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Addressing Vulnerabilities of Protection Seekers in German Federalism

Research Report 2020 on the Identification and Assistance of Vulnerable Persons in Asylum and Reception Procedures and Humanitarian Admission

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The photo for the cover image is #840400976 on iStock. It was chosen as it symbolises the federalism in Germany, through which the asylum procedure is centralised, but the reception of asylum seekers differs in each German state.

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Addressing Vulnerabilities of Protection Seekers in German Federalism

Research Report 2020 on the Identification and Assistance of Vulnerable Persons in Asylum and Reception Procedures and Humanitarian Admission

Work Package 3 | Deliverable 1

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EXECUTIVE SUMMARY

This research report has been published as part of the EU Horizon 2020 VULNER research project (www.vulner.eu). The VULNER research project is an international research initiative, which objective is to reach a more profound understanding of the experiences of vulnerabilities of migrants applying for asylum and other humanitarian protection statuses, and how they could best be addressed. It therefore makes use of a twofold analysis, which confronts the study of existing protection mechanisms towards vulnerable migrants (such as minors and victims of human trafficking), with the one of their own experiences on the ground.

This research report presents some of the intermediate research results of the VULNER project, based on the first phase of the project, which consisted of mapping out the vulnerability assessment mechanisms developed by state authorities in Germany, including how they are implemented on the ground through the practices of the public servants in charge.

The following research questions are addressed: What do the relevant domestic legislation, case-law, policy documents, and administrative guidelines reveal about how "vulnerabilities" are being assessed and addressed in the countries under study? Do the relevant state and/or aid agencies have a legal duty to assess migrants' vulnerabilities, and if yes, using which procedures, when and how? Following which legal and bureaucratic criteria? How do decision-makers (street-level bureaucrats) understand and perceive the 'vulnerabilities' of the migrants they meet on a daily basis? How do they address these 'vulnerabilities' through their everyday practices? What is their stance on existing legal requirements towards 'vulnerable' migrants? Which loopholes do they identify?

In **German federalism** the legal obligation in EU law and international law to identify vulnerable protection seekers concerns on the one hand the federal level (*Bund*) and on the other hand the German states (*Länder*), including municipalities (*Kommunen*). Together they have to identify vulnerable individuals and address their special needs. Due to the federalised system in Germany, three different procedures were examined. Firstly, the German **asylum procedure**, which is uniformly regulated by the *Bund*. Secondly, the reception and accommodation systems, which are left to each German state (*Land*), so that 16 different procedures were examined here. Thirdly, the **humanitarian admission** from abroad including resettlement and other complementary pathways to protection, which are decided by the *Bund* and the *Länder*.

We intensively analysed around **100 national, european and international legal documents** relevant to these questions, i. a. the German Reception Act and Asylum Act. We also conducted **interviews** with key actors on the legal practice. Among them the Federal Office for Migration and Refugees (1 interview), specialised NGOs (6 interviews), researchers (1 interview), lawyers (1 interview) and court judges (1 interview).

The research shows that **Germany has inconsistently applied the legal duties towards vulnerable protection seekers** as stipulated in the respective EU directives and international law. The federal Asylum Act only briefly mentions the obligation to identify vulnerable people and passes it on to the *Länder*. The reception and accommodation procedures of the *Länder* and thus their regulations and practices for vulnerable individuals vary greatly. The interviews with key actors and scientific experts in this field made also clear that the reality of the legal practice is often different from its legal regulations.

Nevertheless, the **Federal Office for Migration and Refugees has introduced some measures** to assess and address special vulnerabilities in the asylum procedure: special representatives, e. g. concerning trafficking in human beings; administrative regulations, e.g. a list of indicators for trafficking; a counselling service by employees of the Office. However, the practical impact of these measures for the identification of vulnerable persons is an open question.

In addition, some *Länder* have enacted **measures to protect asylum seekers from violence in reception centers**. These administrative regulations refer to the vulnerability of certain groups of people more frequently than any other legal documents. They serve as the main way to address vulnerability in reception centers. Their implementation differs widely, but in any case concrete legislative considerations of special needs remain the exception. The executive branch thus becomes a key actor – not only in implementation, but also in normatively addressing the needs of vulnerable protection seekers in general.

These administrative regulations of the *Länder* often refer to **specific vulnerability criteria**, such as minors, (pregnant) women, single parents and LGBTI+-persons. A comprehensive approach to the assessment of vulnerabilities, which is also open to other groups of people, as it is suggested in the EU directives, is missing. Although this practice is insufficient, it gives an idea of the current legal understanding of vulnerability in Germany.

The accommodation in **collective reception centers** is foreseen in principle for all protection seekers in Germany, including vulnerable persons. The explicit promotion of mass accommodation, as in the states of Bavaria or North Rhine-Westphalia, must be viewed particularly through a critical lens, especially with regard to its risks for vulnerable persons. The approach of the city-state Berlin, which considers the accommodation of vulnerable persons in collective reception centers *per se* as unreasonable (in derogation from the general principle), is in contrast noteworthy. In practice, however, this legally formulated goal does not have much impact, because of the difficult situation of the flat market in the city.

Between city states and territorial states there is a general **difference in supply for vulnerable protection seekers**. In territorial states, the access to support structures is much more difficult due to the peripheral accommodations, where it is sometimes impossible for counselling centers to provide their assistance simply because of the geographical distance. In this regard legal provisions, which enable vulnerable persons to move to shelters and flats (instead of obligating to live in the peripheral collective reception centers), turns out to be important.

Humanitarian admission and resettlement programs, which provide legal pathways to protection in Germany, mostly consider specific vulnerability criteria. At the same time, these programs also include selection criteria concerning the capacity for integration. Both levels, the *Bund* and the *Länder*, may decide (more or less) autonomously upon the issuance of an admission program. Since 2018 a range of municipalities and *Länder* demand publicly the admission of more forced migrants in their towns. The city-state Berlin even filed a complaint at the federal administrative court against the Federal Ministry of Interior to approve the admission of vulnerable persons from the hotspots in Greece to Berlin.

Overall, although the awareness for the special needs of vulnerable protection seekers is increasing, compared to international and European provisions, it has not yet been sufficiently implemented in law and administrative practice in Germany. In particular, identification and needs-based support are not seen as an integral part of the asylum and reception procedure so far.

Zusammenfassung

Dieser Forschungsbericht wurde im Rahmen des EU Horizon 2020 Forschungsprojekts VULNER veröffentlicht (www.vulner.eu). Das Projekt ist eine internationale Forschungsinitiative, die darauf abzielt, ein tieferes Verständnis für die Erfahrungen mit der Vulnerabilität von Migrant:innen zu erlangen, die Asyl oder einen anderen humanitären Schutzstatus beantragen, und wie diese am besten adressiert werden können. Sie bedient sich daher einer doppelten Analyse, die die Untersuchung bestehender Schutzmechanismen für Schutzsuchende (wie Minderjährige und Opfer von Menschenhandel) mit deren eigenen Erfahrungen vor Ort konfrontiert.

Dieser Forschungsbericht stellt einige der Zwischenergebnisse des VULNER-Projekts vor, basierend auf der ersten Phase des Projekts, die darin bestand, die von staatlichen Behörden in Deutschland entwickelten Mechanismen zur Identifizierung besonders schutzbedürftiger Personen zu erfassen, einschließlich der Frage, wie sie vor Ort durch die Praxis der zuständigen Beamt:innen umgesetzt werden.

Folgende Forschungsfragen werden dabei behandelt: Welche Aussagen lassen sich den einschlägigen innerstaatlichen Gesetzen, Urteilen, politischen Dokumenten und Verwaltungsrichtlinien zum Verständnis von Vulnerabilität in den untersuchten Ländern entnehmen? Sind die zuständigen staatlichen und/oder Hilfsorganisationen gesetzlich verpflichtet, die Vulnerabilität von Migrant:innen festzustellen, und wenn ja, mit welchen Verfahren, wann und wie? Nach welchen rechtlichen und bürokratischen Kriterien? Wie verstehen und nehmen die Entscheidungsträger:innen die "Vulnerabilität" der Migrant:innenen, denen sie täglich begegnen, wahr? Wie gehen sie mit diesen "Vulnerabilitäten" in ihrer alltäglichen Praxis um? Wie stehen sie zu den bestehenden rechtlichen Verpflichtungen gegenüber besonders schutzbedürftigen Personen? Welche „Schlupflöcher" identifizieren sie?

Aufgrund des föderalen Systems in Deutschland wurden drei Verfahren untersucht. Erstens das **Asylverfahren**, das einheitlich auf Bundesebene geregelt wird. Zweitens die **Aufnahmeverfahren** und Unterbringungssysteme, die in der Verantwortung jedes einzelnen Bundeslandes liegen, so dass hier 16 verschiedene Aufnahmeverfahren zu untersuchen waren. Drittens die deutschen Verfahren zur **humanitären Aufnahme** aus dem Ausland.

Auf **nationaler Ebene** lag der Fokus auf den einschlägigen Regelungen des Aufenthaltsgesetzes und des Asylgesetzes (AsylG). Da die Bundesländer für die die Aufnahme zuständig sind, fanden wir eine große Vielfalt an unterschiedlichen Ansätzen, Maßnahmen und Instrumenten für den Umgang mit der Schutzbedürftigkeit von Asylsuchenden vor. Insgesamt haben wir rund 100 (rechtliche) Regelungen und Dokumente intensiv analysiert.

Die **Interviews mit Schlüsselakteur:innen** und wissenschaftlichen Expert:innen machten deutlich, dass sich die Verfahren in der Praxis oft von den gesetzlichen Regelungen unterscheiden, sodass wir beide Ebenen untersuchen und vergleichen mussten. Die Interviews führten wir mit Vertreter:innen des BAMF, NGOs (6 Interviews), Wissenschaftler:innen (1 Interview), Rechtsanwält:innen (1 Interview) und Richter:innen (1 Interview).

Im **deutschen Föderalismus** betrifft die Verpflichtung zur Identifizierung vulnerabler Personen einerseits den Bund (Asylverfahren) und andererseits die Länder einschließlich der Kommunen (Aufnahmeverfahren). Gemeinsam haben sie zu gewährleisten, dass die besonderen Aufnahme- und Verfahrensbedürfnisse von Schutzsuchenden im Rahmen des Asylverfahrens erkannt und berücksichtigt werden.

Allerdings hat **Deutschland die einschlägigen EU-Richtlinien nur uneinheitlich umgesetzt**. Das AsylG erwähnt die Verpflichtung gegenüber schutzbedürftigen Personen nur kurz, indem pauschal auf "Frauen" und "besonders schutzbedürftige Personen" verwiesen wird. Darüber hinaus überträgt der Bund die Verantwortung einseitig auf die Bundesländer, deren Regelungen und Praktiken für das Aufnahmeverfahren sehr unterschiedlich sind.

Dennoch hat das **BAMF einige Maßnahmen eingeführt**, um eine besondere Schutzbedürftigkeit im Asylverfahren zu erkennen, wie z.B. Sonderbeauftrage zum Thema Menschenhandel, Verwaltungsvorschriften und eine Asylverfahrensberatung. Wie sich diese Maßnahmen in der Praxis auf die Identifizierung von besonders schutzbedürftigen Personen auswirken, bleibt jedoch offen. In jedem Fall sollte ein subjektives Recht für vulnerable Personen auf Anhörung durch einen Sonderbeauftragten aufgenommen werden. Auch hat sich die formelle und informelle Zusammenarbeit mit NGOs als sehr wichtig erwiesen.

Gewaltschutzkonzepte für Aufnahmeeinrichtungen dienen in den Bundesländern als Mittel der Wahl zur Adressierung von Vulnerabilität. Ihre Umsetzung ist sehr unterschiedlich (Verordnungen, Verwaltungsvorschriften, Empfehlungen, Verträge). Umgekehrt bleiben konkrete legislative Verankerungen zu besonderen Bedürfnissen die Ausnahme. Die Exekutive wird damit zur zentralen Akteurin – nicht nur in der Umsetzung, sondern auch in der normativen Adressierung der Bedürfnisse vulnerabler Asylsuchender im Allgemeinen.

Unabhängig von der Art der Regelung ist deren **Bezugnahme auf einzelne Vulnerabilitätskriterien** ebenso üblich wie die **substantielle Berücksichtigung** von Vulnerabilität an sich. Dies betrifft neben Minderjährigen häufig (schwangere) Frauen, Alleinerziehende und in einigen Fällen LGBTI*. Dies gibt uns eine Vorstellung vom deutschen Verständnis von Vulnerabilität. Dennoch ist eine umfassende Berücksichtigung von Vulnerabilität zur Umsetzung des Unionsrechts erforderlich.

Die explizite **Förderung von Massenunterkünften**, wie in Bayern oder NRW, ist insbesondere hinsichtlich ihrer Risiken für vulnerable Personen kritisch zu sehen. Der konzeptionelle Ansatz von Berlin, die Unterbringung vulnerabler Personen in Aufnahmeeinrichtungen *per se* als unzumutbar anzusehen, ist dagegen bemerkenswert, bedarf jedoch einer praktischen Umsetzung. Darüber hinaus gibt es **erhebliche regionale Unterschiede in der Infrastruktur** für vulnerable Schutzsuchende. Teilweise ist eine Betreuung durch Fachberatungsstellen allein aufgrund der Entfernung unmöglich. Es bedarf hier zusätzlicher Regelungen im AsylG, wie z.B. das Recht auf eine angemessene Unterbringung in sicheren Unterkünften und Wohnungen.

Humanitäre Aufnahme- und Resettlement-Programme, die eine legale Einreise ermöglichen, berücksichtigen zumeist bestimmte vulnerable Personen. Gleichzeitig wird die Integrationsfähigkeit als Auswahlkriterium herangezogen. Sowohl der Bund als auch die Länder können über die Vergabe von Aufnahmeprogrammen entscheiden. Seit 2018 fordert eine Reihe von Kommunen und Ländern die Aufnahme von mehr Geflüchteten in ihren Städten.

Insgesamt nimmt zwar das Bewusstsein für die besonderen Bedürfnisse vulnerabler Personen in Deutschland zu, die völker- und europarechtlichen Vorgaben sind jedoch noch nicht ausreichend rechtlich umgesetzt. Deshalb sollten die Asyl- und Aufnahmeverfahren so reformiert werden, dass die Identifizierung und Berücksichtigung besonderer Bedürfnisse als integraler Bestandteil angesehen wird.

ABBREVIATIONS

GRETA	Group of Experts on Action against Trafficking in Human Beings of the European Convention against Trafficking
BAMF	Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees of Germany)
LKA	State Criminal Police Office
DIM	German Institute for Human Rights
SCC	Special Counselling Centre
RCD	EU Reception Conditions Directive
PCV	Protection Concepts against Violence
NRW	North Rhine-Westphalia
SAI	Special Asylum Interviewers
BMI	Federal Ministry of Interior, Building and Community
KOK	Federal Coordination Group against Human Trafficking

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I. INTRODUCTION

If one analyses German legal and social science research with the help of the **German keyword** "*schutzbedürftige Personen*" (the literal translation of "vulnerable persons"), the impression does not arise, that this is a guiding principle in (asylum) law. The term and topic are "also" mentioned in various research contexts, but they are not given a central orientation function. It is not easy to find thematically relevant studies with corresponding database queries, because they are assigned to other key terms.

The situation is completely different when using the **English term**. The term "vulnerabilities" represents a key term (respectively a guiding principle) in the Anglo-Saxon and international research landscape and marks a broad field of debates covering many fundamental areas of social development. It is also immediately obvious that the term "vulnerability/defenselessness" generates attention in a completely different way, than the German version. Both the succinctness and the reference to the "violation" or "infringing act", rather than "protection", have a significant impact on the perception of the concept.

Even more important is that the context is different and broader. The debate is embedded in the major **discourse of equal opportunities in society** and is at the same time conducted much more critically than it is the case in the **German discourse, which refers mostly to the welfare state**. Although a thorough analysis is not possible at this point, it seems useful to address a few selected aspects that may be helpful for the further course of reflection.

The fact that the state and the law give attention to the particularly vulnerable society members is not new, but rather a characteristic that characterizes many areas of law and has its roots in the **social constitutional principle**, which in turn goes back to the idea of a society built on solidarity, which was developed particularly in connection with the processing of the consequences of industrialization.[1] The core idea has been precisely formulated with the postulate of "protecting the weaker party" by *Eike von Hippel* and others.[2] In legal terms, this concept is implemented by the state objective in Article 20 I of the Basic Law (principle of the welfare state)[3], which is supplemented in some points by duties of protection under fundamental rights if the dangers for weaker persons emanate from private actors.[4]

In the past, the welfare state has developed a comprehensive set of instruments, including solidarity-based insurance systems, tax-financed benefits and administrative support and empowerment instruments.[5] Today, the legal regulations are hardly manageable and the twelve books of the social code only mark the core area of the regulations. The German Asylum Seekers Benefits Act tries to formulate a humane but lowered level of benefits for persons undergoing the asylum procedure to get a protection status and for persons whose stay has become illegal.[6]

1 Exemplary Zacher, in: Isensee/Kirchhof (eds.), Handbuch des Staatsrechts, Volume II, 3rd ed. 2004, in: Paragraph 28. The welfare state does not consider the nation or nationality but is primarily linked to legal residence and employment. This can already be seen in the early phase of the development of welfare state mechanisms at the local level. Currently, the connection between the welfare state and migration is re-contextualised by the new § 18 of the Residence Act by the immigration of skilled workers as a contribution to securing social insurance schemes.
2 *V. Hippel*, Der Schutz des Schwächeren, 1982.
3 See just BVerfGE 27, 253 (283); BVerfGE 82, 60 (80).
4 See *Krings*, Grund und Grenzen grundrechtlicher Schutzpflichten, 2001.
5 See also *Zacher*, in: Isensee/Kirchhoff (eds.), Handbuch des Staatsrechts, Volume II, 3rd edition 2004, in: § 28, marginal no. 32 et seq.
6 *Haedrich*, ZAR 2010, 227 et seq.; *Kluth*, Soziale Sicherheit 2018, 32 et seq.; *idem*, zfme 2018, 5 et seq.

The contemporary debate on vulnerability was triggered i.a. by addressing the issue of women's dependence,[7] and was later transferred to the situation of other minorities in society.[8] The associated examination of taboo issues in society led to corresponding legislative activities. At the same time this triggered a debate up to present, which is asks, whether the reference to vulnerability and dependence is also a **strategy in a social conflict** and an expression of the minorities' striving for more power and influence. Especially with regard to the MeToo movement, this analysis of the discoursive function of the term has been often expressed. Since this discourse structure is also used in relation to protection seekers with special needs, the discoursive function and the social background of it deserves also attention in the present context.

The fundamental right of asylum is already as such an expression of a right to protection of a specific group of vulnerable persons without the German citizenship (persons persecuted on political grounds abroad, Art. 16a I), as it's benefits include not only a residence permission but also the right to a livelihood and the ability to exercise fundamental rights.[9] In purely formal terms, this is implemented by including the recognized beneficiaries of protection within the scope of the welfare state guarantees by granting the residence permit, whereby equal treatment with nationals follows from the corresponding provisions of the GCR (Art. 23) and Union law (Art. 29, 30 Directive 2011/95/EU).

The German legislator is obliged to implement the **requirements of international and European law**.[10] In doing so, he is free to decide how to systematically locate the implementing regulations. This applies to the subject-related legal context (regulations in laws on foreigners or related specialised laws) but also to regulations at the federal, state or local level.

In the following, it is not the aim to completely determine and examine theses regulations in all the details. Rather, the **aim of the study is to show different implementation forms and strategies** in an exemplarily way and to discuss the associated advantages and disadvantages.

A first part of the provisions on vulnerable persons in European legislation is implemented by the **three main laws of German Migration Law**: The Asylum Act (*Asylgesetz*) and the Residence Act (*Aufenthaltsgesetz*), however, they only contain a few regulations on vulnerability in the strict sense of the term (determined by EU law). The Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*) is a special law for the period of the recognition procedure or the illegal residence with regard to existential living and medical benefits, and only makes a general reference to special needs.[11] This is related to the fact that the central connecting point for the implementation of Article 22 Directive 2013/33/EU in particular, is the reception procedure, which is shaped by state law (see 3.2.3. below).

The **Asylum Act** refers, inter alia, to § 14 II Nos. 2, 3 Asylum Act, which provides special responsibilities for vulnerable persons, as well as specific regulations on minors in several contexts. However, the issue plays a minor role in total.

7 *Fineman, The Autonomy Myth. A Theory of Dependency, 2004.*
8 *Fineman*, Feminist and queer legal theory,to aspects of the German debate see *Schnell*, Ethik im Zeichen vulnerabler Personen, 2017; *Neulinger*, Zwischen Dolorismus und Perfektionismus: Konturen einer politischen Theologie der Verwundbarkeit, 2018; *Janssen*, Verletzbare Subjekte. Grundlagentheoretische Überlegungen zur conditio humana, 2018 (with particular reference to Hannah Arendt).
9 *Kluth, in: Stern/Becker (eds.), Grundrechte Kommentar, 3rd ed. 2018, Article 16a, recital 64 et seq.*
10 To Europeanisation of the German aliens law see *Hecker*, ZAR 2011, 46 et seq.
11 See generally to the social services the comprehensive description in *Frings/Janda/Keßler/Steffen*, Sozialrecht für Zuwanderer, 2nd edition 2018.

Many of the provisions of the **Asylum Seekers Benefits Act** serve as an implementation of the Reception Directive and, by granting discretionary powers, they open up the possibility of meeting the special needs of vulnerable persons. This becomes particularly clear in the case of medical care. In this respect, § 4 I Asylum Seekers Benefits Act normally only provides treatment for acute illnesses and pain. Paragraph 2 includes more extensive care for expectant mothers and women who have recently given birth. But even with this, the regulation remains below the scope of benefits which are relevant to vulnerable persons. This is only made possible by § 6 I Asylum Seekers Benefits Act, which allows more extensive health care services in individual cases. In the case of vulnerable persons, the discretion has to be exercised by an interpretation in accordance with the directives pursuant to Article 22 Directive 2013/33/EU. Moreover, it is not understandable that the legislator did not extend the provision of § 6 II Asylum Seekers Benefits Act to the cases of vulnerable persons under the Reception Directive. It is still limited to the cases of § 24 I Resident Act and serves to implement the Mass Influx Directive 2001/55/EC[12].

The **Residence Act** has normative references to persons seeking protection and thus also to vulnerable persons among them in two fundamentally different situations. The first is when a residence permit is given to grant protection. These are the cases of §§ 22 to 25 Residence Act.[13] They integrate the persons concerned into the regular social security system and thus, with a few exceptions, equate them with nationals. As a result, this allows an appropriate response to their special needs. International and Union law are not expecting more.

The second point of contact concerns cases in which no recognition has been granted and therefore an enforceable obligation to leave the country exists, to which the foreigner invokes obstacles to deportation which are the expression of a special need, in particular a need for medical care. § 60 of the Residence Act responds to this by recognising an obstacle to deportation under certain conditions and thus creating the basis for granting a "Duldung" (temporary suspension of deportation).[14] In addition, the regulation on deportation detention contains special criteria with regard to the order (§ 62 I 2 Residence Act) and the execution of deportation detention (§ 62a III Residence Act) towards minors.

Of great practical importance for the group of **unaccompanied minors** are the special legal regulations in §§ 42a et seq. Social Code No.8, which regulate the treatment of this group very detailed and in this respect implement the requirements of Article 24 Directive 2013/33/EU.[15]

From a systematic perspective, the individual regulations refer to the determination of age and thus to the question of membership of the group of vulnerable persons (§ 42f Social Code No. 8)[16], the responsibility of a professionally qualified authority and an obligation to observe and report (§ 42e Social Code No. 8). Thereby, the participation rights of minors are also precisely regulated.[17]

In addition to these federal regulations, a considerable part of the guidelines of the Residence Directive is implemented by **States Reception Acts** on the initial reception procedure and the associated implementing regulations (*Durchführungsverordnung*). This is a systematic consequence of the responsibility of the *Länder* for the accommodation of the applicants in accordance with §§ 44 et seq. Asylum Act

12 Directive 2001/55/EC, ABl. 2001 L 212, 12. To that detailed *Schmidt*, ZAR 2015, p. 205 et seq.
13 To the individual residence titles on humanitarian grounds in greater detail *Maaßen/Koch*, in: Kluth/Hund/Maaßen (eds.), Handbuch Zuwanderungsrecht, 2nd edition 2017. § 4, recital 474 et seq.
14 *Hecht/Koch*, in: Kluth/Hund/Maaßen (ed.), Handbuch Zuwanderungsrecht, 2nd edition 2017, § 5, recital 217 et seq.
15 Overall presentation at *Haubner/Kalin*, Einführung in das Asylrecht, 2017, Chapter 10.
16 To that more detailed *Neundorf*, ZAR 2018, p. 238 et seq.
17 To the details *Haubner/Kalin*, Einführung in das Asylrecht, 2017, Chapter 10, recital 21 et seq.

andprovokes that although the implementation is not uniform[18], it does regulate the same issues. The following description is based on the legal situation in the state Brandenburg.[19]

The State Reception Act of Brandenburg generally stipulates in § 2 III that in its execution "the special needs of vulnerable persons within the meaning of Article 21 of Directive 2013/33/ EU ... must be taken into account". This general requirement thus controls the discretionary power in all decisions relating to the type and manner of accommodation. In some cases, this is explicitly addressed, for example in § 8 V No. 3 of the implementing regulation.

The state legislator is thus largely dispensing with its own evaluations and concretisation and works with the technique of referral back. The requirement of the directive is generally referred and the implementing agencies are obliged to exercise discretion in accordance with the guideline. According to the case law of the ECJ, this is a legitimate way of implementing a directive.[20]

The special requirements of the **Return Directive** for the execution of deportation detention in the case of vulnerable persons are taken into account in the deportation detention execution laws of the states[21], whereby in practice the ordering of deportation detention with regard to vulnerable persons is generally avoided.

18 A uniform regulation of the admission procedure by the federal legislator as regulation of the administrative procedures under Art. 84 I of the constitution would constitutionally be possible, but the federal legislator has not made use of it.
19 State Reception Law 15.3.2016 (GVBl. I Nr. 11), last amended by Art. 1 first amending law 19.6.2019 (GVBl. I Nr. 31) such as implementing ordinances of the State Reception Law 19.10.201 (GVBl. II Nr. 55), last amended by Art. 1 2nd Regulation to the modification of the implementing ordinances of the State Reception ActN 1.8.2019 (GVBl. II Nr. 54).
20 To the details *Ruffert*, in: Callies/idem (eds.), EUV/AEUV Kommentar, 5th edition 2017, Art. 288 AEUV, recital 33.
21 Overview and evidences in *Kluth*, in: idem/Heusch (editor), BeckOK AuslR, 24th edition 2019, § 62a of the Residence Act, recital 23 et seq.

II. METHODOLOGY

The identification of the relevant legal regulations and policy instruments in this field is difficult, because there is no federal regulation. According to the German Constitution the states (*Länder*) are responsible for the reception procedure and all the corresponding special requirements.

In many fields of procedural regulations, the 16 Länder have coordinated their regulation with the effect of a de facto uniform legislation as a result. This makes it easier for practitioners and scientific researchers to deal with these regulations.

In the field of reception procedures, the very reverse is the case. There are many and important differences between the 16 approaches regarding form and content. In most cases there are regulations at the level of acts of parliament, others prefer decrees (*Rechtsverordnungen*) or internal administrative regulations (*Verwaltungsvorschriften*). The latter are not published.

With regard to this big variety of different regulations, the desk research was quite ambitious and it took many efforts, to find out all the relevant details, especially internal informal arrangements.

Interviews with key actors and scientific experts made clear, that besides the reality of the procedures is often different from the regulations itself, so that we had to explore and compare both levels. Interview partners were representatives of BAMF (Federal Office for Migration and Refugees), specialized NGO´s, Researchers and Judges of Courts.

We also found out, that there are just a few with regard to the reception regulations. One reason may be, that many of the regulations are quite new and not known even by lawyers.

The scientific awareness in this field is also not very intensive. There are only few important legal books and few articles in legal journals, which discuss problems of the reception procedure in German law related to vulnerable protection seekers.

As the concept of vulnerability is not established in German legal discussion as a major topic, the research had to focus on the different types of vulnerability and the corresponding regulations. One possible explanation for the law relevance of the concept may be the strong focus of German (constitutional) law on social welfare (Sozialstaat) which includes a wide range of support-instruments and protection for vulnerable persons.

III. SCOPE OF THE STUDY

The study was done in 2020 and focused on the German legal framework of the reception procedures in general with a special focus on victims of human trafficking. We decided to choose this approach, because the regulations concerning victims of human trafficking are the most difficult and diverse regulations. The relevant regulations are also applicable for resettlement procedures which are not regulated separately in German law within the relevant context.

Many of the provisions of the Asylum Seekers Benefits Act serve the implementation of the Reception Directive and, by granting discretionary powers, they open up the possibility of meeting the special needs of vulnerable persons. This becomes particularly clear in the case of medical care. In this respect, § 4 I Asylum Seekers Benefits Act normally only provides treatment for acute illnesses and pain. Paragraph 2 includes more extensive care for expectant mothers and women who have recently given birth. But even with this, the regulation remains below the scope of benefits which are relevant to vulnerable persons. This is only made possible by § 6 I Asylum Seekers Benefits Act, which allows more extensive health care services in individual cases. In the case of vulnerable persons, the discretion has to be exercised by an interpretation in accordance with the directives pursuant to Article 22 Directive 2013/33/EU. Moreover, it is not understandable that the legislator did not extend the provision of § 6 II Asylum Seekers Benefits Act to the cases of vulnerable persons under the Reception Directive. It is still limited to the cases of § 24 I Resident Act and serves to implement the Mass Influx Directive 2001/55/EC[22].

The Residence Act has normative references to persons seeking protection and thus also to vulnerable persons among them in two fundamentally different situations. The first is when a residence permit is given to grant protection. These are the cases of §§ 22 to 25 Residence Act.[23] They integrate the persons concerned into the regular social security system and thus, with a few exceptions, equate them with nationals. As a result, this allows an appropriate response to their special needs. International and Union law are not expecting more.

The second point of contact concerns cases in which no recognition has been granted and therefore an enforceable obligation to leave the country exists, to which the foreigner invokes obstacles to deportation which are the expression of a special need, in particular a need for medical care. § 60 of the Residence Act responds to this by recognising an obstacle to deportation under certain conditions and thus creating the basis for granting a "*Duldung*" (temporary suspension of deportation).[24] In addition, the regulation on deportation detention contains special criteria with regard to the order (§ 62 I 2 Residence Act) and the execution of deportation detention (§ 62a III Residence Act) towards minors.

Of great practical importance for the group of unaccompanied minors are the special legal regulations in §§ 42a et seq. Social Code No.8, which regulate the treatment of this group very detailed and in this respect implement the requirements of Article 24 Directive 2013/33/EU.[25]

22 Directive 2001/55/EC, ABl. 2001 L 212, 12. To that detailed *Schmidt*, ZAR 2015, p. 205 et seq.
23 To the individual residence titles on humanitarian grounds in greater detail *Maaßen/Koch*, in: Kluth/Hund/Maaßen (eds.), Handbuch Zuwanderungsrecht, 2nd edition 2017. § 4, recital 474 et seq.
24 *Hecht/Koch*, in: Kluth/Hund/Maaßen (ed.), Handbuch Zuwanderungsrecht, 2nd edition 2017, § 5, recital 217 et seq.
25 Overall presentation at *Haubner/Kalin*, Einführung in das Asylrecht, 2017, Chapter 10.

From a systematic perspective, the individual regulations refer to the determination of age and thus to the question of membership of the group of vulnerable persons (§ 42f Social Code No. 8)[26], the responsibility of a professionally qualified authority and an obligation to observe and report (§ 42e Social Code No. 8). Thereby, the participation rights of minors are also precisely regulated.[27]

In addition to these federal regulations, a considerable part of the guidelines of the Residence Directive is implemented by the State Reception Acts on the initial reception procedure and the associated implementing ordinances. This is a systematic consequence of the responsibility of the states for the accommodation of the applicants in accordance with §§ 44 et seq. Asylum Act and provokes that although the implementation is not uniform[28], it does regulate the same issues. The following description is based on the legal situation in the State Brandenburg.[29]

The State Reception Act generally stipulates in § 2 III that in its execution "the special needs of vulnerable persons within the meaning of Article 21 of Directive 2013/33/ EU ... must be taken into account". This general requirement thus controls the discretionary power in all decisions relating to the type and manner of accommodation. In some cases, this is explicitly addressed, for example in § 8 V No. 3 of the implementing regulation.

The state legislator is thus largely dispensing with its own evaluations and concretisation and works with the technique of referral back. The requirement of the directive is generally referred and the implementing agencies are obliged to exercise discretion in accordance with the guideline. According to the case law of the ECJ, this is a legitimate way of implementing a directive.[30]

Beyond this example of Brandenburg, the study tries to answer the following research questions:

- Which relevant regulations exist at federal and state level, including informal arrangement? The aim is to give an exhaustive and well-structured documentation of the German legal framework concerning the identification and assistance of vulnerable persons within the asylum and reception procedure.

- Following this, it is possible to have a first critical look on the implementation of these regulations and arrangements: What are the differences between the *Länder and are there mere unique implementation gaps or also general problems beyond the respective state legislation, which can be faced universally?*

- Besides the implementation, an overview of the regulations in force may help to identify application shortcomings, which will be examined in respect to the question, whether they are a result of implementation gaps or an ineffective legal framework.

26 To that more detailed *Neundorf*, ZAR 2018, p. 238 et seq.
27 To the details *Haubner/Kalin*, Einführung in das Asylrecht, 2017, Chapter 10, recital 21 et seq.
28 A uniform regulation of the reception procedure by the federal legislator as regulation of the administrative procedures under Art. 84 I of the constitution would constitutionally be possible, but the federal legislator has not made use of it.
29 State Reception Law 15.3.2016 (GVBl. I Nr. 11), last amended by Art. 1 first amending law 19.6.2019 (GVBl. I Nr. 31) such as implementing ordinances of the State Reception Law 19.10.201 (GVBl. II Nr. 55), last amended by Art. 1 2nd Regulation to the modification of the implementing ordinances of the State Reception ActN 1.8.2019 (GVBl. II Nr. 54).
30 To the details *Ruffert*, in: Callies/idem (eds.), EUV/AEUV Kommentar, 5th edition 2017, Art. 288 AEUV, recital 33.

- Further, the study may give a first analysis of the relevant infrastructural requirements, especially on behalf of services offered by NGOs.

- Finally, the professional qualification of administrative staff responsible for the reception procedure will be focused regarding the ability to recognize certain vulnerabilities, especially concerning the special needs of victims of human trafficking.

IV. Addressing Vulnerabilities of Protection Seekers in German Federalism

The findings of the German VULNER team on how the law addresses vulnerabilities of protection seekers in Germany, result on the one hand from **interviews** with different key actors relevant to the protection of trafficked persons in Germany (lawyers, judges, asylum authorities, non-governmental organizations, researchers), and on the other hand from a **legal analysis** of the asylum law and the law against human trafficking in the multilevel system of international, European and German federal law.

We first give an overview of the **legal framework for identifying vulnerabilities in federal Germany** (1.). According to the conducted interviews, the focus lies here on the identification of protection seekers affected by **trafficking in human beings**. This specially burdened group of protection seekers serves as an example for other vulnerable groups to show how the legal provisions of the multi-level system are implemented in German federalism. In German federalism the state-level (*Länder*) is crucial for effectively implementing the laws concerning vulnerable protection seekers.

This is why, we subsequently focus on the **reception of vulnerable protection seekers by the German states** (2.). Here we describe the legal framework of the *Länder* addressing the protection of vulnerable persons. We also look into the Inner-German allocation key, the system of centralised reception centres in the states, the connecting points for installing a clearing procedure herein, the need-based measures and the violence protection concepts, which have been implemented by the states. This is the basis for outlining afterwards the legal provisions and practices in three chosen states: Thuringia, North Rhine-Westphalia and Berlin.

4.1. The Obligation to identify the Vulnerabilities of Asylum Seekers in Germany

4.1.1. The nexus of asylum law and human rights law addressing vulnerabilities

The European and international norms recognize the particular vulnerability of certain protection seekers by providing specific rights for example for "victims"[31] of trafficking. To describe the concrete obligations which states may have, the provisions on vulnerabilities in **asylum law** must be read in conjunction with norms of **human rights** treaties for specific groups (rights of trafficking victims, women rights, children rights etc.).

Within the **Common European Asylum System**, the authorities of the member states must address special needs of protection seekers regardless if the person belongs to a specific group. The EU Reception Conditions Directive (RCD)[32] sets a minimum standard for the reception of vulnerable protection seekers (i.a. trafficked persons) and obliges the member states to take appropriate measures to ensure that this standard is met (Art. 21-22 RCD). It does not formulate expressly the obligation to introduce a formalised identification mechanism for vulnerabilities. Furthermore, it is not regulated which specific rights may result from an identification.

Parallel to asylum law, also human right norms address specific needs of individuals belonging to certain vulnerable groups of persons. In the area of **trafficking in human beings**, there are especially the Euro-

31 The notion "victim" is here used as a legal term accordingly to the formulation in the laws. However, this notion should be questioned due to the social stigmatisation attached to it, VULNER interview from 18th August 2020.
32 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ EU No L 180/96

pean Convention against Human Trafficking[33], the EU Directive against Human Trafficking,[34] the European Convention on Human Rights,[35] and the legal instruments of the International Labour Organisation. Violence or discrimination against women is further more a special issue in the CEDAW[36] and Istanbul Convention.[37]

The legal situation is even more confusing by the fact that some legal instruments stipulate more extensive provisions in relation to particular vulnerabilities and some have a lower level of protection. For example, and with regard to the identification, Art. 10 of the European Convention against Trafficking in Human Beings obliges the state parties to give **specialized counselling centres a formal role** in the identification process. Also, the identification as a "victim of trafficking" must be substantially different from the one as a "victim with a formal role in a criminal proceeding."This requires independent clearing.[38]

The **concrete rights** resulting from the provisions concerning trafficked protection seekers concern i.a. safe housing, (psycho-)social care, legal counselling, a reflection period, and an appropriate asylum procedure. To give effect to these rights, it is of special importance that the states undertake (proactive) identification measures. Therefore, the European and international law on trafficking read together with European asylum law **oblige the states to identify** (potentially) trafficked asylum seekers.[39] Only the early recognition of their specific reception and procedural needs may enable the protection seekers to actually gain protection. The provisions on special need assessment in the EU Reception Condition Directive and the EU Asylum Procedure Directive reflect this causality.

The **Istanbul Convention** has lately received particular attention due to Germany's ratification in 2018. Compared to the European directive RCD, which reached not significant legal implementation in Germany, the international Istanbul convention generates a relatively high effect on the protection of vulnerable protection seekers in the German states (*Länder*). Since 2016, the Länder enacted more and more Protection Concepts against Violence (PCV), which are often specifically aimed at women and LGBTI persons. However, the increasing introduction of PCVs must also be seen in the context of the promotion of centralized mass accommodation in Germany.[40]

Thus, the concrete normative obligations to identify and to treat vulnerabilities appropriately in European asylum procedures result from an **interpretation in the context** of other European and international human right norms to protect specific vulnerable groups. This becomes especially clear in the example of refugees affected by human trafficking, because the specific law on trafficking includes express norms on the states duty to identify victims.[41] More human right norms have to be examined to find relevant provisions on how the special vulnerabilities of certain groups of persons must be considered in administrational procedures, more precisely asylum procedures. The new book of Francesca Ippolito "Under-

33 Council of Europe Convention on Action against Trafficking in Human Beings, 16.5.2005, CETS No. 197.
34 Directive 2011/36/EU of the European Parliament and of the Council of 5.4.2011 to prevent and combat trafficking in human beings and to protect its victims and replacing Council Framework Decision 2002/629/JHA, OJ EU No. L 101/1.
35 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.
36 Convention on the Elimination of All Forms of Discrimination against Women, 18.12.1979.
37 Council of Europe Convention for the Prevention and Combating of Violence against Women and Domestic Violence of 11.5.2011, ETS 210.
38 Cf. *Junghans*, Menschenhandel im Kontext von Migration, in: idem/Jack (eds.), Effektiver Menschenrechtsschutz an den EU-Außengrenzen und für Opfer von Menschenhandel, 2021, 85 et seq.**;** cf. also *Frei*, Menschenhandel und Asyl, 2017,156 et seq.
39 VULNER interview from 1st June 2020.
40 See further down.
41 VULNER interview from 19th June 2020.

standing Vulnerability in the International Human Rights Law" is a good starting point for this.

4.1.2. The responsibility to identify Vulnerabilities within German Federalism

In German federalism the obligation to identify trafficked asylum seekers concerns on the one hand the federal state (*Bund*) and on the other hand the states (*Länder*). In the German system of international protection, the *Bund* carries out the asylum procedure, whereas the *Länder* are responsible for the reception of asylum seekers in collective reception centres. Together they have to guarantee the identification of special reception needs and procedural needs of protection seekers within their responsibility.

4.1.2.1. The states' reception centres (Länder)

Since 2018 a law in the German Residence Act clarifies that the *Länder* are responsible to take **"appropriate measures" to guarantee "the protection of women and vulnerable person" at their reception centres**, including persons affected by human trafficking.[42] As a result, 16 different approaches need to be examined to determine whether and to what extent the requirements are met.

At the states' reception centres lies also the **most promising possibility to identify vulnerabilities**, for example the special needs of trafficked persons. First, because protection seeking persons spend a large part of their time at the reception centre, and second, because the arrival here is the earliest stadium in the asylum procedure, which is when the identification makes a difference for the assessment of the appropriate reception conditions and asylum procedure conditions.

To date though, a **systematic instruction of the reception centres' staff**, for example on the vulnerabilities of persons concerned by human trafficking, is not provided. In addition, the access of asylum seekers to **independent counselling structures** is insufficient.[43]

4.1.2.2. The federal states' asylum procedures (Bund)

The Federal Office for Migration and Refugees (BAMF) has **special representatives** for asylum seekers, which are affected by trafficking in human beings.[44] They get **special training** and do **networking** with other state actors and non-state actors relevant in this field. According to internal administrative rules, the regular staff has to **consult** a special representative as soon as they recognize a potential case of human trafficking. But even then, the special representative is **not obliged to take over the case** by carrying out the hearing, taking further measures and deciding on the asylum grounds and the Dublin-procedure. As the special representatives only get involved after the recognition of a potential victim by the regular staff, for example by the interviewers in the asylum hearing, or by externals, their impact on the proactive identification of trafficked persons remains low.

Therefore, it is essential that also the **regular staff,** especially the interviewers, which conduct the hearings, get sufficient instruction on the specific circumstances and consequences of human trafficking. The formulation of a list of indicators for trafficking in the **administrative rules** is an asset, but can only get effectively operative if more staff is trained to use it. The administrative rules oblige to take further steps,

42 §§ 44 IIa German Asylum Act (Asylgesetz).
43 VULNER interview from 18th August 2020; more see further down.
44 VULNER interview from 12th November 2020.

when recognizing a potential case, i.e. informing the concerned person about special counselling centres nearby and contact other relevant authorities such as the BAMF Dublin-unit and the state prosecutor at the penal court. A provision about the information of the reception centres is missing herein, as well as a systematic guarantee of a "reflection period" and the access to legal counselling.

The currently tested **counselling service** of the Federal Office for Migration on Refugees (BAMF) itself may not contribute much to the identification of potential victims of trafficking in human beings among the asylum applicants, especially because it is not independent.

Lastly, the so called **rapid asylum procedures**, which should be carried out in one week and which shall increasingly be introduced in Germany (and European wide), risk to undermine the identification of the special reception and procedural needs of persons affected by trafficking.[45]

4.1.3. Background Interviews of the German VULNER Team

4.1.3.1. Interview on international legal requirements concerning trafficked persons

We interviewed an Assistant Professor from *University of Fribourg,* Switzerland. She is author of the book "Menschenhandel und Asyl" (Trafficking and Asylum) from 2018, which is the most comprehensive study on the subject in the German-speaking area to date. She first brought together the two branches of law: **asylum law and law concerning trafficking in human beings**. She worked on the **legal requirements** in international, European and Swiss law for the identification of trafficked asylum seekers; and asked how this is implemented in administrative practice in Switzerland. In addition to the overview of the international requirements, we were particularly interested in the implementation in a **federal system**, since Switzerland is a federal state just like Germany.

Her proposal to introduce a **specialised coordination and identification centre against trafficking** has been read by the authorities, but the practice has not changed. To her knowledge, politicians or parliamentarians have not picked it up. In some cases, lawyers though drew on her book for a **precedent case**. The leading decision states that the European Convention against trafficking is directly applicable in Switzerland. On behalf of the Federal Office for Migration of Switzerland, there was also a bigger study which has been conducted thanks to the lobbying of victim protection organisations.

In Switzerland, the Swiss Federal Office of Police operates a coordination centre against trafficking. It does not have so many competences (makes statistics and gives advices). Not like the identification mechanism which she proposes: orientated at the **best practice of a referral mechanism in UK** (also highlighted by GRETA).

Asylum authorities should not make the identification decision. It should be a **multidisciplinary** place. If only private NGOs make identification decisions, it is not **legally contestable**. Moreover, it should not only be at the local level in some parts of the country (as in Berlin the BNS-Network).

The "**reflection period**" is especially foreseen for victims of trafficking in Article 13 Eur. Convention against trafficking (this is not in the Istanbul Convention e.g.). In Switzerland, the asylum authorities say that the asylum procedures are anyway longer than the foreseen 30 days. Nula Frei proses a real 30-day-reflection period, meaning no administrative steps take place, also Dublin delays should freeze and expulsion

45 VULNER interview from 18th August 2020; more see further down.

procedures.

In Switzerland **Cantons,** do not have many competences in asylum matters. Even the housing is now transformed into centralised federal shelters (of course placed in Cantons). There, asylum seekers stay 140 days. Then they are transferred to Cantons by quotas. Changing the Canton is only possible because of family, not because of better care for special vulnerabilities. In general, for studies about the legal situation in the Cantons and Swiss federalism researchers choose five Cantons (2 big, 2 small, 1 French).

4.1.3.2. Interview with the Federal Agency for Migration and Refugees

We interviewed two employees at the *Federal Agency for Migration and Refugees (BAMF*) which is responsible to conduct the asylum procedures in Germany.

The Federal Agency for Migration and Refugees (BAMF) has no direct contact with **reception centres** regarding identification. The latter are usually not in a position to identify victims of human trafficking appropriately, so that identification is mainly carried out by the BAMF. The transfer to **specialized counselling centres** (SCC) works very well in NRW in contrast to other *Länder*. Additionally, there is a great network with other counselling centres and NGOs, who are also present in the reception centres. As soon as victims have been identified, the reception centres are informed.

Officially, the BAMF only recognizes **certain vulnerabilities** (gender-specific persecuted persons, unaccompanied minors, Victims of torture and traumatized persons as well as victims of human trafficking), i.e. it does not use an open-ended term. However, the needs of vulnerable persons are also addressed individually in other ways, e.g. in the case of deaf-mutes.

Identification is the supreme discipline, not only because of **high number of immigrants**, but also because of the absolute **dark field**. The latter is considered by the BAMF, as they do not relate exclusively to information from security authorities, but also to information from SCCs. So, the BAMF gets information about vulnerability either from them or during the asylum hearing. That does not mean that it agrees with the assessment of the SCC´s, but their information serve as indicators.

Important for the BAMF to be prepared is the training of interviewers in general and the advanced training of special asylum interviewers (SAI). Their responsibilities also include the acting as multipliers for normal interviewers and network building. But even with indicators it is difficult to ask the right questions, because victims see themselves often as perpetrators etc.

The BAMF advise protection seekers to point out vulnerabilities as early as possible. So they are highlighted by themselves. If they agree, the counsellors give the information directly into the follow up asylum procedure. Thus, the general counselling on asylum procedure by the BAMF just extend the already existing counselling infrastructure.

Employees, who are working as counsellors may no longer be active as a decision maker. The central counselling department in Nuremberg carries out the subject-specific supervision, whereas the administrative supervision remains at the branch office (*Außenstelle*).

The counselling includes both a group conversation and secondly a voluntary individual consultation. The latter becomes a central stage of identification. Planned are training courses at least for 14 days. The

main goal is to recognize vulnerabilities in preparation for the asylum procedure.

Responsible for the Dublin procedure and especially the *sovereignty clause* are the Dublin-Units. The SAIs may draft a report with suggestions, which often rely on the interview.

If the Law Enforcement Agency recognizes the requirement of the asylum seeker for criminal proceedings, exercising the sovereignty clause is mandatory.

The clearing is not rigid and thus must remain flexible; If there are reasonable grounds, that a person is a victim the hearing must be interrupted and a SAI must be consulted. The SAI directly takes over the hearing or he*she operates as a consultant. The administrative regulation of the BAMF also recommends a second consultation of the SAI at the end of the asylum procedure.

The trainings of SAIs are divided into two parts. A European part designed by EASO and a national part. The latter is managed by the BAMF itself under cooperation with external actors like criminal investigation authorities or SCCs.

The BAMF is planning to address also the issue of ***labour exploitation*** within the trainings, but focuses on forced prostitution and victims from Niger.

Whoever is an experienced decision maker can be trained as a SAI. As a supervisor, you have to be able to justify a corresponding experience of the person. Concerning language, mediator's quality standards are in place. However, neither there is a special pool for vulnerable persons nor a special training is provided.

4.1.3.3. Interview on Victims of Trafficking at the Court

We also interviewed a judge who decides upon complaints against administrative refusals of asylum claims by the Federal Office for Migration and Refugees. He has many cases of victims of trafficking in human beings. He has often reports of **prostitution** in his cases (e.g. to get through Italy), but most of the time the complainants do not invoke trafficking. Recently cases of invoked human trafficking of **Nigerians** have increased.

In all of the cases concerning trafficking in human beings, the claimants **identify themselves** as victims. The court has no resources to identify victims of trafficking by itself, if they do not report themselves. The judges have no time to take part in specialised training on the subject of trafficking in human beings for example by NGOs.

The cases are **rarely successful** in their asylum, refugee or subsidiary protection claims. Most of the self-reported victim's statements on the circumstances of their abduction, predicament or flight are **not credible**. There is also **internal protection** possible in Nigeria's big cities. The criminal networks of trafficking are not so professional and organised. They mostly function with the subjective believe in **voodoo**. This counts not as an objective risk of persecution at the asylum trial.

A large part of the claimants does **not have a lawyer**. In addition, even if so, the majority of the lawyers only file formally the complaint and do not follow up with the reasons for it. The judge knows only one lawyer, who is specialised into the right of asylum seeking victims of trafficking. If a claimant has a good lawyer or is supported by a volunteers, the trail is more trustful, better prepared and in the end more

successful. It probably takes time to work through fragmented memories.

To the judge's opinion the **Federal Office for Migration and Refugees** (BAMF) is not doing a good job. Many decisions are arbitrary and the reasons are copied and pasted. The introduction of the special representatives for victims of trafficking in human beings at the BAMF is a "fig leaf". They should at last conduct the interviews on the asylum grounds of potential victims.

The judge never heard that a BAMF-official had involved a **prosecutor** in a trafficking case. Transnational criminal proceedings are anyway very difficult. The smuggler or the "Madame" is normally not in Germany any more, when a case is opened here.

4.1.4. Shortcomings in the Legal Implementation by Federal Germany

The legal analyses and the interviews with stakeholders of the German asylum system have shown certain shortcomings of German federal and state authorities (*Bund* and *Länder*) in **identifying** vulnerabilities of asylum seekers, especially those affected by human trafficking.[46] It became clear that without an **independent legal and social counselling** the chance to recognize special needs for the asylum and reception procedure remains dramatically low. The Group of Experts on Action against Trafficking in Human Beings (GRETA) in its latest report on Germany and the policy papers of the umbrella organisation of specialised counselling centres (KOK) likewise criticise the current identification measures concerning the involvement of NGOs as insufficient.

More than 15 years passed since the implementation period of the first EU Reception Conditions Directive has expired. Although, the infringement proceeding of the European Commission against Germany were closed in October 2019 with the brief statement that the Reception Directive has now been implemented into national law. So far, in Germany, a **uniform and comprehensive legal implementation** of the EU requirements for identification and need-based measures for vulnerable asylum seekers is **still missing**.[47] However, where necessary, the provisions of the Directive are directly applicable and must therefore be fully respected despite a lack of implementation.

On the one hand, the missing of a common federal implementation is due to the nature of the matter, that the *Länder* are responsible and therefore regulate the reception in the states' accommodations in their own way. On the other hand, the federal level has established a new standard for **centralized state accommodation** in the Common German Asylum Act. With this, also special regulations for vulnerable persons could have been added. But only the introduction of a **very abstract reference** in § 44 IIa German Asylum Act, that the respective *Länder* have to consider special needs, was accepted. Apart from the question whether this affects the application of the following discretionary provisions,[48] it thus remains at the outset of an implementation obligation of each individual federal state.

46 VULNER interviews from 1st December 2020, 18th August 2020, 19th June 2020.
47 See the analysis of the states' law and practice further down.
48 Affirmative: *Junghans*, ZAR 2021, 59 et seqq.

4.2. The Identification and Reception of Vulnerable Asylum Seekers by German States

The aim of the following section is to outline the various German states' (*Länder*) regulatory frameworks that address vulnerable asylum seekers including victims of trafficking and to compare them with each other.

4.2.1. The States' Law

4.2.1.1. Centralized Reception System

The states' reception system is divided into two parts: **state and municipal accommodation**. Reception facilities within the meaning of § 47 I Asylum Act (*Asylgesetz*) are state reception centres (*Aufnahmeeinrichtung*) operated by the *Länder*, sometimes referred to as initial reception centres (*Erstaufnahmeeinrichtung*) or central accommodation facilities (*Zentrale Unterbringungseinrichtung*). They also include so-called *AnkER* centres (centres for arrival, decision and removal) or arrival centres such as the *AkuZ* in Berlin, but not initial reception centres where no accommodation is provided but only registration takes place.

These state reception centres are subject to the **duty of residence** (*Wohnpflicht*) in the sense of § 47 I. If the obligation is repealed or expired, a state-internal relocation to the municipalities according to § 50 Asylum Act follows.

Since 2015, accommodation in state reception centres has increasingly been extended. Starting from a few weeks, an accommodation period of **18 months** is now intended, which the *Länder* can extend to a maximum of **24 months**.[49]

Parallel to this, so-called **"*AnkER-Zentren*"** have been established in Bavaria since 2018. Meanwhile, NRW has introduced **special reception centres** according to § 5 V Asylum Act for the **accelerated procedure**,[50] which it provides for in analogous application also for other persons. The relevance not only of **accommodation conditions** in the narrower sense, but of the accommodation **modality** of state reception centres in general, should not be underestimated. The **negative psychological and physical consequences** have been pointed out many times. Most conflicts in **collective accommodation** are structurally caused by the asylum and reception system, so that the possibilities of **decentralized housing** should always be utilized.[51] The health risks arising from collective housing became even more evident in the current COVID-19 pandemic – also to wider public.

If this was already found out in 2014 in an investigation of municipal collective shelters (*Gemeinschaftsunterkunft*),[52] this applies even more to the **much larger state reception centres** and even more so to **vulnerable persons**, who are increasingly confronted with situations that make it comparatively more difficult for them to exercise their rights and obligations. For example, there is often an increased need for psychosocial counselling, which cannot be adequately met if the reception centre is located at a place

49 § 47 Ib Asylum Act.
50 According to § 30a Asylum Act.
51 *Junghans*, ZAR 2021, 62; *Christ/Meininghaus/Röing*, Konfliktprävention in Unterkünften, BICC (ed.), policy brief 3, 2017, 2; *Cremer*, Menschenrechtliche Verpflichtungen bei der Unterbringung von Flüchtlingen, DIMR (ed.), policy paper No. 26, 2014, 6; *Wendel,* Unterbringung in Flüchtlingen in Deutschland, Regelungen und Praxis der Bundesländer im Vergleich, Pro Asyl e.V. (ed.), 2014, 79.
52 *Wendel,* Unterbringung in Flüchtlingen in Deutschland, Regelungen und Praxis der Bundesländer im Vergleich, Pro Asyl e.V. (ed.), 2014, 79.

without **sufficient infrastructure**.[53]

4.2.1.2. The states' relocation procedure

In addition to the few specifications for the reception procedure that are regulated by federal law, the admission procedures of the *Länder* differ considerably. The already mentioned developments in Bavaria and Thuringia are an example of this.

The extension of the duty of residence does not mean, that the *Länder* are obliged to provide these state reception centres for asylum seekers as long as intended by federal law. The discretionary clause allows them to relocate persons in order to ensure the relocation system ("zur Gewährleistung der Unterbringung und Verteilung").[54] Therefore, it is possible to relocate before the expiration of 18 month. *Länder* are only obliged to have at least one state reception centre.[55] The duty to establish and provide corresponding facilities does not mean, that *Länder* are obliged to change their reception procedure, if an accommodation is ensured alternatively (e.g. through municipal accommodation).

Beside centralized accommodation, housing is possible in a decentralized way. However, it is **the exception** rather than the rule and the housing quota[56] is declining.[57] The design of **decentralized housing** is very different, but the absence of a municipal **obligation to provide collective shelters** and the absence of an **obligation for asylum seekers** to live there has a positive effect.[58] In the context of increasing asylum application, this represents a contradictory development with regard to accommodation, which in some places is being promoted as collective accommodation while elsewhere decentralized housing is being promoted. So far, the relocation procedures in Thuringia, Berlin and NRW have been compared.

In **Thuringia**, there is **no detailed regulation on initial state reception**. The only state reception centre is in Suhl, where arrivals spend up to six months. According to a press release by the by the Thuringian Ministry for Migration, Justice and Consumer Protection (MMJV), municipal relocation is to take place after only a few weeks, as is also intended by the government.[59] The Refugee Reception Act primarily regulates the relocation of refugees to the municipalities by the State Administration Office. As a rule, housing there is to take place in municipal collective shelters, § 2 I 1 ThürFlüAG. Individual accommodation is at the discretion of the municipalities and only envisaged from 12 months or if it is already apparent that this period will be exceeded, § 2 IV ThürFlüAG. In particular, municipalities have to consider single parents (vulnerable as defined in Art. 21 of the Refugee Directive).

In **Berlin,** registration and initial medical examination take place at the arrival centre (AKuZ). During the

53 Cf. *Cremer*, Menschenrechtliche Verpflichtungen bei der Unterbringung von Flüchtlingen, DIMR (ed.), Policy Paper Nr. 26, 2014, 6.
54 Cf. *Funke-Kaiser*, in idem/Fritz/Vormeier (eds.), GK-AsylG, loose-leaf edition 126th supplementary delivery 2020, § 47 Rn. 14.
55 According § 44 I Asylum Act.
56 Percentage of recipients of benefits under the Asylum Seekers Benefits Act who are accommodated in apartments instead of state reception centres or collective shelters.
57 The average housing quota of 45% is the lowest since 2015. The taillights are Brandenburg, Hamburg, Hesse, North Rhine-Westphalia and Saxony, while Schleswig-Holstein, Rhineland-Palatinate, Lower Saxony and Bremen lead the states in the housing quota. The difference is up to 48 % in 2019:
58 *Wendel,* Unterbringung in Flüchtlingen in Deutschland, Regelungen und Praxis der Bundesländer im Vergleich, Pro Asyl e.V. (ed.), 2014, 79.
59 Press release 44/2019 by the Thuringian Ministry for Migration, Justice and Consumer Protection, 2nd September 2019, online available: https://justiz.thueringen.de/aktuelles/medieninformationen/detailseite/44-2019/; coalition agreement 2019, p. 38, online available: https://www.die-linke-thueringen.de/fileadmin/LV_Thueringen/dokumente/KoalitionsvertragGesamttext_20201701.pdf.

stay of several days, initial psychiatric diagnosis and referral counselling for traumatised persons is provided by the Social Service of the State Office for Refugee Affairs (LAF) in cooperation with the Centre for Transcultural Psychiatry *Vivantis*. After the registration respectively, the asylum application has been completed, persons are relocated to a state reception centre. Special facilities are available for LGBTIQ, women and persons with nursing or care needs. The average duration of stay ranges from a few weeks to several months, but is not statistically recorded. Vulnerable persons in need of nursing services, however, usually stay longer in state reception centres, as there are not enough barrier-free places available in the municipal collective shelters.[60] Following the stay in the AKuZ, accommodation in a municipal collective shelter or flat should be possible directly through § 49 II AsylG, if no sufficient or suitable places are available in ordinary state reception centre.[61] In general, the relocation procedure "should be designed with the aim of enabling as many refugees as possible – even before the end of the asylum procedure – to move into a flat". The cancellation of the duty of residence goes hand in hand with the authorisation to move into a flat. This counter the intended accommodation in state reception centres and municipal collective shelters according to §§ 47 I 1, 53 I 1 AsylG. However, the implementation of this basic political commitment to decentralised housing is confronted with a diverging practice so that access to the housing market is structurally significantly hindered for refugees.

In **NRW**, a **three-tiered state reception system** was implemented at the end of 2017, in which the reception of asylum seekers takes place in the following order: State Initial Reception Centre in Bochum (LEA) ↠ Initial Reception Centre (EAE) ↠ Central Accommodation Facility (ZUE).[62] Finally, either the relocation to the municipality or the removal takes place from the ZUE. The promoted centralized accommodation was recently expanded in the context of the „Asylstufenplan". In the course of this, the implementation law for § 47 Ib AsylG came into force, according to which accommodation in state reception centres is possible for up to 24 months. According to the assessment and criticism of the NRW Refugee Council, the current state reception system can hardly be distinguished from so-called "AnkER centres" in Bavaria. According to the decree by the Ministry for Children, Family, Refugees and Integration (MKFFI) from July 2019,[63] "all suitable newly arrived asylum seekers" are to be admitted to the accelerated procedure according to § 30a AsylG (the facilities in Bonn, Hamm, Ibbenbüren, Ratingen and Möhnsee are designated for this purpose). In addition, persons from the countries of origin Georgia, Armenia and Azerbaijan will also be included in the accelerated procedure. This is based on a supplementary agreement between the Land government and the BAMF in accordance with § 30a of the Asylum Act. These special state reception centres are also intended for the accommodation of persons who are to be transferred under the Dublin III Regulation. They are only to be relocated among the municipalities, if a removal is not possible within the 24-month period. In contrast, single parents are to be relocated after 6 months at the latest; if their application has not been rejected as inadmissible or obviously unjustified, already in the fourth month. At the same time, however, exceeding the time limit "by a few weeks" is left to the discretion of the authorities.

60 LAF response to an electronic request from 4th September 2020; administrative regulation of the Senate Department for Labour, Integration and Women, SenIAS (928) 2188, 1.e).
61 Administrative regulation of the Senate Department for Labour, Integration and Women, SenIAS (928) 2188, 5.2d).
62 At the LEA Bochum no accommodation takes place, but registration. The EAE and ZUE are state reception centres in the meaning of § 44 I Asylum Act.
63 Decree of the Ministry for Children, Family, Refugees and Integration of the State of North Rhine-Westphalia on the management of the asylum system - implementation of the AG AsylG from 16th July 2019 (AZ: 531-39.18.03- 17/175).

4.2.1.3. Vulnerability Identification Procedure

The **law of the European Union does not prescribe the design** of an identification procedure concerning vulnerabilities (also referred to as clearing procedure). Art. 22 RCD only says that it must be completed within a "reasonable period" after the asylum application. However, it is implied that the clearing can take place in different stadiums of the asylum and reception procedure within this reasonable period.

According to § 62 I 1 Asylum Act, the *Länder* are only obliged to check with a doctor whether the asylum seeker has a contagious disease and make a radiography of the respiratory organs. The details of this **medical consultation** are in the state's responsibility.[64] At this time, the *Länder* could tie up a checking on **vulnerabilities**, which may affect the conditions of the reception and asylum procedure. This would imply a clearing procedure at the initial state reception centres.

Possibly responsible for the clearing of vulnerabilities can be the **state social services** or **non-state specialized counselling centres**. In addition, a **cooperating dual responsibility** may be considered. Since a later occurring need for protection must also be addressed, continuous accessibility and support must be guaranteed. Therefore, an identification specific knowledge is necessary to classify indications correctly. This is particularly difficult in the case of so-called "hidden" protection facts and requires specifically qualified and sensitive personnel.

It is important that the identifying authorities **inform** the other responsible authorities, for example, other accommodations or social benefit services, so that they may act appropriately. In some cases, a practice has been developed that provides **certificates** by SCCs attesting the specific vulnerability for easier access to benefits.

Finally, different **places for a clearing** procedure come into consideration: Initial contact centres, state reception centres or municipal accommodations, authorities as well as facilities of external SCCs.

While clearing in **initial contact centres** is possible in the course of the medical consultation (see above), it would be insufficient with regard to vulnerabilities occurring later. Therefore, **accommodation facilities** (state and municipal) are of particular importance. Independent actors are therefore needed, who offer **low-threshold counselling** and are trained at least to the extent that they can recognise indications of vulnerabilities and refer to appropriate **specialised counselling centres**.

In addition, the staff of the **authorities with whom asylum seekers come into contact** must be trained to recognize indications of vulnerability and to initiate supportive measures.

Nevertheless, the question appears, if a clearing at initial contact centres is already necessary regarding the "reasonable period" and considering the different modalities of accommodation.

4.2.1.4. Need-based Measures

Once the vulnerability has been identified, the focus is usually on **psychosocial counselling** and improving the **reception and housing situation**. Since an **insecure residence status** causes increased stress, rapid stabilization is also important, especially after assaults. In the case of trafficked persons, a so-called **recovery and reflection period** is specifically provided for, in order to enable the person to recover and

64 According to § 62 I 2 Asylum Act.

escape the influence of traffickers.[65]

Social support and counselling are indispensable for taking advantage of such measures.[66] Nevertheless, the responsibilities of the social services defined by the *Länder* **differ widely**. Bremen also sees this as a responsibility for integration as compensation for the repressive alien law; Bavaria, on the other hand, makes a blanket distinction between persons with and without good perspectives of remaining in Germany, whereby the latter should be given "realistic information about their situation in Germany". The choice of words leaves room for interpretation, but should be read in the context of Bavaria's understanding of integration. In the previous guideline, counsellors were explicitly forbidden from promoting integration in order to "maintain the ability to reintegrate in the countries of origin," so that the social counselling service should provide information especially "about the few reasons for recognition."

Other measures to be considered are state internal and national **relocation** (landesinterne und länderübergreifende Umverteilung), **adjustment of accommodation modalities and conditions**, and **medical and psychological treatment**. The latter is explicitly stipulated for victims of torture and violence in Article 25 I RCD. Access to **standard care** (even though often not sufficient by itself) is essential. **Catalogues of services** may support the rapid and uniform granting of need-based measures for vulnerable persons; whereby individual needs must always be taken into account.

While it is conceivable to provide **separate areas for vulnerable persons or special shelters**, this may not be sufficient. Even consistent adherence to quality standards does not change the structural burden of mass housing. If it causes individually unacceptable conditions, decentralized housing in apartments or women's shelters (*Frauenhäuser*), for example, must be used to remedy the situation. A legal way to do this is offered by § 49 II Asylum Act.[67]

The **internal relocation** is of particular importance in territorial states, for example, when access to counselling structures is in fact more difficult because of the peripheral location of the accommodation or when a physical separation of victims and perpetrators is necessary to protect against violence.

4.2.1.5. Protection Concepts against Violence

The reception procedure, especially the duty to live in state **reception centres causes an administrative vulnerability generated by the administration**, which reduces the individual resilience of the residents and their ability to respond to violence either preventively or reactively.[68] Because of this, in some *Länder* additional government measures (positive obligations) were taken to guarantee the rights of asylum seekers. Protection concepts against violence play (*Gewaltschutzkonzepte*) a key role in this regard.

Based on previous experience with **protection concepts against violence (PCV)**, special requirements can be derived which are relevant for effective protection and address various fields of action. The starting point is the **binding implementation and commitment of all bodies and persons** involved. In addition, although **minimum standards** must be established, there is always a need for facility-specific further development to take account of **specific risks and circumstances**. It is obvious that an accom-

65 The provision is contained in various legal sources, such as Article 13 of the Council of Europe Convention on Action against Trafficking in Human Beings. The implementation in Germany can be found in § 59 VII of the Residence Act.
66 Despite the ambivalent role they may play, *see: Wendel,* Unterbringung in Flüchtlingen in Deutschland, Regelungen und Praxis der Bundesländer im Vergleich, Pro Asyl e.V. (ed.), 2014, 73.
67 *Junghans*, ZAR 2021, 63.
68 *Ibid., 62 with further references; Christ/Meininghaus/Röing, Konfliktprävention in Unterkünften, BICC (ed.), policy brief 3, 2017, 3.*

modation for several hundred residents in a peripheral location must establish different measures than a small, centrally located accommodation. Structural differences must also be taken into account in the accommodation concept.

In addition, the **personnel must be appropriately qualified**, especially the security service and interpreters. However, qualified low-threshold social counselling and support is also essential. In general, there is a need to raise awareness of the special needs of vulnerable persons. The latter also affects the area of information, which is also relevant for residents. Participatory involvement in the design of care and information services (such as workshops on gender-specific violence) can lead to increased attention and confidence in the ability to act with regard to one's own rights.

The living situation of residents has a structurally limiting effect on **access to legal protection**, which is why an **information and support structure** must be established to help people enforce their rights. This includes independent counselling on asylum procedures as well as support in enforcing the law in the event of violent experiences, for example. A dual complaint management system is therefore still of central importance, which provides for rapid remedy in a decentralized manner (within the facilities), but also offers the possibility of an independent and anonymous complaint. The use of the system should be understood as an integral part of quality assurance and improvement. In view of the structural dependency of the residents on the home management and staff, this would also give them the opportunity to enforce ministerial standards themselves.

Asylum and residence law create additional complications for effective protection against violence, which in particular requires **standardized procedures** (e.g. emergency chains, physical separation) for reception centres as well as **cooperation agreements** with external actors such as immigration, benefit and police authorities. A protection concept in a broader sense also includes the implementation of **application instructions** for the authorities involved in order to avoid legal uncertainties. Finally, an effective **monitoring system** is necessary for a sustainable and actual implementation.

4.2.2. Comparing the State Laws

4.2.2.1. The various Forms of Norms

There are references to vulnerability in **acts, decrees, administrative regulations, contracts with accommodation operators and concepts** (see below).[69]

After analysing the respective **legal implementation in each state** (*Land*), we compare them with each other to determine whether and to what extent they refer **to vulnerable persons within the meaning of Article 21 RCD**.

We distinct a **substantial reference** from one that "merely" addresses **specific vulnerable groups** that are either also mentioned in Art. 21 RCD (like single parents with minor children) or go beyond it (like addressing also LGBTQI). Finally, we also consider **humanitarian discretionary clauses**, because in practice the administrations may meet the RCD's provisions also without detailed regulations.

A first overview of the state approaches shows that **not even one third of all *Länder* make substantial**

69 See appendix.

reference to the EU regulation in their laws or decrees.[70] This is important because the implementation of directives can be met only at these two levels of regulation. The enactment of administrative regulations is not sufficient.[71] From this, alone it can be concluded that two thirds of all the *Länder* have not implemented the directive. No conclusion can be drawn whether the five *Länder* that refer to the RCD also have sufficient implementation. Two of them, Thuringia and North Rhine-Westphalia, are examined in more detail (see below).

However, the present study needs a deeper practical evaluation, so that a final assessment of the actual implementation cannot be provided. For now, the aim is rather to provide a first **overview** that takes into account the **regulatory approaches** of the *Länder*. The following analyses includes not only **laws**, but also **administrative regulations and concepts**.

- Laws

With the exception of the city-states of Hamburg and Berlin, all *Länder* have enacted **Reception Acts** (*Landesaufnahmegesetze*). However, the density of regulations varies widely and some Acts date back to the 1990s. The Acts primarily regulate the obligation of the *Länder* to **accommodate** immigrants, their "**relocation"** among the municipalities and the **cost** absorption.

The Reception Acts of **Baden-Wuerttemberg** and the Reception Act of **Brandenburg** are the only ones that make **substantial reference to the RCD and thus to vulnerable persons**. In addition to clarify the responsibility for the **identification of vulnerabilities**, the authorities are given **guidelines for internal relocation**, cf. § 7 I 3 No. 4, § 9 IV Bbg Reception Act.

The reception acts from **Bavaria, Bremen and Thuringia** refer to certain vulnerable groups without making comprehensive reference to Art. 21 RCD. This concerns the accommodation of **single parents, pregnant women or sick asylum seekers**. The same applies to **Saxony-Anhalt**, although it should be emphasized that **LGBTI and members of ethnic or religious minorities** are addressed too, so the vulnerability of persons not explicitly mentioned in Art. 21 is explicitly recognized. They are excluded from the execution of § 47 Ib Asylum Act, according to which the duty of residence is extended to up to 24 months. In **Lower Saxony** it is provided that the relocation of **Jewish** immigrants of the former Soviet Union takes into account the existence of Jewish communities.

- Decrees

Compared to the legislative level of the *Länder*, twice as much state decrees make substantial reference to vulnerable asylum seekers (5/16). **Baden-Wuerttemberg** and **Brandenburg** have an implementing regulation, which refers to the RCD just like their respective reception law. Worth mentioning are above all the *AuslAufnVO* of **Schleswig-Holstein**, the ***NW*** *ZustAVO* and the ***Thür*** *GUSVO* (for the latter see below).

In **Bavaria**, according to § 7 III 1 DVAsyl, humanitarian reasons must be considered in the follow-up ac-

70 See appendix.
71 See ECJ, 14 October 1987, Case 208/85, Commission / Germany, ECR 1987, 4045 (4066), para 30.

commodation. This corresponds to a general humanitarian clause, which in practice allows the consideration of vulnerable persons. With regard to a possible internal relocation within the state or a district, this humanitarian consideration is reduced to a conditioned discretionary clause (ermessenseinschränkende "*soll-Vorschrift*") according to § 9 VI DVAsyl.

In **Mecklenburg-Vorpommern**, the reference is limited to the mandatory installation of a playroom for children, § 6 IV GUVO-MV.

- Regulations, contracts, concepts

The assumption seems to be obvious that the lack of legislative implementation corresponds to an increased density of **regulations** at the administrative level. However, only **Berlin, North Rhine-Westphalia and Schleswig-Holstein** have such regulations that explicitly refer to the vulnerability.[72] A selection of certain vulnerable groups for which special measures are provided is also widespread in state administrative regulations. In half of the *Länder*, no relevant administrative regulation could be identified. Only in Berlin, which does not have any relevant decree or law, can one speak of compensation for the lack of legislative implementation. In most cases, however, it is reasonable to assume that administrative regulations are intended to concretize an existing law or regulation.

In some cases, minimum standards are also laid down in **contracts with operators of refugee accommodation**. In **NRW**, for example, contractors must take into account "ethnic, religious and cultural concerns, gender, family ties and conflict potential as well as the special needs of vulnerable persons" when allocating rooms. These contracts are internally binding for the authorities when the contract is concluded and therefore are qualified as administrative regulations. **Thuringia** is taking another approach by setting out minimum standards for the operation of municipal collective shelters in the GUSVO as an annex, which is similar to a model PCV.

Two-thirds of the *Länder* have developed **protection concepts against violence** (PCV) for reception centres. Here, only state protection concepts are discussed, which apply to any state reception centres, and thus at least until the follow-up municipal relocation.[73] It should be noted that PCVs make much more frequent reference to vulnerability in the sense of Art. 21 RCD than classic administrative regulations, decrees or laws.

It can thus be stated that in the states the draft of a PCV is the means of choice to address vulnerability of asylum seekers. For this reason, they will be discussed separately here, although they are partly implemented as administrative regulations or decrees. Although the concepts primarily originate from another provision of the RCD, Art. 18 IV, they often aim to comprehensively implement the provisions of the Directive. But even comprehensive PCV cannot replace an implementation of the RCD at federal or state level.

While most PCV make comprehensive reference to vulnerable asylum seekers, the concepts of **Brandenburg, Bremen, Hamburg and Saxony-Anhalt aim to address "only" specific vulnerable groups**. These are primarily women or LGBTI-persons and children. In Bavaria, the protection of women against

72 Protection concepts against violence (PCV) are not taken into account here, see further down.
73 In Bremen, the PCV applies to all accommodations, both those of the state and those of the municipalities.

violence is also focused on, whereby the concept contains an opening clause according to which the same measures may apply accordingly to other vulnerable groups.

Both within the PCVs and at the other levels of regulation, there are legal norms with different normative control (*normative Steuerung*), so that their material content is of **varying binding force** for the applying authorities. Binding, discretionary and guiding regulations as well as mere recommendations can be identified. Though, we assume the **comparability** of concepts, programs, contracts with classical administrative regulations. However, this comparability is to be investigated more closely. We consider that concepts are implemented in different ways and reflect the already existing diversity of legal approaches. Thus, the obligation to observe the protection measures is for example part of the operator contracts. In other states, the concepts were issued as internal obligations. According to this, the provisions are legally binding.

4.2.2.2. Addressing Vulnerabilities in Thuringia

Thuringia is the only state that has defined **minimum standards for a PCV in the form of a decree**. The obligation of each municipal collective shelter to draw up a facility-specific protection concept is to be evaluated positively in principle. Positive as well is the stated obligation to implement **standardized procedures in cooperation with external actors**.

However, there is no protection concept for the initial reception centre in Suhl up to date.[74] In addition to the promoted municipal accommodation, it is also at the **discretion of the municipalities to facilitate decentralized housing** when the expected accommodation period is assumed to exceed one year.

Although the decree also establishes standards for **staff qualification**, this do not oblige the employees to undergo actual further training and do not contain any provisions for raising awareness specifically for the needs of vulnerable persons.

- Vulnerability identification procedure

According to the ThürGUSVO, **social counselling and support** is responsible for identifying vulnerabilities. However, according to the RCD, it is not sufficient to carry out a clearing only during the **municipal accommodation**. This has to be done already in the **initial reception centre** Suhl. There, a private welfare organisation (*Arbeiter-Samariter-Bund, ABS*) is responsible for a so-called reception interview (*Aufnahmegespräch*), which also serves as an identification procedure.[75] This interview is the first contact between asylum seekers and the Social Service. However, regulations regarding the **special qualification of staff** for dealing with vulnerable asylum seekers are missing. Since identification is made dependent on information provided by vulnerable persons, it is questionable whether proactive identification can be guaranteed, especially in the case of hidden vulnerabilities.

- Need-based measures

The decree states that vulnerabilities have to be taken into account within the **occupancy concept** (*Belegungskonzept*) and by means of protection measures and **house rules**. However, there are no regulations

74 The current concept is under evaluation: response of the ASB to an electronical request from 11th October 2020.
75 Response of the ASB to an electronical request from 11th October 2020.

on **relocation**. Remarkable is the similarly stated duty to provide social care not only in municipal collective shelters, but also in apartments.

4.2.2.3. Addressing Vulnerabilities in North Rhine-Westphalia

- Vulnerability identification procedure

Once the administration identified a special need, the **asylum authorities have to consider this in any procedural step** and **communicate it to the accommodation facilities**, § 5 VIII ZuStAVO.

According to the operator contracts, the staff of the reception centres as well as administrative employees must be **trained and sensitized**. Furthermore, every state reception centre has a **psycho-social counselling** in addition to the general **asylum counselling**. The latter primarily focuses on the preparation and follow-up of the hearing, but also helps to identify vulnerable applicants.

Nevertheless, the identification of vulnerable person has not yet been an integral part of the reception procedure.

- Need-based measures

The Arnsberg district government must consider the special protection needs of vulnerable persons in both the initial accommodation and the follow-up municipal accommodation, § 5 VIII NW ZustAVO. This can be done by accommodating them in a specially designated area within the state facilities or in a special state reception centre for vulnerable persons. Special procedures are also mentioned for health reasons, in justified individual cases and in the case of victims of human trafficking. This is presumably the decree of 28.7.2017 which provides for allocation directly to the municipalities in the case of compelling medical/nursing reasons, insofar as sufficient care cannot be guaranteed even in special state reception centres for vulnerable persons. Theoretically, according to this, it is also possible to relocate an asylum seeker **directly to the municipalities**, if the special shelters do not meet the individual needs for medical or nursing reasons. The respective district governments are responsible for these decisions in agreement with the district government Arnsberg. Nevertheless, measures are mainly to be carried out within the **occupancy concept**, in which vulnerable persons are given priority. Alternatively, they can also be assigned to the **special state reception centres or a women's shelter**. However, it remains unclear how many special centres and shelters for vulnerable persons exist; even though a suitable shelter is foreseen for each district, it is not obligatory if separate parts are designated in regular state reception centres.

In any case, according to the PCV, a blanket relocation is not sufficient; rather, an **individually tailored decision** must be made. For a coherent application practice, it would be welcome if discretionary regulations for the application of § 49 II Asylum Act were also issued in case of an identified vulnerability.

The PCV continues to provide necessary and essential **medical care and assistance** to vulnerable asylum seekers. Here, there is an explicit deviation from the otherwise chosen term of the residents, so that it would necessary to examine whether corresponding measures are also taken for persons according to § 15a Residence Act.

The PCV has largely taken up the needs for action identified in a study by the German Institute for Hu-

man Rights and therefore prescribes **standardized procedures, specific contact persons and spatial retreat possibilities**.

- Monitoring

The **quarterly reports of the Ministry** for Children, Families, Refugees and Integration of the federal state North Rhine-Westphalia *(MKFFI)* are to be evaluated positively. Although these could go into more detail about the housing of vulnerable persons in regular or protective shelters, they are a first step towards a systematic recording of the housing modalities in NRW.

The implementation of a **three-step complaints system,** which is primarily internal to the accommodation, but has clear guidelines for forwarding to the independent body at the Refugee Council, is also to be welcomed. As far as can be seen from the reports, however, no direct contact with the independent, external complaints office is planned, so there is still a need for action.

4.2.2.4. Addressing Vulnerabilities in Berlin

- Vulnerability identification procedure

The city-state Berlin treats the situation of vulnerable refugees as a **cross-cutting issue,** which affects all the authorities involved. This requires a particularly coherent approach in order to enable reception and asylum procedures to be tailored to the needs of the persons. All authorities and organizations involved in the reception procedure are **required to follow up on indications of special needs**. In practice, however, in view of the persisting grievances, it is doubtful that the basic political commitment to the necessity of addressing vulnerabilities as cross-cutting issue has already been achieved.

Particularly **initial contact centres** are required to be specifically sensitized so that they involve **SCCs** as quickly as possible. Only in this early stage the **relocation** to another state (*Land*) determined by means of the so called *EASY*-procedure can be avoided if necessary.

Identification in the narrower sense is then the responsibility of the **SCCs of the *BNS*-network** *(network for vulnerable persons)*, which issue a corresponding **certificate** and determine the need for support. This clearing procedure uses a **questionnaire** prepared by the members represented in the network.

The advantage of such a network is inter alia the **centralized collection of data**, which makes it possible to identify specific requirements for support. The aim must be to expand the existing professional specialization in the network and, for example, to include also SCCs for **trafficked persons**.

- Accommodation

Berlin pursues the goal of providing **decentralized accommodation** for as many refugees as possible after the removal of the duty to live in state reception centres. If there is not enough capacity in reception centres, the refugees may leave the central *AKuZ* directly.

In addition, the State Office for Refugees (Landesamt für Flüchtlinge, LAF) considers housing in state **reception centres *per se* to be unreasonable for vulnerable persons**, so that the obligation to provide decentralized housing should be lifted if the person has an offer regarding an apartment. In principle,

therefore, we can speak here of a concept that provides collective accommodation only to avoid homelessness.

This approach is unique compared to other states and deserves special attention. Nevertheless, its practical implementation is structurally limited by the **housing situation in Berlin**, especially for refugees. There is therefore an increased need for action in granting refugees access to the housing market (and to the regular care systems), so that the state administration's basic openness to decentralized housing actually has an impact.

Here, the operators are required to ensure compliance with **uniform minimum standards** laid down in the **operator contract** and to develop them with the participation of the inhabitants. They must also provide a clearing procedure to initiate alternative accommodation if necessary. Each accommodation facility has a personnel development concept with obligatory training programs for employees, a protection concept and a complaint and conflict management system. For vulnerable groups (such as LGBTI), a separate protection concept must be drawn up that is tailored to their specific needs.

The consideration of special needs in the context of occupancy concepts or by means of accommodation in shelters, apartments and women's shelters **has to be checked in field research**, in order to check whether the relatively progressive framework is actually being implemented.

In any case, the multiple responsibility of different actors for identifying vulnerable persons does not seem to contribute to a shift of responsibility from the state to the private, but rather to an **increased awareness** of all those involved.

- Monitoring

According to the operator contract (Betreibervertrag), the facility management must document all incidents and report any non-compliance with quality standards that rely on the services of the federal state to the *LAF*. The *LAF* also carries out regular inspections. Data is continuously collected to check the implemented measures and is presented to the Chamber of Deputies annually, alternately in the form of a short or long report. In addition, the coordination of the *BNS*-network by the *SCC Zentrum* Überleben enables a central evaluation of the practice of the specialized departments, which is then submitted to the Senate Administration.

4.2.3. Interviews with Non-Governmental Actors on the Support Structure of the States

We interviewed two representatives of non-governmental organisations *KOK*, *ZORA*). One is a social worker and works for ZORA, a specialised counselling organisation for victims of trafficking human beings in the German State Mecklenburg-Vorpommern. The other is speaker of the KOK, the federal umbrella organisation for specialised organisations for trafficking victims, and former counsellor at ZORA.

ZORA gives trainings to the social workers in the reception centres of the welfare organisation *Malteser*, which also has a protection concept. There is one social worker per house. ZORA's work depends on the **referral of potential trafficking victims**. The victims usually do not contact the organisation by themselves, because they are not aware of their victim-status. Sometimes the BAMF sends victims to ZORA. ZORA also writes a **statement** to the special BAMF representative.

There exists a **cooperation agreement** with the prosecutor, the police and the State Criminal Police Office (*Landeskriminalamt, LKA*). It is an internal document and not public. Sarah Schwarz of KOK is the contact person for the agreements Germany wide. Niedersachsen and the counselling organisation KOFRA in Hanover have a good cooperation agreement.

For **social benefits for EU-citizens**, ZORA has to contact the LKA, which contacts the prosecutor. Only if they want to cooperate in the criminal proceeding, they get a formal notice. Then they may ask for benefits at the Social Service during the "**reflection period**".

Measures taken when a victim is identified concern mainly the possibility of being sheltered in a **special reception centre**. However, this centre is at the same site as the initial state reception centre and the living conditions there are far not the same as in women's shelters. Moreover, ZORA supports their own protection apartments for men and transgender.

In the first **counselling session(s),** the counsellor of ZORA tries to find out if the counselled person is a victim of trafficking. Then she identifies the main crucial problems: trauma and risk of re-traumatising, residence status (EU-citizen, asylum seeker, other), willingness to cooperate with the prosecutor in criminal proceedings. The counselled person decides the tempo of the counselling.

4.2.4. Conclusions

4.2.4.1. Different Approaches to Vulnerability in the State Laws

The **16 German *Länder***, which are responsible for the reception of asylum seekers passed different laws concerning the identification of vulnerabilities.

Herein, the **protection concepts against violence** are the main way to address vulnerability in the states. A recent survey of state chancelleries has shown that in addition to the heterogeneous implementation of PCV – at the municipal level even more than at state level – the states are also divided as to whether further efforts are necessary and explicitly planned.[76] Until the end of next year there is a project of welfare organisation, which aims to establish a decentralised counselling and support structure for protection against violence in refugee accommodations.[77]

The **structure of independent counselling organisations** is very different in the states. Generally, the access to *independent* legal and social counselling for asylum seekers is not guaranteed, but is in fact key for the identification of vulnerabilities.

The **accommodation in mass reception centres** applies in principle also to vulnerable persons. The explicit promotion of collective housing, as in Bavaria or NRW, produces risks especially for vulnerable persons and therefore must be analysed critically. The Berlin approach, which considers the placement of vulnerable persons in collective reception centres per se as unreasonable, is in contrast noteworthy but needs to be practically realised.

76 *Gerbig/Weber*, Gewaltschutz in Flüchtlingsunterkünften, presentation from 29th September 2020, 9 et seq. (online available: gewaltschutz-gu.de/veranstaltungen/online-fachveranstaltung-2020).
77 For more information concerning the project „DeBUG" see: https://www.gewaltschutz-gu.de/projekte/debug.

Further research would be valuable on whether or not there is a connection between normative commitment and the material content of a specific standard. I.e. is it possible to determine, whether a **binding standard tends to set a higher or lower level of protection than recommendations**? Additionally, it should be examined, whether this (the setting of either binding standards or mere recommendations) has a practical impact on the effectiveness of the protection for vulnerable asylum seekers.

4.2.4.2. Administrative Power is Key to effectively address Vulnerability

The legislative consideration of special needs remains the exception in Germany. The executive branch thus becomes a key actor – not only in implementation, but also in normatively addressing the needs of vulnerable asylum seekers.

The legislative consideration of special needs remains the exception. The executive branch thus becomes a key actor, not only in implementation, but also in addressing these needs in general. In some cases, it already refers to vulnerability in the context of an authorization by decree. The means of choice, however, are **administrative regulations** and **concepts for the protection against violence**, which have been increasingly in focus in the last five years. The understanding of an isolated responsibility of the facility operators alone has also changed to the necessity of a legally binding implementation, which is ostensibly reflected in the **operator contracts**. A mutual reference of single regulations is common here. Thus, contract clauses are inserted according to which protection concepts become obligatory components. A positive development can be observed here, which also has an effect on the transparency of **accommodation standards** and the control of the supervisory authorities.[78]

Berlin stands out clearly in the details and the coherences of its regulations: accommodation standards, obligatory house rules, application instructions for relocation, guidelines for administration or cooperation with non-governmental specialized counselling centres. The importance of considering vulnerable persons during the reception and asylum process already seems to be anchored in consciousness. Nonetheless, binding legislation is lacking.

The accumulation of knowledge regarding identification and need-based support through the BNS network is likely to have contributed significantly to this. This has also made possible a transparent and continuous dialogue on grievances and the corresponding need for action, which stimulates the discussion of the issue.[79]

Regardless of the level of regulation, the density of references (*Regelungsdichte*) to **single vulnerability criteria** is as common as **substantial consideration** of vulnerability *per se*. In addition to **minors**, this frequently affects (pregnant) **women**, **single parents** and, in some cases, **LGBTI***-persons. This gives us an idea of the German understanding of vulnerability.

The mention of particular vulnerabilities is probably not least due to the fact that the discourse on obligations for certain groups of people has a longer tradition than for others and is also flanked by other human rights sources. Nevertheless, **comprehensive consideration of vulnerability is necessary** for

78 Cf. the situation in 2014: *Wendel,* Unterbringung in Flüchtlingen in Deutschland, Regelungen und Praxis der Bundesländer im Vergleich, Pro Asyl e.V. (ed.), 2014, 79 et seqq.
79 For example, it was recently noted that there is an increased need for sensitization of security personnel and language mediators.

implementing the RCD. Differentiation can and must be made only in the case of need-based support and within the framework of concepts for the protection against violence.

4.2.4.3. Identification as cross cutting Issue

The identification of vulnerabilities requires clear responsibilities, most of which have so far been in the area of social care. It is crucial to integrate the expertise of **specialised counselling centres** and expand their resources. But also the **authorities of the state and the federal level**, which come into contact with asylum seekers, need to be trained and sensitized for recognizing and pass on vulnerable persons to SCCs. Only this can effectively ensure the access to SCCs, appropriate reception and procedural guarantees.

For this purpose, vulnerability should be treated as a cross-cutting issue. With the *BNS* network, **Berlin** has by far the most comprehensive approach to identification. Here the **cooperation of the governmental LAF and the non-governmental SCCs** seems to be working in such a way that on the one hand the responsibility of the LAF for early identification is not circumvented and on the other hand the expertise of the SCCs is drawn upon.

As far as apparent, **Berlin** is also the only federal state that sets up a **clearing procedure such early** that the relocation within Germany can be waived if necessary. **Thuringia** must **normatively implement** a proper proactive identification procedure in the initial reception centre in Suhl. Although a private welfare organization is responsible for this, the state must develop a comprehensive identification concept. It also remains to be seen to what extent initial psychosocial counselling will be established in NRW. The previous involvement of general asylum counselling does not seem to be appropriate for this purpose

4.2.4.4. Need-based Measures in the States

The consequence of shifting responsibility to the executive branch is that need-based measures can only be taken within the existing legal framework. Thus, **opening or exception clauses** and, accordingly, **discretionary provisions** become the pivot of addressing vulnerability. Due to the scarcity of resources, e.g. housing, which is partly objectively existing but often limited only because of the denial of access, vulnerable persons are given priority in access to alternative forms of accommodation. The status quo shows that the administrative regulations, which, for example, take vulnerability into account when terminating the duty of residence under § 49 II Asylum Act, have not been sufficiently enacted.

With regard to the **accommodation** modalities, the comparison of the three federal states has shown that **Thuringia stands out in particular due to the promoted municipal accommodation** and thus follows an opposite approach to **NRW**. On the other hand, it does not have a uniform protection concept, but instead lays down certain minimum standards for the single collective shelters, without, however, coming close to a comprehensive PCV. Providing this is rather the responsibility of each single accommodation. In this regard the protection concept of NRW should be positively emphasized, which was drawn up in accordance with the evaluation of the German Institute for Human Rights.

However, the successes achieved in implementing minimum standards and protection concepts against violence must also be seen in the context of very different housing quotas. The known demand for **decentralized housing**, which referred initially to municipal collective shelters, is therefore in the context of promoted central accommodation nowadays more important than ever.

The consideration of vulnerability is primarily done by giving preference to scarce resources such as **accommodation in special shelters** or **separated areas of accommodations**. In Berlin, access to SCCs of the BNS network is an important point of reference. The federal state is conspicuous for its high and progressive density of regulations, as is exemplified by the fact that the accommodation of vulnerable persons in reception centres is considered unreasonable per se. However, a practical implementation is structurally limited by the **housing situation in Berlin**, especially for refugees.

In general, there is a **difference in assistance between city and territorial states**. While accommodation in **Berlin** as a city state has at least comparatively little effect on access to SSCs and medical services, access is much more difficult in peripheral accommodation in territorial states such as **Mecklenburg-Vorpommern**. Especially since it is sometimes impossible for SCCs to provide assistance simply because of the distance. This makes an internal relocation within the states an essential requirement. If federal states do not have suitable SCCs (as is the case in **Thuringia** with regard to victims of human trafficking), it may be necessary to relocate to another federal state in accordance with § 51 I Asylum Act. For a uniform and non-bureaucratic removal of the duty of residence and the application of the relocation-procedure, discretionary administrative regulations or even entitlement norms should be issued. This is especially true for states such as **NRW**, which rely extensively on central housing, so that the application of § 49 II Asylum Act gets out of mind. Exceptions to the duty to live in state reception centres must be an integral part of every centralized housing concept.

4.2.4.5. Monitoring of the States' Standards

In **Thuringia**, the monitoring of the guidelines is limited to activity reports on the implementation of social care from the municipalities to the Administration Office.

In **NRW**, quarterly reports document the implementation status of the protection concepts and report on the occupancy of the accommodations and the use of complaint management.

In **Berlin**, the actual implementation is to be recorded by means of audits and annual reports to the Chamber of Deputies.

The mandatory introduction of a **complaints system** in all three German states is a significant step forward compared to 2014, when not a single state had such a system in place. The three-step complaint system in NRW can serve as a model, provided that it is also possible to appeal directly to the independent Refugee Council. A decentralized, internal agency is necessary but not sufficient.[80]

4.2.4.6. Divergent Assistance Infrastructure in the States

With regard to various aspects, the assistance structures in the different states diverge. First of all, the infrastructure is influenced by the fact that it is either territorial or city states, that are targeted. Both the **accessibility** of specialised counselling centres and the possibility for counselling centres to be present in state reception centres are shaped by geographical circumstances. Access to support is even more restricted in **peripheral accommodation** facilities Obviously, **financial resources** of counselling canters also have an impact and diverge.

80 *Wendel,* Unterbringung in Flüchtlingen in Deutschland, Regelungen und Praxis der Bundesländer im Vergleich, Pro Asyl e.V. (ed.), 2014, 52.

Further, the modalities and conditions of housing are key. Besides geographical aspects, this raises the question of size, architectural design and accommodation standards. Differences can also be observed in the existence and application of protection concepts against violence: emergency chains, clear responsibilities and procedural standards effects the (immediate) access to assistance.

Moreover, it is important to mention the crucial qualification of employees both in authorities and in accommodation facilities. They need to be sensitized in various respects (regarding the migration situation, vulnerabilities, as well as conflict potentials in reception centres) and qualified in recognizing vulnerabilities in order to be able to refer to existing support structures.

This finding of different factors influencing actual access to assistance structures gives rise to subsequent problems, which will be briefly outlined. In general, insufficient assistance is legally unacceptable if it is caused artificially. The entitlement to certain **assistance** is in fact ostensibly derived from various human rights that **cannot be relativized by the reception system**.

Therefore, the respective reception procedure of a state cannot be viewed isolated from the respective assistance infrastructure. At least, this raises the need for state internal relocation or to remove the duty of residence, if necessary, to ensure access to counselling services. If the assistance cannot be provided due to the lack of appropriate counselling centres, a national relocation must be considered.

Finally, the quality of **cooperation arrangements** between different governmental and non-governmental actors influences the clearing and access to assistance structures. Such agreements are already common for trafficked persons and in different forms also involve specialized counselling centres. However, due to the fact that various benefit, health and immigration authorities are generally involved in the case of vulnerable asylum seekers, there is also a need for corresponding agreements for other groups of people in order to reduce the additional barriers caused by asylum and residence law with regard to access to social services. A comparative evaluation of the respective cooperation agreements would be helpful here.

4.3. New Humanitarian Admission Policies for Vulnerable Refugees by German Municipalities and States

Cities and municipalities currently experience a **revival as actors of migration policy** worldwide.[81] Besides the traditional task of "integration" of migrants into local communities, this also concerns questions of humanitarian admission and of deportation. The movement of German municipalities' and states' admission policies for vulnerable refugees is one example and merits further attention.[82]

Since 2018 a range of German municipalities (*Kommunen*) and states (*Länder*) address the **humanitarian admission** of vulnerable refugees from abroad. They declared wanting to admit person seeking protection from **rescue boats in the Mediterranean** and **Greek refugee camps**, especially minors, pregnant women, single parents, sick and old protection seekers. Herewith, they followed the demands of local initiatives belonging to the decentralised civil society movement *Seebrücke* (Sea Bridge).[83] As a result the municipalities started a new city led network *Sichere Häfen* (Save Harbours) to promote humanity by

81 *Helene Heuser*, Cities of Refuge, Fluchtforschungsblog, 24th January 2017: https://blog.fluchtforschung.net/stadte-der-zu-flucht/.
82 Collected information: https://uhh.de/rw-staedte-der-zuflucht.
83 For more information on this movement: https://seebruecke.org/en/we/.

admitting more vulnerable protection seekers from abroad.

These new policies touch on the question, **who has the authority to decide in matters of migration** in a multilevel legal system. In Europe this also involves the EU and in Germany the state and municipal level. Following up the practical developments, the legal scopes for action for municipalities and state should be further analysed in order to check on the chances to foster relocation, humanitarian admission and resettlement.

In 2020, the states of **Berlin and Thuringia** decided upon their own **humanitarian admission programs** to receive especially vulnerable refugees from Greece.[84] The Federal Ministry of Interior, Building and Community (BMI) refused to agree on this. The decision to block humanitarian assistance, which the states offered to vulnerable protection seekers, is not just morally and politically difficult to justify, but also legally. The BMI should not indiscriminately reject the humanitarian plans of states, but it should make suggestions on how these plans could be made compatible with the concerns of the federal government. Therefore, the city-state of Berlin filed a complaint at the Administration Court to check whether the federal minister's rejection of the state's admission programs from Greece was lawful.

Since the humanitarian crisis in **Bulgaria** aggravated, a new wave of solidarity declaration and propositions of admission by German municipalities and states began. The chances of a European wide municipal movement to create **new legal pathways** to protection and a new way to **share responsibility** for protection seekers should be investigated further.

84 For an analysis see: *Heuser*, ZAR 2020, 9: www.zar.nomos.de/fileadmin/zar/doc/Editorial_ZAR_2020_09.pdf.

Annex

Appendix State Regulations

Table 1 state regulations concerning vulnerable protection seekers (German), Part 1 & 2

	BW	BY	B	BB	HB
Reception Acts	FlüAG 19.12.13	AufnG v. 24.5.02	Berl FlüLAErrG (14.3.16)	AufnG (v. '16, zul. geänd. '19)	AufnG (v. '04, zul.'17)
Decrees	DV FlüAG v. 8.1.14	**DVAsyl v. 16.8.16**		AufnGDV v. 19.10.16	ZustVO
Administrative regulations/ operator contracts	VwV B I	Menschenhandel	**SenIAS (928)2188 10.6.20**		
	VwV C	Gesundheit			
		GSK (OE)	**Hausordnung für AE/GU**		
		Leitl Art & Größe GU 4/2010	Rahmenhygiene-plan	Weisung Nr. 07/2019	
		Rl Förderung Soz. Ber. 1.1.18	**L&Q_GU1 12.4.18**	RdE GU v. 8.3.06	
Concepts/ other		GSK (19.10.18)	**Arbeitsdokument**	**GSK**	Integra-tionskonzept '16
			Gesamtkonzept	**für GU's auch in VO**	Eckpunkte IK
			Leitfaden		**GSK (25.10.16)**
					GK 16.9.13

	HH	HE	MV	NDS	NRW
Reception Acts	(-)	LAufnG (´07, geänd. '12 (expires in January 2021)	FlAG (v. '94, geänd. '19)	AufnG (`04, geänd. '16)	AufnG v. 28..3.03, zul geändt. '18
		AUSG (`09)			
Decrees		VertUGebV v. 21.12.09	GUVO v '01		ZustAVO 10.9.19
			LVO		
		AAZUstV v. 4.6.18	ZuwZLVO		
Administrative regulations/ operator contracts			Rl GU/soz.Beratung v. 09/25/00	Hinweise_UMF	Verteilung Zuweisung 25.6.97
				Organisationserlass v. 15.2.2017	Los 1 v. 18.7.16
					RdE. v. 16.7.19
					RdE. v. 28.7.17
					RdE v. 11.4.95
Concepts/ other	Ersuchen an Senat 2016	**GSK ZAST 02/19**		**SK. Oldb 08/16**	**GSK (03/17)**
	Lebenslagebericht			Kooperations-vereinbarung	
	Muster-GSK			**GSK NDS**	

Table 1 state regulations concerning vulnerable protection seekers (German), Part 3

	RLP	Saar	LS	LSA	SH	TR
Reception Acts	AufnG v. '93, zul. geän. 19.12.19	LAG v. '94, zul. geänd. '14)	FlüAG (v. '07, zul. geänd. '18)	**AufnG v. 21.1.98** zul. geänd. '19)	AufnG (v. '99, zul. geänd. '05)	FlüAufG v. 16.12.97 zul geändert '16
Decrees	AsylVhGDVO 14.1.2.99	AufenthVO	AsylAufenthVO	AsylVVerlV	AuslAufnVO v. 19. 1.2000	**GUSVO v. 15.08.1**8
			AAzuVO			ThürFlüVertVO
Administrative regulations/ operator contracts			VwV Unterbringung v. 24.4.2015	Leitlinie v. 15.1.13	Leitfaden gute Aufn v. 17.9.14	Handakte
			RL Quartiersentwcklg	RdErl v. 26.11.18	Leitfaden GU	
			Sicherheitsrahmenkonzept	RdErl v. 14.8.09 (UMF)		
			UKK	Leitfaden 12.4.18		
			Heim-TÜV 2011, 13, **17, 19**			
Concepts/ other	**GSK**		**GSK**	Leitfaden (s.o.)		➛siehe Anhang GUSVO

Legend:

Green = substantial reference to vulnerable protection seekers ➛ **bold** = criteria going beyond Art. 21 of the Reception Directive

Yellow = Reference to personal criteria which are also considered in Art. 21 of the Reception Directive (except unaccompanied minors) ➛ **bold** = Vulnerability criteria going beyond Art. 21

Blue = Only human rights self-commitment ➛ **bold** = reference to individual humanitarian reasons

Orange = States that were the subject of closer examination in the first research report

GSK = Protection Concept against Violence

BW (Baden-Wuerttemberg); BY (Bavaria); BB (Brandenburg); HB (Bremen); HH (Hamburg); HE (Hesse); MV (Mecklenburg-Vorpommern); NDS (Lower Saxony); NRW (North Rhine-Westphalia); RLP (Rhineland-Palatinate); Saar (Saarland); LS (Saxony); LSA (Saxony-Anhalt); SH (Schleswig-Holstein); TR (Thuringia)

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