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Asylum Procedure Act (AsylVfG)

Asylum Procedure Act (AsylVfG) in the version promulgated on 2 September 2008 (Federal Law Gazette I, p. 1798), last amended by Article 4 of the Act of 22 November 2011 (Federal Law Gazette I, p. 2586)

Chapter One. General provisions

Section 1 Scope

(1) This Act shall apply to foreigners applying for protection from political persecution pursuant to Article 16 a (1) of the Basic Law or from persecution in accordance with the Convention of 28 July 1951 relating to the status of refugees (Federal Law Gazette 1953 II, p. 559).

(2) This Act shall not apply to displaced foreigners as defined in the Act on the Legal Status of Displaced Aliens in the Federal Territory in the applicable revised version published in the Federal Law Gazette Part III, no. 243-1.

Section 2 Legal status of persons granted asylum

(1) In the Federal territory, persons granted asylum status shall enjoy the legal status pursuant to the Convention relating to the status of refugees.

(2) Provisions granting a more favourable legal status to persons granted asylum status shall remain unaffected.

(3) Foreigners who were granted asylum status in the territory defined in Article 3 of the Unification Treaty before the accession of this territory to the Federal Republic of Germany became effective shall be regarded as persons entitled to asylum.

Section 3 Recognition of refugee status

(1) A foreigner is a refugee within the meaning of the Convention related to the status of refugees if in the country of his citizenship or in which he habitually resided as a stateless person he faces the threats listed in Section 60 (1) of the Residence Act.

(2) A foreigner does not qualify as a refugee under (1) where there are serious reasons for considering that he

1. has committed a crime against peace, a war crime or a crime against humanity as defined in the international instruments drawn up to make provision for such crimes,

2. has committed a serious non-political crime outside the Federal territory before being admitted as a refugee, in particular a cruel act, even if it was intended with an allegedly political aim, or

3. acted in violation of the aims and principles of the United Nations.

The first sentence shall also apply to foreigners who instigated others or otherwise participated in the commission of the crimes or acts mentioned therein.

(3) Nor shall a foreigner be a refugee under (1) if he enjoys the protection or assistance of an organization or institution of the United Nations, with the exception of the United Nations High Commissioner for Refugees under Article 1, section D of the Convention relating to the status of refugees. (1) and (2) shall apply if such protection or assistance is no longer provided, without having finally clarified the situation of the person affected in accordance with the relevant resolutions of the General Assembly of the United Nations.

(4) A foreigner who is a refugee under (1) shall be granted refugee status unless he fulfils the prerequisites of Section 60 (8) first sentence of the Residence Act.

Section 4

Binding character of decisions under asylum law

The decision on the asylum application shall be binding in all matters in which recognition as a person entitled to asylum or recognition of refugee status are relevant in law. This shall not apply to extradition procedures or to procedures pursuant to Section 58a of the Residence Act.

Section 5

Federal Office

(1) The Federal Office for Migration and Refugees (Federal Office) shall decide on asylum applications and the recognition of refugee status. In accordance with this Act, the Federal Office shall also be responsible for measures and decisions taken under foreigners law.

(2) The Federal Ministry of the Interior shall appoint the head of the Federal Office. The head shall ensure the proper organization of asylum proceedings.

(3) The head of the Federal Office is to set up a branch office at each Central Reception Facility for Asylum Applicants (reception centre) with a capacity to accommodate 500 persons or more. He may set up additional branch offices in consultation with the *Länder*.

(4) The head of the Federal Office can arrange with the *Länder* to supply the necessary material and personnel resources in order to fulfil his duties in the branch offices. The staff supplied to him shall be bound by his instructions with regard to their tasks to the same extent as the staff of the Federal Office. The details shall be governed by means of an administrative agreement between the Federation and the *Land*.

Section 6

(repealed)

Section 7

Collection of personal data

(1) The authorities responsible for implementing this Act may, for the purpose of implementing this Act, collect personal data as far as necessary for them to fulfil their duties. Data within the meaning of Section 3 (9) of the Federal Data Protection Act and corresponding provisions contained in the data protection acts of the *Länder* may be collected insofar as needed in individual cases to fulfil duties.

(2) The data shall be collected from the data subject. They may also be collected from other public authorities, foreign authorities and non-public agencies without involving the data subject if

1. this is allowed or expressly required by this Act or another legal provision;
2. it is obviously in the interest of the data subject and there is no reason to assume that he would refuse to give consent if he were aware of his personal data being collected;
3. the cooperation of the data subject is not sufficient or would require an unreasonable effort;
4. the task at hand, by its very nature, makes it necessary to collect data from other persons or agencies or

5. it is necessary in order to verify information provided by the data subject. Data may only be collected on the basis of sentence 2, items 3 and 4 and from foreign authorities or non-public agencies if there are no indications suggesting that overriding interests of the data subject that warrant protection might be affected.

Section 8

Transmission of personal data

(1) Upon request (Section 7 (1)), public authorities shall inform the authorities responsible for the implementation of this Act of any circumstances that have come to their knowledge, provided that this does not conflict with particular legal provisions on the use of such information or with the overriding interests of the data subject that warrant protection.

(2) The competent authorities shall immediately inform the Federal Office of any formal extradition request submitted by a foreign state and any request for arrest received in conjunction with the announcement of an extradition request and of the conclusion of the extradition procedure, if the foreigner concerned has filed an asylum application.

(2a) The authorities entrusted with implementing this Act shall inform the competent authorities under Section 10 of the Act on Benefits for Asylum Applicants of any circumstances or measures under this Act that are required for the payment of benefits to those entitled to benefits under the Act on Benefits for Asylum Applicants as well as of any work permits granted to these persons that said authorities have been informed of and information on the expiry, revocation or rescinding of work permits.

(3) The data collected under this Act may, for the purposes of enforcing the Residence Act and for the health care of asylum applicants as well as for criminal prosecution measures and, upon request, for the prosecution of administrative offences, be transmitted to the public bodies in charge of these measures and be processed and used by them, as far as this is necessary for them to perform the tasks for which they are responsible. The data may be transmitted to a body mentioned in Section 35 (1) of the Social Code, Book I, and processed and used by them as far as this is necessary to identify and prosecute the unjustified receipt of benefits under the Social Code, Book XII, of health and accident insurance benefits or of unemployment benefits or subsistence benefits under the Social Code, Book II, and where there are actual indications as to such unjustified receipt of benefits. Section 88 (1) through (3) of the Residence Act shall be applied *mutatis mutandis*.

(4) The transmission of data on the basis of other legal regulations shall remain unaffected.

(5) The provision contained in Section 20 (5) of the Federal Data Protection Act and corresponding provisions in the data protection acts of the *Länder* shall not apply.

Section 9

United Nations High Commissioner for Refugees

(1) The foreigner may contact the United Nations High Commissioner for Refugees (UNHCR). He may present his views regarding individual cases in sets of proceedings to the Federal Office. The UNHCR may visit foreigners, including those in detention and in airport transit zones.

(2) At the request of the UNHCR, the Federal Office shall provide the United Nations High Commissioner for Refugees with the information necessary to fulfil his tasks under Article 35 of the Convention relating to the status of refugees.

(3) Decisions on asylum applications and other information, in particular the grounds for persecution given, may, unless presented in an anonymous form, be transmitted only if the foreigner himself has applied to the United Nations High Commissioner for Refugees or if the foreigner's consent is otherwise documented.

(4) The data may be used only for the purpose for which they were transmitted.

(5) (1) through (4) shall apply accordingly to organizations acting by order of the United Nations High Commissioner for Refugees on Federal territory on the basis of an agreement with the Federal Republic of Germany.

Section 10

Provisions concerning delivery

- (1) During the asylum procedure, the foreigner shall ensure that communications of the Federal Office, the responsible foreigners authority and any court he has resorted to can reach him at all times; in particular, he shall inform the aforementioned agencies of any change of address without delay.
- (2) The foreigner shall accept any notifications and informal communications at the most recent address indicated in his asylum application or of which he informed the agency in question if he has neither appointed an authorized representative nor designated an authorized receiving agent for the procedure or if notifications or communications cannot be delivered to these. The same shall apply if the last known address at which the foreigner resides or is required to reside, has been communicated by a public agency. The foreigner shall accept notifications and informal communications of public bodies other than those listed in (1) which are mailed to the address at which he shall accept notifications and informal communications of the Federal Office pursuant to the first and second sentences above. If the communication cannot be delivered, it shall be regarded as having been delivered at the time of mailing even if the communication is returned as undeliverable.
- (3) Where one or both parents have applied for asylum with their minor, unmarried children or their spouses and where the same address is valid for all family members pursuant to (2), certain decisions and communications for them may be combined in one notice or one communication and addressed to one spouse or parent. The address shall list all family members who are above age 16 to whom the decision or the communication is addressed. The decision or communication shall explicitly state to whom it applies.
- (4) A reception centre shall deliver any notification and informal communication sent to the address of the reception centre to those foreigners who, under (2) above, shall accept such notifications and informal communications. Mail delivery and distribution hours for each working day shall be publicly displayed. The foreigner shall ensure that incoming mail can be given to him at the reception centre within the mail delivery and distribution hours. On being given to the foreigner, any notification and informal communication shall be delivered; in other cases they shall be regarded as having been delivered three days after being delivered to the reception centre.
- (5) Provisions on substituted service shall remain unaffected.
- (6) Should it be necessary for a communication to be delivered outside the Federal territory, service shall be made by public notice. The provisions of Section 10 (1) sentences 2 and 3 and (2) shall apply.
- (7) At the time of application, the foreigner shall be informed of these service provisions in writing and the foreigner shall acknowledge the receipt of this information.

Section 11

Exclusion of appeals to the Federal Office

There shall be no right to appeal to the Federal Office against measures and decisions issued in accordance with this Act.

Section 11a

Temporary suspension of decisions

The Federal Ministry of the Interior may temporarily suspend decisions of the Federal Office under this Act for certain countries of origin for up to six months, if the assessment of the asylum and deportation situation requires special clarification. Suspension pursuant to sentence 1 may be extended.

Chapter Two.

Asylum procedures

Sub-chapter one.

General rules of procedure

Section 12
Legal capacity of minors

(1) 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.

(2) In applying this Act, the provisions of the Civil Code shall determine whether a foreigner is to be regarded as a minor or an adult. If a foreigner is of age under the law of his home country, his legal capacity and capacity to contract shall remain unaffected.

(3) Except as provided by a contrary decision of the family court, either parent is authorized to represent a child under the age of 16 in the asylum procedure if the other parent does not reside in the Federal territory or if his place of residence in the Federal territory is not known.

Section 13
Application for asylum

(1) An asylum application shall be deemed to have been made if it is clear from the foreigner's written, oral or otherwise expressed desire that he is seeking protection in the Federal territory from political persecution or that he wishes protection from deportation or other return to a country where he would be subject to the threats defined in Section 60 (1) of the Residence Act.

(2) Every application for asylum constitutes an application for recognition of refugee status as well as for recognition of asylum status, unless the foreigner expressly objects.

(3) Any foreigner who does not have the necessary entry documents shall apply for asylum at the border (Section 18). In the case of unauthorized entry he shall immediately report to a reception centre (Section 22) or apply for asylum with the foreigners authority or with the police (Section 19).

Section 14
Filing an application for asylum

(1) The application for asylum shall be filed at the branch office of the Federal Office assigned to the reception centre responsible for receiving the foreigner. Before filing the application, the foreigner shall be informed in writing and shall acknowledge receipt of the information that following the withdrawal or non-appealable rejection of his application, under Section 10 (3) of the Residence Act, the issuing of a residence title will be subject to restrictions. This information shall be provided without delay in the cases listed in (2), first sentence, no. 2.

(2) The asylum application shall be made at the Federal Office, if the foreigner

1. holds a residence title with an overall validity of more than six months;
2. is under arrest or other official custody, in a hospital, a sanatorium or an asylum or in a youth welfare institution, or
3. is not yet 16 years of age and his legal representative is not required to live in a reception centre.

The foreigners authority shall immediately transmit any written application it has received to the Federal Office.

(3) If, in the case of (2), first sentence, no. 2, the foreigner is in

1. detention pending trial,
2. prison,
3. custody preparatory to deportation pursuant to Section 62 (2) of the Residence Act,

4. detention pending deportation pursuant to Section 62 (3) first sentence, no. 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 pending deportation under Section 62 (3) first sentence, nos. 1a through 5 of the Residence Act, an application for asylum shall not hinder the ordering or continuation of custody awaiting deportation. The foreigner 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.

Section 14a Family unity

(1) When an application for asylum is filed in accordance with Section 14, the application also includes each unmarried child under age 16 residing in the Federal territory at the time without the right to freedom of movement or without a residence title, if the child had not already filed an application for asylum.

(2) If a foreigner's unmarried child under age 16 enters Federal territory or is born here after the foreigner has applied for asylum, the Federal Office shall be notified immediately if one parent has permission to reside (*Aufenthaltsgestattung*) or is residing in Federal territory after the asylum procedure has been completed without a residence title or with a residence permit pursuant to Section 25 (5) of the Residence Act. Such notification shall be the responsibility of both the child's representative as defined in Section 12 (3) and the foreigners authority. As soon as the Federal Office has received the notification, the application for asylum shall be considered filed on behalf of the child.

(3) The child's representative as defined in Section 12 (3) may waive the processing of an asylum application for the child at any time by stating that the child faces no threat of political persecution.

(4) (1) through (3) shall also be applied if the application for asylum was filed before 1 January 2005 and the child was in the Federal territory at that time, arrived later or was born here.

Section 15 General obligations to cooperate

(1) Foreigners shall be personally required to cooperate in establishing the facts of the case. This shall also apply to foreigners represented by a legal adviser.

(2) The foreigner shall be required in particular to

1. provide the necessary information orally, and on request also in writing, to the authorities responsible for implementing this Act;
2. inform the Federal Office without delay if he has been granted a residence title;
3. comply with statutory and official orders which require him to report to specific authorities or institutions or to personally appear there;
4. present, hand over and surrender his passport or passport substitute to the authorities responsible for implementing this Act;
5. present, hand over and surrender all necessary certificates and any other documents in his possession to the authorities responsible for implementing this Act;

6. cooperate, if he does not have a valid passport or passport substitute, in obtaining an identity document;

7. undergo the required identification measures.

(3) Necessary certificates and other documents within the meaning of (2), no. 5 shall include in particular

1. any certificates and documents apart from the passport or passport substitute which might aid in establishing the foreigner's identity and nationality;

2. visas, residence permits and other border-crossing documents issued by other countries;

3. air tickets and other transport tickets;

4. documents concerning the travel route from the home country to the Federal territory, the means of transport used and time spent in other countries after leaving the country of origin and before entering the Federal territory; and

5. any other certificates and documents which the foreigner uses to substantiate his claim or which are relevant for the decisions and measures to be taken under asylum and foreigners law, including the decision and enforcement of possible deportation to another country.

(4) The authorities responsible for implementing this Act may search the foreigner and the items he carries with him if he fails to comply with his obligations under (2), nos. 4 and 5 above, and if there are indications that he has such documents. The foreigner may be searched only by a person of the same sex.

(5) The withdrawal of the asylum application shall not terminate the foreigner's obligation to cooperate.

Section 16

Documenting, establishing and verifying identity

(1) The identity of any foreigner who applies for asylum shall be established by means of identification measures unless he is under 14 years of age. Pursuant to sentence 1 above, only photographs and prints of all ten fingers may be taken. In order to determine the foreigner's country or region of origin, the foreigner's oral statements may be recorded on audio and data media other than at his formal hearing. Such recordings may only be made if the foreigner is informed beforehand. These recordings shall be kept at the Federal Office.

(1a) In order to verify the authenticity of the foreigner's document or identity, the biometric and other data stored electronically within the passport, official passport substitute or other identity documents may be read, the necessary biometric data obtained from the foreigner and compared with the biometric data from the document. Biometric data pursuant to sentence 1 shall include only fingerprints, photograph and iris scan.

(2) Responsibility for the measures pursuant to (1) and (1a) shall rest with the Federal Office and, if the foreigner applies for asylum there, also with the authorities under Sections 18 and 19 as well as with the reception centre where the foreigner registers.

(3) The Federal Criminal Police Office shall assist in evaluating the data obtained pursuant to (1) first sentence for the purpose of establishing identity. For this purpose it may also use identity records that it has stored in order to carry out its duties. The Federal Criminal Police Office may not inform the authorities listed in (2) why these records are being stored, unless this is permissible under other regulations.

(4) The Federal Criminal Police Office shall file data obtained under (1) first sentence separately from other identity records.

(4a) Data obtained pursuant to (1) first sentence for purposes of establishing the identity or nationality of the foreigner may be transmitted to the Federal Office of Administration in order to compare them with data pursuant to Section 49b of the Residence Act.

Section 89a of the Residence Act shall apply accordingly.

(5) The processing and use of data obtained pursuant to (1) shall also be permissible for the purpose of establishing the foreigner's identity or identifying evidence for purposes of criminal prosecution and threat prevention. The data may furthermore be used in order to identify unknown or missing persons.

(6) Data obtained pursuant to (1) shall be destroyed ten years after the enforceable completion of the asylum procedure; data obtained pursuant to (1a) shall be destroyed without delay after verifying the authenticity of the foreigner's document or identity.

Section 17 Interpreters/translators

(1) If the foreigner does not have sufficient command of the German language, an interpreter, translator or other language mediator shall be provided at the hearing as standard procedure in order to translate into the foreigner's native language or another language which the foreigner can reasonably be supposed to understand and in which he can communicate.

(2) The foreigner shall have the right to call in, at his own expense, a suitable interpreter/translator of his choice.

Sub-chapter two. Initiating the asylum procedure

Section 18 Tasks of the border authority

(1) Any foreigner requesting asylum with an authority charged with police supervision of cross-border traffic (border authority) shall immediately be referred to the competent reception centre, or, if that is not known, to the nearest one, for the purpose of registration.

(2) The foreigner shall be refused entry if

1. he enters from a safe third country (Section 26a);
2. there are indications that another country is responsible for processing the asylum application based on European Community law or on an international treaty and proceedings to admit or re-admit have been initiated; or
3. he poses a threat to the general public because he is subject to an enforceable custodial sentence of at least three years' imprisonment in the Federal Republic of Germany on account of a particularly serious criminal offence and if he left the country less than three years previously.

(3) The foreigner shall be removed if the border authority finds him near the border immediately before or after an illegal entry and if the conditions in (2) apply.

(4) If a foreigner enters from a safe third country (Section 26a), the authorities shall refrain from refusing entry or from removing the foreigner if

1. the Federal Republic of Germany is responsible for processing an asylum application based on European Community law or an international treaty with the safe third country; or if
2. the Federal Ministry of the Interior has so ordered on humanitarian grounds, for reasons of international law or in the political interests of the Federal Republic of Germany.

(5) The border authority shall take the foreigner's photograph and fingerprints.

Section 18a Procedure in case of entry by air

(1) In the case of foreigners from a safe country of origin (Section 29a) who wish to enter via an airport and apply for asylum with the border authority, the asylum procedure shall be

conducted prior to the decision on entry, if the foreigner can be accommodated on the airport premises during the procedure or cannot be accommodated on the airport premises only because of a necessary hospital stay. The same applies to foreigners who request asylum from the border authorities at an airport and who are unable to prove their identity with a valid passport or other means of identification. The foreigner shall immediately be given the opportunity to file an asylum application with the branch office of the Federal Office assigned to the border checkpoint. The Federal Office shall interview the foreigner in person without delay. The foreigner shall immediately thereafter be given the opportunity to contact a legal adviser of his choice, unless he has already secured legal counsel. Section 18 (2) shall remain unaffected.

(2) If the Federal Office rejects the asylum application as being manifestly unfounded, the Federal Office shall warn the foreigner pursuant to Sections 34 and 36 (1) that he will be deported should he enter the country.

(3) If the asylum application is rejected as being manifestly unfounded, the foreigner shall not be allowed to enter the country. The decisions of the Federal Office together with the refusal of entry shall be delivered by the border authority. The border authority shall immediately send a copy of its decision and the administrative file of the Federal Office to the competent administrative court.

(4) Any application for temporary legal remedy pursuant to the Code of Administrative Court Procedure shall be filed within three days from the date the decisions of the Federal Office and of the border authority are delivered. The application may be filed with the border authority. The foreigner shall be informed of this. Section 58 of the Code of Administrative Court Procedure shall be applied mutatis mutandis. The decision should be issued in writing. Section 36 (4) shall be applied. If an application is filed on time, the refusal of entry shall not be enforced prior to the court decision (Section 36 (3) ninth sentence).

(5) Any application pursuant to (4) shall be aimed at the granting of entry and, in the case of entry, against the deportation warning. The court order allowing the foreigner to enter the country shall at the same time serve to suspend deportation.

(6) The foreigner shall be allowed entry if

1. the Federal Office informs the border authority that it is not able to decide the case within a short time;
2. the Federal Office has not taken a decision on the asylum application within two days of its being filed;
3. the court has not taken a decision on an application pursuant to (4) within two weeks, or
4. the border authority has not requested detention as required by Section 15 (6) of the Residence Act or the judge has refused to order or extend detention.

Section 19

Tasks of the foreigners authority and the police

(1) Any foreigner requesting asylum at a foreigners authority or the police of a *Land* shall, in cases pursuant to Section 14 (1) above, immediately be referred to the competent reception centre, or, if that is not known, to the nearest one, for the purpose of registration.

(2) The foreigners authority and the police shall take the foreigner's photograph and fingerprints (Section 16 (1)).

(3) A foreigner who has entered the country without authorization from a safe third country (Section 26a) may be removed to such country without previously being referred to a reception centre in accordance with Section 57 (1) and (2) of the Residence Act. In this case the foreigners authority shall order the foreigner to be removed as soon as it has been ascertained that the removal can be carried out.

(4) Provisions on arrest and detention shall remain unaffected.

Section 20

Referral to a reception centre

(1) Pursuant to Section 18 (1) or Section 19 (1), foreigners are required to comply with a referral to a reception centre immediately or by the deadline specified by the relevant authority.

(2) If after making an asylum request, the foreigner fails to comply with (1) purposely or due to gross negligence, Section 71 shall apply mutatis mutandis to any later application for asylum. In derogation from Section 71 (3) third sentence, a hearing shall be held. The authority at which the foreigner has requested asylum shall inform him in writing of these legal consequences, and the foreigner shall acknowledge receipt of this information. If it is impossible to inform the foreigner pursuant to the third sentence, the foreigner shall be escorted to the reception centre.

(3) The authority referring the foreigner to a reception centre shall immediately inform the reception centre in writing of the referral, the asylum request and the information provided to the foreigner pursuant to (2) third sentence. The reception centre shall immediately, or no later than one week after receiving the information pursuant to the first sentence, inform the assigned branch office of the Federal Office whether the foreigner has been admitted to the reception centre and shall send the information pursuant to the first sentence.

Section 21

Retention and transfer of documents

(1) Any authority referring a foreigner to a reception centre shall take into custody the documents pursuant to Section 15 (2) nos. 4 and 5 and transmit them without delay to the reception centre. Any identification records shall be enclosed.

(2) If a foreigner reports directly to the reception centre responsible for receiving him, the documents shall be taken into custody by the reception centre.

(3) The reception centre responsible for receiving the foreigner shall forward the documents without delay to the assigned branch office of the Federal Office.

(4) Copies of the documents taken into custody shall be provided to the foreigner on request.

(5) The documents shall be returned to the foreigner when they are no longer needed for the asylum procedure or for measures terminating residence.

Section 22

Registration requirements

(1) Any foreigner required to file his asylum application with a branch office of the Federal Office (Section 14 (1)) shall register in person at a reception centre. This centre shall receive him or refer him to the reception centre responsible for receiving him; in case of referral, the foreigner's fingerprints and photograph shall be taken, if possible.

(2) The *Land* government or its designated agency may determine that

1. registration pursuant to (1) shall be effected at a specific reception centre,
2. any foreigner referred from another *Land* shall initially report to a specific reception centre.

The foreigner's fingerprints and photograph shall be taken during his stay in the specific reception centre referred to in the first sentence. In cases where the provisions of Sections 18 (1) and 19 (1) above apply, the foreigner shall be referred to this reception centre.

(3) Pursuant to (1) second sentence or (2), foreigners are required to comply with a referral to the responsible reception centre immediately or by the deadline specified by the reception centre. If the foreigner fails to comply with the requirement in the first sentence purposely or due to gross negligence, Section 20 (2) and (3) shall apply mutatis mutandis. The reception centre shall inform the foreigner in writing of these legal consequences, and the foreigner shall acknowledge receipt of this information.

Section 22a

Taking charge of an applicant for the purpose of processing an asylum application

Any foreigner who has been taken charge of under European Community law or an international treaty for the purpose of processing an asylum application shall have the same status as a foreigner who has applied for asylum. The former is required to proceed, upon or immediately after entry, to the agency named by the Federal Ministry of the Interior or by its designated agency.

**Sub-chapter three.
Procedure before the Federal Office**

Section 23

Filing an application at the branch office

- (1) Any foreigner who has been received by the reception centre shall be required to appear in person and without delay or at the date determined by the reception centre at the branch office of the Federal Office for the purpose of filing his asylum application.
- (2) If the foreigner fails to comply with (1) purposely or due to gross negligence, Section 71 shall apply to any later application for asylum mutatis mutandis. In derogation from Section 71 (3) third sentence, a hearing shall be held. The reception centre shall inform the foreigner in writing of these legal consequences against acknowledgement of receipt. The reception centre shall inform its assigned branch office of the Federal Office without delay that the foreigner has been admitted to the reception centre and given the information under the third sentence.

Section 24

Obligations of the Federal Office

- (1) The Federal Office shall clarify the facts of the case and compile the necessary evidence. After the application for asylum has been filed, the Federal Office shall inform the foreigner in a language he can reasonably be supposed to understand about the course of the procedure and about his rights and duties, especially concerning deadlines and the consequences of missing a deadline. It shall interview the foreigner in person. The interview may be dispensed with if the Federal Office intends to recognize the foreigner's entitlement to asylum or if the foreigner claims to have entered the Federal territory from a safe third country (Section 26a). The interview shall be dispensed with if an asylum application has been filed for a child under the age of 6 born in the Federal territory and if the facts of the case have been sufficiently clarified based on the case files of one or both parents.
- (2) After the application has been filed, it shall also be incumbent on the Federal Office to decide whether there are any obstacles to deportation pursuant to Section 60 (2) through (5) or (7) of the Residence Act.
- (3) The Federal Office shall inform the foreigners authority without delay of
1. its decision and
 2. grounds presented by the foreigner or otherwise apparent
 - a) for suspending deportation, in particular the need to obtain documents necessary to conduct a return, or
 - b) which, pursuant to Section 25 (3) second sentence (a) through (d) of the Residence Act, could constitute an obstacle to issuing a residence permit.
- (4) If a decision on the asylum application is not taken within six months, the Federal Office shall inform the foreigner upon request as to when a decision is likely to be taken.

Section 25

Interview

- (1) The foreigner himself shall present the facts justifying his fear of political persecution and provide the necessary details. The necessary details shall include information concerning residences, travel routes, time spent in other countries and information on whether a

procedure aimed at obtaining recognition as a foreign refugee or an asylum application has already been initiated or completed in other states or on the Federal territory.

(2) The foreigner shall relate all other facts or circumstances which preclude deportation or deportation to a specific country.

(3) If the foreigner produces such facts only at a later stage, they may be ignored if the decision of the Federal Office would otherwise be delayed. The foreigner shall be informed of this provision and of Section 36 (4) third sentence.

(4) For a foreigner required to reside in a reception centre, the interview should be arranged to coincide with the filing of the asylum application. It shall not be necessary to issue a special summons requiring the foreigner and his legal adviser to appear. This provision shall apply *mutatis mutandis* if the foreigner is informed of the interview date at the time he files his application or within one week thereafter. If the interview cannot take place on the same day, the foreigner and his legal adviser shall be informed without delay of the date of the interview. If the foreigner fails to appear at the interview without an adequate excuse, the Federal Office shall decide, on the basis of the record as it stands, taking into account the foreigner's failure to cooperate.

(5) In the case of foreigners who are not required to reside in a reception centre, a personal interview may be dispensed with if the foreigner fails to comply with a summons for a personal interview without an adequate excuse. In this case, the foreigner shall be given the opportunity to state his case in writing within a period of one month. If the foreigner fails to state his case within this period, the Federal Office shall decide on the basis of the record as it stands, taking into account the foreigner's failure to cooperate. Section 33 shall remain unaffected.

(6) The interview shall not be open to the public. It may be attended by persons who show proof of their identity as representatives of the Federation, of a *Land*, the United Nations High Commissioner for Refugees or the Special Commissioner for Refugee Matters at the Council of Europe. The head of the Federal Office or his deputy may allow other persons to attend.

(7) A record of the interview containing the essential information produced by the foreigner shall be kept. A copy of this record shall be given to the foreigner or sent to him with the Federal Office's decision.

Section 26

Asylum status and refugee status for families

(1) The spouse of a person granted asylum status shall be entitled to asylum status if

1. the recognition of the foreigner as a person entitled to asylum is incontestable,
2. the couple was already married in the country where the person granted asylum status is politically persecuted,
3. the spouse filed an asylum application before or at the same time as the person granted asylum status or immediately after entry and
4. there is no reason to repeal or withdraw the recognition of the person granted asylum status.

(2) A child of the foreigner who was minor and unmarried at the time the asylum application was filed shall be granted asylum status if the foreigner's asylum status is incontestable and there is no reason to repeal or withdraw this status.

(3) (1) and (2) shall not apply to spouses or children who fulfil the prerequisites listed in Section 60 (8) first sentence of the Residence Act or Section 3 (2) (2) shall not apply to children of a foreigner granted asylum status pursuant to (2).

(4) (1) through (3) shall be applied *mutatis mutandis* to spouses and children of foreigners granted refugee status. Refugee status shall take the place of asylum status.

Section 26a
Safe third countries

(1) Any foreigner who has entered the Federal territory from a third country within the meaning of Article 16a (2) first sentence of the Basic Law (safe third country) cannot invoke Article 16a (1) of the Basic Law. He shall not be granted asylum status. The first sentence above shall not apply if

1. the foreigner held a residence title for the Federal Republic of Germany at the time he entered the safe third country;
2. the Federal Republic of Germany is responsible for processing an asylum application based on European Community law or on an international treaty with the safe third country; or if
3. the foreigner has not been refused entry or removed on account of an order pursuant to Section 18 (4) no. 2 above.

(2) In addition to the Member States of the European Union, safe third countries are those listed in Appendix I.

(3) The Federal Government shall resolve by statutory ordinance without the consent of the Bundesrat that a country listed in Appendix I is no longer deemed a safe third country if changes in its legal or political situation give reason to believe that the requirements mentioned in Article 16a (2) first sentence of the Basic Law have ceased to exist. The ordinance shall expire no later than six months after it has entered into force.

Section 27
Safety elsewhere from persecution

- (1) A foreigner who was already safe from political persecution in another third country shall not be recognized as a person entitled to asylum.
- (2) If the foreigner holds a travel document issued by a safe third country (Section 26a) or by another third country pursuant to the Convention related to the status of refugees, it shall be presumed that he was safe from political persecution in that country.
- (3) If before entering the Federal territory, a foreigner has lived for more than three months in another third country where he is not threatened by political persecution, it shall be presumed that he was safe there from political persecution. This shall not apply if the foreigner provides plausible evidence that deportation to another country where he is threatened by political persecution could not be ruled out with reasonable certainty.

Section 27a
Responsibility of another country

An application for asylum shall be inadmissible if another country is responsible for processing an asylum application based on European Community law or an international treaty.

Section 28
Post-flight reasons

(1) As a rule, a foreigner shall not be recognized as being entitled to asylum if the threat of political persecution is based on circumstances resulting from a deliberate decision by the foreigner after leaving his country of origin, unless this decision is in line with firm convictions on which he clearly acted while still in his country of origin. The first sentence shall not apply in particular if the foreigner, due to his age and level of maturity in the country of origin, was not yet able to form firm convictions of his own.

(1a) A threat pursuant to Section 60 (1) of the Residence Act may be based on events that occurred after the foreigner left his country of origin, and in particular on conduct by the foreigner that expresses a continuing conviction or orientation that already existed in the country of origin.

(2) If the foreigner makes a follow-up application after withdrawal or incontestable rejection of an earlier asylum application, and the new application is based on circumstances of his own creation after the withdrawal or incontestable rejection of the earlier application, he cannot as a rule be granted refugee status in a follow-up procedure.

Section 29

Applications for asylum to be disregarded

(1) It shall be determined that an asylum application is to be disregarded if it is obvious that the foreigner was already safe from political persecution in another third country and if it is possible to return him to this country or to another country where he is safe from political persecution.

(2) If it is impossible to return him within a period of three months, the asylum procedure shall be continued. The foreigners authority shall inform the Federal Office without delay.

Section 29a

Safe country of origin

(1) The asylum application of any foreigner from a country within the meaning of Article 16a (3) first sentence of the Basic Law (safe country of origin) shall be turned down as being manifestly unfounded, unless the facts or evidence produced by the foreigner give reason to believe that he faces political persecution in his/her country of origin in spite of the general situation there.

(2) In addition to the Member States of the European Union, safe countries of origin are those listed in Appendix II.

(3) The Federal Government shall resolve by statutory ordinance without the consent of the Bundesrat that a country listed in Appendix II is no longer deemed a safe country of origin if changes in its legal or political situation give reason to believe that the requirements mentioned in Article 16a (3) first sentence of the Basic Law have ceased to exist. The ordinance shall expire no later than six months after it has entered into force.

Section 30

Manifestly unfounded applications for asylum

(1) An asylum application shall be manifestly unfounded if the prerequisites for recognition as a person entitled to asylum and the prerequisites for granting refugee status are obviously not met.

(2) In particular, an asylum application shall be manifestly unfounded if it is obvious from the circumstances of the individual case that the foreigner remains in the Federal territory only for economic reasons or in order to evade a general emergency situation or an armed conflict.

(3) An unfounded asylum application shall be rejected as being manifestly unfounded if

1. key aspects of the foreigner's statements are unsubstantiated or contradictory, obviously do not correspond to the facts or are based on forged or falsified evidence;
2. the foreigner misrepresents his identity or nationality or refuses to state his identity or nationality in the asylum procedure;
3. he has filed another asylum application or asylum request using different personal data;
4. he filed an asylum application in order to avert an imminent termination of residence although he had had sufficient opportunity to file an asylum application earlier;
5. he grossly violated his obligations to cooperate pursuant to Section 13 (3) second sentence, Section 15 (2) nos. 3 through 5, or Section 25 (1) above, unless he is not responsible for violating his obligations to cooperate or there are important reasons why he was unable to comply with his obligations to cooperate;

6. he has enforceably been expelled pursuant to Sections 53 and 54 of the Residence Act; or

7. the asylum application is filed on behalf of a foreigner without legal capacity under this Act, or is considered under Section 14a to have been filed after asylum applications by the parent(s) with the right of custody have been incontestably rejected.

(4) Furthermore, an asylum application shall be rejected as manifestly unfounded if the requirements of Section 60 (8) first sentence of the Residence Act or of Section 3 (2) apply.

(5) An application filed with the Federal Office shall also be rejected as manifestly unfounded if, due to its content, it does not constitute an asylum application in the sense of Section 13 (1).

Section 31

Decision of the Federal Office on asylum applications

(1) The decision of the Federal Office shall be issued in writing. It shall contain reasoning in writing and be delivered to those concerned without delay, along with information on legal remedies. If no representative has been appointed for the procedure, a translation of the result of the decision and of the information on legal remedies into a language the foreigner can reasonably be assumed to understand shall be enclosed; foreigners granted asylum status and foreigners granted refugee status or in whose case the Federal Office has issued a deportation ban pursuant to Section 60 (2) through (5) or (7) of the Residence Act shall also be informed of the resulting rights and duties. If the asylum application is rejected only pursuant to Section 26a or Section 27a, the decision together with the deportation order under Section 34a shall be delivered to the foreigner himself. It may also be delivered to him by the authority responsible for deportation or for carrying out deportation. If the foreigner has an authorized representative or if he has named an authorized receiving agent, a copy of the decision shall be forwarded to the representative or agent.

(2) In decisions on relevant asylum applications and in decisions pursuant to Section 30 (5) it shall be expressly determined whether the foreigner is to be granted refugee status and asylum status. The latter determination shall be dispensed with if the application was restricted to determining whether the applicant should be granted refugee status.

(3) In cases pursuant to (2) and in decisions on asylum applications to be disregarded it shall be determined whether there are reasons precluding deportation pursuant to Section 60 (2) through (5) or (7) of the Residence Act. This may be dispensed with if the foreigner is recognized as being entitled to asylum or granted refugee status.

(4) If the asylum application is rejected only pursuant to Section 26a it shall only be determined that the foreigner is not entitled to asylum status because he entered the Federal territory from a safe third country. In cases listed in Section 26 (1) through (3), Section 26 (4) shall remain unaffected.

(5) If a foreigner is granted asylum status pursuant to Section 26 (1) or (2), the determinations pursuant to Section 60 (2) through (5) and (7) of the Residence Act and the granting of refugee status pursuant to Section 3 (4) should be dispensed with. If a foreigner is granted refugee status pursuant to Section 26 (4), the determinations pursuant to Section 60 (2) through (5) and (7) of the Residence Act should be dispensed with.

(6) If the asylum application is rejected as inadmissible pursuant to Section 27a, the foreigner shall be informed in the decision which other country is responsible for carrying out the asylum procedure.

Section 32

Decision in case of withdrawal or abandonment of the application

If the asylum application is withdrawn or abandoned in the meaning of Section 14a (3), the Federal Office shall indicate in its decision that the asylum procedure has been discontinued and whether there are any obstacles to deportation pursuant to Section 60 (2) through (5) or (7) of the Residence Act. In the cases listed in Section 33, a decision shall be made on the basis of the record as it stands.

Section 32a

Suspension of the procedure

(1) The asylum procedure of a foreigner shall be suspended as long as he is granted temporary protection under Section 24 of the Residence Act. As long as the procedure is suspended, the foreigner's legal status shall not be determined by this Act.

(2) The asylum application shall be deemed to be withdrawn if the foreigner does not notify the Federal Office within one month of the expiry of his residence permit that he intends to continue the asylum procedure.

Section 33

Abandonment of the application

(1) An asylum application shall be deemed to have been withdrawn if the foreigner has failed to pursue it for a period exceeding one month, despite a request by the Federal Office. The request by the Federal Office shall inform the foreigner of the consequences resulting from the preceding sentence.

(2) The asylum application shall furthermore be deemed to have been withdrawn if the foreigner has travelled to his country of origin during the asylum procedure.

(3) The foreigner shall be turned back at the border if upon entry into the country it is determined that he travelled to his country of origin during the asylum procedure and the asylum application is therefore deemed to have been withdrawn pursuant to (2). A decision of the Federal Office pursuant to Section 32 shall not be required. Section 60 (1) through (3) and (5) and Section 62 of the Residence Act shall be applied mutatis mutandis.

Sub-chapter four.

Termination of residence

Section 34

Deportation warning

(1) Pursuant to Sections 59 and 60 (10) of the Residence Act, the Federal Office shall issue a written deportation warning if

1. the foreigner is not granted asylum status,
2. the foreigner is not granted refugee status,
3. the conditions stipulated in Section 60 (2) through (5) and (7) of the Residence Act are not met or deportation is permissible on an exceptional basis, regardless of compliance with the conditions stipulated in Section 60 (7) sentence 1 of the Residence Act, and
4. the foreigner does not hold a residence title.

A hearing of the foreigner prior to issuing the deportation warning shall not be required. The foreigners authority shall remain competent in other respects for decisions pursuant to Section 59 (1) sentence 4 and subsection (6) of the Residence Act.

(2) The deportation warning is to be issued in conjunction with the decision on the asylum application. If no representative was appointed for the proceedings, the operative part of the deportation warning and the instruction on legal remedies shall be translated for the foreigner into a language which he can be reasonably expected to know.

Section 34a

Deportation order

(1) If the foreigner is to be deported to a safe third country (Section 26 a) or to a country responsible for processing the asylum application (Section 27a), the Federal Office shall order his deportation to this country as soon as it has been ascertained that the deportation can be carried out. This shall also apply if the foreigner has applied only for recognition of refugee status or if he has withdrawn the asylum application prior to the decision by the Federal Office. No prior deportation warning nor deadline shall be necessary.

(2) Deportation pursuant to (1) may not be suspended pursuant to Sections 80 or 123 of the Code of Administrative Court Procedure.

Section 35

Deportation warning in case of applications for asylum that are to be disregarded

In the cases under Section 29 (1), the Federal Office shall notify the foreigner that he will be deported to the country where he was safe from persecution.

Section 36

Procedure in cases where the application for asylum is to be disregarded

(1) In cases where the asylum application is to be disregarded or manifestly unfounded, the foreigner shall be given one week to leave the country.

(2) The Federal Office shall send to the persons involved a copy of their asylum file along with the decision. The administrative file shall be transmitted without delay to the competent administrative court along with proof of delivery.

(3) Appeals of the deportation warning pursuant to Section 80 (5) of the Code of Administrative Court Procedure shall be filed within one week of notification; the notice from the Federal Office is to be enclosed with the appeal. The foreigner shall be informed of this. Section 58 of the Code of Administrative Court Procedure shall be applied *mutatis mutandis*. The decision shall be taken in a written procedure; an oral court hearing in which the action is heard at the same time shall not be permitted. The decision is to be taken within one week of the expiry of the time-limit under (1) above. The chamber of the administrative court may extend the time-limit under sentence 5 above by one week at a time. The second and additional extensions of the time-limit shall be permissible only for serious reasons, in particular if the court is not able to take an earlier decision due to an unusually heavy court caseload. No deportation shall be permissible prior to a court decision if the appeal has been filed in time. A decision has been taken when the operative provisions of the decision have been signed by the judge or judges and are available at the registry of the chamber.

(4) An order to suspend deportation may be issued only if there are serious doubts as to the legality of the administrative act against which an appeal has been filed. Facts and evidence not stated by the persons involved shall not be considered unless they are obvious or known to the court. The introduction of facts and evidence which were not considered in the administrative procedure pursuant to Section 25 (3) and facts and circumstances within the meaning of Section 25 (2), which the foreigner did not produce in the administrative procedure may be left unconsidered by the court if the decision would otherwise be delayed.

Section 37

Further procedure in case of an appeal granted by court decision

(1) The decision of the Federal Office as to whether an application is to be disregarded and the deportation warning shall become ineffective if the appeal pursuant to Section 80 (5) of the Code of Administrative Court Procedure is granted by the administrative court. The Federal Office shall continue the asylum procedure.

(2) If, in the case of an asylum application which was turned down as being manifestly unfounded, an appeal pursuant to Section 80 (5) of the Code of Administrative Court Procedure is granted by court, the deadline for leaving the country shall expire 30 days after the non-appealable conclusion of the asylum procedure.

(3) (1) and (2) shall not apply if, due to the decision of the administrative court, deportation to one of the countries mentioned in the deportation warning becomes enforceable.

Section 38

Deadline for leaving the country in case of rejection for other reasons or withdrawal of the application

(1) In other cases where the foreigner is not recognized by the Federal Office as a person entitled to asylum, he shall be given 30 days to leave the country. If action is brought, the

deadline for leaving the country shall be 30 days after the non-appealable conclusion of the asylum procedure.

(2) If the asylum application is withdrawn prior to the decision of the Federal Office, the foreigner shall be given one week to leave the country.

(3) In cases where the asylum application is withdrawn or where action is brought, the foreigner may be granted a time-limit of up to three months if he agrees to leave the country voluntarily.

Section 39

Deportation warning following withdrawal of refugee status

(1) If the administrative court has withdrawn the entitlement to asylum or refugee status, the Federal Office shall issue a deportation warning without delay once the decision has become non-appealable. The foreigner shall be given 30 days to leave the country.

(2) If the revoked decision of the Federal Office does not state whether the conditions listed in Section 60 (2) through (5) or (7) of the Residence Act obtain, this statement shall be provided after the fact.

Section 40

Notification of the foreigners authority

(1) The Federal Office shall immediately inform the foreigners authority of the district where the foreigner is required to reside of any enforceable deportation warning and shall immediately provide it with any documents required for deportation. The same shall apply if the administrative court has ruled that the suspensive effect of an appeal based on a reason precluding deportation pursuant to Section 60 (2) through (5) or (7) of the Residence Act shall apply only with regard to deportation to the country concerned and if the Federal Office does not continue the asylum procedure.

(2) The Federal Office shall immediately inform the foreigners authority if the administrative court rules that the action brought against the deportation warning is to have a suspensive effect in cases pursuant to Sections 38 (2) and 39 above.

(3) If the Federal Office delivers the deportation order (Section 34a) to the foreigner, the Federal Office shall immediately inform the authority responsible for the deportation of such delivery.

Section 41

(repealed)

Section 42

Binding effect of decisions under foreigners law

The foreigners authority shall be bound by the decision of the Federal Office or the administrative court concerning the existence of reasons precluding deportation pursuant to Section 60 (2) through (5) or (7) of the Residence Act. The foreigners authority shall decide whether a reason precluding deportation pursuant to Section 60 (4) of the Residence Act has arisen or ceased to exist at a later stage; such decision shall not require the decision taken by the Federal Office to be suspended.

Section 43

Enforceability and suspension of deportation

(1) If the foreigner possessed a residence title, a deportation warning which is enforceable under the terms of this Act may not be enforced until the foreigner is also enforceably required to leave the country pursuant to Section 58 (2) second sentence of the Residence Act.

(2) If the foreigner has applied for an extension of a residence title with an overall validity of more than six months, the deportation warning shall not be enforceable until after the application has been rejected. In other respects, Section 81 of the Residence Act shall not preclude deportation.

(3) Where spouses or parents and their minor, unmarried children have filed an asylum application simultaneously or in each case without delay upon their entry, the foreigners authority may temporarily suspend deportation in order to enable the family to leave the country together. The foreigners authority shall issue to the foreigner a certificate confirming suspension of deportation.

**Section 43a
(repealed)**

**Section 43b
(repealed)**

**Chapter Three.
Accommodation and distribution**

Section 44

Setting up and maintaining reception centres

(1) The *Länder* shall be required to set up and maintain reception centres necessary to accommodate asylum applicants and to provide the necessary number of places in the reception centres for newly arrived asylum applicants per month allocated to them on the basis of their respective admission quotas.

(2) The Federal Ministry of the Interior or the authority designated by it shall inform the *Länder* each month of the number of new asylum applicants, the prospective trend and the prospective need for accommodation.

(3) Section 45 of Book Eight of the Social Code (Article 1 of the Act dated 26 June 1990, Federal Law Gazette I, p. 1163) shall not apply to reception centres.

Section 45

Admission quotas

The *Länder* may agree to define a key for distributing asylum applicants among the individual *Länder* (admission quota). Until such an agreement has been concluded, or if such an agreement should cease to exist, the admission quota for the current calendar year shall be based on the key calculated for the previous calendar year in line with tax revenues and population and published in the Federal Gazette by the office of the Bund-*Länder* Commission for Educational Planning and Research Promotion (Königstein key).

Section 46

Determination of the responsible reception centre

(1) The reception centre where the foreigner has registered shall be responsible for receiving him, if it has space available under the terms of the quota referred to in Section 45 and if the branch office of the Federal Office assigned to it processes asylum applications from the foreigner's country of origin. Where these prerequisites are not met, the reception centre designated in (2) shall be responsible for receiving the foreigner.

(2) Upon request by a reception centre, a central distributing agency designated by the Federal Ministry of the Interior shall indicate which reception centre is responsible for receiving the foreigner. This shall be based on the admission quotas referred to in Section 45, the available vacancies according to these quotas and finally the processing capacities of the competent branch office of the Federal Office with regard to the foreigners' countries of origin. If more than one reception centre meets the aforementioned criteria, the nearest one shall be designated to be responsible for receiving the foreigner.

(3) The requesting reception centre shall inform the central distributing agency only of the number of foreigners and their respective countries of origin. Spouses and parents with their minor, unmarried children shall be reported as a group.

(4) The *Länder* shall ensure that the central distributing agency has at all times the information needed to determine which reception centre is responsible, in particular

information on how many foreigners have arrived and departed, how full each reception centre is and how many vacancies each reception centre has.

(5) If there are no more vacancies in the reception centres of a *Land* which is nevertheless required under the quota system to accept foreigners, the government of the *Land* concerned or an authority designated by it shall inform the central distributing agency which reception centre is responsible for admitting foreigners.

Section 47

Residence in reception centres

(1) Foreigners required to file their asylum application with a branch office of the Federal Office (Section 14 (1)), shall be required to live for a period of up to six weeks, but no longer than three months, in the reception centre responsible for receiving them. The same shall apply in cases pursuant to Section 14 (2) no. 2 if the conditions under this provision cease to exist before the Federal Office has taken a decision.

(2) If the parents of a minor, unmarried child are required to live in a reception centre, the child may also live in the reception centre, even if he has not filed an asylum application.

(3) During the period of obligatory residence in a reception centre, the foreigner shall be required to ensure that the competent authorities and courts can contact him.

(4) Within 15 days of the filing of an asylum application, the reception centre shall inform the foreigner, if possible in writing and in a language which he can reasonably be assumed to understand, of his rights and duties under the Act on Benefits for Asylum Applicants. With the information referred to in the first sentence, the reception centre shall also inform the foreigner about who is able to provide legal counsel and which organizations can advise him on accommodation and medical care.

Section 48

Termination of the obligation to reside in a reception centre

The obligation to live in a reception centre shall end before three months have elapsed if the foreigner

1. is required to take up residence in another place or in other accommodation;
2. has been incontestably recognized as being entitled to asylum or incontestably granted refugee status; or
3. if he meets the requirements for a legal claim to a residence title under the Residence Act after having filed an application through marriage on Federal territory.

Section 49

Release from the reception centre

(1) The obligation to reside at a reception centre shall be terminated if a deportation warning is enforceable and it is impossible to enforce deportation at short notice; or if the foreigner is to be issued a residence permit pursuant to Section 24 of the Residence Act.

(2) The obligation may be terminated for reasons of public health, for other reasons of public security and order or for other compelling reasons.

Section 50

Distribution within a Land

(1) Foreigners shall be immediately released from the reception centre and distributed within the *Land* concerned if the Federal Office informs the responsible *Land* authority that

1. it is impossible to decide or to decide at short notice whether the asylum application is inadmissible, to be disregarded or is manifestly unfounded or whether the prerequisites listed in Section 60 (2) through (5) or (7) of the Residence Act are fulfilled by the foreigner, his spouse or his minor, unmarried child; or that

2. the administrative court has ruled that the action brought against the decision of the Federal Office shall have suspensive effect.

Distribution may also be carried out if the foreigner's obligation to live in the reception centre ceases for other reasons.

(2) The *Land* government or the authority designated by it shall be authorized to regulate distribution by means of a statutory ordinance if this is not regulated by *Land* law.

(3) The responsible *Land* authority shall inform the Federal Office within three working days of the district of the foreigners authority where the foreigner is to take up residence after the distribution procedure.

(4) The responsible *Land* authority shall issue the allocation decision. The allocation decision shall be issued in writing and shall include information on legal remedies. A justification shall not be required. A hearing of the foreigner concerned shall not be required. The allocation shall take into account the domestic community of spouses and their children who are under the age of 18.

(5) The allocation decision shall be delivered to the foreigner himself. If the foreigner is represented by a legal adviser or if he has designated an authorized receiving agent, the legal adviser or the authorized receiving agent shall also receive a copy of the allocation decision.

(6) The foreigner shall proceed without delay to the authority designated in the allocation decision.

Section 51

Distribution among Länder

(1) If a foreigner is not or no longer required to live in a reception centre, the domestic community of spouses and parents with their minor, unmarried children or other humanitarian reasons of comparable weight shall be taken into account also by means of allocation among the *Länder*.

(2) Allocation pursuant to paragraph (1) shall be effected at the foreigner's request. The responsible authority of the *Land* where the foreigner has requested residence shall decide on the request.

Section 52

Calculation of quotas

Asylum applicants admitted pursuant to Section 14 (2) no. 3, Section 14a and Section 51 shall be counted in the quotas under Section 45 above.

Section 53

Collective accommodation

(1) Foreigners who have filed an asylum application and are not or no longer required to live in a reception centre, should, as a rule, be housed in collective accommodation. Both the public interest and the foreigner's interests shall be taken into account in this context.

(2) The foreigner's obligation to live in collective accommodation shall end when the Federal Office has recognized him as a person entitled to asylum or when a court has required the Federal Office to recognize him, even if an appeal has been made, as long as the foreigner is able to prove that he has found accommodation elsewhere and that this will not result in additional costs for a public authority. The same shall apply if the Federal Office or a court grants the foreigner refugee status. In cases pursuant to sentences 1 and 2 above the obligation shall also terminate for the foreigner's spouse and minor children.

(3) Section 44 (3) shall apply *mutatis mutandis*.

Section 54

Notification of the Federal Office

The foreigners authority in whose district the foreigner is required to stay shall inform the Federal Office without delay

1. of the address under which summons may be served on the foreigner;

2. of any alert to determine the foreigner's place of residence.

Chapter Four.
Right of residence during the asylum procedure

Section 55
Permission to stay in Germany

(1) Foreigners seeking asylum shall be granted permission to stay (*Aufenthaltsgestattung*) in the Federal territory for the purpose of processing the asylum application. They shall not be entitled to stay in a specific *Land* or a specific place. Foreigners who have entered the Federal territory unlawfully from a safe third country (Section 26a) shall acquire permission to stay upon filing an asylum application.

(2) Filing an asylum application shall automatically cancel any exemption from the obligation to hold a residence title, cancel any residence title with an overall validity of up to six months and cancel the effects of an application for a residence title listed in Section 81 (3) and (4) of the Residence Act. Section 81 (4) of the Residence Act shall remain unaffected if the foreigner has held a residence title with an overall validity of more than six months and has applied for its extension.

(3) To the extent that acquiring or exercising a right or a privilege depends on the length of the stay in the Federal territory, the length of stay pursuant to (1) shall be counted only if the foreigner has been non-appealably granted asylum status or refugee status.

Section 56
Geographic restrictions

(1) The permission to stay (*Aufenthaltsgestattung*) shall be limited to the district of the foreigners authority where the reception centre responsible for receiving the foreigner is located. In cases pursuant to Section 14 (2) first sentence, permission to stay shall be limited to the district of the foreigners authority where the foreigner is staying.

(2) If the foreigner is required to take up residence in the district of another foreigners authority, permission to stay shall be limited to that district.

(3) Geographic restrictions shall remain in force, even after expiry of the permission to reside, until they are lifted. In derogation from the first sentence, geographic restrictions shall expire when residence is regarded as legal under Section 25 (1) third sentence or Section 25 (2) second sentence of the Residence Act or when a residence title is issued.

Section 57
Leaving the area of a reception centre

(1) A foreigner required to stay in a reception centre may be permitted by the Federal Office to temporarily leave the area specified in his permission to stay (*Aufenthaltsgestattung*) if compelling reasons so require.

(2) Such permission is to be granted without delay in order to enable the foreigner to keep appointments with legal representatives, the United Nations High Commissioner for Refugees and organizations providing welfare services to refugees.

(3) The foreigner shall need no permission to attend appointments at authorities or court hearings where his personal appearance is necessary. He shall inform the reception centre and the Federal Office of such appointments.

Section 58
Leaving an assigned area of residence

(1) A foreigner who is not or no longer required to stay in a reception centre may be allowed by the foreigners authority to temporarily leave the area for which his permission to stay is valid or to generally stay in the district of another foreigners authority. This permission shall be granted if an urgent public interest applies, if it is necessary for compelling reasons or if refusing permission would constitute undue hardship. Permission shall generally be granted if employment is to be carried out that is permitted pursuant to Section 61 (2), or if this is necessary for the purpose of attending school, in-company basic and further training or

studies at a state or state-recognised university or comparable training facility. This permission shall require the consent of the foreigners authority for whose district the general stay is permitted.

(2) Such permission is to be granted without delay in order to enable the foreigner to keep appointments with legal representatives, the United Nations High Commissioner for Refugees and organizations providing welfare services to refugees.

(3) The foreigner shall need no permission to attend appointments at authorities or court hearings where his personal appearance is necessary.

(4) A foreigner shall be allowed to temporarily leave without permission the area in which he is permitted to stay, if the Federal Office has granted him asylum status or if a court has required the Federal Office to recognize him, even if the decision is still subject to appeal; the same shall apply if the Federal Office or a court has granted the foreigner refugee status or protection against deportation pursuant to Section 60 (2), (3), (5) or (7) of the Residence Act. Sentence 1 shall apply mutatis mutandis to the foreigner's spouse and minor, unmarried children.

(5) The foreigners authority of a district (Kreis) or a municipality belonging to a district may grant a foreigner the general permission to stay temporarily anywhere within the district.

(6) In order to take local circumstances into account, *Land* governments may provide by statutory ordinance that foreigners shall need no permission to stay temporarily in an area encompassing the jurisdiction of multiple foreigners authorities, the area of the *Land* or, if agreement is reached between the participating *Land* governments, in the area of another *Land*.

Section 59

Enforcing geographical restrictions

(1) If necessary, the obligation to leave pursuant to Section 12 (3) of the Residence Act may, even without prior notification, be enforced by means of immediate force. The travel route and means of transport are to be prescribed.

(2) The foreigner shall be arrested and taken into custody upon order of the court in order to enforce the obligation to leave, if it cannot be guaranteed that he would voluntarily comply with the obligation to leave also in the cases listed in Section 56 (3) and if it would otherwise be considerably more difficult or even impossible to enforce this obligation.

(3) Measures pursuant to (1) and (2) above shall be the responsibility of

1. the police forces of the *Länder*,
2. the border authority where the foreigner asks for asylum,
3. the foreigners authority in whose district the foreigner is staying,
4. the reception centre where the foreigner registers and
5. the reception centre which has received the foreigner.

Section 60

Restrictions

(1) The permission to stay (*Aufenthaltsgestattung*) may be subject to conditions.

(2) Any foreigner who is not or no longer required to live in a reception centre, may be required

1. to take up quarters in a specific municipality or to live in specific accommodations,
2. to move to a specific municipality or a specific accommodation and to take up quarters there,
3. to stay and take up quarters in the district of another foreigners authority of the same *Land*.

An interview with the foreigner shall be required in cases pursuant to sentence 1, no. 2 if he has stayed in the municipality or accommodation for longer than six months. The interview shall be deemed to have taken place if the foreigner or his legal representative has been given the opportunity to comment on the accommodation arrangements within a period of two weeks. An interview shall be dispensed with if it is precluded by compelling public interests.

(3) Measures pursuant to (1) and (2) above shall be the responsibility of the foreigners authority to whose district the foreigner's stay is limited.

Section 61 Employment

(1) Foreigners shall not be allowed to take up paid employment as long as they are required to stay in a reception centre.

(2) An asylum applicant who has lawfully stayed in the Federal territory for a year may, in derogation from Section 4 (3) of the Residence Act, be permitted to take up employment if the Federal Employment Agency has granted its approval or a statutory instrument stipulates that taking up such employment is permissible without the approval of the Federal Employment Agency. Previous periods of tolerated or lawful residence shall be counted as part of the waiting period under sentence 1. Sections 39 through 42 of the Residence Act shall apply *mutatis mutandis*.

Section 62 Medical examination

(1) Foreigners who are required to stay in a reception centre or in collective accommodation shall be required to undergo a medical examination for communicable diseases including an x-ray of the respiratory organs. The supreme health authority of the *Land* or an authority designated by it shall determine the extent of the medical examination and the physician to conduct the examination.

(2) The authority responsible for the foreigner's accommodation shall be informed of the examination results.

Section 63 Certificate of permission to stay (Aufenthaltsgestattung)

(1) Within three days of filing an asylum application, the foreigner shall be issued a certificate of permission to reside (*Aufenthaltsgestattung*) containing the holder's photograph and personal information, unless the foreigner has a residence title. In the case of (3) second sentence, the foreigner shall be requested at the time of filing an asylum application to apply for this certificate to be issued to the foreigners authority with responsibility within the period specified in sentence 1.

(2) The certificate shall be valid for a limited period. As long as the foreigner is required to reside in a reception centre, it shall be valid for no more than three months, and otherwise for no more than six months.

(3) The Federal Office shall be responsible for issuing the certificate while the foreigner is required to reside in a reception centre. Otherwise, responsibility shall lie with the foreigners authority to whose district the permission to reside is limited. Conditions and changes to geographical restrictions may also be indicated in the certificate by the authorities which have imposed such conditions or changes.

(4) The certificate shall be collected when the permission to reside expires.

(5) Section 78a (5) of the Residence Act shall apply *mutatis mutandis*.

Section 64 Obligation to carry identification

(1) For the duration of the asylum procedure the foreigner shall comply with the requirement to prove his identity by carrying the certificate confirming the permission to reside (*Aufenthaltsgestattung*).

(2) The certificate shall not authorize the foreigner to cross the border.

Section 65

Return of passport

(1) After the foreigner has filed the asylum application, the passport or passport substitute shall be returned to the him if it is not needed in the further course of the asylum procedure and if the foreigner holds a residence title or if the foreigners authority grants him a residence title pursuant to the provisions of other laws.

(2) The passport or passport substitute may be temporarily returned to the foreigner if necessary for travel in cases pursuant to Section 58 (1) above or if necessary in order to renew the passport or to prepare the foreigner's departure.

Section 66

Determining the foreigner's whereabouts

(1) In order to establish his whereabouts, a foreigner may be reported to the Central Aliens Register and to the search systems of the police if his whereabouts are unknown and if

1. he fails to arrive within one week at the reception centre to which he has been referred;
2. he has left the reception centre and has failed to return within one week;
3. he has failed to comply within one week with an allocation order or an order pursuant to Section 60 (2), first sentence, or
4. if he cannot be reached at the address he gave or at the address of the accommodation where he is required to reside; the conditions under no. 4 shall be met if the foreigner has failed to receive, within a period of two weeks, a message delivered to the address.

(2) The reception centre, the foreigners authority in whose district the foreigner is required to stay and the Federal Office shall be responsible for taking action to report the foreigner. The foreigner may be reported only by persons who are specially authorized to do so.

Section 67

Termination of permission to stay

(1) The permission to stay (*Aufenthaltsgestattung*) shall cease to be valid

1. if the foreigner is refused entry or removed pursuant to Section 18 (2) and (3);
 - 1a. if the foreigner is refused entry pursuant to Section 33 (3);
2. if the foreigner has failed to file an asylum application within two weeks of requesting asylum;
3. upon delivery of the Federal Office's decision to the foreigner, if the asylum application has been withdrawn;
4. if a deportation warning issued pursuant to the provisions of this Act or pursuant to Section 60 (9) of the Residence Act has become enforceable;
5. upon announcement of a deportation order pursuant to Section 34a above;
- 5a. upon announcement of a deportation order pursuant to Section 58a of the Residence Act;
6. otherwise, if the decision of the Federal Office has become non-appealable.

(2) If the foreigner files an asylum application after the period specified in (1) no. 2, the permission to stay (*Aufenthaltsgestattung*) shall again become effective.

**Section 68
(repealed)**

**Section 69
(repealed)**

**Section 70
(repealed)**

Chapter Five.

Follow-up application, secondary application

Section 71

Follow-up application

(1) If, after the withdrawal or non-appealable rejection of a previous asylum application, the foreigner files a new asylum application (follow-up application), a new asylum procedure shall be conducted only if the conditions of Section 51 (1) through (3) of the Administrative Procedure Act are met; this shall be examined by the Federal Office. The same shall apply to a child's application for asylum if the representative under Section 14a (3) has waived the processing of the asylum application.

(2) The foreigner shall make the follow-up application in person at the branch office of the Federal Office assigned to the reception centre where the foreigner was required to reside during the previous asylum procedure. In the cases of Section 14 (2) first sentence, no. 2, or if the foreigner can prove that he is unable to appear in person, the follow-up application shall be filed in writing. The follow-up application shall be filed in writing with the central office of the Federal Office if

1. the branch office that would have been responsible pursuant to sentence 1 above no longer exists,
2. the foreigner was not required to reside at a reception centre during the previous asylum procedure. Section 19 (1) shall not apply.

(3) In the follow-up application the foreigner shall give his address as well as the facts and evidence to fulfil the conditions listed in Section 51 (1) through (3) of the Administrative Procedure Act. The foreigner shall provide this information in writing upon request. A hearing may be dispensed with. Section 10 above shall apply *mutatis mutandis*.

(4) If the conditions of Section 51 (1) through (3) of the Administrative Procedure Act are not met, Sections 34, 35 and 36 shall be applied *mutatis mutandis*; in the case of deportation to a safe third country (Section 26a) Section 34a shall be applied *mutatis mutandis*.

(5) If after a deportation warning or a deportation order issued pursuant to this Act has become enforceable following the filing of the previous asylum application, the foreigner files a follow-up application which does not lead to a new asylum procedure, a new time-limit and a new deportation warning or a deportation order shall not be required in order to enforce deportation. Deportation may be enforced only after notification by the Federal Office that the conditions of Section 51 (1) through (3) of the Administrative Procedure Act are not met, unless the foreigner is to be deported to the safe third country.

(6) (5) shall also apply if the foreigner temporarily left the Federal territory in the meantime. If the foreigner entered the Federal territory unlawfully from a safe third country (Section 26a), he may be removed to that country pursuant to Section 57 (1) and (2) of the Residence Act without prior notification by the Federal Office.

(7) If the foreigner's right of residence during the previous asylum procedure was geographically restricted, the last geographical restrictions shall continue to apply unless otherwise decided. In cases pursuant to (5) and (6) above, the responsibility for measures under foreigners law shall also lie with the foreigners authority in whose district the foreigner is staying.

(8) A follow-up application shall not preclude an order to take the foreigner into custody awaiting deportation unless a further asylum procedure is carried out.

Section 71a **Secondary application**

(1) If a foreigner files an asylum application (secondary application) in the Federal territory after having unsuccessfully applied for asylum in a safe third country (Section 26a) in which European Community law on the responsibility for processing asylum applications applies or which has concluded with the Federal Republic of Germany an international agreement, a further set of asylum proceedings shall only be carried out if the Federal Republic of Germany is responsible for carrying out the asylum proceedings and the conditions of Section 51 (1) through (3) of the Administrative Procedure Act are met; this shall be examined by the Federal Office.

(2) Sections 12 through 25, 33 and 44 through 54 shall apply mutatis mutandis to the procedure for determining whether the new asylum application is to be processed. A hearing may be dispensed with if one is not needed to determine that a new asylum application is not to be processed. Section 71 (8) shall apply mutatis mutandis.

(3) The deportation of the foreigner shall be temporarily suspended. Sections 56 through 67 shall apply mutatis mutandis.

(4) If a new asylum application is not processed, Sections 34 through 36 and 42 through 43 shall apply mutatis mutandis.

(5) If the foreigner files another asylum application after the withdrawal or the non-appealable rejection of his secondary application, Section 71 shall apply.

Chapter Six. **Expiry of legal status**

Section 72 **Cessation**

(1) Recognition of asylum status and refugee status shall cease to have effect if the foreigner

1. voluntarily or by accepting or renewing a national passport or by any other action places himself anew under the protection of the state whose nationality he holds;

1a. voluntarily returns to and settles in the country he left or stayed away from for fear of persecution; or

2. after losing his nationality has voluntarily regained it;

3. has obtained a new nationality upon application and enjoys the protection of the state whose nationality he has obtained or

4. renounces such recognition or withdraws his application before the decision of the Federal Office becomes non-appealable.

(2) The foreigner shall return the notification of recognition and the travel document to the foreigners authority without delay.

Section 73 **Revocation and withdrawal**

(1) Recognition of entitlement to asylum and refugee status shall be revoked without delay if the conditions on which such recognition is based have ceased to exist. In particular, this shall be the case if, after the conditions on which his recognition as being entitled to asylum or refugee status is based have ceased to exist, the foreigner can no longer refuse to claim the protection of the country of which he is a citizen, or if he, as a stateless person, is able to return to the country where he had his usual residence. The second sentence shall not apply if the foreigner can invoke compelling reasons, based on earlier persecution, for refusing to

return to the country of which he is a citizen, or, if he is a stateless person, in which he had his usual residence.

(2) Recognition as a person entitled to asylum shall be withdrawn if it was granted on the basis of incorrect information or withholding of essential facts and if such recognition could not be based on any other grounds. The first sentence shall be applied mutatis mutandis to refugee status.

(2a) No more than three years after the decision becomes non-appealable, it shall be examined whether the conditions for revocation pursuant to (1) or withdrawal pursuant to (2) exist. The foreigners authority shall be informed of the result. The foreigners authority shall also be informed which persons under Section 26 derive their entitlement to asylum or their refugee status from the foreigner and whether the conditions for withdrawal pursuant to (2b) exist in their case. If no revocation or withdrawal follows the examination, a subsequent discretionary decision pursuant to (1) or (2) shall be possible unless entitlement to asylum or refugee status is revoked or withdrawn because the conditions pursuant to Section 60 (8) first sentence of the Residence Act or Section 3 (2) exist.

(2b) In the cases referred to in Section 26 (1), (2) and (4), recognition of entitlement to asylum and refugee status shall be revoked if the conditions of Section 26 (3) first sentence exist. Recognition of entitlement to asylum shall furthermore be revoked if the recognition of the person entitled to asylum from whom the recognition was derived has expired, been revoked or withdrawn and if the foreigner could not be recognized as a person entitled to asylum for other reasons. In cases pursuant to Section 26 (4), refugee status shall be revoked if the refugee status of the foreigner from whom the recognition was derived, has expired, been revoked or withdrawn and if the foreigner could not be granted refugee status for other reasons.

(2c) For the purpose of naturalization procedures, the decision on the asylum application shall no longer be binding until the revocation or withdrawal becomes legally valid.

(3) The decision as to whether the conditions referred to in Section 60 (2), (3), (5) or (7) of the Residence Act are fulfilled shall be withdrawn if it is incorrect and revoked if the conditions are no longer fulfilled.

(4) The foreigner shall be informed in writing of a planned decision to revoke or withdraw pursuant to this provision or to Section 48 of the Administrative Procedure Act, and shall be given the opportunity to respond. He may be requested to respond in writing within a period of one month. If the foreigner fails to respond within this period, the decision shall be taken on the basis of the record as it stands; the foreigner shall be informed of these legal consequences.

(5) Communications or decisions of the Federal Office which require action by a certain deadline shall be delivered to the foreigner.

(6) If the recognition of entitlement to asylum or refugee status is non-appealably revoked or withdrawn or no longer in effect for other reasons, Section 72 (2) shall apply mutatis mutandis.

(7) If the decision on the asylum application became non-appealable before 1 January 2005, the examination pursuant to (2a) first sentence shall be carried out no later than 31 December 2008.

Section 73a

Foreign recognition as a refugee

(1) If the responsibility for issuing travel documents for a foreigner granted refugee status within the meaning of the Convention relating to the status of refugees has been transferred from a foreign country to the Federal Republic of Germany, the foreigner's legal status as a refugee in the Federal Republic of Germany shall cease to have effect if one of the circumstances listed in Section 72 (1) takes effect. The foreigner shall surrender the travel documents to the foreigners authorities without delay.

(2) The foreigner's legal status as a refugee in the Federal Republic of Germany shall be withdrawn if the requirements for granting refugee status are not met or no are longer met. Section 73 shall apply mutatis mutandis.

Chapter Seven. Court proceedings

Section 74

Deadline for court appeal, rejection of late submission

(1) An appeal against decisions pursuant to this Act shall be brought no later than two weeks after the decision has been delivered; in cases where an application pursuant to Section 80 (5) of the Code of Administrative Court Procedure must be filed within a period of one week (Section 36 (3) first sentence), the appeal shall also be brought within one week.

(2) The plaintiff shall submit the facts and evidence on which the action is based within a period of one month after the decision was delivered to him. Section 87b (3) of the Code of Administrative Court Procedure shall apply mutatis mutandis. The plaintiff shall be informed of the obligation pursuant to sentence 1 and the consequences resulting from failing to observe the time-limit. The submission of new facts and evidence shall remain unaffected.

Section 75

Suspensive effect of an appeal

An appeal brought against decisions pursuant to this Act shall have suspensive effect only in cases pursuant to Section 38 (1) and Section 73 above. An appeal brought against Federal Office decisions revoking or withdrawing the recognition of entitlement to asylum or refugee status because the conditions listed in Section 60 (8) first sentence of the Residence Act or Section 3 (2) are fulfilled shall have no suspensive effect. Section 80 (2) first sentence, no. 4 of the Code of Administrative Court Procedure shall remain unaffected.

Section 76

Individual judges

(1) In disputes resulting from this Act the Chamber should, as a rule, refer the legal dispute to one of its members for decision as an individual judge, unless the case presents particular difficulties of a factual or legal nature or unless the legal matter is of fundamental significance.

(2) In cases where the Chamber has already conducted oral proceedings, the dispute may not be referred to an individual judge unless a provisional, partial or interlocutory judgement has been passed in the meantime.

(3) After having heard the parties involved, the individual judge may refer the dispute back to the Chamber if it is clear from a substantial change in the proceedings that the legal matter is of fundamental significance. It shall not be possible to refer the matter to the individual judge a second time.

(4) In temporary relief proceedings a member of the Chamber shall decide as an individual judge. The individual judge shall refer the dispute to the Chamber if the legal matter is of fundamental significance or if he intends to deviate from previous rulings by the Chamber.

(5) A judge subject to an initial probationary period may not act as an individual judge within the first six months of his appointment.

Section 77

Decision of the court

(1) In disputes resulting from this Act, the court shall base its decision on the factual and legal situation at the time of the last oral proceedings; if the decision is taken without oral proceedings, it shall be based on the situation at the time the decision is taken. Section 74 (2), second sentence shall remain unaffected.

(2) The court shall dispense with a further presentation of the facts and of the reasons for its decision, provided that it follows the statements and justification of the administrative act

against which the appeal was filed and so states in its decision, or provided that the parties concerned unanimously renounce such presentation.

Section 78 **Legal remedy**

(1) If the administrative court rejects an action brought in connection with legal disputes resulting from this Act as manifestly inadmissible or manifestly unfounded, its judgment shall be non-appealable. The same shall apply if only the plaintiff's complaint against the decision on the asylum application has been rejected as being manifestly inadmissible or manifestly unfounded, while the remainder of the plaintiff's complaint has been rejected as inadmissible or unfounded.

(2) In the remaining cases, the parties concerned shall be entitled to file an appeal against the administrative court's judgment if the appeal is granted by the higher administrative court. There shall be no revision of the administrative court's judgment.

(3) An appeal shall be granted only if

1. the legal matter is of fundamental significance or
2. the judgment deviates from a decision of the higher administrative court, the Federal Administrative Court, the Joint Panel of the highest Federal courts or the Federal Constitutional Court and rests on this deviation or
3. one of the parties claims a defect in the proceedings pursuant to Section 138 of the Code of Administrative Court Procedure and if such a defect exists.

(4) A request for appeal shall be made within a period of one month after the judgment was delivered. The request shall be filed with the administrative court. It shall indicate the judgment to be appealed. The request shall state the reasons why an appeal should be granted. Filing the request shall impede the legal force of the judgment.

(5) The higher administrative court shall decide whether to grant the request; the court shall not be required to give any reasons for its decision. The original judgment shall become final upon rejection of the request. If the higher administrative court grants the request, the application procedure shall be continued in the form of appellate proceedings; there shall be no need to file an appeal.

(6) (repealed)

(7) Any appeal pursuant to Section 84 (2) of the Code of Administrative Court Procedure shall be filed within two weeks from the time the court decision was delivered.

Section 79 **Special provisions governing appeals**

(1) In the proceedings before the higher administrative court, Section 128a of the Code of Administrative Court Procedure shall apply mutatis mutandis to statements and evidence which the plaintiff has failed to submit within the time-limit given in Section 74 (2) first sentence.

(2) Section 130 (2) and (3) of the Code of Administrative Court Procedure shall not apply.

Section 80 **Inadmissibility of appeals**

Subject to the provisions of Section 133 (1) of the Code of Administrative Court Procedure, an appeal against decisions on cases brought under the present Act shall be inadmissible.

Section 80a **Suspension of the proceedings**

(1) When an appeal is brought, Section 32a (1) above shall apply mutatis mutandis. The suspension shall have no influence on time-limits for filing or justifying appeals.

(2) The appeal shall be regarded as withdrawn if the plaintiff does not notify the court within one month of the expiry of the residence permit pursuant to Section 24 of the Residence Act that he intends to pursue the legal action proceedings.

(3) The Federal Office shall inform the court without delay of the issue and the expiry of the residence permit pursuant to Section 24 of the Residence Act.

Section 81

Abandonment of the proceedings

In legal proceedings pursuant to this Act, the action shall be deemed to have been withdrawn if the plaintiff, despite a request by the court, has failed for a period exceeding one month to pursue the proceedings. The plaintiff shall bear the costs of the proceedings. The request by the court shall inform the plaintiff of the consequences resulting from the first and second sentences above.

Section 82

Inspection of the files in temporary relief proceedings

In proceedings under temporary relief, access to the files shall be granted at the court's registry. The files may be handed over to the authorized lawyer to take to his home or office premises, if it can be ruled out that this will delay the proceedings. The second sentence shall apply mutatis mutandis to the dispatching of files.

Section 83

Special panels of deciding judges

(1) Disputes under the present Act should be aggregated at special panels of deciding judges.

(2) The *Land* governments may form, by virtue of statutory instruments, special arbitration bodies at the administrative courts to deal with disputes under the present Act and to determine the seat of such bodies. The *Land* governments may confer this power on other authorities. The arbitration bodies formed pursuant to the first sentence above should have their seat close to the relevant reception centres.

Section 83a

Notification of the foreigners authority

The court may informally notify the foreigners authority of the result of the proceedings.

Section 83b

Court costs, value of the subject-matter

Court costs (fees and expenses) shall not be charged in disputes under the present Act.

Chapter Eight.

Fines and punishment of criminal offences

Section 84

Incitement to fraudulent application for asylum

(1) Anyone who incites or helps a foreigner to provide incorrect or incomplete information during the asylum procedure before the Federal Office or during the judicial proceedings in order for the applicant to be recognized as being entitled to asylum or to have determined that the conditions of Section 60 (1) of the Residence Act are met, shall be punished with imprisonment of up to three years or with a fine.

(2) In particularly serious cases a prison sentence of up to five years or a fine shall be imposed. As a rule, a case shall be considered particularly serious if the perpetrator

1. receives or expects to receive a financial advantage for an act referred to in (1) above, or
2. repeatedly acts or acts for more than five foreigners.

(3) In the cases referred to in (1), anyone shall be punishable by a prison sentence of between six months and ten years who

1. is motivated by commercial interests or
2. acts as a member of a gang formed for the purpose of committing such offences on a recurring basis.

(4) Any attempt to commit such offences shall be punishable.

(5) Section 73d of the Criminal Code shall be applied in the cases listed in (3) no. 1. Sections 43a and 73d of the Criminal Code shall apply in the cases listed in (3) no. 2.

(6) Anyone who commits an act referred to in (1) for the benefit of a family member in the meaning of Section 11 (1) no. 1 of the Criminal Code shall be exempt from punishment.

Section 84a

Commercial and organized encouragement to fraudulent application for asylum

(1) Anyone who, motivated by commercial interests and as a member of a gang formed for the purpose of committing such offences on a recurring basis, commits offences covered by Section 84 (1), shall be punishable by imprisonment for a term of between one and ten years.

(2) In less serious cases the penalty shall be imprisonment for six months to five years.

(3) Sections 43a and 73d of the Criminal Code shall be applied.

Section 85

Other criminal offences

Anyone

1. failing, despite the provisions of Section 50 (6), also in conjunction with Section 71a (2) first sentence above, to report without delay to the authority indicated;
2. repeatedly violating residence restrictions pursuant to Section 56 (1) or (2), either paragraph also in conjunction with Section 71a (3) above;
3. violating an enforceable obligation pursuant to Section 60 (1), also in conjunction with Section 71a (3) banning or restricting paid employment;
4. failing to comply in time with an enforceable order pursuant to Section 60 (2) first sentence, also in conjunction with Section 71a (3); or
5. pursuing paid employment in violation of Section 61 (1), also in conjunction with Section 71a (3);

shall be punished by imprisonment of up to one year or a fine.

Section 86

Fines

(1) Any foreigner who violates a residence restriction pursuant to Section 56 (1) or (2), either paragraph also in conjunction with Section 71a (3), shall be deemed to have committed an administrative offence.

(2) Such an administrative offence may be punished with a fine not to exceed two thousand five hundred Euros.

Chapter Nine.

Transitional and final provisions

Section 87

Transitional provisions

(1) The following transitional provisions shall apply to the administrative procedure:

1. Asylum procedures already started shall be completed in accordance with the legal provisions previously applicable if the Federal Office has sent its decision for delivery to the foreigners authority before this Act has entered into force. If an asylum procedure was final before this Act entered into force, the Federal Office shall be responsible for deciding whether obstacles precluding deportation pursuant to Section 53 of the Foreigners Act exist, as well as for issuing a deportation warning only if a new asylum application is processed.

2. Follow-up applications filed before this Act entered into force shall be decided by the foreigners authority in accordance with the legal provisions previously applicable.

3. Foreigners who filed an asylum application before this Act entered into force shall be distributed among the *Länder* in accordance with the legal provisions previously applicable.

(2) The following transitional provisions shall apply to legal remedies and to court proceedings:

1. In cases pursuant to (1) nos. 1 and 2, the deadline for filing complaints shall be based on the legal provisions previously applicable; the local responsibility of the administrative court shall be determined pursuant to Section 52, no. 2, third sentence of the Code of Administrative Court Procedure in the version applicable before the present Act entered into force.

2. The admissibility of a legal remedy against an administrative act shall be determined based on the legal provisions previously applicable if notice of the administrative act was given before the present Act entered into force.

3. The admissibility of a legal remedy against a court decision shall be based on the legal provisions previously applicable if the decision was pronounced or officially delivered before the present Act entered into force.

4. If an appeal filed under the legal provisions previously applicable has suspensive effect, the provisions of the present Act on the exclusion of suspensive effect shall not apply.

5. In court proceedings where a request pursuant to Section 33 of the Asylum Procedure Act in the version as promulgated on 9 April 1991 (Federal Law Gazette I, p. 869), amended by Article 7, Section 13 in conjunction with Article 11 of the Act of 12 September 1990 (Federal Law Gazette I, p. 2002) was made before the present Act entered into force, this provision shall continue to apply.

Section 87a

Transitional provisions for the amendments which entered into force on 1 July 1993

(1) Unless stated otherwise in the following provisions, the provisions of the present Act, with the exception of Sections 26a and 34a, shall also apply to foreigners who filed an asylum application prior to 1 July 1993. Sections 27 and 29 (1) and (2) shall apply *mutatis mutandis* to foreigners who have entered from a Member State of the European Communities or from one of the countries listed in Appendix I.

(2) The following transitional provisions shall apply to the administrative procedure:

1. Section 10 (2) second and third sentences and (3) and (4) shall apply if the foreigner has additionally been informed in writing of the provisions therein.

2. Section 33 (2) shall apply only to foreigners who travelled to their country of origin after 1 July 1993.

3. For follow-up applications filed prior to 1 July 1993, the provisions of Sections 71 and 87 (1) no. 2 shall apply in the version applicable up to that time.

(3) The following transitional provisions shall apply to legal remedies and court proceedings:

1. The admissibility of an appeal against an administrative act shall be determined based on the law previously applicable if such administrative act was announced prior to 1 July 1993.
2. The admissibility of an appeal against a court decision shall be determined based on the provisions previously applicable if the decision was pronounced or officially delivered before the present Act entered into force.
3. Section 76 (4) shall not apply to procedures pending prior to 1 July 1993.
4. A referral to an individual judge carried out prior to 1 July 1993 shall remain unaffected by Section 76 (5).
5. Section 83 (1) shall not be applied up to and including 31 December 1993.

Section 87b

Transitional provision for the amendments which entered into force on 1 September 2004

Section 6 in the version applicable prior to 1 September 2004 shall continue to apply to court proceedings pursuant to the present Act pending prior to 1 September 2004.

Section 88

Authorization to issue statutory instruments

(1) The Federal Ministry of the Interior, by statutory ordinance with the consent of the Bundesrat, may determine which authorities are responsible for executing European Community law and international agreements governing the responsibility for processing asylum applications, in particular regarding

1. requests made to other countries to admit or re-admit foreigners;
2. decisions on requests of other countries to admit or re-admit foreigners;
3. sharing of information with other countries and the European Community, as well as notices to the foreigner concerned; and
4. the collection, transmission and comparison of fingerprints of the foreigner concerned.

(2) The Federal Ministry of the Interior shall be authorized, by statutory ordinance with the agreement of the Bundesrat, to draw up samples and modalities for issuing the certificates referred to in Section 63.

(3) By statutory ordinance the *Land* government may transfer responsibilities of the reception centre to other *Land* authorities.

Section 89

Restriction of fundamental rights

(1) The fundamental rights of physical integrity (Article 2 (2), first sentence of the Basic Law) and freedom of the person (Article 2 (2), second sentence of the Basic Law) shall be curtailed under the terms of this Act.

(2) The procedure to be applied in case of deprivation of liberty shall comply with Book 7 of the Act on Procedures in Family Cases and in Matters concerned with Non-contentious Litigation.

Section 90

(repealed)

Appendix I (ad Section 26a)

(Reference: Federal Law Gazette I 2008, p. 1822)

Norway

Switzerland

Footnotes

In the version promulgated on 2 September 2008 Federal Law Gazette I, p. 1798

Appendix II (ad Section 29a)

(Reference: Federal Law Gazette I 2008, p. 1822)

Ghana

Senegal

Footnotes

Appendix II: In the version promulgated on 2 September 2008, Federal Law Gazette I,
p. 1798;

The inclusion of Ghana is compatible with the Basic Law (100-1), according to the decision
of the Federal Constitutional Court of 14 May 1996 I 952 - 2 BvR 1507/93 and 2 BvR
1508/93 -