

## GERMANY

### ARRIVALS

#### 1. Total number of individual asylum seekers who arrived, with monthly breakdown and variation between years

Table 1:

Source: Federal Office for the Recognition of Foreign Refugees (BAFL)

Month	2002	2003	Variation +/- (%)
January	7,762	6,124	-21.1
February	5,771	4,486	- 22.3
March	5,697	4,329	- 24.0
April	6,019	4,012	-33.3
May	5,346	3,758	-29.7
June	5,664	3,653	-35.5
July	5,947	4,528	-23.9
August	5,780	3,548	-38.9
September	6,286	4,418	-29.7
October	6,568	4,343	-33.9
November	5,510	3,830	-30.5
December	4,694	3,416	-27.2
<b>TOTAL</b>	<b>71,127</b>	<b>50,563</b>	<b>-28.9</b>

#### 2. Breakdown according to the country of origin/nationality

Table 2:

Source: BAFL

Country of origin / nationality	2002	2003	Variation +/- (%)
Turkey	9,575	6,301	- 34.2
Serbia and Montenegro	6,679	4,909	- 26.5
Iraq	10,242	3,850	- 62.4
Russian Federation	4,058	3,383	-16.6
China	1,738	2,387	+37.3
Vietnam	2,340	2,096	- 10.4
Iran	2,642	2,049	- 22.4
India	2,246	1,736	- 22.7
Afghanistan	2,772	1,473	- 46.9
Azerbaijan	1,689	1,291	- 23.6
<i>Others</i>	<i>27,146</i>	<i>21,088</i>	<i>-22,3</i>
<b>TOTAL</b>	<b>71,127</b>	<b>50,563</b>	<b>-28,9</b>

#### 3. Persons arriving under family reunification procedure

76,077 (2002: 85,305)

Source: BAFL

These figures include family members of migrants in Germany and family members of German citizens. Data indicating refugee arrivals is not available.

#### 4. Refugees arriving as part of a resettlement programme

In German law, the term ‘quota refugees’ is associated with the reception of people on general humanitarian grounds. It was however applied only once on a larger scale when the so-called ‘boat people’ from Indochina arrived at the end of the 1970s / beginning of the 1980s.

At the beginning of this legislative period, the Federal Government agreed to offer 500 places to third country nationals within the framework of resettlement programmes run by UNHCR. Three years after this agreement not a single refugee has been resettled in Germany within the framework of UNHCR resettlement programme.

#### 5. Unaccompanied minors (only children under 16)

977 (2002: 873)

Table 3:

Source: BAFL

Country of origin	2002	2003
Vietnam	83	154
Turkey	46	83
Iraq	55	64
Afghanistan	138	48
Angola	76	45
Syria	29	36
Ethiopia	57	35
<i>Others</i>	<i>389</i>	<i>512</i>
<b>TOTAL</b>	<b>873</b>	<b>977</b>

### RECOGNITION RATES

#### 6. The statuses accorded at first instance and appeal stages as an absolute number and as a percentage of total decisions

Table 4:

Source: BAFL

Statuses	2002		2003	
	Number	%	Number	%
Recognition Article 16(a), German Constitutional Law	2,379	1.83	1,534	1.6
No status awarded	78,845	60.59	63,002	67.1
Convention status Section 51(1), Aliens Law	4,130	3.17	1,602	1.7
Statutory Temporary Suspension of Deportation Section 53, Aliens Law	1,598	1.23	1,567	1.7
<i>Other decisions</i>	<i>43,176</i>	<i>33.18</i>	<i>26,180</i>	<i>27.9</i>
<b>TOTAL</b>	<b>130,128</b>	<b>100</b>	<b>93,885</b>	<b>100</b>

The proportion of asylum seekers receiving one of the three above-mentioned forms of protection decreased again in 2003. Out of 93,885 applications processed in 2003, refugee status was granted in only 1,534 cases, in accordance with the fundamental right to asylum (Article 16(a) of the German

Constitution). Only asylum seekers who enter the country by air or sea can apply for this status. Please note that figures include cases of 'family asylum' and not only individual cases.

### 7. Refugee recognition rate (1951 Geneva Convention) according to country of origin

Table 5:

Source: BAFL

Country of origin Year	Total decisions	Article 16(a) German Constitution		Section 51(1) Aliens Act		Section 53 Aliens Act		Rejections		Formal decisions	
		Number	%	Number	%	Number	%	Number	%	Number	%
<b>Turkey</b>											
2002	14,804	1,055	7.13	583	3.94	119	0.80	8,307	56.11	4,740	32.0
2003	12,779	713	5.6	397	3.1	118	0.9	7,365	57.6	4,186	32.8
<b>Serbia &amp; Montenegro</b>											
2002	50,558	24	0.05	7	0.01	404	0.80	25,470	50.38	25,088	49.6
2003	13,955	15	0.1	0	0	233	1.7	5,984	42.9	7,723	55.3
<b>Iraq</b>											
2002	12,439	459	3.69	2,432	19.55	73	0.59	8,323	66.91	1,152	9.26
2003	5,959	148	2.5	393	6.6	28	0.5	4,705	79.0	685	11.5
<b>Russian Federation</b>											
2002	4,493	46	1.02	337	7.50	57	1.27	3,354	74.65	699	15.56
2003	3,851	65	1.7	298	7.7	135	3.5	2,536	65.9	817	21.3
<b>China</b>											
2002	1,625	12	0.7	18	1.1	5	0.3	1,442	88.7	148	9.1
2003	3,052	20	0.7	48	1.6	2	0.1	2,817	92.3	165	5.4
<b>Vietnam</b>											
2002	2,871	0	0	6	0.2	4	0.1	2,308	80.4	553	19.3
2003	2,737	1	0	3	0.1	9	0.3	2,247	82.1	477	17.4

## RETURNS, REMOVALS, DETENTION AND DISMISSED CLAIMS

### 8. Persons returned on 'safe third country' grounds

No figures available.

### 9. Persons returned on 'safe country of origin' grounds

No figures available.

### 10. Number of applications determined inadmissible

No figures available.

### 11. Number of asylum seekers denied entry to the territory

No figures available.

### 12. Number of asylum seekers detained, the maximum length of and grounds for detention

No figures available.

### 13. Deportations of rejected asylum seekers

23 944 (2002: 26,286)

Source: Stenographic Report of the 93<sup>rd</sup> meeting of the German Federal Parliament

Please note that figures refer to deportation of foreign nationals and not only to rejected asylum seekers. Separate figures are not available.

#### 14. Details of assisted return programmes

11,700 (2002: 12,000)

Table 6:

Source: International Organization for Migration (IOM)

Destination country (2003)	Number
Serbia and Montenegro	5,090
Kosovo	1,854
Turkey	767
Russian Federation	635
Bosnia-Herzegovina	437
Bulgaria	415
Iran	385
Slovak Republic	375
Iraq	308
Vietnam	278
Armenia	245
Macedonia	222
<i>Others</i>	689
<b>TOTAL</b>	<b>11,700</b>

#### 15. Number of asylum seekers sent back to the Member State responsible for examining the asylum application under the Dublin Convention (Dublin II Regulation)

Table 7: Dublin Convention practice

Source: BAFL

<i>January- August 2003</i>	Total number of requests presented by Germany to other Dublin States	Total number of requests addressed to Germany by other Dublin States
Requests presented	3,527	6,309
% of requests presented	72,2%	84,4%
Requests accepted	2,490	5,402
% of requests accepted	83,9%	86,7%
Requests refused	838	1,045
% of requests refused	94,3%	87,4%
<i>September-December 2003</i>	Total number of requests presented by Germany to other Dublin States	Total number of requests addressed to Germany by other Dublin States
Requests presented	1,356	1,166
% of requests presented	27,8%	15,6%
Requests accepted	477	827
% of requests accepted	16,1%	13,3%
Requests refused	51	150
% of requests refused	5,7%	12,6%

Table 8: Requests by country

Source: BAFL

Country	Number of requests presented by Germany to other Dublin States (1.1.2003 - 31.12.2003)	Number of requests addressed to Germany by other Dublin States (1.1.2003 to 31.12.2003)
Austria	783	230
Belgium	282	624
Denmark	104	255
Finland	34	170
France	446	478
Greece	229	10
Iceland	1	2
Ireland	5	16
Italy	706	79
Luxembourg	15	98
Netherlands	413	350
Norway	149	1,205
Portugal	35	1
Spain	89	31
Sweden	216	1,934
United Kingdom	20	818
<b>TOTAL</b>	<b>3,527</b>	<b>6,301</b>

Table 9: Requests by country

Source: BAFL

Country	Number of requests presented by Germany to other Dublin II States (01.09.2003 - 31.12.2003)	Number of requests addressed to Germany by other Dublin II States (01.09.2003 to 31.12.2003)
Austria	562	55
Belgium	110	181
Finland	11	21
France	134	167
Greece	32	-
Italy	97	8
Luxembourg	10	19
Netherlands	118	32
Norway	60	229
Portugal	4	2
Spain	32	6
Sweden	130	333
United Kingdom	6	111
<b>TOTAL</b>	<b>1,306</b>	<b>1,166</b>

## SPECIFIC REFUGEE GROUPS

### 16. Developments regarding refugee groups of particular concern

#### Afghanistan & Iraq

After the examination of applications submitted by Afghan asylum seekers was resumed (23 May 2003), several asylum revocation proceedings were initiated on the assumption that the Kabul area could now offer protection to refugees and returnees ('internal flight alternative').

In May 2003, the Ministers of Interior (representing the German Federal Republic and individual German states) decided that refugees originally from Iraq and Afghanistan should be returned as rapidly as possible and “as soon as deportations are possible.”

Kosovo

In 2003, members of the Roma and the Serbian minority were still not deported back to Kosovo. Some deportations did however take place; medical reasons that would have impeded deportation were disregarded.

Airport arrivals

A specific procedure applies to persons who request asylum at German airports. If an asylum seeker comes from a ‘safe country of origin’ or does not possess a valid passport or surrogate passport, the airport procedure applies. The Federal Office first conducts a personal hearing and if the application is not ‘manifestly unfounded’, or if the Federal Office is not able to decide on the case within a short time (due, for examples, to complex investigations or when further investigation is necessary), the alien is allowed to enter the country. If the Federal Office turns down the asylum application as ‘manifestly unfounded’, there is no suspensive effect of the deportation. Application for an order of suspensive effect is possible as part of the airport procedure, if urgent entry to the territory is necessary, thus making it possible for the applicant to obtain temporary legal protection. The Administrative Court has to decide on the application within two weeks.

Of particular concern is the situation of those who, following a final negative decision on their asylum application or due to problems in obtaining a passport, have to remain in transit areas at airports. In the past, people were allowed to enter the country on humanitarian grounds; during 2003, this practice has become far more restrictive (see table below).

Table 10:

Source: BAFL

		2001	2002	2003
<b>Number of cases</b>		1,209	882	850
<b>Decisions within two days</b>	<b>Status awarded</b>	25	0	0
	<b>‘Manifestly unfounded’ cases</b>	234	273	270
<b>Permission to enter</b> (no decision within two days /further investigations needed)		930	584	458
<b>Appeals</b> <b>Administrative Court</b>	<b>Total decisions</b>	185	222	199
	<b>Status granted</b>	8	18	7
	<b>Rejected</b>	184	196	193

Table 11: Statistics of protected persons resident in Germany

Source: Federal Ministry of the Interior

Year	De facto refugees	Convention refugees	Civil war refugees (Bosnia)
1998	370,000	32,000	100,000
1999	423,000	44,000	50,000
2000	370,000	54,000	30,000
2001	361,000	69,000	24,000
2002	415,000	75,000	<20,000
2003	416,000	75,000	Separate data no longer available

## LEGAL AND PROCEDURAL DEVELOPMENTS

### 17. New legislation passed

#### Immigration Act

The debate on the new Immigration Act continued in 2003. The new law will come into force on 1 January 2005; some provisions will already be in force by August 2004. The new Immigration Act provides for the recognition of gender-related persecution and persecution by non-state agents. In the past, many asylum seekers saw their application rejected because the persecution they had suffered had not come from the state. Asylum seekers who flee 'failed' states will now be granted refugee status under the new law.

#### Status under Article 16(a) of the Constitution and Convention refugee status

The status of Convention refugees will be brought in line with the status of persons entitled to asylum under the German Constitution. Both groups will now be initially issued with a temporary residence permit, which can become permanent after three years, if the necessary conditions exist. Close family members of Convention refugees (so-called 'core family') will automatically be granted the same legal status.

#### Activities in exile

Under the new legislation, Convention refugee status will be ruled out when foreign nationals leave their country of origin in the absence of any persecution and eventually engage in activities which can result in persecution if they were to be returned (so-called 'subjective post-flight reasons').

#### 'Toleration status'

The previous practice of granting temporary 'toleration status', which has to be periodically renewed, will be limited under the new legislation. According to estimates, over 220,000 people (mostly rejected asylum seekers who cannot be returned) are currently merely 'tolerated' in Germany. Approximately 150,000 of them have been living for five years or more with short-term 'toleration permits' regularly extended. Serious concern has been expressed in relation to the future of this group of people, since the new Immigration Act does not provide for the right of residence for holders of 'tolerance status'.

#### Humanitarian residence permit

According to the new legislation, a residence permit can be issued if 'urgent humanitarian, or personal reasons, or considerable public interest' require it. This applies for example to people with health problems or whose family members are seriously ill, or to those still in primary or secondary education. This also includes cases of persons who have lived in Germany for several years holding a 'toleration permit'.

#### Residence permit in case of impediment to leave the country

The Immigration Act also provides for the possibility for holders of a 'toleration status' to obtain a residence permit. The latter will be issued if the obligation to leave the country cannot be fulfilled within 18 months. This refers to cases when the person who is obliged to leave the country cannot 'voluntarily' do so. However, if the person provides wrong details or tries to deceive the authorities about his/her identity or nationality, no residence permit will be issued.

#### Hardship cases regulation

The new Immigration Law also gives governments of the federal states the opportunity to establish so-called 'hardship commissions' which would be responsible for assessing particular individual circumstances when deciding on a case. The new hardship cases regulation is to be applied 'if urgent humanitarian or personal reasons justify a longer stay of the foreigner in the federal territory'. The hardship cases regulation will only be applicable until 2009.

#### 'Manifestly unfounded' applications

Asylum seekers whose application is rejected as 'manifestly unfounded' are not issued with a residence permit. This normally happens in cases where the applicant, during the hearing, is not able to clearly explain events and conditions which are the basis of the claim, often interpreted as 'lack of facts' or

evidence in support of the claim itself. This applies to a relatively large group of applicants; in 2003, approx. 36% of the applications was rejected as ‘manifestly unfounded’.

#### Security issues

The anti-terror measures introduced in 2001 have been incorporated in the new Immigration Act. When facts lead to the conclusion that a foreign national belongs to or has belonged to an organisation which supports terrorism, the person in question will be subject to expulsion. Membership and supportive acts will also be considered as evidence of a current danger.

As protection against a ‘serious’ danger or a terrorist attack, the German Minister of Interior or an ministers of interior one the German federal states may order the deportation of a foreign citizen living in Germany. A ‘fact-based threat assessment’ (*tatsachengestützte Gefahrenprognose*) is needed. Anyone, who supports an organisation that has been classified as violent in an annual report of the Federal Office for the Protection of the Constitution, risks immediate deportation. S/he will have one week to file a legal action before the German Supreme Administrative Court against the deportation order.

New provisions are also being introduced against what the German media have recently called ‘preachers of hate’. The term refers to people who publicly incite others to violence, make threats of violence or in general endanger “free and democratic constitutional principles or public security”. These people will now be regularly expelled from the country. If they cannot be deported due to the possibility of inhuman treatment in their home country, the German state will place them under police or secret service surveillance.

#### Asylum Seeker Benefits Act

The Asylum Seeker Benefits Act will not be abolished and the number of people who, according to this act, receive reduced social benefits will be extended.

#### Departure centres

Under the new law, the federal states may accommodate individuals obliged to leave the country in so-called ‘departure institutions’ with the purpose of enforcing ‘voluntary’ departures. In order to achieve this goal, particular social pressure is exerted on people by introducing a daily duty to report to the authorities and regular interviews. The Immigration Act does not state a maximum length of stay in the departure institutions.

### **18. Changes in refugee determination procedure, appeal or deportation procedures**

See Section 17 above.

### **19. Important case-law relating to the qualification for refugee status and other forms of protection**

#### Federal Constitutional Court, (2BvR 134/01, resolution of 14-05-2003)

The decision concerns a Kurdish woman from Turkey who pleaded that soldiers had repeatedly sexually abused and raped her. Her asylum application was dismissed on the grounds that the incidents were to be considered ‘excessive acts’ that could not be imputed to the Turkish state. A subsequent asylum application, during which a medical statement was also presented as evidence, remained unsuccessful (Article 16(a) of the Constitution). Once again, the administrative court identified the events as ‘excessive acts’ and only obligated the federal office to ascertain the requirements of Section 53 Article 6(1) of the Aliens Act. The application for appeal was also dismissed.

#### Federal Administrative Court: change of religion can justify protection for asylum seekers (BVerwG 1 C 9.03)

An Iranian asylum seeker, who had entered Germany in 1996 and converted to Protestantism while his application was still undergoing the review process, appealed against the rejection of his asylum claim by the Upper Administrative Court in Bautzen. The court believed that his conversion to Protestantism would not pose a danger to his life and well being, if he returned to Iran, as, in their opinion, he could practise his new faith there.

The Federal Administrative Court overruled this decision, stating that, in accordance with the jurisdiction of the Federal Constitutional Court, the freedom to practise a faith should be taken into account when deciding on an asylum application. According to the court, the country of origin should guarantee the so-called “religious subsistence level”, which includes the freedom to declare one’s belief and attend non-public church services; it does not include however attending public church services. The Federal Administrative Court sent the case back to the Upper Administrative Court in Bautzen asking to establish whether these conditions could be applied to the applicant, i.e. whether he could practise his faith in Iran without risks.

**20. Developments in the use of the exclusion clauses of the 1951 Geneva Convention in the context of the national security debate**

The exclusion clauses of the 1951 Geneva Convention have finally been incorporated in German law, in Section 51(1) of the Immigration Act.

**21. Developments regarding readmission and cooperation agreements**

In 2003, Germany signed readmission agreements with the Slovak Republic and France.

After reaching similar agreements with the former Yugoslavia (Serbia and Montenegro) and Albania in 2002, Federal Minister of Interior, Otto Schily (SPD) signed a bi-lateral re-admission agreement with the Slovak Republic. Under this agreement, Germany will be entitled to send the following groups of migrants: Slovak nationals who have migrated to Germany without having a legal residence status, and third-country nationals and stateless persons that have entered Germany illegally via Slovak territory, or are in possession of a Slovak residence permit or visa. According to Mr. Schily, the agreement “constitutes a significant step towards tackling uncontrolled migration”, as the Slovak Republic has now become one of the main transit countries for illegal migrants, especially from Asia.

(Source: Press Statement, BMI 19.02.03)

**THE SOCIAL DIMENSION**

**22. Changes in the reception system**

See Section 17.

**23. Changes in the social welfare policy relevant to refugees**

See Section 17.

**24. Changes of policy in refugee integration**

The constitution of the Council of Experts for immigration and Integration by the Federal Minister of Interior, Otto Schily, took place on 26 May 2003 at the *Bundesamt für Migration und Flüchtlinge* (Federal Office for Migration and Refugees) in Nuremberg.

The Council is responsible for monitoring Germany’s admission and integration policies, for presenting update migration figures and for producing regular annual reports on migration movements in the Federal Republic of Germany, including possible future developments. These reports shall also analyse movements of ethnic German re-settlers (*Spätaussiedler*), visa policies and asylum applications and procedures.

**25. Changes in family reunion policy**

See Section 17.

**OTHER POLICY DEVELOPMENTS**

**26. Developments in resettlement policy**

As already mentioned, at the beginning of this legislative period, the Federal Government agreed to offer 500 places to third country nationals within the framework of a resettlement programme run by UNHCR. Not a single refugee has been resettled in Germany within the framework of this programme so far.

**27. Developments in return policy**

See Section 16.

**28. Developments in border control measures**

No information provided.

**29. Other developments in refugee policy**

There were no further developments in refugee policy in 2003.

**POLITICAL CONTEXT**

**30. Government in power in 2003**

Since the 1998 elections, the Social Democrat Party has been in power in coalition with the Greens.

**31. Government's policy vis-à-vis EU developments**

No other EU Member State is more vehement than Germany in supporting the principle of unanimity voting and makes such full use of it in its attempt to lower EU standards to German levels. For months, the German government managed to block the agreement on the Qualification Directive. As regards to the Reception Directive, Germany succeeded in pushing through its restriction concerning the freedom of movement of asylum seekers (the so-called 'compulsory residence') and in preventing that the access to the labour market for asylum seekers be regulated at European level.

Due to German (and Austrian) pressure, the Family Reunification Directive now contains a specific exception, allowing for the reduction of migrant children's age from 18 to 12. This provision, along with others, provoked widespread indignation within the European Parliament and for this reason it was decided to bring this directive before the European Court in Luxembourg. Meanwhile, the new Immigration Act brought the age for the purpose of family reunification concerning migrant children from 12 to 16.