

Germany's Triple Asylum Roulette

Gerald Schneider

Germany has responded much more generously to the “refugee crisis” than other European states. However, the current debate in the country almost exclusively boils down to the question of whether applicants with non-credible claims of fearing prosecution in their home country receive the desired refugee status or at least temporary protection. Some asylum seekers undoubtedly exploited the administrative chaos that followed the sudden influx of an unprecedented number of migrants in 2015 and 2016, managing to stay for an extended period in Germany despite filing untrustworthy applications. A record number of [745,545 applications](#) were filed in 2016 and [185,853](#) were recorded for last year. However, the discussion on asylum today neglects the discrimination toward those whose valid claims and appeals are rejected, and thus face the risk of deportation as a consequence of faulty rulings and unjustified administrative decisions.

Three actors mainly decide the fate of asylum applicants in Germany. First, offices of the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF), spread out over the country, determine the status of applicants, granting them residence or the right to remain, or deciding they have to leave the country. Asylum seekers can appeal a negative ruling, and one of the country’s 52 administrative law courts will either overrule or uphold a negative BAMF decision. After this, the immigration agencies of the country’s individual states have to ensure that denied asylum seekers leave the country. If they do not go back voluntarily and the security situation in their home country is determined to be safe, they can then be deported. The states have some discretion with regard to deportation decisions—but always within the bounds that the federal lawmaker sets. My previous research has shown that asylum seekers [face a very unequal chance to become recognized as refugees](#) at the first decision-making stage by the BAMF across the states. But [the inequity does not stop there](#). They also face, depending on the administrative law court in charge of their file, a very unequal chance that their appeals against a negative BAMF decision are successful. Moreover, the risk that denied applicants are deported also varies considerably across the states.

Discrimination at all stages

First, the BAMF rejection rate continues to vary across the states and across the years. The average for 2010–2017 was 40 per cent, with a high of 58 percent in 2010 and a low of 22 percent in 2016. In that period, the states with the highest average rejection rate included Berlin (46 percent), Baden-Württemberg and Saxony-Anhalt (both 45 percent). Bremen (34 percent) and Saarland (24 percent) had the lowest.

Second, the average rate of appeal rulings favoring the federal authorities rather than asylum seekers as a percentage of all decisions also varies significantly. The overall rate of rejection of appeals was 38 percent in 2010–2017, with the highest being 46 percent in 2012 and the lowest 32 percent in 2016. The lowest rates over all eight years were 19 percent in Hamburg and 20 percent in Berlin, while the highest were 53 percent in Schleswig Holstein and 52 percent in Saxony-Anhalt.

Finally, the differences across the states and years are large when it comes to the deportation rate (that is, deported asylum seekers as a percentage of all negative decisions). While the average deportation rate for 2012–2017 was 24 percent, it was 35 percent in 2013 and 14 percent in 2017. In Bremen, the deportation rate for the period was 6 percent while for Saarland it was 65 percent. It should be noted, though, that the actual numbers are quite low as some who are denied asylum are tolerated for various reasons after the exhaustion of their ability to appeal. A considerable proportion also leaves the country, as indicated, voluntarily.

The differences from state to state would most likely even be larger if the federal authorities were willing to publish summary information about the decision-making of the individual BAMF offices or of the administrative courts. In the case of the larger states, such as North Rhine-Westphalia, it would also be interesting to see whether there are similarly large differences in the deportation rates across the larger cities and counties.

Extra-legal factors influence decisions

It is impossible that these inequities – which are most likely deflated but still troublingly large – are based on the allocation of fundamentally different stocks of asylum seekers across Germany. Their overall number is too large to explain these differences away as random variations. What is more, the distribution of asylum seekers across the country is determined by a formula that considers the population size and economic wealth of a state, and which is also used for other decisions about burden-sharing between states. Any state government would object to allocation decisions by the BAMF that systematically disfavor it in comparison to its peers.

In fact, asylum decisions correlate with the administrative, political and socio-economic features of a state in expected ways. For example, states with a government led by the Social Democrats have lower deportation rates, and the rate of negative BAMF decisions and rejected appeals is also lower in states where they have been in power for a long time. Partisanship on the part of the administrative law courts and BAMF decision-makers hence plays a role. BAMF officials reject more refugees in the first stage in states that invest more in the police force, and wealthier states exhibit lower rejection and deportation rates.

Extra-legal concerns should, however, never affect the implementation of a federal government policy. In the current asylum decision-making process, too much depends on luck from the perspective of the individual applicant. Given the large number of cases decided each year, the number of people who are affected by this triple asylum roulette is in the hundreds if not thousands. Decision-makers should thus work hard on reforming the procedures to create a fairer system in which applicants with a comparable risk of persecution in their home country are treated in the same way across Germany. The main steps in such a reform are the selection of unbiased officials and judges, and the constant monitoring of their choices through federal agents and parliamentary committees.

Yet, the willingness to improve the quality of decision-making so far has been limited. The BAMF only reformed its procedures in the [fall of 2017](#) after the publication of an increasing number of critical reports. One of the measures introduced was the “four-eyes principle”, according to which two collaborators of the office have to be present for a decision. No similar reform efforts that would reduce the arbitrariness of the current asylum procedure have yet been introduced for the latter decision-making stages.