT/C/DEU/6, para 75.

¹³ CAT/C/DEU/6, para. 76.

¹⁴ “Evaluation des Pilotprojektes „Asylverfahrensberatung““, For internal use only, Draft of 25/09/2017, published by the Lower Saxony Refugee Council, https://www.nds-fluerat.org/wp-content/uploads/2018/05/FB_Asylverfahrensberatung_Entwurf170925.pdf, accessed on 22/03/2019.

¹⁵ See Parliamentary Publication (Bundestags-Drucksache) No. 19/873, 22/02/2018, <http://dipbt.bundestag.de/doc/btd/19/008/1900873.pdf>, accessed on 22/03/2019.

¹⁶ See Draft of 25/09/2017 (footnote 14), p. 7.

¹⁷ Koalitionsvertrag zwischen CDU, CSU und SPD, 2018,

<https://www.bundesregierung.de/resource/blob/975226/847984/5b8bc23590d4cb2892b31c987ad672b7/2018-03-14-koalitionsvertrag-data.pdf?download=1>, accessed on 22/03/2019. This “coalition agreement” is a non-binding programme for the new legislation period.

¹⁸ Concept of facility for asylum seekers and rejected applicants, see also d).

the BAMF itself: the BAMF provides information about rights and obligations for asylum seekers in group sessions – including information about returns.¹⁹ This kind of providing information cannot replace an individual and independent counseling.

While there is the possibility to ask for an individual appointment, it is not guaranteed that this second appointment takes place before the interview or the decision by the BAMF. Both, the general information and the optional second advice are provided by BAMF-employees. Hence, the authority that has to decide on the application shall be the one giving advice to the person concerned. Due to the negative experience of the majority of asylum seekers, it is very difficult to build a trustful atmosphere between the person concerned and the employee of the state authority deciding on his/her claim. This feeling becomes worse in combination with the information about return provided by the BAMF at that early stage of procedure. It has to be questioned too how impartial the counseling is considering that the counselor is employed directly by the BAMF. This becomes especially important when the counseling concerns a decision denying protection. It is not to be expected that BAMF-employees will advise someone to sue their own employer or to get in contact with private lawyers. Considering the high rate of successful court cases,²⁰ such an advice can make the difference between protection and the return to an unsafe country.

So still today, the best access to a lawyer is the one provided by welfare organizations and their contacts, and in fact, this lack of access is one of the biggest problems. Although the Federal Ministry of Interior still foresees a cooperation with some welfare organization in some facilities (where it exists, see a)), legal assistance is not systematically guaranteed to asylum seekers in Germany.

- d) Moreover, the negative impact of the concept of the so called “anchor”-centers have to be considered: Since August 2018 so called AnKER-centres have been established in some Bundesländer.²¹ The acronym “AnKER” stands for the German terms: Ankunft, Entscheidung, Rückführung – arrival, decision and return. Asylum seekers and rejected applicants are obliged to stay in these centres for up to 18 months under very problematic conditions.²² The aim of the BAMF is to proceed as fast as possible which is a problem when it comes to hasty hearing dates. In these facilities, different authorities shall be present, such as the foreigners authority (“Ausländerbehörde”) or representatives of the judiciary.²³ Thus said, it may be possible that a person not fully informed gets a negative decision and goes to court unpreparedly, without having seen a lawyer before.

¹⁹ Parliamentary Publication (Bundestag-Drucksache) No. 19/4284, question 7 et seq., 12/09/2018, <http://dipbt.bundestag.de/dip21/btd/19/042/1904284.pdf>, accessed on 22/03/2019; Model Agreement for AnKER (“Mustervereinbarung”), published by the Federal Association for Unaccompanied Refugee Minors (Bundesfachverband unbegleitete minderjährige Flüchtlinge, BumF), https://b-umf.de/src/wp-content/uploads/2018/11/2018_11_16_entwurf_mustertext_verwaltungsvereinbarung_anker-einrichtungen.pdf, accessed on 22/03/2019.

²⁰ 31,7% of the cases being examined on the merits have been successful in front of court (01/01/2018-30/09/2018), Parliamentary Publication (Bundestag-Drucksache) No. BT-Drs. 19/5661. As it comes to Afghan asylum seekers, it is even more (58,3%).

²¹ Bavaria, Saxony, Saarland (March 2019).

²² See Press Release by Refugee Council Bavaria, 05/02/2019, <https://www.fluechtlingsrat-bayern.de/beitrag/items/bilanz-nach-6-monaten-anker-zentren.html>, accessed on 22/03/2019.

²³ Koalitionsvertrag zwischen CDU, CSU und SPD, 2018, <https://www.bundesregierung.de/resource/blob/975226/847984/5b8bc23590d4cb2892b31c987ad672b7/2018-03-14-koalitionsvertrag-data.pdf?download=1>, accessed on 22/03/2019.

- e) Furthermore, there seems to be an increasing, unjustified mistrust against organizations and their advice. The government of Upper Bavaria for example prohibits the “information-bus” access to first initial facilities in this region. This bus provides basic legal advice for asylum seekers as a cooperation project by the Refugee Council Munich and Amnesty International, funded partly by the city of Munich and the German support organization for UNHCR (UNO-Flüchtlingshilfe).²⁴ Since 16 years, the Refugee Council Munich provides this kind of legal counseling in initial reception facilities in Munich. By being mobile, they can reach different facilities. But since November 2017, the access to these facilities in that region is prohibited, they are not allowed to enter anymore. The official justification is based on “security grounds”, “fire protection” and the “protection of refugees”, which is highly questionable after 16 years. The case is pending in front of the Administrative Court Munich.²⁵

Asylum seekers must be given access to a fair asylum procedure in order to determine protection needs, to prevent refoulement and to identify persons concerned.

Recommendations:

We recommend that the Committee

- requests the State Party to grant asylum seekers systematic access to independent, qualified and free-of-charge procedural legal counseling before a hearing is carried out. “Independent” must mean that it is not the same organization that decides on the case that also does the legal counseling.
- requests the State Party to grant counselors and organizations access to reception facilities to provide legal counseling.

²⁴ Press release by the Refugee Council Munich, 08/02/2018, <http://muenchner-fluechtlingsrat.de/pressemitteilung-muenchner-fluechtlingsrat-erhebt-klage-gegen-regierung-von-oberbayern-wegen-zugangsverbot-des-infobusses/>, accessed on 22/03/2019.

²⁵ File number M 30 K 18.876.