Cosmopolitanism and asylum seekers in the European Union - Implementation of the asylum acquis in Germany, the Netherlands and the United Kingdom from 1999-2015. Are EU Member States fulfilling their international and EU obligations?

K J Mierswa

PhD

2016

Cosmopolitanism and asylum seekers in the European Union - Implementation of the asylum acquis in Germany, the Netherlands and the United Kingdom from 1999-2015. Are EU Member States fulfilling their international and EU obligations?

Klaudia Jadwiga Mierswa

A thesis submitted in partial fulfilment of the requirements of the University of Northumbria at Newcastle for the degree of Doctor of Philosophy

Research undertaken in the Faculty of Arts, Design and Social Sciences

November 2016

Für Mami, Papi und Nicole

Dla Babci Janiny i Dziadka Jozefa

Dla Dziadka Herberta

For John

Abstract

This study described and analysed the provision of reception conditions- including material reception conditions, accommodation, health care, education and employment- to asylum seekers in Germany, the Netherlands and the United Kingdom. The main aims of the study were to: 1) Give an outline of the legislative and administrative measures governing the asylum process in the European Union and the concerned countries, 2) Develop a theoretical framework with cosmopolitan indicators and finally 3) Analyse the findings using the cosmopolitan indicators and discuss whether EU Member States are in compliance with cosmopolitan values and human rights norms when it comes to the provision of reception conditions to asylum seekers. The study is of a unique character as it compared different national processes of reception conditions to asylum seekers in light of a cosmopolitan framework.

A multi-method research strategy included a qualitative research approach, the development of indicators and analysis of three case studies. Data was collected from multiple sources: NGO and governmental reports, European, national and regional legislation and semi- structured interviews with experts from NGOs and governmental authorities working in the provision of reception conditions to asylum seekers. The establishment of cosmopolitan indicators describing political, moral and cultural characteristics of a cosmopolitan state provided a conceptual framework for the study, and the indicators served as an analytical tool in the discussion of the findings.

The study demonstrated that there are flaws in the analysed national approaches in the provision of reception conditions to asylum seekers. One contributing factor for this was the existing broadly-phrased EU asylum acquis and the implementation of these legislative tools into national and local law. Furthermore, the study pointed out that the EU and the analysed countries show certain cosmopolitan traits, such as the realization of an inter-connectedness and dependency of the world in the present global environment. However, the commitment and ambitious aims of being in compliance with human rights norms and cosmopolitan values are rarely fully translated into the actual provision of reception conditions to asylum seekers. The study found that one of the main forces of this dilemma is the reluctance of the EU Member States to give up a certain degree of their sovereignty in this matter.

The study shows that the conceptual framework developed from cosmopolitan ideas can be usefully applied to the study of the provision of reception conditions to asylum seekers, the conceptual framework could be used as guidance for a subsequent and more extensive research in the field. Furthermore, the study presents policy recommendations to the analysed countries providing them with relevant input on shortcomings and possible solutions and improvements to the national asylum processes.

List of contents

List of appendices

List of tables and figures

List of abbreviations

AC	**Application Centre**
BAMF	**Bundesamt für Migration und Flüchtlinge**
CEAS	**Common European Asylum System**
CFSP	**Common Foreign and Security Policy**
COA	**Central Agency for the Reception of asylum seekers**
COL	**Central Reception Centre**
DFT	**Detained Fast-Track Procedure**
ECHR	**European Convention on Human Rights**
ECtHR	**European Court of Human Rights**
EEA	**European Economic Area**
EEC	**European Economic Community**
GDR	**German Democratic Republic**
IND	**Immigration and Naturalisation Service**
JHA	**Justice and Home Affairs**
NGO	**Non-governmental organisation**
NSA	**Non-suspensive appeal cases**
POL	**Process Reception Location**
RVA	**Regulation on benefits for asylum seekers and other categories of foreigners**
SEA	**Single European Act**
SIA	
UDHR	**Universal Declaration on Human Rights**
UN	**United Nations**
VA	**Extended asylum procedure**
VW	**Vreemdelingenwet (Aliens Act)**

Acknowledgments

First of all, I would like to thank my supervisors Dr. Rachael Chapman and Dr. Tom Vickers for the patient guidance, encouragement and advice they have provided throughout my PhD. I have been extremely lucky to have supervisors who cared so much about my work, and who responded to my questions and queries so promptly.

I must also express my gratitude to my parents Karolina and Dariusz, who have always encouraged me to pursue my dreams and who have always supported me in everything I do. Both of you have shown me, that it is worth it to work hard for your dreams. I also have to thank them for all the patience and motivational words during the ups and downs of my research.

In addition to this, I would also like to thank my sister Nicole. You have always been my rock and without your creative input and hours of proof-reading and commenting on draft chapters and conference submissions I would have been completely lost. Thank you as well for just being such an amazing and inspiring person, that always pushes me with positive energy.

I would also like to mention my grandparents Janina and Jozef and thank them for all of the heart-warming and caring phone-calls and care packages that help me through numerous sleepless nights working on this thesis. You two are truly an inspiration!

I must also express my deepest gratitude to my partner John, for his continued support, encouragement and endless love. Without you and your caring nature I would have struggled to find the inspiration and motivation needed to complete this dissertation.

Finally, I would like to thank the Faculty of Arts, Design and Social Sciences for the scholarship, which made it possible to conduct this research.

Declaration

I declare that the work contained in this thesis has not been submitted for any other award and that it is all my own work. I also confirm that this work fully acknowledges opinions, ideas and contributions from the work of others.

Any ethical clearance for the research presented in this thesis has been approved. Approval has been sought and granted by the Faculty Ethics Committee on the 22nd of January 2014.

I declare that the Word count of this Thesis is: 75,062

Name: Klaudia Jadwiga Mierswa

Signature:

Date: 08/11/2016

Chapter 1

Introduction

In many parts of the world, refugees flee their home countries due to war, violence or the fear of prosecution. Their search for sanctuary often brings them to the Member States of the European Union, a union that is aiming at respecting human rights and has these values enshrined in their core legislative measures.

In their search for a safe haven, refugees make use of their right to seek asylum, an ancient juridical concept under which an individual persecuted by their own country may be protected by another sovereign entity.This idea of the right to asylum is further manifested in Article 14 of the Universal Declaration of Human Rights, which states that "everyone has the right to seek and enjoy in other countries asylum from persecution".

The most common and known definition of the concept of a refugee is the one established through the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. According to the 1951 Geneva Convention and the 1967 Protocol, the concept of refugee should apply to anyone who

> "and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

Following on from this, an asylum seeker or 'asylum applicant', as it is often referred to in EU legislation, is 'a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet

been taken' (Article 2b, 2013/33/EU). In this respect, international protection 'means refugee status and subsidiary protection status' (Article 2a, 2011/95/EU), which means the recognition by an EU Member State of a third-country national or a stateless person as a refugee (Art.2e) or as someone eligible for subsidiary protection (Art.2g).

Following on from that a lodged asylum application is understood as being "a request made by a third-country national or a stateless person for protection from a Member State, who can be understood to seek refugee status or subsidiary protection status, and who does not explicitly request another kind of protection" (Art.2h, 2011/95/EU).

In this respect, an asylum seeker or asylum applicant can be understood, as being an individual applying for international protection and refugee status, whom is still awaiting the decision on this application.

The right to asylum inevitably leads to the principle of universal hospitality, a principle developed by Immanuel Kant in his 1795 essay "Perpetual Peace: A Philosophical Sketch", in which Kant claims that as a human being, one has the right to world citizenship and therefore to universal hospitality. If mankind is interconnected though, following on from the cosmopolitan approach Kant is taking, one could also argue that all human beings are belonging to a single community, which is based on a shared morality and the commitment to human rights.

The question is though does this theoretical underpinning of cosmopolitanism stand a chance in the reality of providing asylum and adequate reception conditions to refugees and asylum seekers? With this dilemma in mind, I developed the idea for this thesis. Cosmopolitanism so far, has rarely been used to explain or discover real-life phenomena, due to the difficulty of conceptualizing this rather theoretical concept into valuable and comparable indicators, which this thesis will attempt to do. Another aspect, which makes this thesis original is the fact that, so far the concept of cosmopolitanism has been rarely used in connection to the study of the provision of reception conditions to asylum seekers. Finally, this thesis is employing a comparative case study analysis of three EU Member States, which will contribute to existing knowledge as well as provide an original contribution.

Just since 2008 until 2013, the number of people seeking refuge in the European Union has steadily increased. While in 2008, around 230,000 asylum seekers entered the Member States of the European Union, the number increased up to 435,00 asylum

seekers in 2013. In 2015, the extraordinary surge of migrant flows to the European Union continued. The number of irregular border crossings in 2015, at 1,83 million was six times higher than 2014, which has already seen a record year, and it was even 17 times higher than in 2013. A total amount of 1,25 million asylum applications were lodged just in the year 2015 in the European Union (Eurostats, 2015). One of the main destination countries within the European Union for asylum seekers is Germany. In 2013, Germany received the highest amount of asylum seekers in the EU with 127,000 asylum applicants, which is resulting in 29% of all asylum seekers in the European Union (Eurostats, 2014).

These developments in the world and the increased number of asylum applications and irregular border crossings put enormous pressures not only on national border and migration authorities and the asylum systems of individual Member States, but it is also highlighting the shortcomings of border and migration control and management in the European Union.

The main striking question that comes to mind looking at the facts and figures, is how the European Union responded to the fact that it is the main receiving region of asylum seekers in Europe. Indeed, the European Union has acknowledged the fact that it is one of the main destination regions for asylum seekers in Europe. Therefore, in 1999, the EU Member States (MS) have committed themselves to create a Common European Asylum System (CEAS) in order to tackle the growing asylum challenges at the European level. Over the following years, the EU has adopted a number of important legislative measures that harmonise common minimum standards for asylum. The most prominent ones are the following: The Qualifications Directive (2004/83/EC), the Minimum Standards of Reception Directive (2003/9/EC), the Procedures Directive (2005/85/EC) and the Dublin Regulation (343/2003/EC). The entire European asylum system was geared towards solving the increasing asylum challenges at a European level, and to harmonise and streamline the different national asylum systems of the Member States in order to ensure an equal and treatment of asylum seekers.

The Directive that is important for this thesis is the Reception Conditions Directive (2003/9/EC). The objective of the Directive “is to lay down minimum standards for the reception of asylum seekers in Member States” and it applies to “all third country nationals and stateless persons who make an application for asylum at the border or in

the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers". Under the Reception Conditions Directive, Member States are obliged to guarantee the following measures to the asylum seekers: Material reception conditions (accommodation, food and clothing), family unity, medical and psychological care and finally access to the education system and language courses. Furthermore, Member States cannot deny asylum applicants the access to the labour market and vocational education 6 months after they have lodged their application for asylum. Although the main goal of the directive is to ensure comparable conditions in all Member States, Member States are still allowed to decide on the scope of the Reception Directive. The Reception Directive can be seen as an important part of the CEAS, because the differences in the reception conditions in the EU Member States can be a factor for migratory movement of asylum seekers within the EU. This point is also interesting, if one takes into consideration that based on the Dublin II Regulation asylum seekers can only lodge an asylum application once in the EU. Hence, the conditions in which they are being received are from great importance in their choice. With the Reception Directive, the reception conditions are harmonised in the varying Member States, so that the phenomenon of asylum shopping can be avoided. One of the most heavily discussed provisions of the Reception Conditions Directive is the access to employment and the delay in access to it as well as the complicated procedure attached to it. Nevertheless, it is already a big step, that the Member States are obliged to open the access to employment as well as vocational training to the asylum seeker, due to the fact, that before the adoption of the Directive, Member States were rather reluctant to grant asylum seekers the access to the labour market.

So although it seems that the European Union has a robust scaffold in place in providing asylum seekers adequate reception conditions, there is one major aspect that has to be taken into account at any point of the asylum process, namely the compliance with human and fundamental rights.

In order to guarantee that the rights of refugees and asylum seekers are not violated during the whole asylum process and beyond, the Member States of the EU are theoretically subject to three distinct layers of human rights protection. These consist out of (i) the European Convention for the Protection of Human Rights (ECHR)

together with the 1951 Geneva Convention, (ii) the Charter of Fundamental Rights, and (iii) finally national human rights law.

There are various measures and provisions in place that ensure, that the rights of refugees and asylum seekers are protected. The first regime of international protection of asylum seekers and refugees is the 1951 Geneva Convention. Nowadays, the 1951 Geneva Convention and the 1967 Protocol can be seen as the cornerstone of the protection of refugees, due to the fact that they have been ratified by a majority of sovereign states, including all of the EU Member States. Furthermore, the Convention and the Protocol are providing the definition of a "refugee" and they set out the rights of refugees and asylum seekers. Besides this, the 1951 Geneva Convention sets out the obligations and duties, as well as the rights of the refugee and the Host-State. The basic rules for the host-State that need to be followed are those of non-discrimination concerning race, religion or country of origin of the refugee, non-penalization of the refugee, even if he entered the host-State unlawfully, and finally non-expulsion, hence the principle of non-refoulement. Finally, the Convention lays out the minimum standards of protection that a State should provide to refugees. Among others these rights contain judicial protection of the refugees, access to elementary education, and access to social security and administrative assistance.

Drawing on the inspiration of the 1951 Geneva Convention, a regional system of human rights protection operation across Europe was the next logical step. One of the major advantages of the ECHR and a point that is highlighting the importance of this Convention is the fact, that it is still the only international human rights agreement that is providing such a high level of individual protection The reason for this is, amongst others, the European Court of Human Rights (ECtHR), which was established through the Convention. Any individual who feels that his rights are violated under the Convention by a state can take a case to the Court. Although there is no explicit reference to the right of asylum in the European Convention on Human Rights, refugee rights do find protection indirectly in the ECHR. The ECHR is covering many situations that fall outside the scope of other instruments intended to ensure international protection of asylum seekers, e.g. a case of a person not qualifying as a refugee, would fall outside the scope of the 1951 Geneva Convention; but such a person would nonetheless be protected by the ECHR.

To conclude, the 1951 Geneva Convention and the 1967 Protocol, together with the ECHR, form a solid protection for the rights of asylum seekers and refugees. Although

it seems that the ECHR is less specific when it comes to refugee protection, the safeguards that are provided therein seem to be stronger and covering a broader range of situations. Hence, if the protection granted by other international legal measures, such as the 1951 Geneva Convention fail, refugees and asylum seekers may still rely on protection set out in the ECHR.

While the EU MS are bound to the protection of human rights by being parties to the 1951 Geneva Convention and the ECHR, and references to the ECHR were incorporated into EU legal provisions, the EU was lacking its own written catalogue of human rights. This changed with the proclamation of the European Charter of Fundamental Rights at the European Council in Nice in 2000.The Charter is including all the political and civil rights, as enshrined in the ECHR, as well as other existing EU rights, such as economic social and cultural rights. Thus, technically EU MS are subject to three distinct layers of human rights protection: the ECHR together with the 1951 Geneva Convention, the Charter of Fundamental Rights, and national human rights law. Accordingly, one might think, that asylum seekers and refugees can fall back on the protection of their fundamental human rights. But as it will be seen later, even this safety-net seems to have loop-holes.

Having international human rights provisions and national legislation, as well as the Common European Asylum System in place, one might think that asylum seekers in the European Union should enjoy harmonised and adequate reception conditions regardless in which EU Member State they lodge their asylum application, and above all they should be guaranteed that their human and fundamental rights are guaranteed across the European Union.

Following the presented theoretical underpinning of cosmopolitanism and the contextual background of this study the main research question of this study is the following:

To what extent do EU Member States comply with EU regulations, human and fundamental right obligations in respect to the provision of reception conditions to asylum seekers and in how far can their approaches to the provision of reception conditions be characterised as cosmopolitan?

In order to analyse the living conditions of asylum seekers in those countries and whether the national authorities comply with cosmopolitan values, such as human right

norms, various approaches have been employed in order to collect the necessary data.

In a first step, it was important to point out the national provisions that are available regarding the living conditions. In this respect, the main focus of the data collection was on the national and regional legislation, as well as other policy measures. Hence, for instance, the statutes and ordinances of the countries and the regional entities have been collected and examined.

The second step of the data collection was to assemble data that would demonstrate whether the national legislative measures concerning the provision of adequate living conditions are in compliance with cosmopolitan values and human rights provisions. In this respect, the method of collecting data was twofold: Firstly, policy publications by the respective national and regional governments, as well as NGO and country reports, such as the German National Country Report by the European Council on Refugees and Exiles, have been analysed. Furthermore, newspaper articles and media reports addressing the living conditions of asylum seekers in Germany, the Netherlands and the United Kingdom have been studied. Secondly, in order to get a better insight into the process of the provision of the living conditions of asylum seekers, several interviews have been conducted with members of NGOs focusing on the support of refugees and asylum seekers and secondly interviews were conducted with state officials working at municipal level in the field of migration and asylum. The interviews were semi-structured with open-ended questions, and they were conducted in German, Dutch and English. The interviews were geared at gathering more information and details about the decision-making processes and procedures that guide the provision of adequate living conditions of asylum seekers in Germany, the Netherlands and the United Kingdom. Furthermore, the intention was to gain understanding about different factors and players that influence this provision.

The living conditions of asylum seekers will be examined by analyzing three different aspects, namely accommodation, health care and the access to education and employment.

The first part of the thesis will engage with the literature, both describing how the various international and European legislative tools and measures developed into the existing cosmopolitan regime of refugee and asylum seekers rights and with the assistance of existing work on cosmopolitanism, a variety of cosmopolitan indicators

have been developed, which will be used in a later part of the thesis to analyse the various national approaches to providing appropriated reception conditions to asylum seekers. Following this theoretical framework that is the basis of the analysis, the methodology will be presented in more detail. The choice of countries, the conceptualization of the cosmopolitan indicators, the data collection and the data analysis will be discussed and justified. It will be explained how the data was collected and how the collected data has been analysed. Furthermore, a short introduction into the conceptualization of living conditions will be given.

Following on from this, the main focus of the second part of the thesis will be on a comparison of the three countries. In a first attempt the history of asylum and migration in Germany, the Netherlands and the United Kingdom will be outlined. Besides this, the respective national administrative structure will be explained. These two aspects are important to discuss, as they form the foundation for the further analysis and understanding of the national asylum systems nowadays.
After the presentation of the historical development of asylum in the three countries and the explanation of the national administrative set-up, the focus of the subsequent part will be on analyzing the compliance of the German, Dutch and English asylum system, in particular the provision of adequate living conditions, with the EU Reception Conditions Directive and human rights provisions. In this respect, firstly the provisions of the EU Reception Conditions Directive will be presented and in a subsequent step, the reception conditions in these countries will be closer examined in light of the Directive and other human right norms.

The main focus of the second part of the analysis will be the discussion of the cosmopolitan indicators developed in the first part the thesis in light of the findings from the analysis of the reception conditions provided in the three countries.

In a final step of the thesis the findings will be discussed and concluded and the main research question will be summarized. Besides this, policy recommendations for the three countries will be provided, which have been set up through the gathering of the different data in the UK, the Netherlands and Germany, in order to point out possible shortcomings and incentives for improvements of the current national systems of provision of reception conditions to asylum seekers.

Part I

Chapter 2: Context- The protection of rights and the creation of the EU asylum acquis

Chapter 3: Literature review - Cosmopolitanism: From a normative concept to the creation of cosmopolitan indicators

Chapter 4: Methodology

Chapter 2

Context

The protection of rights and the creation of the EU asylum acquis

2.1.The protection of asylum and refugee rights in international and European legislation

Before the creation of the Common European Asylum System (CEAS) and the different legislative measures encompassing the European asylum acquis will be discussed in more detail, the following part will take a close look at the existing international and European legislative tools in place to protect the rights of asylum seekers and refugees.

The right to asylum, as we know it today, made its first appearance in 1948 with the Universal Declaration of Human Rights (UDHR) (UN General Assembly, 1948). In this respect, in the UDHR it was included that "everyone has the right to seek and enjoy in other countries asylum from persecution" (Article 14).

Following on from the Universal Declaration of Human Rights, a few years later, in 1951, the Convention Relating to the Status of Refugees, also known as the 1951 Geneva Refugee Convention, was adopted. In the beginning, the 1951 Geneva Refugee Convention had a rather limited impact, due to the fact, that the main aim of the Convention was to support and protect individuals who have fled their countries of origins before 1951 as a result of World War II. In addition to this time restriction, the 1951 Geneva Refugee Convention also contained a geographical restriction as it focused mainly on displaced people within Europe (UN General Assembly, 1951). Both, the geographical and time limitations were removed with the adoption of the 1967 Protocol, through which the 1951 Geneva Refugee Convention obtained universal coverage, which made it become one of the crucial regimes in the field of international protection of asylum seekers and refugees (UN General Assembly, 1967).

Nowadays, the 1951 Geneva Refugee Convention together with the 1967 Protocol can be seen as the cornerstone of the protection of refugees and asylum seekers, due to the fact that both legislative measures have been ratified by the majority of sovereign states, including all of the EU Member States.

In addition to this, the 1951 Geneva Convention and the 1967 Protocol are providing a common definition of 'refugee' and they encompass the rights of asylum seekers and refugees. Following on from this point, according to the Convention,

> "a refugee is someone who is unable or unwilling to return to their country of origin, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion" (Article 1A, UN General Assembly, 1951).

Besides touching upon the definition of a refugee, the 1951 Geneva Refugee Convention is also setting out duties and obligations, as well as rights of the refugee and the concerned host-State. In regard to this, the main rules for the host-State to be followed are those of (a) non-discrimination concerning race, religion or country of origin of the refugee, (b) non- penalization of the refugee, even in the case of unlawful entry of the host-State, and (c) non-expulsion, hence the principle of non-refoulement (see Articles 3, 31(1) & 33 of the 1951 Convention, UN Assembly, 1951).
Lastly, the 1951 Convention lays out the minimum standards of protection that a host-State should provide to a refugee. Amongst others, these rights include (a) judicial protection of the refugees, (b) access to elementary education, and (c) access to social security and administrative assistance (see Articles 16, 22,24 & 25 of the 1951 Convention, UN General Assembly, 1951).

Drawing on the inspiration of the Universal Declaration of Human Rights and the 1951 Geneva Refugee Convention, the next development in the field of human rights protection was the establishment of a regional system operating across Europe. Thus, in 1950, the Council of Europe drafted the European Convention on Human Rights (ECHR), which entered into force in 1953. One of the major advantages and strong facets of the European Convention on Human Rights, that is a distinguishing factor in regard to other international human rights agreements, is its strong focus on individual protection (Lenart, 2012). One of the main reasons for the high level of individual protection is the creation of the European Court of Human Rights (ECtHR), where any

individual, that feels that his rights are violated under the ECHR by a host-State can take a case to the Court.

However, it has to be pointed out, that there is no explicit reference to the right of asylum or refugee in the European Convention on Human Rights. Nevertheless, the rights of refugees are protected in the ECHR indirectly. The European Convention on Human Rights is covering many aspects and situations that might fall outside the scope of the other international legislative instruments intended to ensure international protection of asylum seekers.[1]

Another important aspect, that has to be pointed out, is the fact, the European Union is not yet party to the European Convention on Human Rights and therefore is not subject to scrutiny by the European Court of Human Rights nor is it bound by its decisions.[2] Therefore, the judicial mechanisms of the European Court of Human Rights theoretically do not apply to EU actions; however Member States, as parties to the ECHR, have an obligation to comply with the provisions set out in the ECHR when implementing or applying EU measures and provisions (Waagstein, 2010).

In conclusion, the 1951 Geneva Refugee Convention together with the 1967 Protocol and the European Convention on Human Rights, can be seen as a solid protection of human rights and therefore cosmopolitan values. As, it was pointed out earlier however, the European Union was lacking its own legal written catalogue of human rights. This improved with the establishment of the European Charter of Fundamental Rights at the European Council in Nice in 2000. The Charter of Fundamental Rights includes all the political and civil rights, as they are already enshrined in the ECHR, together with other EU rights, such as economic, cultural and social rights.

Hence, in theory refugees and asylum seekers can rely on three layers of human rights protection: (a) the 1951 Geneva Refugee Convention with the 1967 Protocol and the European Convention on Human Rights, (b) the European Charter of Fundamental Rights, and finally (c) the respective national law in Germany, the Netherlands and the United Kingdom.

[1] E.g. a person, that would not qualify as a refugee, would automatically fall outside the scope of the 1951 Geneva Convention, however such as person would be protected by the European Convention on Human Rights.

[2] Although the accession to the ECHR became a legal obligation with the Treaty of Lisbon and the negotiation process is ongoing.

2.2. First steps towards a European asylum system

Before taking a look at the first steps towards a European asylum system it is crucial to point out that the rationale behind creating the European Union, or the European Economic Community as it started out in the early stages, was the creation of a European economic market that would enhance the economic cooperation between the Member States of this community. At the starting point, issues related to immigration and asylum were exclusively arranged and dealt with through bilateral or multilateral agreements by the Member States and other third states. Consequently, issues around asylum and immigration were within the competencies of the individual Member States.

This high degree of sovereignty of the Member States in regards to asylum and immigration matters began to change with the introduction of the Single European Act (SEA) in 1986, with which the concept of an internal market has been introduced, which is by definition "an area without internal frontiers in which persons, goods, services and capital can move freely in accordance with the Treaty establishing the European Community" (SEA,1986). With the creation of this internal market, the Member States of the EEC made one step closer towards the actual establishment of an area of freedom of movement and closer relations between the Member States. One of the distinctive characteristics of the internal market was the right for people to move freely and without restrictions from one to another Member State. Therefore, in order to transfer the ideas behind the internal market, it was necessary to abolish checks on people at the internal borders between the Member States. Although the EU Member States agreed to the creation of the internal market, some remained hesitant to abolish the common and internal borders and share their competences concerning border-policies with the EEC. This resistance in cooperation on a European level in terms of border and immigration issues led to the failure of the internal market and the free movement of persons within the territory of the EEC.

The Federal Republic of Germany, France and the Benelux Economic Union however, continued working on the idea of creating a territory without borders and they launched the Schengen Agreement in 1985. The main aim of this agreement was the foundation of a territory without checks at the internal borders and the creation of a system to handle the external frontiers. As a result of the Schengen Agreement, the Convention Implementing the Schengen Agreement (SIA) was signed in 1990. Following on from

the adoption of the Schengen Agreement and the SIA, the checks on individuals at the internal borders were steadily abolished, leading to the free movement of people within the internal borders. In order to counteract the abolishment of checks on individuals at the internal border, stricter compensatory measures were implemented at the external borders. This aspect is from great importance in regard to asylum issues, due to the fact that asylum seekers at some point have to enter the European Union through those external borders, however after this, if they were not controlled, they in theory can move freely within the territory of the European Union. The Schengen Implementing Agreement entered into force 1993 and it took effect on the 26th of March 1995 creating the Schengen Area. The Schengen Area was aimed at being an area without checks and frontiers at the internal borders of the participating States. It was only with the Treaty of Amsterdam of 1997 that the Schengen acquis was integrated into the existing EU framework and EU Member States that were originally not participating in the Schengen Agreement, accepted the Schengen acquis as part of the EU law with their accession to the EU.

The first legislative measure relating to immigration and asylum introduced in Europe was the Dublin Convention in 1990. The Dublin Convention was signed on the 15th of June 1990 as a treaty under international law, thus it was not being classified as being part of EU law. The Convention entered into force in 1997 in Belgium, Denmark, the Federal Republic of Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, United Kingdom and later also in Austria, Sweden and Finland. The core aim of the Dublin Convention was that every asylum application should be processed by only one Member State. For that reason, the provision of the Dublin Convention determined which country would be responsible to examine the asylum claim. In addition to this, if a country has already granted refugee status to a family member or dependant of the asylum seeker, the same country is responsible for the examination of the asylum application of the given asylum seeker (Art.4 Dublin Convention). A country is also responsible for a lodged asylum application; in the case it had previously issued a valid residence permit or a visa to an asylum seeker (Art.5) or if this country is the first entry point of an illegal applicant (Art.7). In all the other cases, the country that is responsible for the examination of an asylum claim is the one where the first application of asylum has been lodged. In the instance, where an asylum seeker has been removed from the first country where he lodged an asylum claim to

another country, the latter has the right to send the concerned asylum seeker back to the country, where he originally lodged his asylum claim.

In order to avoid tensions between the Dublin Convention and the Schengen acquis, the signatory countries of both agreements decided that the Schengen acquis would cease to be applied once the Dublin Convention would enter into force. Thus since 1997, the Dublin Convention was the only provision available for the examination of asylum claims in Europe.

In a nutshell, one can say that the main benefit of the Dublin Convention was the fact, that it theoretically was based on mutual trust, which assured that all Member States of the EU respect the EU acquis on asylum matters and promote the idea of solidarity and cooperation between Member States. However, the Dublin Convention did not create a common European asylum policy, due to the fact that Article 3 of the Convention gave Member States the right to continue to examine asylum claims on grounds of their national legislation. Nevertheless, it can be seen as a first step towards stronger cooperation in asylum affairs in the European Union.

With the Maastricht Treaty in 1992 the European Union was created. The Maastricht Treaty also introduced the three pillar structure of the EU. The first pillar entailed the European Communities, while the second pillar established the Common Foreign and Security Policy (CFSP). Lastly, the third pillar consisted out of policies on Justice and Home Affairs (JHA). It is essential to point out, that the introduction of the second and third pillar led to an enhancement of intergovernmental cooperation, as asylum and migration matters became part of the third pillar.

With the Treaty of Amsterdam in 1997, another step towards closer cooperation in asylum issues was made, as asylum matters have been transferred from the third to the first pillar. This transfer can be seen as part of the communitarisation of the European Union, which means that Member States no longer had the exclusive competencies in the field of asylum; as it had become a shared responsibility within the EU.

The most important milestone in the creation of a common European asylum policy was the European Council in Tampere in 1999. The commitment to the aim of turning the European into an ‘Area of Freedom, Security and Justice’ was underlined and plans for a future European asylum system have been presented. Subsequently, a future asylum system should include

> "in the short- term a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection" (Tampere European Council, 1999).

In addition to this, it was agreed by the European Council, that in the long-term "Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union" (Tampere European Council, 1999). One of the main justification for the establishment of common asylum procedures and a uniform refugee status across the EU was the avoidance of asylum shopping. As reception conditions of refugees and asylum seekers differ across the Member States of the European Union, asylum seekers may choose the country to claim an asylum application on the basis of which country provides the best reception conditions. Consequently, asylum seekers were no longer able to lodge an asylum claim in several EU Member States at the same time or choose the one having the most lenient practice or policy in place.

As a concluding remark, one can say, that with the introduction of the internal market, the gradual abolition of checks and controls on individuals at the common internal borders has been introduced and it was finally achieved through the Schengen acquis. The Treaty of Amsterdam introduced the Area of Freedom, Security and Justice, while the European Council of Tampere highlighted the significance of the subject of asylum and endorsed the commitment of the European Union to human rights and cosmopolitan values under the 1951 Geneva Refugee Convention.

While the first part of this chapter discussed the necessary provisions and steps that were taken in order to create a Common European approach to asylum, the following part of this chapter will discuss the Common European Asylum System in-depth.

2.3.European asylum acquis

Once the direction for a common asylum system has been set at the Tampere European Council and the European Council was required by the Amsterdam Treaty to adopt "measures on asylum, in accordance with the 1951 Geneva Convention and the 1967

Protocol relating to the status of refugees and other relevant treaties" by 2004, various Directives were adopted. The Amsterdam Treaty has given some direction in regard to the layout of the common asylum system. In this respect, firstly four different categories of protection have been pointed out: temporary protection, refugee status, international protection and finally the protection of asylum seekers. In regard to the refugee status, rules on the qualification and procedures for the granting or withdrawing of the status ought to be set up. When it comes to the asylum status, the Treaty is asking for clear reception standards, mechanisms and criteria for the allocation of asylum seekers. Taking a look at the existing EU legislative measures on asylum, it becomes clear, that they are addressing all these requirements set out in the Treaty. While the Qualifications Directive is setting out the requirements on the qualification as a genuine refugee, the Procedures Directive points out rules that should be complied with when it comes to granting or withdrawing refugee status. In addition to this the Dublin II Regulation and the Dublin III Regulation is concerned with the allocation of asylum seekers in the European Union and finally the Reception Conditions Directive is determining the rights of asylum seekers.

Temporary Protection Directive

The first Directive, that has been adopted after the European Council in Tampere was the Temporary Protection Directive (2001/55/EC), however the origins of the Temporary Protection Directive can be dated back to the 1990s. With the Yugoslavian war in the early 1990s, a solution was needed to the question of how to address the regulatory challenge resulting out of a mass influx of people fleeing conflict from the war-torn region. Up until then, the European approach in times of mass humanitarian crises was to provide temporary protection status, however the evolution and application of various national temporary protection schemes was rather inconsistent and the policies in place were highly discretionary. With the Kosovo crisis, which resulted in the largest inflow of refugees in Europe since World War II, the need for a regulatory framework in the case of mass influx became evident. The purpose of the Directive is to

> "establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member

States in receiving and bearing the consequences of receiving such persons" (Article 1, 2001/55/EC).

The aim of the Directive is to put immediate temporary protection in place and is encouraging solidarity and burden-sharing amongst the EU Member States in relation to providing protection to displaced individuals. Following the Temporary Protection Directive, Member States are obliged to grant individuals that are in possession of a temporary protection status, a residence permit and various rights such as the right to have access to suitable accommodation, to employment, education and the assistance in social welfare.

Although the Temporary Protection Directive was established to provide for an efficient and practical framework in order to be prepared for mass influx, the Directive has not been implemented up to this date, even though Malta and Italy did request the activation of the Directive in 2011, the European Commission did not pick up on the requests.

Qualification Directive

The second Directive, that is part of the Common European Asylum System, is the Qualifications Directive (2004/83/EC), which is aimed to "lay down minimum standards for the qualification of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted". Following the stipulations of the Directive a refugee is defined as "any non-EU country national or stateless person who is located outside of his/her country of origin and who is unwilling or unable to return to it owing to fear of being persecuted" (Art.9). Once an individual classifies as a refugee or for the subsidiary protection status, he has to be granted the following set of rights by the Member States:

(a) information about the process in a language that they understand (Art.22);
(b) the right to non-refoulement (Art.21);
(c) a residence permit (Art.24);
(d) the right to travel within and outside the country that granted the refugee or subsidiary protection status (Art. 25);
(e) access to paid employment and vocational training (Art.26);
(f) access to education (Art.27);

(g) access to medical care and any other necessary types of care, particularly for persons with special needs (victims of torture, rape or other forms of psychological, physical or sexual violence etc.) (Art.29);
(h) access to appropriate accommodation (Art.31); and
(i) access to programmes assisting in the integration into the host society (Art. 33).

In general, one can say that the Qualifications Directive is attending to many issues in asylum law, which have led to divergences in the national approaches in the past.

On the 21st October 2009, the European Commission adopted a proposal to recast the Qualifications Directive. The main new elements of the amended Directive include:

1. A clearer definition of the concepts of *internal protection*, *membership of a particular social group* and *actors of protection*, which empowers Member States to identify genuine asylum seekers quicker and therefore prevent the abuse of the asylum system.
2. A broader definition of the concept of *family & dependent people.*
3. Improved access to employment and health care for beneficiaries of subsidiary protection.
4. Amended conditions for the access to integration and accommodation facilities.
5. Improved standards for vulnerable persons such as unaccompanied minors or people with special needs.

Asylum Procedure

The third adopted Directive is the Asylum Procedures Directive (2005/85/EC). The Directive is targeted at providing "minimum standards on procedure in Member States for granting and withdrawing refugee status". Following on from the Directive, Member States are required to guarantee that asylum seekers applying for refugee status are able to remain in the country while their asylum claim is still pending and they should receive all necessary information about the procedure, their rights and obligations.

The Procedures Directive is one of the most criticized directives of the Common European Asylum System and the main point of criticism is the supposed incompatibility with international obligations. In addition to this, Costello (2005) is

doubting the three concepts that are introduced through the Directive. The first concept, the concept of the first country of asylum, allows asylum claims to be rejected in the case where asylum seekers have already been acknowledged as refugees in another country. Moreover, is the concept of safe country of origin permitting to consider applications of nationals of a particular country as unfounded, whilst the safe third country concept is permitting the transfer of responsibility for the examination of an asylum claim to transit countries (Costello,2005).

As one can see, the original Asylum Procedures Directive was the lowest common denominator between the EU Member States, with the rules being too broadly framed leaving the Member States leeway to implement the rules in a way that would be beneficial for them. Therefore, in 2013, a recast of the Asylum Procedures Directive has been adopted. The recast of the Directive is much more precise and establishing a more articulate system, which guaranteed that asylum application decisions are more fair and efficient, as well as guaranteeing a more harmonised high quality standard across the Member States. In this respect, the procedures will be faster and more efficient, which will result out of better training for those entities involved in the decision-making process. In addition to this, rules on appeals in front of courts were rephrased in a more understandable manner, which will allow the asylum applicants to bring their cases in front of the national courts faster. Finally, a strong emphasis has been placed on vulnerable people. Anyone in need of special help, e.g. due to their disability, age, illness, sexual orientation or traumatic experiences, are entitled to receive adequate support and help in lodging their asylum application. Unaccompanied minors will additionally receive support from an appointed qualified representative by the national authorities.

In pursuit of the discussion of the different Directives that form the CEAS on an individual basis, it becomes apparent that they share common objectives and are intertwined. In this respect, they should rather be seen as constituents of an integrated system instead of as independent legal measures. All of the Directives explicitly identify their main purpose of laying down comparable standards on the subject matter which they address. As well as the common objectives of the Directives, all of the legislative measures of the CEAS are attempting at setting minimum standards. Hence, the relevant legislation ought to be observed by the Member States, leaving them the discretion to adopt or keep national standards, only if they are more favourable to the

asylum seekers. In this respect, the Procedure, Qualification and Receptions Directives are pointing out that 'Member States may introduce or retain more favourable standards…, in so far as those standards are compatible with this Directive' (similar wording can be found in all of the three mentioned Directives). Conclusively, all Directives promote a certain level of harmonisation, however there are various degrees of harmonisation visible in the Directives.

Dublin III Regulation

Another crucial legislative measure of the European asylum acquis is the Dublin III Regulation (EU No 604/2013), which is establishing a method for deciding which EU Member State is responsible for an asylum claim.

The first time, a regulation like this has been created was through the Dublin Convention in 1997, which was then replaced by the Dublin II Regulation (EC No 343/2003) in 2003, which was part of the actions by the European Union to create a common European asylum system. The main criticism of the Dublin II Regulation was the strong focus on transferring asylum seekers from one Member State to another and placing increased responsibility on the Member States located at the European borders. The Dublin III Regulation however, encompasses more opportunities for family members of asylum applicants to request that they are transferred to other EU Member States in order to be united and have their asylum claims be dealt by the same authorities. Other prominent differences between the Dublin II and Dublin III Regulations are the right to a personal interview for those asylum seekers that are about to be transferred to another Member States under the regulation, an appeal mechanism and protection from automatic detention. Furthermore, the European Commission drafted a standardised information leaflet provided to all Member States, in order to be used to inform and educate asylum applicants about the Regulation and their rights and duties.

Furthermore, the Dublin III Regulation introduced a new clause, which is denying Member States the right to transfer an asylum seeker to another Member State, if there is a risk that the asylum applicant might be subject to inhuman and degrading treatment. As a result of this, all Member States are obliged to assess the conditions in the Member State that they want to transfer the asylum seeker to.

Another innovation of the Dublin III Regulation is a new surveillance system, which is the so-called early warning mechanism, which facilitates the monitoring of the

asylum systems in the Member States and detect problems and deficiencies faster.

Eurodac Regulation

Another regulation which is important in connection with the Dublin III Regulation is the Eurodac system (Regulation No 603/2013), which was adopted in 2000 and recasted in 2013, and is aiming at assisting Member States in the identification of "applicants for asylum and persons apprehended in connection with the unlawful crossing of the external borders of the Community" (Art.3). The Regulation is covering the "Central Unit, a computerised central database in which the data are processed for the purpose of comparing the fingerprint data of applicants for asylum and of the categories of aliens and of means of data transmission between the Member States and the central database" (Art.5).

The Eurodac system is functioning in the following manner: "Fingerprint data transmitted by any Member State, shall be compared by the Central Unit with the fingerprint data transmitted by other Member States and already stored in the central database" (Art.5). After this "the Central Unit shall forthwith transmit the hit or negative result of the comparison to the Member State of origin" (Art.6).

Just like some of the other legislative measures of the European asylum acquis, the Eurodac Regulation was revised in 2013. One of the main modification of the recast of the Regulation (EC No 603/2013) is that there is now the opportunity for national police forces and Europol to access Eurodac data for the purposes of detecting, preventing and investigating serious crimes or terrorism.

2.4. The focus of the thesis - Reception Conditions Directive

This thesis is examining the reception conditions that are provided to asylum seekers by the various EU Member States and therefore the last directive of the EU asylum acquis is from greatest importance. The objective of the Reception Conditions Directive (2003/9/EC) "is to lay down minimum standards for the reception of asylum seekers in Member States" and it is applying to "all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers" (Preamble 2003/9/EC). Hence the aim is to ensure that asylum applicants

have a dignified standard of living and that living conditions are comparable across all of the EU Member States.

As a general rule, the Directive points out that asylum seekers should be made aware of their rights as well as duties and the benefits they may claim under the Directive. In order to do so, asylum seekers should receive a document, which is certifying their status as an asylum seeker, which will be renewable until they receive a decision on their asylum application. In addition to this, Member States have the duty to allow asylum seekers the freedom of movement within their territory, and movement can only be restricted to part of the territory, but there has to be a valid reason for the restriction (e.g. facilitating a faster processing of asylum applications).

Following the provisions of the Directive, EU Member States are obliged to guarantee the following to asylum seekers: (a) material reception conditions, (b) family unity, (c) medical and psychological care, and finally (d) the access to education and employment.

A. Material reception conditions

The Directive points out that Member States should ensure that material reception conditions are available to asylum applicants when they lodge their asylum application and that sufficient provisions should be in place to guarantee that the provided material reception conditions are adequate for the health of the asylum applicants and capable of ensuring their subsistence (Art.13 (1/2/3)). The Member States are free to decide on the nature of the material reception conditions provided, in the sense that they can be provided in kind, or in the form of financial allowances or vouchers or in a combination of these measures (Art.13 (5)).

In the case that accommodation is provided in kind to the asylum seeker, the Member State can either lodge them in premises that are used solely for the purpose of accommodating asylum applicants during their application examination at the border; in specific accommodation centres which guarantee an adequate standard of living; or in private accommodation adapted for lodging asylum applicants (Art.14).

Irrespectively of which option the Member States choose, they have to ensure that the family life of the asylum applicant is protected and that asylum seekers are granted the possibility of communicating with legal advisers and representatives of the UNHCR

and other non-governmental organisations as well as relatives.

In addition to this, legal advisers or counsellors as well as representatives of the UHNCR and NGOs should be granted the access to the accommodation centres or other housing facilities where the asylum seekers are lodged in order to support and assist the said asylum seekers. Access to the facilities can only be limited or denied on grounds relating to the security of the facilities and of the asylum seekers (Art.14 (1-7)).

B. Family unity

In regard to family unity, the Directive urges Member States to take appropriate actions and measures in order to preserve as far as possible housing unity as present within their territory, in the case that asylum seekers are provided with accommodation by the Member State (Art.8).

C. Access to medical and psychological care

Following the Reception Conditions Directive, Member States should warrant that asylum seekers receive the necessary medical and psychological care, which should at least encompass emergency care and the essential treatment of illness. Special provisions should also be in place for asylum seekers with special needs (Art.15). In this respect, Member States should pay special attention to the situation of vulnerable persons such as minors, elderly people, disabled people, pregnant women and individuals who have been subject to rape, torture or further forms of physical, psychological or sexual violence.

D. Access to education and employment

In addition to this, Member States are obliged to grant minor asylum seekers and children of asylum seekers the access to the national education system under comparable conditions as nationals of the host Member State at least until an expulsion measure against them or their parents is imposed. Education can either be provided in regular schools or the accommodation centres itself (Art.10). Children should not be denied the access to the national education system for more than three months from the date that the asylum application has been lodged.

When it comes to the access to employment, EU Member States are given the discretion to determine a period of time, during which asylum seekers are denied the

access the labour market.[3] In the case where no decision on an asylum application has been taken within one year of lodging the asylum application, Member States have to grant access to employment to the asylum seeker (Art. 11). In addition to this, Member States enjoy the sovereignty, for reasons of labour market policies, to give priority to EU citizens and nationals of States parties to the Agreement on the EEA or to other legally resident third-country nationals (Art. 11(4)).

Besides the access to employment, there are also provisions regulating the access to vocational training present in the Reception Conditions Directive. In this respect, Member States have the choice to permit asylum seekers to pursue vocational training, irrespectively of whether they enjoy the access to the labour market (Art. 12).

Although the Reception Conditions Directive points out the rights of the asylum seekers to the provision of reception conditions and discusses the nature of these provisions, it is also acknowledging the Member States' rights to reduce or even withdraw the provided reception conditions.

Hence, Member States can reduce or withdraw reception conditions in cases where the asylum seeker:

a. Has withdrawn his application;
b. Has unrightfully benefited from the provided material reception conditions;
c. Presents a risk or threat to national security or is suspected of having committed a crime against humanity or a war crime;
d. Or disappears from the territory without plausible reason, or does not comply with requirements concerning the asylum procedure, such as failing to appear for personal interviews or providing information (Art.16).

However, Member States are urged to take decisions on reducing or withdrawing reception conditions in an objective and impartial manner, based solely on the individual behaviour of the concerned asylum seeker, who should be given the opportunity to lodge an appeal against this decision and should be entitled to legal assistance in order to help him pursuing an appeal (Art.17).

[3] In the original Reception Conditions Directive this period was limited to one year, with the recast of the Directive however, the time limit has been set at 9 months.

Even though Member States have the right to reduce or withdraw material reception conditions, they have to ensure that emergency medical care is guaranteed in all circumstances.

Although the main incentive of the Directive is to assure comparable and adequate conditions in all of the Member States, the broad formulation of the Directive leaves a lot of leeway to the Member States to decide on the scope of the implementation of the provisions. As already mentioned earlier, varying reception conditions across the Member States can lead to migratory movement of asylum seekers within the European Union. This point becomes more fascinating if one also takes into consideration the fact that asylum seekers can only lodge an asylum claim in one country within the EU, as pointed out in the Dublin II and III Regulation. Thus, the reception conditions that are being provided to asylum seekers are a critical factor in their choice of the Member State where they want to lodge an asylum application.

Just like some of the other Directives of the asylum acquis, the Reception Conditions Directive was subject to the recast procedure, which changed some provisions of the Directive. The recast of the Reception Conditions Directive aspires to guarantee better and more harmonised standards of reception conditions throughout the Member States of the European Union. For the first time, quite detailed instructions have been implemented in regard to the detention of asylum seekers, warranting that their human and fundamental rights are fully respected. In this sense, the recast of the Directive includes an exhaustive list of detention grounds that will prevent uninformed detention practices and a limitation to the length of the detention period. Moreover, does the recast restrict the detention of vulnerable groups, in particular children and it encompasses crucial legislative guarantees and rights such as the access to free legal assistance and information when lodging an appeal against a detention order. Finally, when it comes to improvements in regard to detention, it introduces explicit reception conditions for detention facilities, such as the access to lawyers, NGOs and family members.

In addition to improved conditions for asylum seekers in detention, the recast of the Reception Conditions Directive puts strong emphasis on the special needs of vulnerable people. In this respect, the new Directive sheds light on the obligation to conduct an individual assessment to identify the special requirements of vulnerable persons. The recast Directive provides strong attention to unaccompanied children and

victims of torture and it guarantees that these vulnerable asylum seekers should have the access to psychological support and care.

Finally, the recast of the Reception Conditions Directive reduces the access to employment for an asylum seeker to a maximum period of 9 months.

2.5.Chapter summary

This second chapter of this thesis presented the context of the study. In a first step, the human rights provisions that asylum seekers and refugees can rely on, were presented. In this respect, asylum seekers and refugees can depend on a safety-net consisting out of three layers of protection, with international, European as well as national legislative provisions. Once it has been established, that the rights of asylum seekers and refugees are in theory protected by various human rights regimes, the chapter continued with a discussion of the history of the creation of the European asylum acquis, starting off with stronger cooperation within the EEC, followed by the establishment of the SEA and the abolishment of internal borders and border controls up to the establishment of the Common European Asylum System, with the various Regulations and Directives that encompass this system. The Regulations and Directives have been shortly discussed and the main provisions and flaws of these legislative measures and tools were presented. In a final step, strong emphasis was put on the Reception Conditions Directive, as the focus of this study is on the provision of reception conditions to asylum seekers, and the main emphasis of the Reception Conditions Directive is on the regulation of the provision of reception conditions to asylum seekers and refugees.

The Reception Conditions Directive establishes minimum standards in regard to the provision of reception conditions to asylum seekers that EU Member States are obliged to meet, but it also points out the duties of asylum seekers in order to receive all of the benefits and rights pointed out in the Directive. In addition to this the Reception Conditions Directive establishes requirements in regard to material reception conditions, the access to health care and the access to education and employment that EU Member States have to provide to asylum seekers and refugees. But the Directive does not only point out the duties and responsibilities of the EU Member States in relation to the provision of reception conditions, but it also discusses the rights of Member States e.g. when it comes to the withdrawal of those reception conditions. Finally, this chapter discussed the recast of the Reception Conditions Directive and the

changes and improvements that this recast has made on the original Reception Conditions Directive. After having established the contextual background and the circumstances of how the whole European asylum acquis has been created, the following chapter will focus on the theoretical background and it will review the existing literature around the concept of cosmopolitanism, starting with a debate about the historical development of cosmopolitanism, finishing off with the establishment of cosmopolitan indicators, which will be used later on in the data analysis process.

Chapter 3

Literature review

Cosmopolitanism: From a normative concept to the creation of cosmopolitan indicators

This chapter lays the theoretical base for the conceptualization of cosmopolitanism as a post-universalist, analytical tool, that can make the "internal development processes within the social world" (Delanty,2009, p.53) visible.

One of the values that the European Union is based upon is the protection of human rights and the protection of the right to ask for asylum, both of these values are enshrined in a number of legislative measures governing the European Union. But the concepts of valuing human and fundamental rights and the right to asylum are also core elements of cosmopolitanism. Since, the European Union already seems to encompass various cosmopolitan values, it was interesting to further examine whether the European Union can actually be described as a cosmopolitan actor, especially in asylum matters. Therefore, the following chapter will start off by mapping the origins of the cosmopolitan concept in the Stoic and Cynic era, followed by a discussion of cosmopolitanism in the Enlightenment era up to the development of contemporary cosmopolitanism. Furthermore, the chapter tries to make a connection between cosmopolitanism and the state and debates what would constitute a cosmopolitan actor. Finally, the chapter ends with the discussion and establishment of political, moral and cultural indicators that will further be used as an operational tool in the empirical research on the provision of reception conditions to asylum seekers by EU Member States.

3.1.History & Overview of Cosmopolitanism

Cosmopolitanism is nowadays one of the central concepts in the contemporary scholarly debates, because it has the strength to connect and express issues and ideas that are socially and politically significant, but it is also demanding to be analysed from a variety of different angles (Delanty & Inglis, 2011). However, the cosmopolitan idea is not a contemporary innovation. The history of cosmopolitanism can be briefly

summed up as an idea that originated from the emergence of a vision of universal humanity in ancient Greece. Later in the Enlightenment and with the work of Immanuel Kant period the concept of cosmopolitanism became connected to various streams in Western political thought that were characterized by an orientation towards the love of humanity. With its multidimensional nature, its "conceptual disarray" (Phillips & Smith, 2008) and its prerogative of being 'actually existing' (Malcomson, 1998) or 'real' (Beck, 2006), the concept of cosmopolitanism needs to be carefully examined.

Classical cosmopolitanism

At its simplest, cosmopolitanism "joins together two ideas, that of the cosmos or the world as a whole with polis, or political community" (Holton, 2009, p.2). Since cosmopolitan derives from the Ancient Greek philosophical school of thought, Delanty & He (2008) argue that "it would not be inaccurate to speak of a cosmopolitan turn in social science" (p.324).

The original Greek term *kosmopolites*, which means 'citizen of the world', can be traced back to Diogenes the Cynic, who refused to be defined by local origins and group memberships, but rather in terms of more universal aspirations and concerns (Diogenes, 1958). Cynics lived by the idea, that customs and law, as they were created by mankind and they differ in socio-geographical settings, are merely not valid enough to impose restrictions and rules on the individual freedom of human beings.

The Stoics further developed this idea of 'citizen of the world' and took the concept of cosmopolitanism to develop a different stance, arguing that each of us is dwelling in two communities: the local community of our birth and the community of human argument and aspiration that "is truly great and truly common, in which we look neither to this corner nor to that, but measure the boundaries of our nation by the sun" (Nussbaum, 1997). Hence, it is just an accident of where a person is born, due to the fact that any human being might have been born in any nation. Therefore, all human beings should be regarded as our neighbours and fellow citizens.
They further insist that the idea of *kosmou polites* is valuable, for how we view other people, in the sense that it is recognizing in people what is fundamental about them and most worthy of acknowledgement: namely their ambitions to justice and decency and their abilities for reasoning in this respect (Nussbaum, 1997).

So, following this line of reasoning and believing that all human beings are equal and possess certain inalienable rights, we are morally required to think about what this conception means for our interactions with the rest of the world.

While Diogenes expressed an individualist ethic of attachment to the wider human community, the Stoic concept of cosmopolitanism is bringing forward a social conception of humans whose social nature can only be guaranteed in a universal human community.

What is still present of the ancient idea of cosmopolitanism in modern cosmopolitan thought is the concern with enlarging political community and not rejecting community in favour of individual freedom or the denial of social bonds.

An important fact to keep in mind is the historical context of the emergence of cosmopolitanism and later on the manifestation of the cosmopolitan concept. In this respect, Stoic cosmopolitanism emerged at the critical stage of the decline of the classical Athenian city state and the rise of the Hellenistic Empire of Alexander the Great. By the same token, cosmopolitan ideas experienced a revival in the second half of the twentieth century, when alternatives to the violent nationalism and communism were needed. Finally, with the emergence of new global forces and a new world order, contemporary cosmopolitanism is deriving its animus (Delanty & Inglis, 2011).

Modern cosmopolitanism

Modern cosmopolitanism can be divided into three categories: moral and political cosmopolitanism, romantic cosmopolitanism, and cross-civilization cosmopolitanism. The tradition of moral and political cosmopolitan thought can be represented by Immanuel Kant, which predominantly concerned the extension of republicanism to a world-state and the creation of cosmopolitan law, which is based on the "right of hospitality" (Kant & Reiss, 1991). Nevertheless, there are other scholars and authors in the Enlightenment era, that worked on the cosmopolitan concept and critically discussed this, such as Marx & Engels, who actually claimed that "the bourgeoisie has through its exploitation of the world market given a cosmopolitan character to production and consumption in every country" (Marx & Engels, 1998, p.54). In addition to this Nietzsche classified cosmopolitanism as a characteristic of early modernity by pointing out that:

> "the abundance of disparate impressions are greater than ever: cosmopolitanism in food, literatures, newspapers, forms, tastes, even landscapes. The temp of this influx presitissimo; the impressions erase each other; one instinctively resists taking in anything, taking anything deeply, to 'digest' anything; a weakening of the power to digest results from this. A kind of adaption to this flood of impressions takes place: men unlearn spontaneous action; they merely react to stimuli from outside." (Nietzsche, 1968, p.47)

Kant's goal was to give a meaning to human experience without relying on pure rationalism or empiricism. Thus, he believed that the forces of nature were not to be discovered by experience alone, but via a priory constructions which give significant human meaning to these experiences (Kant, 1998).

Following Kant's reasoning, the major problem that humanity is facing is an increasing globalization. In this respect, Kant argues that

> "the peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of laws in one part of the world is felt everywhere. The idea of a cosmopolitan law is therefore not fantastic and overstrained; it is a necessary complement to the unwritten code of political and international law, transforming it into a universal law of humanity." (Nussbaum, 1997, p.7)

In general, Kant is defining cosmopolitanism as "being the matrix within which all the original capacities of the human race may develop", hence the cultivation of a global environment within which everyone can develop their human capacities (Kant & Reiss, 1991). But this in turn is "entailing the greatest problem for the human species, namely the solution of which nature compels him to seek, is that of attaining a civil society, which can administer justice universally" (Kant, 2007).

The moral foundation for Kant's approach to cosmopolitanism is the belief that the source of ultimate moral concern lies within human beings as having ends in themselves and with their equal capacity to be free and autonomous moral agents. Since everyone has the capacity to be moral lawgivers, it is crucial and rational to treat fellow human beings with respect and a sense of universal dignity.

As human beings should be allowed to act as moral agents, political and legal structures should be seen as vehicles for the development of mutual co-legislation and external freedom. But in order to universalize equal freedom where "the freedom of each can coexist with the freedom of all others", it is necessary to universally restrict freedom in order to maximize the equal freedom of everyone, in all places and at all times (Kant, 1998). To sum up, according to Kant global justice necessitates "a condition in which each individual's external freedom is restricted so as to make it consistent with the freedom of all others in the framework of a common law or system of laws" (Rosen, 1993, p.9).

In this respect, Kant proposes an interconnected tripartite system of jurisprudence divided into domestic, international and cosmopolitan law. Kant's understanding of cosmopolitan law is concerned with the hospitable treatment of everyone by everyone whether as individuals or as political entities (Brown, 2010). This principle is meant to provide the grounding for a broadened sense of global community. Besides this, cosmopolitan law goes beyond mutual security and provides a legal basis for constant interconnection and development that may bring people closer to recognize each other as mutual citizens instead of strangers (Brown, 2010).

In a nutshell, one can say that Kant's concept of cosmopolitanism is based in his moral philosophy and the acknowledgement of human beings as moral agents deserving of universal respect and dignity. Consequently, individual human capacities should be seen as the definitive unit of moral concern equally and it is the priority of Kant's cosmopolitanism that these capacities should have the possibility to flourish within a condition of universal public right (Fine, 2011).

The second major strand within modern cosmopolitanism is a moral approach based on the romantic tradition and its characteristic concern with heroic individualism, namely romantic cosmopolitanism. In contrast to modern cosmopolitanism, romantic cosmopolitanism was predominately associated with the intellectual elites and the culture of travel. This kind of cosmopolitanism is represented by Goethe, who supported the idea of 'world literature' that replaces national literature (Delanty & Inglis, 2011). As romantic cosmopolitanism can be associated with the culture of travel, a distinguishing attribute was the attempt of viewing one's country from the

perspective of another place, as can be seen in Montesquieu's *Persian Letters* (Rosenfeld, 2002).

A rather neglected feature of cosmopolitan analysis is the dialogic connection between East and West that emerged as part of the wider rise of Enlightenment cosmopolitanism. A key figure advocating cross-civilization cosmopolitanism is Leibniz, who analysed shared links between European and Chinese thought believing that there is a higher unity of purpose that could be revealed only by an understanding of cultures, while later thinkers, such as Schelling and Schlegel tried to make a connection between India and Europe in identifying India as the source of European culture (Delanty & Inglis, 2011).

Contemporary cosmopolitanism

During the 19th century and the beginning of the 20th century with the rise of nationalism and the growing importance of nation states, cosmopolitanism faded into the background. After the WW II and the political reconstruction, but especially with the creation of the UN and the UN Declaration of Human Rights, scholars bestowed consideration upon the concept of cosmopolitanism. But its revival came after the post-1989 period, since cosmopolitanism was seen as a suitable alternative to nationalism and communism.

Within contemporary cosmopolitanism one can point out six main types, where some are related to modern cosmopolitanism, whilst others go beyond this.
Moral cosmopolitanism can be related to the ancient tradition of Stoic cosmopolitanism. Following the Stoic stance on cosmopolitanism, Martha Nussbaum (1996) concludes that since human beings find themselves in two communities- the local community and the community of human argument and aspiration- one should regard all human beings as fellow citizens and neighbours and treat them with respect and allegiance. Therefore, Nussbaum (1996) draws up a concentric model of identifications, whereby people should think of themselves as surrounded by a variety of concentric circles centred on an inner self. The cosmopolitan task then is to give greater importance to the identification with humanity as a whole.

Going beyond the ideas of moral cosmopolitanism and analysing the institutional constructs to create a cosmopolitan society and world is political cosmopolitanism. Strong supporters of political cosmopolitanism are Archibugi and Held, who propose

a new cosmopolitan world order committed to democratic values, human rights and universal standards (Archibugi, 2008). Following Archibugi's line of thought "from the sociological point of view, we are all more or less, directly or indirectly, willy nilly, citizen of the world" (Archibugi, 2010, p. 327).

According to Held (2002) there are eight interconnected cosmopolitan values that can be grouped into three clusters. The first cluster is pointing out the essential organisational features of the cosmopolitan moral world, namely that each human being is subject of equal moral concern; that everyone can be regarded as an autonomous actor with respect to the range of choices that are available to them and finally that the claims of every person that might be affected by an action should be considered equally in the decision-making process (Held, 2002).The second cluster presents the foundation of translating individually initiated actions into collectively sanctioned guidelines of action, while the principles in the third cluster are acting as the basis of deciding what vital and non-vital needs are and ensuring that the given resources are used in an appropriate manner (Held, 2002).

Taken together, these cosmopolitan principles, according to Held (2011), establish the regulative measures that 'govern the range of diversity and difference that ought to be found in public life'; hence cosmopolitanism can be seen as a directive for political life.

Held (2011) is arguing that the global challenges that we face nowadays can in fact better be met in a cosmopolitan framework. As Held is concluding, from the creation of the UN and the European Union, to the emergence of international human rights regimes and the establishment of the International Criminal Court, a tendency towards reframing human activity and embedding it in rights, laws and duties becomes visible. At the centre of these developments is the cosmopolitan view that humans are not primarily defined by their geographical or cultural location, their nationality or their ethnicity. In fact, all human beings should be treated with equal moral respect and concern and enjoy their freedom (Held, 2011).

With this in mind, Held (2011) continues and argues that cosmopolitanism is in general referring to specific basis rights and values which no agent, no matter if a state or a representative of an international body, should be able to violate. Furthermore, if all human beings are equal, they also deserve equal political treatment, hence a treatment that is founded upon the equal care and consideration of their agency, impartially of

their nationality, ethnicity or geographical location.

Continuing with this approach, Held (2010) is applying cosmopolitan values to political and institutional structures arguing that cosmopolitanism can also refer to forms of political regulation and legislation which is creating powers, rights and duties that question or limit the sovereignty of nation-states. These regulatory forms can be found between national and international law and regulation, namely "the space between the domestic law which regulated the relations between a state and its citizens, and traditional international law which applies primarily to states and interstate relations" (Held,2010). In fact, there are already a variety of legal regulations present, ranging from legal measures of the European Union, to international human rights treaties and agreements concerning arms control or environmental protection. Therefore, Held (2011) concludes that "cosmopolitanism is not made up of political ideals for another age" but actually already existing in our rules and institutions.

As a consequence of the growing attention of the transformation of the political sphere and the society concerning global justice and human rights, cultural cosmopolitanism has emerged, which is primarily reflecting upon empirical concerns instead of simple normative analysis of a hypothetical cosmopolitan order. In this respect Roger Scruton (1982) is defining cosmopolitanism as

> "the belief in, and pursuit of, a style of…acquaintance with, and the ability to incorporate, the manners, habits, languages, and social customs of cities throughout the world (…) In this sense, the cosmopolitan is often seen as a kind of parasite, who depends upon quotidian lives of others to create various local flavours and identities in which he dabbles" (p.100).

One of the major strands within the field of modern cosmopolitanism is social cosmopolitanism, where Ulrich Beck can be seen as a representative, who is promoting a 'methodological cosmopolitanism' as a substitute to nationalism, which is prevailing in social sciences (Beck, 2000). However, methodological nationalism is no longer fully able to explain social reality due to a transformation process towards cosmopolitan values. In this respect, Beck argues, that societies have become 'cosmopolitanized', which is a force originating from increased global interconnectedness coming from within 'the nation-state' making citizen become cosmopolitan, which becomes evident in the changing lifestyles, politics and economy (Beck, 2006). Exactly this "cosmopolitanization" of the society can be analysed by

using the concept of sociological cosmopolitanism. Hence, cosmopolitanization necessitates

> "that the key questions of a way of life, such as nourishment, production, identity, fear, memory, pleasure, fate, can no longer be located nationally or locally, but only globally or glocally – whether in the shape of globally shared collective futures, capital flows, impending ecological or economic catastrophes, global foodstuff chains or the international 'Esperanto' of pop music. And the key question now will be to what extent the transnational sphere of experience, which is opening up, will dissolve or overlap the national sphere of experience." (Beck,2002, p.29-30)

This process of cosmopolitanization then "transforms everyday consciousness and identities significantly. Issues of global concern are becoming part of 'moral life-worlds' of people" (Beck, 2002, p.17). This perception is also visible in Delanty's assumption that the cosmopolitan concept is "integral to the overall movement of modernity" (2009, p.29) and Kendall et al's opinion that "we are now at a historical moment where cosmopolitanism is not a choice, but is forced upon us" (2009, p. 31).

Finally, the last strand of contemporary cosmopolitanism, which can rather be categorized as a critique instead of a separate approach, is critical cosmopolitanism. Critical cosmopolitanism emphasizes the transformational possibilities taking into account cultural, social and political aspects. In general, it is acknowledged that there are three major meanings of cosmopolitanism. Firstly, cosmopolitanism defines a worldview according to which human beings see themselves as citizens of the world. Secondly, cosmopolitanism can be described as an "ethos of worldliness, of seeking to engage with the world as one's home" (Kurasawa, 2011). To be cosmopolitan in this context, then accentuates the concept of multiperspectivism, hence the ability to move between divergent socio-cultural practices and belief-systems. Thirdly, cosmopolitanism is identifying a belief in the unity of all human beings and an attachment to humankind in all (Kurasawa, 2011). The third definition is also presupposing a certain degree of humanist universalism advocating the worth of all civilizations' contributions to one's social life (Kurasawa, 2011).

Prima facie, these definitions to cosmopolitanism seem familiar and resemble the definitions of other approaches to cosmopolitanism. But critical cosmopolitanism is

exposing the gap between the normative objectives and their actualization and empirical evidence in the present world order (Kurasawa, 2011). So, having this in mind, world citizenship might not only be interpreted as a voluntary act of self-identification with the rest of the world, but rather as an unequal distributed "capacity to exercise the right entailed by being a citizen of the globe" (Kurasawa, 2011). In this respect, Arendt (1968) is arguing, that even though everyone in theory can claim that the world is their *polis*, the privilege to have universal rights acknowledged, is limited to those who are already citizens of nation-states that have already enshrined those rights in their national law and institutional set-up.

Similarly, it is argued, that the idea of worldliness and seeing the world as one's oyster is also restricted to those, who have symbolic and material resources, and are part of dominant groups, which are allowing them to realize their expectations. Hence, worldliness is often reduced to the capability to travel and consume exotic and non-local products and services restricting cosmopolitan worldliness to consumerist ways of interaction with unknown and unfamiliar socio-cultural expressions (Kurasawa, 2011). This in turn is implying that cosmopolitanism or the possibility to become cosmopolitan is limited to the elitist and powerful people belonging to dominant societies.

Evidently, the above-mentioned tension between the normative approach and implications of cosmopolitanism on the one hand, and the analytical approach of critical cosmopolitanism form the basis of the dynamism of a critical approach to cosmopolitanism.

Although all the different approaches to the concept of cosmopolitanism vary in certain degrees, they all share key ideas, which have been summarized by Thomas Pogge:

> "Three elements are shared by all cosmopolitan positions. First, individualism: the ultimate units of concern are human beings, or persons- rather than, say, family lines, tribes, ethnic, cultural or religious communities, nations, or states. The latter may be units of concern only indirectly, in virtue of their individual members or citizens. Second, universality: the status of ultimate unity of concern attaches to every living human being equally- not merely to some sub-set, such as men, aristocrats, Aryans, whites or Muslims. Third, generality: this special status has global force. Persons are ultimate units of concern for

everyone- not only for their compatriots, fellow religionists, or such like" (Pogge, 1992, p.48).

After a short introduction into the history of cosmopolitanism and the different approaches to define this concept, the following part 3.2. and 3.3. will take a closer look at specific approaches to cosmopolitanism and shed light on the relationship between cosmopolitanism and human rights, as well as the practicality of applying cosmopolitan values in the present political and institutional set-up.

3.2.Cosmopolitanism and the State

In general, as one can conclude from part 3.1. cosmopolitanism is defining duties and responsibilities that we have towards fellow human beings which are exclusively based on humanity, instead of a relation to common race, gender, ethnicity, religion or other common characteristics (Brown & Held, 2010). Following this line of reasoning, Lu (2000) points out that cosmopolitanism is the "acknowledgement of some notion of common humanity that translates ethically into an idea of shared or common moral duties towards others by virtue of this humanity" (p. 245).

The question is what role is the state playing when it comes to cosmopolitanism and is it possible for states to be cosmopolitan actors. In studying the available literature focusing on cosmopolitanism, it becomes apparent that the role of the state and the importance of it in creating a cosmopolitan order and condition is often neglected and omitted. Besides this, there might be uncertainty when it comes to the relationship of cosmopolitan theories and the actual state practice.
In the following it will be attempted at pointing out different opinions on the relationship of cosmopolitanism and the state; and tried to examine what classifies a state as a cosmopolitan actor.

State as an arbitrary factor in conceptualising cosmopolitan order

Before explaining why, the moral implications of cosmopolitanism and the political functionality of the state are indeed compatible, it has to be acknowledged that the relationship between cosmopolitanism and the state remains ambiguous. In this respect, many scholars have argued that the state is representing an arbitrary moral factor when it comes to global justice and moral duties (Pogge, 2002). Furthermore, it has been argued that, due to globalisation, states have become increasingly unable to manage their concerns separately from other external factors (Habermas, 2006).

Hence, due to the globalizing forces and emerging global collective problems, the need for global cooperation has become apparent which can be best solved within a system of cosmopolitan governance, leading to a loss of power of the state (Held, 1995).

As it became evident in the previous part of the literature review, the state is playing a rather insignificant role in cosmopolitan theory, due to the fact, that many cosmopolitans argue that the state is becoming an arbitrary aspect in the formulation of the scope of cosmopolitan order based on three arguments. Firstly, it is argued that the state is morally arbitrary in the formulation of cosmopolitan justice, due to the fact that it is a matter of coincidence in which state and institutional relationship a person is born into. Therefore, it is not a matter of free and own moral choice and decision by the individual. Consequently, it seems like an unconvincing argument to have the requirement of a state membership as a precondition for the granting of rights and entitlements (Caney, 2005).

Secondly, it is argued that globalization and the increasing interconnectedness and interdependency of states in terms of social and economic cooperation have pointed out the need for relationships that go beyond the states. In this respect, Beitz (1975) highlights that "if evidence of global economic and political interdependence shows the existence of a global scheme of social cooperation, we should not view national boundaries as having fundamental moral significance" (p.371).

Finally, cosmopolitans argue in favour of the insignificance of states in the cosmopolitan theory by pointing out that the state is in fact a "political construction that does not contain an inherent moral worth" (Brown, 2011). Since the state is merely a result of human invention, it is indeed not a static entity that cannot be altered morally or politically. Relating to this Beck (2006) defines the state as a constructed institutional entity with the aim of coordinating the political relationships between people. Therefore, it can be reformulated and transformed into something else at any time. As globalization has extended the economic and political cooperation beyond state borders, new political formulations and institutions might be better equipped to capture the new relations in a globalized world, which leads to the fact that the state is losing its power and importance in this respect (Held & McGrew, 2007).

This side-lining of the state is further accentuated by Yunker (2007), who promotes the idea of a 'Federal Union of Democratic Nations' in order to deal with collective problems and global challenges, instead of suggesting a different moral orientation of

the states to address these problems. The 'Federal Union of Democratic Nations' would be able to strike a balance between the competing short-term interests of the different states on the one hand; and on the other hand, the crucial long-term goals of the entire human population.

Responsible Cosmopolitan States

However, what is important to keep in mind is that we currently live in a world which is dominantly based on states and therefore, in order for cosmopolitan theory to have greater importance, it is important to include the state in the cosmopolitan concepts and theories.

The question is therefore, what makes states cosmopolitan?

According to Beitz (1975) one can distinguish between moral claims "that every human being has a global stature as the ultimate unit of moral concern" and the actual argumentation on how these moral demands can be institutionalised and implemented. Therefore, following Barry's argumentation this moral approach to cosmopolitanism "leaves open the final question of the ideal constitution of international society... and there is no automatic move from ethical premises to any particular conclusion about the ideal world constitution" (Barry, 1998). Concluding from this, one could argue that states indeed can be cosmopolitan actors in the sense that they comply with cosmopolitan ethics and commitments that are summarised by Held (2005), who classifies three key ideas of the cosmopolitan concept, which are important for moral cosmopolitan actors: individualism, universality and generality. According to cosmopolitanism, the ultimate units of concerns should be human beings or individual persons, instead of ethnic, religious or cultural groups and communities. Following this line of reasoning, the status of ultimate concern is applying to every human being in an equal way, once again not distinguishing between different groups or sub-set of society. Finally, according to cosmopolitanism, this status of ultimate concern has global force and should be valid for everyone everywhere. Held (2005) is following this line of argumentation by arguing, that cosmopolitanism sets out basic values which set down standards or boundaries which no state or organisation should violate. Focusing on the assumption that each person should be seen as an individual, the cosmopolitan values espouse the idea that all people are in a fundamental sense equal, hence they deserve equal political treatment; that is, treatment based upon the equal

care and consideration of their agency, irrespectively of their background and origin. Thus, cosmopolitanism is referring to the idea of a global order in which the notion of human rights is the main operative principle of justice, with mechanisms of global governance that ensure the protection of those rights.

From this approach to cosmopolitanism and cosmopolitan values, one could argue, that if a state is indeed complying with the standards of individualism, universality and generality and committing to human rights as their central principle of justice, it could be classified as a moral cosmopolitan actor. Indeed, most of the states nowadays are signatories to international human rights treaties and laws, and they have provisions focusing on the protection of fundamental human rights present their national legislation.

Other scholars go a step further and argue that in fact all states are cosmopolitan in character, often in spite of themselves and of the choices they may have made. In order to support this argument Glenn (2012) has put forward four propositions. Firstly, there are no nation-states, there never has been and there never will be a nation-state. The reason for this is that there is no state that satisfies the requirement of homogeneity in the given state structure, since human diversity is manifesting itself even in the smallest of the states. Therefore, one could argue that all states are cosmopolitan in character.

Secondly, cosmopolitanism is not implying universalism. According to Stephen Toulmin (1990) cosmopolitan can be defined as "a harmonious bringing together of the cosmos and a particular polity". Therefore, a state, that is cosmopolitan, should not necessarily be seen as a state of domination that attempts on imposing its law on the rest of the world. It should rather be defined as a state that has dealt successfully with internal and external diversity and the resulting challenges within which all states have to function.

A further point that is underlining the argument that all states are cosmopolitan is the fact that states are becoming more and more evidently cosmopolitan and the contemporary state is losing its grip and declining in influence. For this reason, the cosmopolitan state will soon become recognised as a successor to the current notion of nation-state.

Following this line of thought Archibugi and Held (2011) are arguing that states can indeed be cosmopolitan actors within their own borders. In fact, most states already

deal with citizen with diverse religions, ethnicities, languages and ideologies. Furthermore, many states face a growing challenge from migration, which is has the potential to lead to internal tension.

Held (2005) is arguing that with the aim of committing to cosmopolitan values and morals, states have to comply with certain principles.
In order to protect the equal significance of each person in the 'moral realm of all humanity', eight principles are crucial: (a) equal worth and dignity; (b) active agency; (c) personal responsibility and accountability; (d) consent; (e) collective decision-making about public matters through voting procedures; (f) inclusiveness and subsidiarity; (g) avoidance of serious harm; and (h) sustainability. The first three principles (a-c) set out the crucial organisational features of a cosmopolitan entity. Its main focus is on the assumption that each human being is the subject to equal moral concern and that actors, while acting autonomously, have be aware and more important accountable for the consequences of their actions. The second set of principles (d-f) establishes the core of translating the individually initiated activities into forms of collectively agreed or collectively sanctioned ways of actions and regulatory measures. The last group of principles (g-h) highlights the importance of prioritizing urgent needs and sets up a framework for this. Especially the principle of inclusiveness and subsidiarity creates a moral framework for concentrating public policy and decision on those who are most vulnerable.

One approach is that, cosmopolitan states should make an effort, whenever it is possible, to reduce disparities between natives and strangers. On way to achieve is by granting and offering aliens the same political rights that are enjoyed by its own citizen.

But also, the institutional set-up of a state can be improved in order to comply with cosmopolitan values. In this respect, states can encourage their institutions to take an independent stance in global affairs, e.g. there is already a variety of institutions available that connect sub-state and regional initiatives. A cosmopolitan state would allow those institutions and initiatives to use their resources more independently, e.g. as an external check and balance on the governmental action (Archibugi & Held, 2011).

As a concluding remark, one can say that states still play a noteworthy role in global relations and therefore the importance of the state in regard to cosmopolitanism has to be acknowledged. By ignoring the state as an entity, that has no moral or social relevance, Brown (2011) is arguing that "cosmopolitanism will struggle to capture important considerations that must be normatively addressed in order to have greater saliency". In fact, the state is having a major influence on people's lives and the society and it will continue to be, and it is an "entity that socially reproduces itself through everyday practice and these practices make the state real" (Harvey, 2009).

3.3.Conceptualising cosmopolitan indicators

Skrbis and Woodward argue that

> "in order to see cosmopolitanism as a useful analytical tool we suggested that it needs to be seen as a set of practices and dispositions grounded in social structures, and observable in commonplace folk settings and practices" (2007, p.734).

In this respect, in order to understand cosmopolitanism as an actual analytical tool that can be used to examine various social phenomena, one has to move away from the classical and 'Kantian' definition of cosmopolitanism and put more focus on people's outlook and practices. In pursuance of operationalising cosmopolitan virtues, Roudometof (2005) brings forward the idea of operationalising cosmopolitanism with the help of a local-cosmopolitan continuum where cosmopolitans are less attached to local context of living, nation and a local culture and show a low level of cultural, economic and institutional protectionism. Beck (2002) disagrees with this definition of a cosmopolitan 'prototype' and argues, that cosmopolitans can characterised as having "roots and wings at the same time" (p.19); which is supported by Kendall et al (2009) who argue that cosmopolitanism can be "built on top of local belonging" (p. 39).

While there a variety of 'check-lists' and discussions of different elements that constitute a cosmopolitan outlook, the aim of this study is to bring together the theoretical definitions of what constitutes cosmopolitanism or a cosmopolitan outlook in order to establish a list with indicators that can be used in order to empirically analyse social phenomena, in this particular case the provision of reception conditions to asylum seekers in the European Union.

Building on the previous literature review, the indicators will be divided into three different categories examining the cultural, political and moral spheres, as these three dimensions are frequently intrinsic to contemporary theoretical operationalisations and definitions of cosmopolitan practices and outlooks. To underline this approach, Saito (2011) breaks down the cosmopolitan ideal into "cultural omnivorousness, ethnic tolerance, and cosmopolitics" (p.129). In addition to this, as already mentioned earlier in this chapter, Held (2010) argues that cosmopolitanism consists out of an awareness of the interconnectedness of different political communities, the recognition of 'collective fortunes' and the "celebration of difference" (p.112).

Following on from discussing the origins of cosmopolitanism and deliberating about the connection of states and cosmopolitanism, in the following cosmopolitan indicators will be conceptualised on the basis of the previous findings of the literature review.

In a first step the political dimensions of cosmopolitanism are going to be discussed. In contrast to moral cosmopolitanism, political cosmopolitanism can be characterised as more formal and 'from above' as brought forward by Held (1995; 2010) or Archibugi (2008). Vertovec & Cohen (2002) understand under political cosmopolitanism the creation and establishment of transnational institutions such as the UN, however political cosmopolitanism can also be visible on an individual level. In this respect, cosmopolitan individuals should advocate for political integration as "an attempt to establish a wider community" (Pichler, 2008, p. 1122). Following on from this assumption, cosmopolitans demonstrate an awareness of 'global risk society' (Beck,2006) and of an 'interconnectedness of different political communities' (Held, 2010). Resulting from this awareness, cosmopolitan individuals should have the ability to "create a shared normative culture" (Delanty, 2009, p.86), which would in turn lead to them recognizing the collective fortunes of humanity and the necessary solutions for these fortunes (Held, 2010). In order to reach the idea of a cosmopolitan world, promoting international human rights and attempting at decreasing global poverty represent crucial principles of a political cosmopolitan outlook (Smith, 2007; Van Hooft, 2007). These concepts and ideas of political cosmopolitanism have also been operationalised in empirical research by defining people that can be classified as politically cosmopolitan as people who have a high level of trust in supranational

entities of governance and those people that realize that there are a variety of problems in the world that are in need of global solutions (Norris & Inglehart, 2009).

The second group of indicators can be clustered as cultural cosmopolitanism. In general, one can say that cultural cosmopolitanism highlights "intercultural borrowing, exchange, and fusion" (Hansen,2010, p.154). The most present characteristic of cultural cosmopolitanism is "a willingness to engage with the Other" (Hannerz,1990, p.236). Following Hannerz' line of thought

> "cosmopolitanism in a stricter sense includes a stance toward diversity itself, toward the coexistence of cultures in the individual experience. A more genuine cosmopolitanism is first of all an orientation, a willingness to engage with the Other" (Hannerz, 1990, p.239).

Adding to this argumentation, Szerszynski & Urry (2002) argue that cultural cosmopolitanism can also be manifested as an appreciation, curiosity and open-mindness to a variety of places, people and cultures and the inclination of taking "risks by virtue of encountering the other" (ibid). In addition to this, Beck points out, that a cosmopolitan human being should show a "curiosity of the cultural different" (2006, p.7) and a "celebration of difference" (Held, 2010, p.112).

Furthermore, Merton (1968) is stressing the importance of a feeling of belonging to a 'Greater society', while Pichler (2012) points out the identification with being a 'citizen of the world'. Szerszynski & Urry (2002) highlight the ability to map one's own culture and society in a geographical and historical setting; Beck on the other hand emphasizes the awareness that "all local ethnic religious and cosmopolitan cultures and traditions interpenetrate" (2006, p.7). In this respect, the ability of "cultural code-switching" (Kendall et al.,2009, p.11) is mentioned as an important trait of cultural cosmopolitanism.

Besides the political and cultural dimensions of cosmopolitanism, the final set of indicators that can be used to understand whether a state is cosmopolitan or not, are moral cosmopolitan characteristics. When it comes to moral cosmopolitanism, Nussbaum (1994) can be seen as the main advocate of 'cosmopolitan education'. In this respect, Nussbaum points out that any human being should show the same moral compassion to all fellow human beings, irrespectively of their connection to that human being. In acting like this and feeling global responsibility, "one does not need

to give up local identifications and affiliations" (Nussbaum, 1997, p.9). In this regard, Nussbaum continues by arguing that a person "must also, and centrally, learn to recognize humanity wherever she encounters it, undeterred by traits that are strange to her, and be eager to understand humanity in its "strange" guises" (Nussbaum, 1994). This idea is further reinforced by Kant's (1795) idea of universal hospitality. In addition to Nussbaum's vision of moral cosmopolitanism, Chouliaraki (2008) argues that a cosmopolitan person cultivates the feeling of pity and the urge to help the 'distant sufferer' that he experiences through various media outlets (e.g. television). Similarly, Beck (2006) points out that 'cosmopolitan empathy' is in fact part of a cosmopolitan outlook, while Delanty argues that any individual that identifies himself as being cosmopolitan should be capable of a "positive recognition of the Other" (2009:86).

In the following table. the above mentioned cosmopolitan indicators have been summarised and sorted into the three different categories of the political, cultural and moral sphere in order to provide a better overview.

Table 1: Overview of political, cultural and moral indicators of cosmopolitanism

Political indicators	***Cultural indicators***	***Moral indicators***
Desire to make the world more 'cosmopolitan' through campaigning for human rights (Smith, 2007; Van Hooft, 2007)	The sensation of belonging to a 'Greater society' or 'the world'	Feeling global responsibility (Nussbaum, 1994/ 1997)
Low degree of economic, cultural & institutional protectionism (Roudometof, 2005)	Ironic distance to locality, nation and culture	Feeling pity and acting on images of distant suffering (Chouliaraki, 2006/ 2008)
Willingness to expand political community (Pichler, 2008)	Not attached to local context (Roudometouf, 2005)	The experience of cosmopolitan empathy (Beck, 2006)
Trust in supranational institutions (Norris & Inglehart, 2009)	Willingness to engage with the other (Appiah, 2007)	The capacity of positive recognition of the 'Other' (Delanty, 2009)
A recognition of 'collective fortunes' which require collective solutions (Held,2010)	Celebration of difference (Held, 2010)	Universal hospitality (Kant, 1795)
Awareness of the interconnectedness of different political communities (Held, 2002/2005)	Inclusive valuing of the cultural other	Learning to recognize humanity wherever it is (Stoic, Nussbaum, Appiah)

The impossibility of living in a world society without borders (Beck, 2006)	Transcultural "code-switching" (Kendall et al, 2009)	
An awareness of global risks and the global 'community of fate' (Beck, 2006)	All local ethnic, religious and cosmopolitan cultures and customs interpenetrate (Beck, 2006)	
The capacity to create a shared normative culture (Delanty, 2009)	The ability to 'map' one's own society and its cultural background in terms of a historical and geographical knowledge	
	A willingness to take risks by virtue of encountering the "other" (Szerszynski & Urry, 2002)	
	Curiosity about many places, people and cultures (Beck, 2006)	
	The consumption of many places and environment (Szerszynski &Urry, 2002)	
	The capacity for a mutual evaluation of cultures and identity (Delanty, 2009)	
	The capacity of relativisation of one's own culture (Delanty, 2009)	

3.4. Theoretical cosmopolitan indicators and empirical operationalization

The first step of creating cosmopolitan indicators that can be used in empirical research has been completed through a coherent and detailed discussion of cosmopolitanism and the development of theoretical tenets of various cosmopolitan approaches.

At our disposal now are a variety of theoretical indicators of the cosmopolitan disposition. In a second step, it is crucial to present the possibility of operationalization of those theoretical cosmopolitan indicators as a mean to explain empirical findings and reality in the field of asylum of immigration and locate "actually existing

cosmopolitanisms" (Malcolmson, 1998). What is important in this regard, is to keep in mind, that the individual theoretical tenets can not necessarily be operationalized individually into empirical indicators and utilized to capture the complexity of the cosmopolitan concept. Thus, the methodological solution and discussion presented in the table in Appendix 3 follows the assumption that the theoretical cosmopolitan indicators are operationalized into indicators and applied in empirical research and are manifested in a multi-dimensional nature.

In this regard, the commitment and compliance of countries to a variety of international human and fundamental rights provisions, such as the 1951 Convention relating to the Status of Refugees and its 1967, can be seen as a political cosmopolitan trait, in the sense that countries show a desire through being signatories to those treaties to "make the world more cosmopolitan through campaigning for human rights" (Smith, 2007; Van Hooft, 2007). However, through their compliance with those treaties and legislative measures countries also show that they are capable of, as Delanty (2009) calls it, a 'shared normative culture' based on the values of human rights.

As Beck (2006) points out cosmopolitanism can also be seen as a growing awareness of global risks which leads in turn to the establishment of a shared "community of fate". This means that countries recognize their collective fortunes, but also collective problems, which consequently require collective solutions. In this respect, one could argue, that the Member States of the EU realized that conflicts, environmental disasters and other factors force people to flee in one part of the world, but because the EU is a major destination for those seeking refuge, it is a global issue that has to be solved together. Hence, one could say that the creation of the Common European Asylum System (CEAS) in 1999, which attempted to tackle the challenges posed by refugee movements at a European level and which tried to harmonize and streamline all the various national asylum approaches into one universal European approach, represents a cosmopolitan answer to increasing refugee flows.

The creation of the Common European Asylum System and the implementation of EU legislative and administrative measures into national policies on immigration and asylum can also be described as not only the 'willingness to expand political

community' (Pichler, 2008), but also as a sign of 'trust in supranational institutions' (Norris & Inglehart, 2009).

In regard to the topic of this thesis, which is dealing with the provision of reception conditions to asylum seekers- ranging from the access to education, healthcare and material reception conditions- one can say, that from a cosmopolitan perspective, the free access to the domestic labour market, healthcare and education for migrants and asylum seekers can be seen as an empirical evidence of a low degree of economic, cultural and institutional protectionism (Roudometof, 2005). While restrictions to the free access of one of these services could be described as a limit to political cosmopolitanism, if these services are delivered by national rather than transnational institutions (Vertovec and Cohen, 2002), which differentiate between citizens and non-citizens.

Education and health might provide a sound basis for an awareness of a shared 'community of fate' (Beck, 2006) because of the impact on the whole society of educational levels of its members, and because the wider consequences for public health if a section of society is denied access to health care. Limits on access to Higher Education could be seen as restricting cultural cosmopolitanism by denying opportunities to expand mutual understanding of cultures and identities, and to set one's own cultural in a wider perspective relative to others (Delanty 2009). While restrictions on access to health care to asylum seekers could also be seen as a failure of moral cosmopolitanism, by failing in global responsibility (Nussbaum, 1997) and to act on pity for suffering (Chouliaraki, 2008).

Applying the indicator brought forward by Beck (2006) that in a cosmopolitan world, it is impossible to live in a world society without borders to the case of asylum and immigration in the European Union, one could argue that the actions of the EU Member States are contradicting. On the one hand, the EU Member States agreed to the creation of the European Single Market, hence the abolishment of internal borders in order to guarantee the free movement of goods, capital, services and labour. On the other hand, a desire to strengthen the EU external borders can be witnessed, which is leading to the creation of the 'European Fortress'.

One of the main arguments for being classified as cosmopolitan actor, is the display of the 'willingness to engage with the Other' (Appiah, 2006) and the 'coexistence of

cultures' (Hannerz, 1990). In addition to this, Beck (2006) adds that a cultural cosmopolitan actor should show 'curiosity of the culturally different'. Following on from this one could argue, that if a Member State embraces their multicultural society and promotes integration of immigrants and asylum seekers through different initiatives and projects, they could be classified as 'taking risks by virtue of encountering the Other' (Szerszynski & Urry, 2002) and finding 'civic and ethical value in the process of exposure to otherness' (Gilroy, 2004); hence they act in a cultural cosmopolitan manner.

Finally, applying the cosmopolitan frame to the provision of accommodation to asylum seekers, one could argue that following Kant's idea of the principle of universal hospitality, Member States could be classified as following this principle if they provide adequate living standards to asylum seekers and accommodate them amongst their own citizen creating the feeling of all belonging to a 'greater society' (Merton,1968).

3.5.Chapter summary

This chapter started out with a general overview of the history and the development of cosmopolitanism from the Stoic and Cynic school of thought to the Enlightenment era with Immanuel Kant's idea of a cosmopolitan world and the different approaches and differences of the cosmopolitan outlook in contemporary and modern approaches to the concept. Following on from this, the chapter continued with a discussion of how states can be seen as cosmopolitan actors and what traits in this respect are necessary for a state to be classified as cosmopolitan. In a final step, all the findings of the literature review have been taken together in order to develop theoretical cosmopolitan indicators, grouped into cultural, political and moral, that can be used for empirical research in order to examine whether social phenomena or actors can be characterized as being cosmopolitan. The final step of this chapter, was to transform the theoretical cosmopolitan tenets into indicators and statements that can assist empirical research. During this process, it became evident, that the various theoretical cosmopolitan indicators could not always be translated into separate empirical indicators, due to the fact that cosmopolitanism is a multi-dimensional concept.

Chapter 4

Methodology

Chapter 2 and 3 allowed an insight and overview of both the actual context, that the thesis is placed in and the theoretical framework and approach and the cosmopolitan indicators that will be used for the research. The following chapter 4 will discuss the methodological measures that will be used in order to collect data and generate research findings.

4.1.Research question, aims and analysis overview

Following on from the presented contextual framework and the introduction into the topic of this study, the main research question for this study is as follows:

To what extent do EU Member States comply with EU regulations, human and fundamental right obligations in respect to the provision of reception conditions to asylum seekers and in how far can their approaches to the provision of reception conditions be characterised as cosmopolitan?

In order to find an adequate answer to this complex main research question, one can break it down into the following research aims, which will guide this study in pursuance of answering the main research question:

1. What constitutes a cosmopolitan outlook and which indicators can be used to characterise social phenomena or actors as cosmopolitan?
2. Which regulations are in place at EU level in regard to the provision of reception conditions to asylum seekers?
3. Which international or European human and fundamental right measures are in place that safeguard the rights of asylum seekers and refugees?
4. Which regulations, measures and legislative tools are available in Germany, the Netherlands and the United Kingdom in regard to asylum matters and specifically concerning the provision of reception conditions to asylum seekers?

5. What is the actual situation in these EU Member States in terms of the provision of reception conditions to asylum seekers?
6. Do the Member States comply with the before-mentioned EU regulations and other obligations?
7. Can the approaches of the EU Member States in regard to the provision of reception conditions to asylum seekers be classified as cosmopolitan?

With this core research question in mind, the main objectives of the thesis that are to be reached with the help of the research design are the following:

1. Discuss and review the various cosmopolitan theories
2. Develop a theoretical framework and cosmopolitan indicators that can be applied to the analysis of the concerned countries
3. Point out the existing European, national, and local legislative and administrative measures and tools available to the analysed countries in the provision of reception conditions to asylum seekers
4. Apply the previously developed cosmopolitan indicators to the country case studies
5. Discuss the findings considering the main research question

To reach the mentioned aims of this research project, a comparative analysis of three country case studies has been chosen as an appropriate research design.

4.2.The study design

The case study approach

In general, one can say that the case study approach excels at delivering a deeper understanding of a complex issue and it helps at extending experience and adding strength to what is already known trough previous research. In addition to this, case studies have been used by researchers across a variety of disciplines for many years, and in particular social scientists have widely used this particular qualitative research method in order to analyse contemporary real-life situations and deliver the frame for the application of ideas and theories. Furthermore, researchers are making use of the case study method in order to produce new theoretical approaches, build upon theory, contest a theory, to shed light on a situation, to provide a framework to apply solutions or improvements to existing situations and finally to describe and explore a phenomenon. Yin (1984) defines the case study approach as an empirical inquiry that

investigates a contemporary phenomenon within its real-life context, when the boundaries between context and phenomenon are not clearly evident and in which multiple sources of evidence are used.

Case studies are from a complex nature due to the fact that they involve various sources of data, could include multiple cases within one study and potentially could produce large amounts of data for analysis.

However, there are still certain aspects of the case study approach that are criticized. In this respect, it is believed that the small number of cases chosen in a case study approach cannot offer grounds for the establishment of reliability or generality of findings. Additionally, some critics dismiss the case study approach due to the fact that the intense and detailed study and exposure of the concerned case could potentially bias the findings. Yin (1984) points out three main arguments of criticism against the case study approach. Firstly, he argues that case studies are often accused of lacking rigour. In this respect, Yin (1984) points out that "too many times, the case study investigator has been sloppy, and has allowed equivocal evidence or biased views to influence the direction of the findings and conclusions". Secondly, according to Yin (1984), case studies provide only a marginal basis for scientific generalization due to the fact that they only use a limited number of subjects, which leads to the question 'How can you generalize from a single case?'. In this respect, the case study approach is often considered to be 'microscopic' (Tellis, 1997; Yin, 1993). Thirdly, case studies are sometimes labelled as being too difficult and long to conduct and produce a massive amount of data, with the danger of the data not being organized and managed systematically.
Nevertheless, the case study approach remains to be used by many researchers in a variety of disciplines.

The advantages of the case study approach are definitely its applicability to contemporary, human and real-life situations and its public accessibility through written reports, due to the fact that the data and results resulting from a case study are directly related to the reader's everyday life and experience and can through this facilitate and enable a clearer understanding of complex real-life situations. In addition to this strong connection to real-life experiences and situations, another advantage of a case study is the fact, that the analysis and examination of the data is mostly conducted within the context of its use (Yin, 1984). This is in contrast to the use of an

experiment, which is deliberately isolating a phenomenon or situation from its context, mainly focusing on a limited number of variables (Zaidah, 2003). Moreover, case studies allow for the instrumental and collective use of both qualitative and quantitative analyses of the data.

In order to analyse the living conditions of asylum seekers in the European Union and discuss whether authorities comply with cosmopolitan values, such as human right norms, three countries have been selected as case studies- namely Germany, the Netherlands and the United Kingdom. The main rationale for the choice of these particular countries is the potential comparability of these three countries. While the immigration and asylum histories will be discussed in more detail in the country case studies chapters in the following thesis, one has to remark at this point that although one might think, that Germany, the Netherlands and the United Kingdom are very diverse; this study argues that commonalities in their immigration and asylum histories pose a strong justification for the choice of these three countries as appropriate case studies. In addition to this, those three countries have been chosen as they are countries that are located outside the borders of the European Union, hence they are normally not the first entry point to the European Union for asylum seekers and refugees and therefore theoretically were not directly exposed to the influx of asylum seekers into the European Union. Finally, the last rationale for the selection of Germany, the Netherlands and the United Kingdom as the Member States to be analysed and examined is the fact, that the researcher speaks all of the languages spoken in these three countries and has contact with people working with asylum seekers and refugees, which makes the selection process of suitable interview partners and the discussion of the various administrative and legislative measures and tools in the asylum and refugee management easier.

Other existing research utilizing a comparative approach or analyzing reception conditions

During the research for the appropriate methodological approach, it became evident, that other scholars have researched similar aspects of this study or used a similar approach to the study design.

In this regard, Bolini (1997) is examining the access to health care in Europe. Bolini states that the entitlements to health care differ depending on whether an individual is

classified as a refugee or an asylum seeker. While refugees enjoy the same right to health care than the citizens of the country, asylum seekers tend to have restricted access to health care. The available reports on the health status of asylum seekers in Western European countries document a quite difficult psychological and social adjustment. As a concluding remark, Bolini (1997) concludes that a major effort is urgently needed in order to evaluate the health needs of asylum seekers, and to improve standards of reception and care in European countries.

Sales (2002) puts emphasis on the increasing focus of the British asylum policies on control, with no national system in place for the settlement of refugees. In her article Sales (2002) discusses the voucher system and compulsory dispersal, which are intended to isolate asylum seekers from society and promote intense social exclusion. According to Sales, policies promoting the social inclusion of recognized refugees are limited, uneven and dependent on voluntary initiative. They are also harmed by the punitive system of social support for asylum seekers. In addition to this, Acute labour shortages, which have forced employers to recruit overseas, have opened up the debate on immigration, and present the possibility of developing a more progressive agenda based on a commitment to human rights (Sales, 2002).

Focusing on the access to the labour market is Weber (2016), which analyses the inconsistencies between the EU asylum acquis and the EU's labour migration policies and makes a call for stronger convergence. In her paper Weber (2016) discusses the potential of the work skills that asylum seekers have and explores possibilities of expanding the access to the labour market for asylum seekers.

In addition to this the work by Jenny Phillimore and Lisa Goodson (2006) has to be mentioned. Phillimore examines the dispersal policies in the United Kingdom, which lead to the exclusion of asylum seekers from 'mainstream society', and the potential effect the dispersal of asylum seekers to remote areas can have on the economic prosperity and social cohesion. Phillimore demonstrates, that whilst newly arrived asylum seekers and refugees have both skills and qualifications, they are currently experiencing high levels of unemployment.

4.3.The data collection process

Desk research

The first part of the data collection process for this research project consisted of extensive and detailed desk research. In the beginning of the research process it was from great importance to point out all of the existing legislative measures on a European level in order to have an overview of the different options and obligations that EU Member States have in connection to the provision of reception conditions to asylum seekers. Therefore, all of the relevant documents encompassing the EU asylum acquis have been thoroughly examined and discussed in the contextual chapter 2. In addition to the European legislation on asylum and refugees, it was important to get acquainted with existing international and European human and fundamental rights provisions, to no only have an insight into the obligations and rights of Member States but also to point out the rights that asylum seekers and refugees should enjoy.
After the international and European context of this thesis has been thoroughly examined and discussed, the second aspect of the desk research was an extensive investigation and exploration of the three chosen case studies, that is Germany, the Netherlands and the United Kingdom. It was from great importance, to have a comprehensive overview of the history, the administrative system and most importantly the different approaches to the provision of reception conditions to asylum seekers. In this respect, the main focus of the data collection was on the national and local legislation, as well as other policy measures. Hence, for instance, the statutes and ordinances of the *Lände*r, regional or local entities have been collected and examined.

The second step of the data collection process was an analysis of the situation in Germany, the Netherlands and the United Kingdom and actually point out what approaches these countries take in providing asylum seekers with reception conditions and whether these taken actions are in fact in accordance with the existing EU asylum acquis. In a final step, it was important to assemble data that would demonstrate whether the national legislative and administrative measures and actions taken concerning the provision of adequate living conditions to asylum seekers are in compliance with cosmopolitan values. In this respect, the method of collecting data was twofold: Firstly, policy publications by the national and local governments, as well as NGO and country reports, such as National Country Reports for the three discussed countries issued by the European Council on Refugees and Exiles, have been

analysed. Furthermore, newspaper articles and media reports addressing the living conditions of asylum seekers in Germany, the Netherlands and the United Kingdom have been studied.

Interviews

Once the desk research was completed, the second part of data collection consisted out of conducting a variety of interviews in order to get a better and more extensive insight into the process of the provision of the living conditions to asylum seekers and get additional and valuable details of the process that lie behind the whole reception conditions provision process. In order to gather this data, interviews were conducted with two different sets of interviewees. On the one hand, state officials and governmental bodies at municipal, local or regional level working in the field of asylum and migration have been interviewed. The purpose of this, was to gain understanding of the process itself, the different actors in the process and possible difficulties and obstacles that might arise in the process of the provision of adequate reception conditions to asylum seekers. The second group of interviewees consisted out of national and local NGOs and other organisations focusing on the support of refugees and asylum seekers. The reason for choosing the interviewees of this second group, was mainly the fact, that they have an exhaustive knowledge of the provision of reception conditions to asylum seekers in the analysed countries and in addition to this they promote the compliance with human and fundamental rights and are therefore aware of possible shortcomings or infringements of the analysed approaches to the provision of reception conditions to asylum seekers.

Table 2: Overview of the interviewees details

Country	Interviewee	Characteristics
Germany	G1	NGO, policy officer, male, 37 years
	G2	NGO, policy officer, male, 40 years
	G3	NGO, female, volunteer manager, 28 years

	G4	NGO, male, research officer, 35 years
	G5	State official, female, local government, 42 years
	G6	State official, female, PR manager, 40 years
	G7	State official, male, local government, 52 years
	G8	State official, female, case worker, 46 years
Netherlands	NL1	NGO, female, PR manager, 43 years
	NL2	NGO, female, PR manager, 39 years
	NL3	NGO, male, education officer, 54 years
	NL4	NGO, female, case worker, 29 years
	NL5	NGO, male, volunteer, 25 years
	NL6	State official, male, local government, 38 years
	NL7	State official, female, local government, 35 years

	NL8	State official, male, local government case worker, 40 years
United Kingdom	UK1	NGO, female, PR officer, 42 years
	UK2	NGO, male, research and policy officer, 37 years
	UK3	NGO, male, volunteer, 40 years
	UK4	NGO, female, policy officer, 50 years
	UK5	State official, female, policy officer, 32 years
	UK6	State official, male, regional government, 50 years
	UK7	State official, male, local government, case worker, 41 years

Generally, around five to eight interviews per country have been conducted, with a fair representation between the first and the second group of interviewees. In more detail, eight interviews were conducted in Germany, with four interviewees representing the first group and the remaining four interviewees representing the second group; interviews were also conducted in the Netherlands, with three interviewees of the first group and five interviewees belonging to the second group; and finally seven interviews were conducted in the United Kingdom with a ratio of three to four, with the latter being from the second group mentioned earlier. Hence, in total 23 interviews in Germany, the Netherlands and the United Kingdom were conducted, with ten

interviewees from the governmental or administrative sector and 13 interviewees working in the 'NGO sector'. In both cases, interviews were semi-structured with open-ended questions, and they were conducted in the respective language, hence German, Dutch and English. The questions for the interviews have been prepared beforehand and there were two different sets of questions in place, tailored to the two different groups of people that have been interviewed.

Anticipated problems

Due to the context and field the study takes place, there are various problems in the data collection, in particular in relation to conducting the interviews. While NGOs and other organisations that work with and support asylum seekers and refugees were rather approachable and sympathetic in participating in the study and willing to be interviewed; it seemed to be more demanding and challenging to engage with governmental bodies and state officials in the participation in the study. Frequently, it was reasoned that participants working in these governmental bodies and local authorities fear that their participation in the study might lead to criticism of these bodies and uncover shortcomings and flaws in their work. In this respect, it proved to be a good approach to contact NGOs or other organisations supporting asylum seekers first, as they very often have already existing contacts and connections to governmental or administrative bodies, that they are more than willing to establish a connection to. In addition to this, researcher tried to anonymised the collected data as much as possible so that it becomes more difficult to uncover the interviewees from their statements and information they have provided.

Another issue, which arose in the beginning of conducting the interviews, was the choice of the language that the interviews are conducted in. One the one hand, there was the possibility to conduct all the interviews in English, in order to make transcription and comparability easier. On the other hand, there was the possibility, to conduct the interviews in the language of the interviewee, hence German, Dutch and English. Conducting interviews in the language that the interviewee is familiar with, has a variety of advantages, as it has been already discussed in this chapter, however there are certain disadvantages or problems that might result from a multi-language interview approach.

Access, ethics and informed consent

Prior to conducting the interviews, the whole research project, together with its proposed data collection process was approved by the Ethics Committee of the School of Arts, Design and Social Sciences of Northumbria University and it was deemed suitable to proceed with the research project.

Once adequate organisations and people have been allocated that are willing to cooperate in the research project and be interviewed, they received an overview of the research project together with topics that will be discussed during the interview. In addition to this, interviewees were send an informed consent sheet, which was discussed prior to the interview and signed off by both parties.

In order to guarantee anonymity of the participating interviewees as much as it is possible, they were given codes and synonyms in the data analysis process and later on in the writing up process of the thesis.

4.4 Approaches to data analysis

Definition of reception conditions

The living conditions of asylum seekers will be examined by analyzing three different aspects, namely material reception conditions including accommodation, the access to health care and the access to education and employment. The main rationale that these three aspects of living conditions were chosen to be examined, is the fact that the EU asylum acquis and the Reception Conditions Directive in particular discuss those three aspects and point out requirements in regard to those three aspects that have to be met in order to guarantee the adequate provision of reception conditions to asylum seekers. As these three aspects are pointed out in the Reception Conditions Directive, the same requirements apply to all EU Member States and therefore the comparability of the concerned national approaches to the provision of reception conditions to asylum seekers is feasible as theoretically Germany, the Netherlands and the United Kingdom have to comply with the same standards when it comes to the provision of material reception conditions, the access to health care, as well as the access to education and employment.

As already mentioned, the first aspect that is examined in regard to the provision of reception conditions to asylum seekers is the provision of material reception conditions

in Germany, the Netherlands and the United Kingdom. In this respect, not only the financial support that asylum seekers receive is discussed, but also the access to food or clothes or other services, such as legal support. Another major facet that is examined in this context is the accommodation that is provided to asylum seekers in these three countries.

The second aspect that is analysed is the access of asylum seekers to health care in Germany, the Netherlands and the United Kingdom. Often, a high number of asylum seekers originate from countries or regions with a less developed health system, or they come from areas where the provision of health care was limited or not possible due to factors such as war or uprisings. Besides this, asylum seekers flee their countries of origin due to reasons of oppression, persecution or conflicts, which can have a severe impact on the mental health of asylum seekers. But not only the events and experiences that happened in the home country have an influence on the mental well-being of the asylum seekers. Once the asylum seeker arrives in the new designated country, stress and uncertainty about the future and the new and unknown environment can affect the psychic health.
According to Norrendam (2005) these mentioned factors lead to the fact that asylum seekers tend to fall ill more often than other groups of the population. As a consequence, it becomes evident, that the access to health care forms a vital part of the provision of adequate living conditions to asylum seekers.

The third aspect that can be seen as a vital part of the provision of living conditions is the access to education and employment. Both education and employment are crucial elements of a successful integration into the new society and a way to a normal life in the new country for asylum seekers. Besides being an integral part to the successful integration into the new country, studies have also shown that having the opportunity to work is closely related to mental and physical health. In this respect, Linn (1985) is arguing that people who are unemployed tend to suffer more from low self-esteem and anxiety in comparison with people that are employed.

Together these three aspects define the concept of living conditions in the study. Of course, there are a variety of other aspects that can be seen as part of adequate reception and living conditions, but in the following analysis the focus will be on the provision of material reception conditions, the access to health care and the access to education and employment.

The use of cosmopolitan indicators in the study

Part III of this study is presenting a discussion of whether the approaches or parts of the national measures can be classified as cosmopolitan. In order to determine whether Germany, the Netherlands and the United Kingdom can be characterised as being cosmopolitan in their provision of reception conditions to asylum seekers, the cosmopolitan indicators that were established in Chapter 3 will be used for this purpose.

Transcription

All of the interviews have been recorded with a dictaphone and important points or quotes have been noted during the interview as well. The choice of recording the interviews is facilitating the transcription of the interviews in the sense, that it has an exemplary value of making the details of actual human action available for detailed scrutiny and formal analysis. As the interviews have been conducted in German, Dutch and English, the interviews were also left in their original output language and transcribed fully in these languages. In the case, where quotes of the interviews have been used in the thesis to underline certain points, they have been translated into English, so that it is understandable for the reader.

Data analysis

The analysis of the collected data followed a thematic content analysis, which is encompassing the following steps:

1. Getting familiar with the collected data

In this step, the collected interview data and NGO reports and other qualitative data was read and re-read.

2. Coding and labeling the data.

In this respect, the whole interviewee data was coded and labelled with the help of highlighters and different colours for different themes and indicators, that have been established through the literature review and can be found in appendix 3. The statements that were established in this process were tested against the collectec data about the provision of reception conditions to asylum seekers.

3. Defining and naming themes

Once the different themes and indicators have been pointed out and highlighted, the different themes and patterns have been classed into the cosmopolitan spheres and the statements first and secondly they have been allocated to the different cosmopolitan indicators.

4. Write-up process

In a final step, the goal was to create a coherent narrative that is supporting the established theoretical framework of cosmopolitan indicators with the help of quotes from the collected data.

4.5. Chapter summary

This chapter started off with the presentation of the main research question that guided this study. Following on from the main research question, the sub-questions have been presented, which facilitate the study as they break up the research into different parts. Resulting from both the main research question and the sub-questions, the aims and purpose of this study have been outlined. In a following step, the data collection process and the data analysis procedure have been discussed in detail.

After setting out the context of the thesis in Chapter 2, developing the theoretical framework and discussing the concept of cosmopolitanism in Chapter 3 and finally establishing the methodological background for this study in Chapter 4, the following three chapters of Part II will focus on the three-case studies Germany, the Netherlands and the United Kingdom. In a first step, a comparison of the different national administrative and legal backgrounds will be presented, followed by the presentation of the historical background. In a subsequent step, the asylum procedures in Germany, the Netherlands and the United Kingdom will be presented. In a final step, the focus will be on a thematic comparison of the provided reception conditions in Germany, the Netherlands and the United Kingdom.

Part II

Chapter 5: Immigration and asylum in Germany, the Netherlands and the United Kingdom and the legislative and administrative national frameworks

Chapter 6: Asylum procedures in Germany, the Netherlands, and the United Kingdom

Chapter 7: Reception conditions of asylum seekers in the Germany, the Netherlands, and the United Kingdom

Chapter 5

Immigration and asylum history in Germany, the Netherlands, and the United Kingdom and the legislative and administrative national frameworks

Part II will focus on the reception conditions provided to asylum seekers in Germany, the Netherlands, and the United Kingdom. To understand the approaches taken by the three countries in the provision of reception conditions, it is crucial to present the historical, administrative, and legislative frameworks present in the three countries, in order to point out commonalities and differences, that could have an impact on the provision of reception conditions to asylum seekers in Germany, the Netherlands and the United Kingdom.

Therefore Chapter 5 will discuss the existing historical, administrative, and legislative frameworks in Germany, the Netherlands and the United Kingdom, while Chapter 6 will present the asylum procedures in the three analysed countries. Finally, Chapter 7 will present and discuss the reception conditions that are provided to asylum seekers.

5.1. Administrative and legislative background in Germany, the Netherlands and the United Kingdom

In order to understand the different approaches taken by the countries in regard to the provision of reception conditions to asylum seekers it is important to understand the administrative and legislative background that is present in the three analysed countries, as this can have an impact on the approach taken by the countries when it comes the provision of reception conditions. For instance, if a country has a rather decentralized administrative and governmental framework, this can lead to differences across the country in terms of the provision of reception conditions to asylum seekers due to the decentralization, as there might be more actors involved in the decision-making process.

In addition to this, it is crucial to also be aware of the various legislative measures that are in place concerning asylum in Germany, the Netherlands and the United Kingdom, due to the fact, that in theory all of the EU Member States should have harmonized legislative measures in place to guarantee that asylum seekers can benefit from uniform reception conditions across the European Union. Through the discussion on the different national legislative tools concerning asylum it can analysed whether asylum seekers actually have similar rights in all of the EU Member States.

Administrative framework in Germany, the Netherlands and the United Kingdom

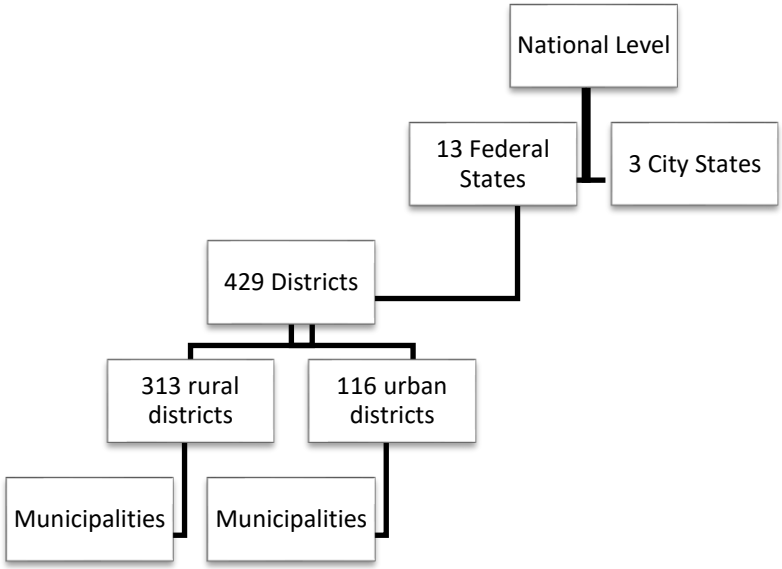
Germany is a federal, parliamentary, and representative democratic republic with federalism as one of the main constitutional principles. The German Basic law stipulates that the structure of each Land government must "conform to the principles of republican, democratic, and social government, based on the rule of law" (Bundesrepublik Deutschland,1949).

In general, the structure of the administrative system in Germany is encompassing three main independent levels: (a) the administration of the Federation, (b) the administration of the *Länder* and finally (c) the administration of the local authorities.

Each of these have their defined group of responsibilities and functions. Furthermore, there is no hierarchical structure of agencies from local authority through to the respective *Land* up to the central federal government. Vice versa, neither the federal government nor the *Länder* have a fully developed general administrative and supervisory apparatus of authorities and agencies reaching down to the local level.

Most of the states are governed by a cabinet which is led by a *Ministerpräsiden*t in cooperation with a unicameral legislative body (*Landtag*), so in this respect one can say, that the *Länder* are parliamentary republics. Germany has a federal constitution and it consists out of 16 states, which are known as *Länder*, which means that the constituent states have a certain degree of sovereignty in the decision-making process (Leibnizforum für Raumwissenschaften, 2014).
The following table offers a good overview of the German administrative system.

Table 3: Overview of the German administrative system



Every state, except the city-states Hamburg, Bremen and Berlin, are consisting out of rural districts and urban districts or district-free towns and cities. Each of the districts has an elected council as well as an executive, which is chosen either by the people or the council.

Every of the rural districts is further subdivided into municipalities, which are the smallest administrative units in Germany. The legislation for the municipalities is created by the states and it is uniform applicable for all municipalities throughout a *Land*.

In general, municipalities have two major policy responsibilities: First of all, they are responsible for the administration of programs and provisions authorized by the federal or *Länder* government. In most of the cases, these provisions relate to schools, public health, youth and social assistance.

Secondly, according to Art.28 (2) of the German Basic Law, municipalities have "the right to regulate on their own responsibility all the affairs of the local community within the limits set by the law". Since this definition is phrased in very broad terms, local governments can actually justify the self-regulation of a wide range of activities.

Similarly, to the multiple tiers of governance in Germany, the Netherlands have three tiers of government: central, provincial and municipal. The central government is dealing with issues that are of national interest. Provinces and municipalities form tiers

of local government. Local authorities have the possibility to pass independent bylaws, however they must conform to national legislation. Besides this, provinces and municipalities are obliged to collaborate with the central government in the implementation of measures that the central government decided upon. In the case of municipalities, they also should collaborate in implementing measures that the province, in which they are situated in, has decided upon.

The Netherlands can be divided into twelve provinces and they are second highest level of government after the national government. In general, one can say that provinces do not have that many competencies and responsibilities, as they are mainly focusing on issues that can't be dealt with by the central government or the municipalities. Therefore, in most of the cases the provinces fulfill an executive function, in the sense that they implement and execute policy measures, which are made at national level. However, there are a variety of responsibilities and competences at the provincial level: (a) recreation, welfare, and culture, (b) conservation and environment, (c) agriculture and economy, (d) regional public transport, regional infrastructure and (e) land management.

The lowest level of government in the Netherlands, are municipalities. Currently the Netherlands is made up of 393 regular municipalities and 3 public bodies, which are special municipalities.
Municipalities do not have a designated set of responsibilities or competencies. Similarly, to provinces, municipalities often fulfill an executive function, hence they guarantee that policies made at national or provincial level are implemented at the municipal level. However, there are different areas that the municipalities are responsible for: (a) education, (b) economy and the environment, (c) employment, welfare and social affairs, (d) local infrastructure and transport, (e) urban development and (f) land management. As one can see, both the provincial and municipal executive bodies are chaired by a Commissioner or a mayor, that is appointed by the Government. Hence, political responsibilities are delegated to other members of those executive bodies.

One of the main striking features of the UK administrative system is the fact, that it is very multi-layered, complex, and therefore of a rather non-uniform nature. For the purpose of local government, England is split up into areas with a one-tier structure or so-called unitary authority areas where there is one local authority; and a

two-tier structure of counties and districts governed by two local authorities. Those two main approaches are further divided into non-metropolitan two-tier areas, metropolitan counties, unitary authorities and finally Greater London.

In general, one can say, that most of the areas in England are governed and administrative under a two-tier non-metropolitan structure, where the county councils are responsible for the provision of most of the services, such as social services and education; while the district councils have rather limited competencies. In the metropolitan counties, the district councils are effectively acting as unitary authorities in the sense that they are providing the majority of services. Besides these structures and the Greater London area, the rest of England is governed by a single council or unitary authority, which can be seen as a combination of a non-metropolitan county and a non-metropolitan district, and carrying out the duties and functions of both of those entities.

Depending on the administrative structure in the different local entities, the responsibilities and powers of the local governing authorities vary, as can be seen in the following table:

Table 4: Administrative system in the United Kingdom

	Upper tier authority	**Lower tier authority**
Non-metropolitan counties/ districts	Police, fire, consumer protection, transport, social services, planning, education & waste management	Licensing, local planning, waste collection, housing & council tax
Metropolitan counties	Police, fire, consumer protection, licensing, planning, transport, education, libraries, social services, council tax, waste collection & housing	
Unitary authorities	Housing, licensing, consumer protection, waste management and collection, council tax, planning, transport, education & social services	

Greater London	Transport, police, fire, regional development & strategic planning	Licensing, consumer protection, waste collection, council tax, local planning, education, libraries, social services & housing

Comparing the administrative framework in Germany, the Netherlands and the United Kingdom, one can see that they have a similar approach in terms of multiple layers or tiers of governance or government. All the three compared countries show various levels of administration, ranging from a three-tier approach like in Germany and Netherlands up to a multi-layered complex approach as in the United Kingdom. The major difference though, that will have an impact on the provision of reception conditions to asylum seekers is the degree of independence and sovereignty that the different tiers of government have in their decision-making process. In this regard, even though the Netherlands and the United Kingdom demonstrate multiple administrative tiers, their powers are rather limited and they rather fulfill an executive rule by following legislation and measures implemented by the national government. In contrast to this Germany, while having three tiers of government, has a rather independent second tier, with the 16 Länder acting as parliamentary republics. This differences in the administrative set-up of the three countries can have an impact on asylum and especially on the provision of reception conditions to asylum as it could lead to differences not only amongst the countries but also the different regional and local layers within the countries in regard to reception conditions.

Legislative framework in Germany, the Netherlands and the United Kingdom

Besides the existing administrative background in Germany, the Netherlands and the United Kingdom, it is also crucial to discuss the various legislative measures that are in place that are relevant to asylum procedures, the provision of reception conditions and detention of asylum seekers and refugees.

In this respect, in Germany, the first important legislative measure that should be mentioned is the Residence Act (Aufenthaltsgesetz). The Residence Act contains the fundamental provisions in regard to the entry and exit as well as stay of foreigners in Germany, and it intends at regulating and limiting the influx of foreigners to Germany.

In general, everybody with a valid passport and, if necessary, a valid visa for Germany is allowed to enter the German territory (Art.14, Residence Act). If a foreigner enters the German territory unauthorized though, he can be denied the entry to Germany at the border. Besides the regulation and the limitation of immigration to Germany, the Residence Act also attempts to

> "enable and organize immigration with due regard to the capacities for admission and integration and the interest of the Federal Republic of Germany in terms of its economy and labour market. At the same time, the Act shall also serve to fulfil the Federal Republic of Germany's humanitarian obligations. To this end, it shall regulate the entry, stay and economic activity of foreigners and the integration of foreigners" (Section 1, Residence Act).

The second legislative measure that should be pointed when it comes to asylum matters in Germany is the Asylum Act (Asylgesetz). The Asylum Act was implemented in order to transpose the EU Qualifications Directive as well as the EU Reception Conditions Directive into national law. In this respect, the Asylum Act presents detailed definitions of who can be classified as a refugee and asylum seeker and what types of persecution the Act applies to. In addition to this, there are in-depth descriptions of the different asylum application procedures. Following on from this, the Act delivers provisions for the accommodation of asylum seekers and restrictions to their ability to free movement within the German territory and the access to employment. Finally, the Asylum Act informs what appeal measures are in place that asylum seekers can make use of in case of a rejected asylum application. As mentioned earlier, one of the main purpose of the Asylum Act was the transposition of EU legislation into national legislation, however it appears that the Asylum Act is merely acknowledging the necessary provisions and requirements that should be in place in order to provide reception conditions to asylum seekers but rather putting emphasis on the scope of available protection and the definition of important concepts, as well as the asylum procedures and the appeal processes.

What the Asylum Act is missing to address, is taken into consideration by the Asylum Seekers Benefit Act (Asylbewerberleistungsgesetz). With the implementation of the Asylum Seekers Benefit Act, a legislative measure was created that would regulate the amount and nature of benefits and reception conditions that asylum seekers are entitled to receive. Following on from this, the Act distinguishes between necessary essential benefits and necessary personal benefits. Necessary essential benefits in this respect

encompass food, accommodation, clothes, health care and goods of the daily use (Art.3, Asylum Seekers Benefit Act). In addition to this, the Asylum Seekers Benefit Act points out the amount of the financial support that asylum seekers are entitled to and the different types of accommodation that can be used in order to lodge asylum seekers. Besides discussing the material reception conditions, the Act is also acknowledging the fact, that asylum seekers should enjoy access to health care, however the Act is restricting this to only the necessary and emergency health care (Art.4). The Asylum Seekers Benefit Act is also addressing the access to employment and limits and restricts the possibilities for asylum seekers to be eligible to enter the German labour market for a certain period of time (Art.5).[4] Finally, the Act establishes circumstances under which the provision of reception conditions can be restricted or completely withdrawn.

One can say, that the Asylum Seekers Benefit Act is the closest national legislative measure in regard to the EU Reception Conditions Directive, due to the fact, that it is addressing similar provisions and requirements.

When it comes to the United Kingdom, the first important act in this respect is the 1971 Immigration Act. The 1971 Immigration Act points out provisions and measures for the control of immigration into the United Kingdom of people of all nationalities, and provides for the making of deportation orders and the rights of appeal against immigration decisions, and confers the right of abode on certain categories.

The second crucial legislative measure concerning asylum matters in the UK, is the 1999 Immigration and Asylum Act, which aims at addressing the conditions that apply to individuals entering the United Kingdom. In this respect, the main provisions of the Act can be summarized as follows:

a. Reforming the asylum process in order to guarantee that decisions on asylum applications will be taken within six months.
b. Introducing vouchers for asylum seekers that replace welfare benefits.
c. Introducing the provision of accommodation on a no-choice basis.
d. Regulating immigration advisers.
e. Establishing a new legal framework for the detention of asylum seekers.

[4] The time limitation has been changed over the last few years multiple times with varying restrictions from one year up to three months.

Following on from the 1999 Immigration and Asylum Act, the 2002 Nationality Immigration and Asylum Act was introduced. The aim of the 2002 Act was "to amend national legislation, to create provisions for the support of asylum-seekers in accommodation centres and support arrangements for asylum-seekers generally. Also creates provisions relating to detention and removal; contains provisions on immigration and asylum appeals" (The Guardian, 2009). The main provisions set out in the 2002 Nationality Immigration and Asylum Act were as follows:

a. Increased the possibility to detain asylum seekers at any time during their asylum application.
b. Transfer the power to local authorities to sign contracts with the Home Office in regard to emergency accommodation, accommodation centres and induction centres.
c. Establishes a list of 'safe countries of origin'.

In 2004, the UK government implemented the 2004 Asylum and Immigration (Treatment of Claimants) Act, which mainly aimed at limiting the role and power of courts in immigration appeals. It replaced the previous system of immigration adjudicators and the immigration appeal tribunal with a single-tier asylum and immigration tribunal. In this respect, the 2004 introduced the following changes:

a. Creation of a single tier of appeal available to asylum seekers.
b. Creation of criminal sanctions for individuals arriving in the United Kingdom without a valid travel document.
c. Stricter limitations on the eligibility for refugee support.

On the 14th of May 2014, the 2014 Immigration Act was endorsed and implemented into UK legislation. The 2014 Immigration Act introduced a variety of changes to the existing asylum and immigration sphere. Firstly, the 2014 Immigration changed the right to appeal. Up until the 2014 Act, asylum seekers had the opportunity appeal to the First Tier Tribunal if they thought that the decision on their asylum claim is inconsistent with the immigration rules. With the 2014 Act though, rights of appeal and replace them with a right to seek an administrative review of the Home Office decision. In addition to this, the 2014 Immigration will have a strong impact and put pressure on the landlords, as they are required to confirm a tenant's right to remain in the UK before agreeing to rent property to them.

Although the focus of this study is on the period up until 2015, it is important to note the 2016 Immigration Act at this point in order to give a complete overview of the existing provisions in the United Kingdom. The 2016 Immigration Act introduced major revision on the UK immigration system as the following provisions were implemented:

a. Introduction of sanctions to illegal workers and employers, that hire illegal migrants.
b. Migrants who do not have permission to be in the United Kingdom are risking that certain privileges could be revoked, e.g. their bank account could be frozen.
c. The Government's 'deport first, appeal later' scheme has been extended to all migrants, which means that any individual that has lodged an asylum claim can be removed to their home country pending the outcome of their appeal against the decision to remove them.
d. Pregnant women can now only be detained by immigration officers for up to 72 hours.

The Netherlands have also implemented a variety of legislative measures in order to guarantee adequate living conditions to asylum seekers. The first on is the Aliens Act (Vreemdelingenwet). Especially Article 11 is pointing out the rights to reception conditions to asylum seekers and refugees.

Another legislative tool is the Act of the Agency of Reception (Wet Centraal Opvang Orgaan), which established rules and guidelines for the central organization for the reception of asylum seekers (COA). The Act sets out what obligations, duties, and rights the organization has and it establishes the competencies of the organization and its relationship with the Dutch government. Furthermore, in Article 3 of the Act, a connection to the RVA is made, as the material and immaterial reception conditions asylum seekers are entitled to.

The main legislative instrument dealing with the reception conditions of asylum seekers is the Regulation on benefits for asylum seekers and other categories of foreigners (RVA) from 2005. In Articles 2-4 of the regulation, it is defined who actually has the right to reception conditions and benefits. In the following Articles 5-7 it is laid out when the entitlement to reception conditions and benefits ends.

Following on from this, the right to reception conditions and provisions ends, when lawful residence ends, or in the case where the asylum application is granted and more adequate accommodation has been found. Additionally, the right to reception and benefits can cease in the case, where the asylum seeker is transferred to a new accommodation facility, where he fails to arrive within 48 hours. Furthermore, if an asylum seeker is failing to report to the responsible at the reception facility for two weeks, reception can be denied. Finally, the RVA is giving the COA the right to deny or end provisions and services in the case where an asylum seeker is not complying with the rules of the reception facility. Article 9-18 of the RVA point out what the reception of asylum seekers is encompassing. According to this, the reception of asylum seekers should in each case include: accommodation, weekly financial allowance for food, clothing and other personal items, financial support for travel, recreational and educational activities, access to medical care, insurance and monetary support if the asylum seeker is not accommodated in one of the reception facilities. Besides this, additional support and care is included for traumatized and chronically ill asylum seekers. These benefits and reception conditions can be withdrawn from the asylum seeker if he is not cooperating with the authorities or if he is causing problems in the reception facilities (Art.10). Furthermore, COA has the right to reduce or end the access to the before mentioned reception conditions in the case where the asylum seeker is not following the rules of the reception center or if he fails to comply with the weekly registration duty in the reception facility (Art.13). Finally, the reception conditions can be reduced if the asylum seeker has regular income or other financial assets at his disposal. In the last part of the regulation, the duties of the asylum seeker during their reception are pointed out.

Concluding from the comparison of the legislative frameworks in place regarding asylum in Germany, the Netherlands and the United Kingdom, one can say that all three countries have legislation in place that theoretically (a) allows that the reception conditions provide an adequate standard of living to asylum seekers, (b) ensures that human dignity is guaranteed throughout the asylum process and (c) that the special needs of vulnerable groups are paid attention to. In this regard, all three countries have a variety of detailed legislative measures in place in order to theoretically prevent an incompliance with fundamental and human rights, which would go against the cosmopolitan ideas and values.

What is striking, is the approach that the Netherlands is taking in regard to the provision of reception conditions to asylum seekers, is the fact that the management of all asylum matters in the Netherlands have been transferred by law to one single authority, in contrast to the United Kingdom and Germany, where national legislative measures are coexisting with regional or local legislative measures and approaches. Through the management of the whole asylum procedure by just one entity, the goal is to achieve uniform standards of reception conditions throughout the Netherlands, however it will be interesting to see, whether this approach taken by the Dutch government is actually proven to be an effective approach in order to achieve this goal.

5.2. Immigration and asylum histories in Germany, the Netherlands, and the United Kingdom

Colonial and overseas territorial ties

Both the United Kingdom and the Netherlands can be characterised by having a long history with former colonies and overseas territories, which led to an influx of immigration from these countries.

In the case of the Netherlands, the Dutch colonial empire, which started in 1602, began to fall when Indonesia claimed its independence in 1945, which led to an increase in the immigration of Dutch-Indonesian repatriates and Moluccans (Lucassen and Penninx,1997). In the first twenty years after Indonesia's independence around 300,000 repatriates immigrated to the Netherlands. Moluccans arrived in the Netherlands as part of an agreement with the Dutch government, which had planned an independent Moluccan state. But since Indonesia did not support the independence of Moluccans and the creation of a Moluccan state, 12,500 Moluccans immigrated to the Netherlands. Since there is no independent Moluccan state to this day, many have stayed in the Netherlands permanently (Lucassen and Penninx, 1997).

In 1975 Suriname, a former Dutch colony, was granted independence leading to a surge in migration, due to the fact that many Surinamese were afraid that an independent Suriname could not remain stable and wealthy without the support of the Netherlands. A second wave of immigration from Suriname was caused by the introduction of mandatory visas for Surinamese who wanted to enter the Netherlands

in 1980, as many feared that entering the country would become even more difficult (Vijfeeuwenmigratie, 2015).

Besides Indonesia and Suriname, Antilles and Aruba, the last remaining Dutch overseas territories, were and still are important sources of migrants in the Netherlands. In the beginning, many wealthy Antilleans chose to study and educate themselves in the Netherlands. But in the 1990s, when the economy stagnated in the Antilles, many lower-class Antilleans chose to migrate to the Netherlands in hope for employment and a better life (Vanderputte, 2013).

Just like the Netherlands, the United Kingdom has a long history of colonial and overseas imperial ties, starting with the Act of Union in 1707 and coming to an end in the 1990s with the handover ceremony of Hong Kong, which was the last overseas territory of the United Kingdom.

In the United Kingdom, before the 1960s, the British immigration policy was still embedded in the structures and ideas of the British Empire, with Commonwealth citizen having the right of entry in the UK. This approach was also manifested in the British Nationality Act (1948) which acknowledged the right of Commonwealth citizen to settle down in the United Kingdom.

This approach however changed in the 1950s and 1960s, where the UK government put their main focus on limitation and integration as new trends in the British migration policies. Following the idea of limitation, various legislative measures were introduced in 1962, 1968 and 1971 aiming at reaching 'zero net immigration'. Especially, the 1971 Immigration Act was from great importance for the future British migration approach, as it repealed all previous legislative measures on immigration and it is still providing the framework for the current UK immigration legislation (Somerville et al, 2009).

The main essence of the mentioned legislative measures was the introduction of stricter and stronger border control procedures, which included new distinctions between the rights of the UK born/UK passport-holders and people from former British colonies, especially from India, Pakistan, and the Caribbean — who now became subject to immigration controls.

During the conservative era (1971 – 1997) the direction of immigration policies in the UK nearly remained the same with a greater focus on limitation and restriction. This

can be particularly highlighted by the British Nationality Act (1981) which abolished the common-law tradition by withdrawing the right of citizenship to all those born on British territory.

In this regard, one can say that both the Netherlands and the United Kingdom, instead of embracing the impact of the immigration of nationals from their former colonies and overseas territories and seeing the potential that these immigration movements could have, they imposed stricter and limited legislative measures for citizen from these colonies and territories.

Guest workers as a mean to meet the demand on the domestic labour market

Another common denominator that became apparent while studying the immigration history of the Netherlands and Germany, was the introduction of the guest worker scheme in order to meet the demand of workers in the relevant labour markets. In the 1960s, the Dutch government followed other Western European states and recruited guest workers. The first group of guest workers mainly originated from Southern Europe, such as Spain and Portugal; later these workers were recruited from Turkey, Morocco and the former Yugoslavia. Guest workers from Southern Europe often returned to their home countries, especially after their countries became Member States of the European Union (Sanderse et al., 2011). However, return migration to Turkey and Morocco was less common caused by the difficult economic and political circumstances in these countries and the newly introduced obstacles of re-entering the Netherlands and other EU Member States for non-EU citizen. After the recruitment stop in 1974, many of the guest workers decided to stay in the Netherlands and they were joined by their families. This process of family reunification reached its maximum around 1980 and family migration is still the main source of settlement migration to the Netherlands and accounting for approximately 40% of all immigrants (Sanderse et al., 2011).

In the same way as the Netherlands, Germany recruited employees from various countries due to the lack of qualified employees. In this respect, the German Democratic Republic (hereinafter: GDR) had agreements with Poland (1965/66), Algeria (1974) and Cuba (1978). From 1966 until 1989, the GDR recruited around 500,000 foreign employees, which were subject to a rotation system, which meant that after a period of four to five years they were required to return to their country of

origin. In 1989, there were 191,200 foreigners in the GDR; thereafter around 94,000 were employees that were recruited (Bundeszentrale für politische Bildung, 2005).

Germany's first guest-workers came from Italy in 1955, after a recruitment agreement has been signed between the German and Italian governments. They were followed by Greek and Spanish guest workers in the early 1960s, and guest workers from Marocco, Portugal, Tunisia and the Former Yugoslavian Republic in the end of the 1960s. However, the biggest influence on the German society came from the guest workers recruited from Turkey after the recruitment agreement has been signed in 1961. Since 1961 until the end of the recruitment of Turkish guestworkers, around 860,000 Turkish workers immigrated to Germany, and now they form the biggest group of people with a migration background in Germany, with 2,5 million people living in Germany (Bundeszentrale für politische Bildung, 2005).

Even though the United Kingdom did not have a guest-worker scheme like Germany or the Netherlands, it is important to mention that also the United Kingdom shows a growing percentage of migrants in the UK economy. In this regard, the number of working-age foreign-born people in the United Kingdom increased from nearly 3.0 million in 1993 to 7.0 million in 2015. There was a significant jump in the number of migrant workers in the United Kingdom in 2006, which resulted with the opening of the British labour market to workers from the A8 countries (Slovenia, Slovakia, Poland, Hungary, Lithuania, Latvia, Estonia and the Czech Republic) in 2004 (Rienzo, 2016).

The idea of inviting guest workers was seen by both the Dutch and German governments as a temporary measure to meet the demand for workers in the domestic labour market, hence the idea was that after a certain period the guest workers would leave Germany and the Netherlands and return back to their home countries. With this in mind, the respective governments did not think about long-term approaches in regard to the integration of guest workers. In reality, many of the guest workers did not return to their home countries after their work placement ended and rather settled down in the Netherlands and Germany and strived for the reunification with their families.

The issue of irregular migration enters public debate

When talking about asylum, it is important to touch upon the issue of irregular migration as both concepts are connected. In general, irregular migration describes migratory movement that takes place outside the regulatory norms of transit, receiving and sending countries, however there is no clear or universally accepted definition of irregular migration. From the perspective of destination countries, irregular migration is the entry or stay in a country without the necessary authorization or documents required under immigration regulations. From the perspective of sending countries, irregular migration can be understood as people crossing international boundaries without a valid passport or travel document. Therefore, in a way, asylum can be characterised as one type of irregular migration.

Until the 1990s, irregular migration in Germany, the Netherlands and the United Kingdom was not necessarily on the top of the political agenda or even a crucial point in public debate, however this changed with several fatal incidents, especially in the Netherlands and the United Kingdom.

The issue of irregular migration raised national attention in 2000 in the United Kingdom, when 58 Chinese people died on a Dutch truck while they were locked in the back of the truck en route to the United Kingdom (BBC, 2000). Another incident in 2004 put the spotlight on irregular immigration in the UK, where 22 Chinese cockle pickers died in Morecambe Bay (BBC, 2004).
In response to these incidents, the government passed legislation intended at regulating and supervising employers (so-called gangmasters) who hire and deploy short-term agricultural employees. Furthermore, a governmental body, the Gangmaster Licensing Authority, has been established in 2005 in order to reduce the exploitation of seasonal and short-term workers, however the work of the authority is limited to certain labour market sectors, namely fish-processing industries and agriculture (Gangmaster Licensing Act, 2004).

Just like in the United Kingdom, irregular migration has not been an important agenda point in the Dutch immigration debate, however due to certain incidents it has received a lot of media attention. As an example, in 1992 a plane crashed into two high-rise buildings in Amsterdam-Bijlmer. The majority of the residents of the buildings were irregular Ghanaian migrants, which rendered it difficult for the authorities to determine

the number of victims and identify them. This accident for the first time made the public aware of the large number of irregular migrants living in the Netherlands.[5]

Besides the Bijlmer plane accident, the phenomenon of 'white illegals' gained public awareness in the 1990s. 'White illegals' are people who live in the Netherlands illegally, but who are employed and pay taxes. Although many of these immigrants have been granted residence permits, the Linking Act that was implemented in 1998 in response to this, hindered irregular migrants pursuing regular employment. The Act is connecting various governmental databases (e.g. immigration services & tax authorities) in order to exclude irregular immigrants from public services and the opportunity to receive a social security number (Wet Wijzing, 1998). In addition to targeting irregular immigrants via the Act, the authorities also focused on the employers. In this respect, police are carrying out inspections in those sectors that are known to employ irregular immigrants and in the case an employer employed those migrants, he will be fined.

Since 2002, various policies were developed and introduced in order to tackle the problem of irregular immigration in the UK. On the one hand, external measures were implemented such as stricter visa requirements and regimes. On the other hand, internal measures evolving around the four main areas - identity management, increased employer compliance, increased public service compliance and regularization- were implemented by the government (Somerville et al. 2009).

First of all, in response to the aftermath of 9/11, compulsory biometric identification data for all immigrants who intended to stay in the country of longer than six months were developed. Furthermore 'Biometric Identity Cards' for all non-EU foreign national were introduced in November 2008.

The introduction of these measures caused controversies, as it was argued that they might have a negative implication and effect on civil liberties. However, the government defended their policies and argued that these measures are in fact reducing the possibility of illegal entry and more secure identity documents help to prevent the entry of people to the UK who might be considered as a security threat.

Secondly, the government introduced increasing sanctions on employers who employed unauthorized workers, in order to prevent employers from taking advantage

[5] http://www.npogeschiedenis.nl/andere-tijden/afleveringen/2012-2013/Bijlmerramp.html

from irregular immigrants.

Besides this, compliance policies were placed on public service providers, such as health care providers in the sense that the access to non-emergency health care is restricted for irregular immigrants. Additionally, schools have been asked to check the status of children attending the school and to report those that are illegally residing in the UK to the immigration authorities.

Finally, resulting from administrative changes and ad-hoc decisions, the government has regularized between 60,000 and 100,000 people over the last decade. The majority of those that have been regularized, have been in the country for longer than 13 years and often have made asylum claims that have not yet been decided upon.

Asylum – A shift of focus of migration policies

With the fall of the Berlin Wall in 1989, followed by the breakup of the Soviet Union and the emerging conflict and wars in the former Yugoslavia in the 1990s, the number of people fleeing and seeking refuge and asylum in Europe increased and the topic of asylum entered the different national governmental debates. (Somerville et al, 2009).

In the United Kingdom, this change in focus is particularly visible in the Asylum and Immigration Appeals Act (1993) and the Immigration and Asylum Act (1996). The Asylum and Immigration Appeals Act introduced restrictive measures, establishing "fast track" procedures for the decision-making process on asylum applications, introducing the possibility to detain asylum seekers while their asylum application is decided upon, and reducing the welfare benefits that asylum seekers are entitled to. These measures and policies were further fostered and elaborated in the 1996 Immigration and Asylum Act, which further limited the welfare benefits and entitlements of asylum seekers.

With the Labour party coming into power in 1997, the essence of migration policies shifted. Instead of limiting migration, the idea was to implement a 'selective openness' approach to immigration, with a strong emphasis on economic migration and the establishment of stricter security and control tools. Furthermore, the Labour government put stronger emphasis on the concept of integration, which was developed in the 1960s, in the sense that they reinforced anti-discriminatory tools and legislative measures and introduced incentives targeting 'community cohesion', so linking segregated communities by fostering shared values and belonging (Somerville, 2007).

In general, the Labour government implemented various important legislative measures and policies dealing with immigration and asylum over the years. Especially, the legislation introduced in 2002 can be characterised as being from great significance, due to the fact, that the government expanded its outlook on economic immigration by introducing visas for highly skilled economic immigrants in order to come to the UK, solely based on their skills even if they don't have a concrete employment offer.
On the other hand, more restrictive measures were taken, such as tightening up visas and the implementation of stricter rules and measures for asylum seekers and illegal immigrants. This can be seen in creation of the UK Borders Agency, which replaced the Immigration and Nationality Directorate (IND) and is having more power than the IND, in the sense that it is combining the visa responsibilities from the Foreign Office and the detection responsibilities from Customs.

With increasing numbers of asylum applications and the aftermath of the Sangatte crisis, public pressure to tackle the asylum issue grew (Guardian, 2002). Sangatte, which is a commune on the Northern coast of France on the English Channel, became a known place in the media, due to the fact that it accommodated a controversial refugee camp, which was closed by the French government in 2002, which resulted in riots.

As a response, the government introduced various legislative measures intended at reducing the number of asylum application, speeding up the asylum process and implementing more effective tools to deport rejected asylum seekers. Furthermore, an extensive list of policy measures was implemented, such as stricter visa procedures, financial penalties on air and truck carriers, juxtaposed controls at European ports and the posting of British immigration liaison officers abroad (Somerville et al,2009). Together all these measures were intended at strengthening the British border and making it more difficult to enter British territory for foreign nationals.
Besides this, further policy measures were established aiming at reducing the access to welfare benefits and the labour market, increasing the surveillance and detention possibilities of asylum seekers and the forced dispersal of asylum seekers outside of London.

In the Netherlands, an increase of asylum applications could be witnessed as well in the early 1990s, with around 40% of the asylum applications being accepted. But

during the same time several measures limiting the access to asylum have been implemented under the Ruud Lubbers government. First of all, the number of resettlers from UN refugee camps was maintained at 500. Besides this a selection system has been set up in order to separate 'real' refugees from economic migrants (Wijkhuis et al, 2011).

However, the newly implemented system has not been successful in decreasing the number of asylum applications and in 1994 the number of incoming asylum seekers peaked. In order to deal with the challenges that resulted from the high influx of asylum seekers and potentially decrease the number of asylum seekers, the Aliens Act (Vreemdelingenwet (VW)) was implemented in 2000. Following the Aliens Act, asylum seekers can be granted refugee status (a) if they meet the criteria set out in the Geneva Convention, (b) on humanitarian grounds or (c) if they are the dependent partner or child of another asylum applicant (Vreemdelingenwet, 2000). In order to reduce the number of incoming asylum applications, the Act introduced temporary permits and limited the ground for refugee status. Besides that, it aimed at deterring asylum seekers by rejecting within 48 hours.
After the implementation of the Aliens Act, asylum application de facto decreased from 43,560 in 2000 to 9,780 in 2004 (Wijkhuis, 2011).

Although the Netherlands had policy measures in place when it comes to the asylum application process, there was no strict removal policy in place for those asylum seekers whose applications had been turned down. So, it was assumed that it was the responsibility of the asylum seeker to leave the country. This resulted in the fact that many people who were denied refugee status, stayed in the Netherlands without a legal residence permit. Due to this around 26,000 people who claimed asylum before the year 2001 have remained in the Netherlands (Wijkhuis, 2011).

In 2003, an amnesty was announced for those people who have been waiting for the result of their first application for five years or more. However due to the different government changes, no law has been passed until 2007. Under a left leaning government an amnesty law was passed including all asylum seekers who have claimed asylum before 2001 but had not left the Netherlands since then and had not committed any serious crime (Ersanili, 2007).

Similarly, as in the Netherlands and the United Kingdom, the number of asylum applications in Germany peaked in the 1992, resulting from the civil war in Yugoslavia and reached a historical level of 438,181 (Herbert,2001). The continuously growing influx of asylum seekers and resulting resentments of the German population was picked up by the politicians and the media, as they conveyed a picture, which was suggesting that asylum seekers and labour migrants from all over the world were 'flooding' Germany (BAMF, 2012). This idea was further strengthened by the prevention of the integration of asylum seekers into German society, the accommodation of asylum seekers in remote collective accommodation; and finally, the prohibition to access the labour market leading to the dependence on the German welfare system (Kontakt-und Beratungsstelle für Flüchtlinge und Migranten eV, 20012).

At that time, asylum and immigration were the main topics discussed in Germany and this led to an augmented debate concerning a change of the German Basic Constitutional Law in regard to the right to asylum in the federal parliament. The dispute over the right to asylum and the question whether it should be changed, eventually culminated in 1993 in the so-called Bonner Asylum Compromise (*Bonner Asylkompromiss.)* This resolution introduced an amendment of the basic right to asylum and involved new provisions guiding the asylum process (BAMF, 2012).
In the new version of the German Basic Constitutional Law, Article 16 (2) was nullified and instead linked to Article 16a (1) together with requirements for the qualification as a refugee that has the right to enjoy the right to asylum. Two of the main requirements were the 'third-countries'- rule and the 'safe country of origin'-concept (Duchrow, J. & Spieß, K., 2006).
According to the 'third-country'- rule, asylum seekers that enter German territory coming from other safe third countries, where they are not politically persecuted, do not have the possibility to claim asylum in Germany. Following the 'safe country of origin' concept, the federal parliament can define countries that can be regarded as 'safe countries' concerning their political and legal situation. Asylum seekers, originating from these designated 'safe countries' also are restricted in their possibility to claim asylum in Germany (Grundgesetz, Article 16a).

In the same year, as a result of the compromise of Bonn, the German government implemented the Asylum Seekers Benefit Act (*Asylbewerberleistungsgesetz*

(AsybLG)). The main aim of the Act was to decrease the influx of asylum seekers and refugees to Germany and to preclude the abuse of the asylum law. Furthermore, the Asylum Seekers Benefit Act intended at "avoiding incentives for migratory movements through a benefit level that seems to be higher compared in an international setting" (German Bundesverfassungsgericht. 1 BvL 10/10 from the 18th of July 2012, paragraph 121).
Hence, the Act regulated what asylum seekers are entitled to receive for their day-to-day life.

In 2005, the Immigration Act (*Zuwanderungsgesetz*) fundamentally reformed the German legislation on asylum. On the one hand, the Federal Office took on even more responsibility in the implementation of asylum proceedings, in the sense that it now uses internal management tools to ensure a uniform decision-making process taking place in all branch offices (Zuwanderungsgesetz, 2005).
On the other hand, the Act also introduced changes relevant for the asylum seekers themselves. First, the notion of persecution has been expanded to political persecution that emanates from non-governmental actors. However, the restriction is, that protection against deportation is dependent on the inability or unwillingness of the state, state-like actors or international organizations to offer protection to the asylum seeker against the persecution.
Secondly, gender has been included as a reason for persecution. So, if asylum seekers are persecuted in their country of origin only on the basis of their gender, this can now be taken into consideration under the category of "persecution because of affiliation to a social group" (Zuwanderungsgesetz, 2005).
Finally, a time-limit has been imposed on the residence permit of asylum seekers. Those entitled to asylum previously were granted an unlimited residence permit. With the Immigration Act they now receive a limited residence permit. After three years, they have the right to an unlimited settlement permit. However, the Federal Office must certify that the preconditions for recognition still apply (Zuwanderungsgesetz, 2005).

As it became evident, the main focus of asylum policies and legislation in Germany, the Netherlands and the United Kingdom is on restricting and limiting the inflow of asylum seekers through strict and rigorous measures in order to prevent the concept of "asylum shopping" or asylum seekers purposely choosing a country to lodge an asylum

application due to favorable reception conditions and benefits. In addition to this, it seems that another focus is on strengthening the own borders, which in turn is further enforcing the idea of limiting or impeding the inflow of asylum seekers.

5.3. Discussion

This chapter 5 demonstrated that there are a variety of similarities between Germany, the Netherlands and the United Kingdom in regard to their immigration and asylum history, however there are as well certain differences between these countries when it comes to their administrative and legislative background and their approach to the asylum procedure.

As it was shown in this chapter, all three countries have similar immigration histories. Germany has a long-standing history with immigration streams coming from Greece, the former Republic of Yugoslavia and the biggest group of immigrants coming from Turkey, following the "Gastarbeiter"- scheme in the 1960s and 70s. This influx of immigrants coming from Greece and Turkey were caused by the shortage of workers in certain professions in Germany, which lead to a recruitment process of the German government. This could be seen as political cosmopolitan, as described by Roudometof (2005) as a low degree of cultural, institutional and especially economic protectionism, due to the removal of barriers for foreign workers to enter the German labour market. A similar approach and political cosmopolitan characteristic can be evidenced in the Netherlands, where in the 1960s the Dutch government followed Germany and recruited guest workers, hence opening the domestic labour market. The first group of guest workers mainly originated from Southern Europe, such as Spain and Portugal, later these workers were recruited from Turkey, Morocco and the former Yugoslavia. In addition to this, the recruitment of Greek workers in the GDR could also be classified as cultural cosmopolitanism, due to the successful integration of the Greek into the German society, which can be seen as the capacity for a mutual evaluation of cultures and identities (Delanty, 2009). In contrast to this though, one could classify the UK's approach to immigration and asylum as being in contradiction with cosmopolitan values. In contrast to Germany and the Netherlands and their guest-worker scheme, the United Kingdom put their main focus in the 1960s on limitation and integration in regard to migration.

Following the idea of limitation, various legislative measures were introduced in 1962, 1968 and 1971 aiming at reaching 'zero net immigration'. Especially, the 1971

Immigration Act was from great importance for the future British migration approach, as it repealed all previous legislative measures on immigration and it is still providing the framework for the current UK immigration legislation (Somerville et al, 2009). The main essence of the mentioned legislative measures was the introduction of stricter and stronger border control procedures, which included new distinctions between the rights of the UK born/UK passport-holders and people from former British colonies, especially from India, Pakistan, and the Caribbean — who now became subject to immigration controls.

Another striking difference that became apparent in the discussion of the administrative and legislative backgrounds of the United Kingdom, the Netherlands and Germany, was the different administrative layouts. In Germany, for example, the administrative and legislative decision-making process is on a rather decentralised level, with the 16 Federal States having different approaches to who handles asylum and immigration matters. In contrast to this, one has the Netherlands, which is taken a very centralised approach to asylum and immigration matters.

5.4. Chapter summary

This chapter 5 was from great importance to assist in answering parts of the main research question of this study, which aims at finding out to what extent EU Member States comply with EU regulations, human and fundamental right obligations in respect to the provision of reception conditions to asylum seekers. Through presenting the administrative and legal background, as well as the immigration and asylum histories of Germany, the Netherlands and the United Kingdom, a foundation was established in order to understand why there might be similarities and differences in the countries' approaches to the provision of reception conditions to asylum seekers.

Through the comparison of the administrative background of the three countries, it became apparent that each country shows a different degree of centralized governance. In this respect, Germany shows the most decentralized administrative background, while the Netherlands have a high degree of administrative centralization, which can dictate the approach taken in terms of providing reception conditions and can have an impact on guaranteeing that all of the concerned countries comply with EU regulations, as well as human and fundamental obligations.

The discussion of the available legislative measures concerning asylum in Germany, the Netherlands and the United Kingdom, showed that in theory all of the three countries have rules and legislation in place, that deals with all of the aspects around asylum and the provision of reception conditions to asylum seekers.

Finally, the comparison of the immigration and asylum histories of the three countries pointed out that all three countries witnessed waves of not only economic migration, but also people seeking asylum, which could predict tendencies of how Germany, the Netherlands and the United Kingdom are dealing with these topics in the present.

The following chapter 6 will continue with establishing a framework for the analysis of the provision of reception conditions to asylum seekers, as the asylum procedures in Germany, the Netherlands and the United Kingdom will be presented.

Chapter 6

Asylum procedures in Germany, the Netherlands, and the United Kingdom

The emphasis of chapter 6 will be on the discussion of asylum procedures in Germany, the Netherlands and the United Kingdom. The analysis of the different aspects of the asylum procedures, e.g. the length of the procedure, are crucial, as this study is discussing the reception conditions of asylum seekers; hence the reception that they receive once they lodged their asylum application up until their status is determined.

Therefore, it is crucial to discuss the differences in the asylum procedures as they can have an impact on the actual provision of reception conditions to asylum seekers. For instance, depending on the length of the whole asylum procedure, various reception conditions might be adequate for a short asylum procedure, however they can be unbearable if the asylum procedure and the determination of the refugee status are prolonged.

6.1.Asylum procedures in Germany

German legislation states that in general an asylum seeker has to lodge an application right at one of the borders of Germany. However, entry into Germany has to be refused by the German border authorities in the case where a migrant reports to border authorities at the border without being in the possession of necessary documents for legal entry or in the case where a removal to the neighbouring country would be possible immediately (Section 18(2) Asylum Act and Sections 14 and 15 Residence Act).

Nevertheless, due to a change in legislation in 2013, the border authorities now have to refer any asylum applications straight to the Federal Office in cases where they arrest asylum seekers who have already crossed the border. Up until the change in legislation in 2013, the concerned border authorities were not asked to register asylum applications in these cases.

In the cases, where asylum applications are not lodged at the border, asylum seekers are required to ‘immediately’ report to a branch office of the Federal Office for

Migration and Refugees (BAMF) or alternatively to a police station or to an office of the foreigners' authorities. It has to be noted though, that only the BAMF is entitled to register an asylum application. Therefore, if an asylum seeker is reporting to a police office or other authority, he will automatically be referred to the next branch of the BAMF.

Due to the increased inflow of asylum seekers in 2014 and 2015, the BAMF has not been capable of keeping up with the registration of asylum applications, which led to the fact, that asylum seekers are now very often registered only on a preliminary basis and they are handed a document which serves as a 'confirmation of having reported as an asylum seeker' (BÜMA). This document ensures the asylum seeker that they will receive accommodation even though they have not yet been able to lodge an asylum application (BAMF,2015).

The responsible authority for the decision-making process in asylum procedures is the BAMF, which took over the responsibilities in this respect from the Federal Office, which has new expanded duties in migration ranging from the coordination of integration courses up to research on migration issues.

In general, there is no time limit in place for the BAMF to take a decision in a lodged asylum application; however, if a decision within six months has not been reached, the BAMF is required to inform the asylum seeker of when a decision is likely to be taken. With the increased inflow of asylum seekers, the number of pending asylum applications also increased, with 169,166 pending decisions in 2014 and 237,877 pending asylum applications in 2015 (AIDA, 2015).

On average, however the decision-making process in an asylum procedure was at 5-7 months over the recent years. However, there might be differences in the length of the asylum procedure depending on the country of origin of the asylum seekers, as a prioritisation of specific cases has been taken place since 2012. With an augmented influx of asylum applications from the Former Yugoslavian Republic of Macedonia (FYROM) and Serbia, the BAMF publicised in autumn 2012, that asylum applications from these countries will be prioritised. Up until that point, the prioritisation of specific asylum applications had no legal basis and all the existing measures of the regular asylum procedures were theoretically still in place. Yet, a variety of administrative tools were implemented to deal with as many asylum applications as possible during

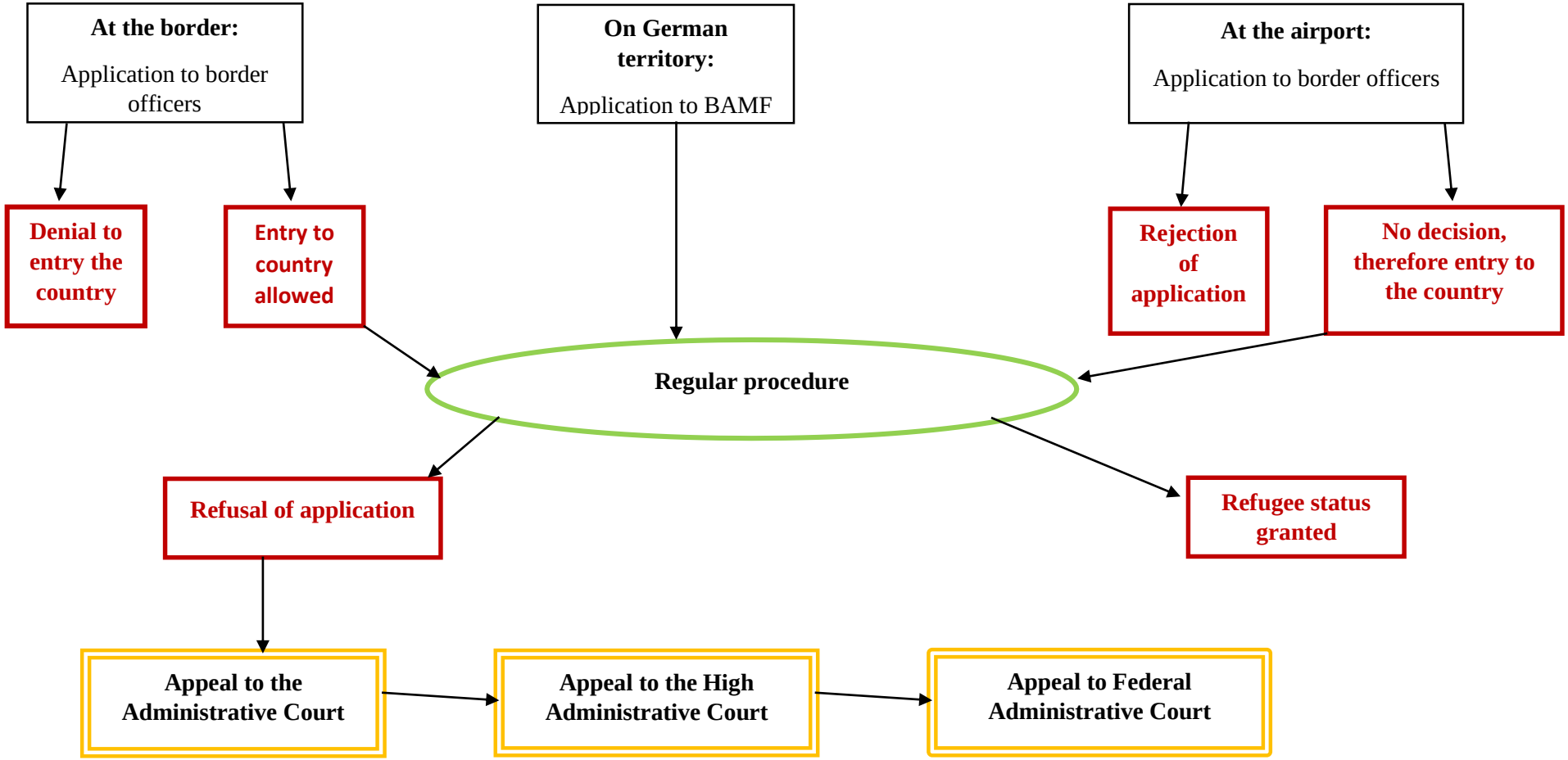
a short time. With this in mind, the aim of the fast-tracking procedure of specific asylum applications was to conduct the interview on the same day that the asylum application is lodged, or latest two days after this. Following on from this, a decision on the asylum application was supposed to be taken within one week. The German government justified the fast-track processing by saying that "all procedural guarantees and quality criteria were applied when dealing with prioritised caseloads" (AIDA, 2015). Conversely, various NGOs have question this pointing out that the fast-tracking of asylum procedures might lead to "summary procedures", in which a thorough, detailed and unbiased examination of asylum applications would not be guaranteed, as the asylum procedures were centred around the notion that asylum applicant from these countries were abusing the asylum system, therefore the government was accused of creating a "self-fulfilling prophecy" (G4, interview, 2013).

Although the aim of the fast-tracking process of asylum applications from certain countries was aimed at reducing the length of the procedures, the target was not met, as the average length of asylum procedures of Serbian and Macedonian asylum seekers slightly increased from 2.1 to 2.4 months.

Another way that is used to reduce the number of asylum application and decrease the length of the asylum procedure is the application of the safe country of origin concept. According to this concept, German asylum authorities are obliged by law to assume that neither inhuman or degrading treatment or persecution exist in countries classified as safe countries of origin. Therefore, asylum applications from asylum seekers that come from these countries are precipitously regarded as manifestly unfounded. A more detailed examination of an individual case will only take place in the event that the asylum seeker can provide proof that they might in fact be at risk of inhuman treatment or persecution in spite of the general circumstances in the country of origin.

The following graph will give an overview of the different asylum procedures in Germany and discuss them in-depth afterwards.

Table 5: Overview of the German asylum procedure



Regular procedure

In the regular asylum application procedure, the BAMF will conduct an interview with each asylum applicant. Only in the following special cases a personal interview might be dispensed:

1. The Federal Office intends to recognise the to grant asylum on the basis of the evidence given in the asylum application.
2. The asylum seeker claims to have entered Germany via a safe third country.
3. The asylum seeker fails to appear to the interview without an adequate excuse (BAMF,2015).

Furthermore, in many cases, where the prospects of being recognised as refugees were high, the interviews were omitted and the asylum applications were handled through written procedures. In 2015, this applied to asylum seekers that were Eritrean and Syrian nationals or members of ethnic minorities from Iraq. Asylum applicants that fulfil these requirements can be granted refugee status on the basis of a questionnaire. In the case, that further questions arise out of the examination of the questionnaire, a 'normal' procedure has to be carried out and an interview has to be conducted (AIDA,2015).

When an interview has to be conducted, the presence of an interpreter at the interview is regulated by legislation. The BAMF has its own pool of interpreters covering approximately 400 languages and dialects. However, there are no specifications by law in terms of professional qualifications for interpreters and therefore there are several issues that might arise out of this. It has been reported that interpreters have poor language skills or do not speak the same dialect as the asylum applicants. Furthermore, it was noted that sometimes interpreters omit important comments or details that the asylum applicants made when summarising the interview. Another important aspect, which was pointed out, was the fact that the interview is actually not conducted in the first language of the asylum applicant, but rather in a language that they are supposed to understand, e.g. because it is officially the language of their country of origin (G6, interview, 2013).

After the interview, a transcript is being created consisting of a summary of questions and answers and it is taken from the tape recording of the recording and written in

German. The interpreter that has been conducting the interview is also the responsible one for translating the transcript to the asylum applicant, which is given the chance to correct any misunderstandings or mistakes. With the signature of the transcript, the asylum applicant confirms that he had all the opportunities to present his case and that all the details in the transcript are correct.

Dublin procedure

While there is no direct connection or reference to the Dublin Regulation in German legislation, a general reference to the EU asylum acquis can be found in Section 27a of the Asylum Act by stating that "an application for asylum shall be inadmissible if another country is responsible for processing an asylum application based on European Community law or an international treaty".

The examination of whether another state is actually responsible for carrying out the asylum procedure is part of the regular procedure anyways. Therefore, the Dublin procedure, in the German context, does not refer to a separate procedure, but rather a shift in responsibility for an asylum application within the administrative entities.

Until 2013, the German border police also initiated Dublin procedures, in the case where an individual was caught at the border and he could not be immediately returned to the neighbouring country, even though this country would have been the responsible one to deal with the asylum application. In this respect, Germany has agreements in place with a variety of countries, such as Denmark, Austria, the Czech Republic and Switzerland, to deal with such cases. However, in 2013, the BAMF informed German border authorities and the Federal States that these actions were in contradiction with the national legislative measures on asylum applications and that the BAMF is the only authority that is entitled to initiate Dublin procedures.

Admissibility procedure

Under German law, besides the Dublin procedure, there is theoretically no other asylum application procedure that is designed as an admissibility procedure. Nevertheless, it is pointed out in German legislation that an asylum application can be classified as unfounded, if the asylum applicant can be returned to 'another third country'. In this respect, an asylum applicant may be send back to any country that can be categorized and defined as a 'safe third country'.

The examination of whether an asylum application is unfounded on basis of the 'safe third country' concept is part of the regular procedure, therefore the same standards and requirements are in place.

Border procedure

As mentioned earlier, there is no special procedure that is in place for asylum applications that are placed at the land border, however this is not the case for asylum applications lodged at an airport. The "procedure in case of entry by air" is legally defined as an "asylum application that shall be conducted prior to the decision on entry to the territory". Hence, such an asylum procedure can only be initiated and subsequently carried out if there are adequate accommodation possibilities available to the asylum seeker on the airport premises during the asylum procedure and if a branch office of the BAMF is assigned to the border checkpoint. These facilities can be found at the airports in München, Frankfurt am Main, Hamburg, Berlin and Düsseldorf.

Usually, the airport border procedure is applying to individuals, that are not in possession of valid travel documents upon the arrival at the airport or to asylum applicants that lodge an asylum claim to border authorities in the transit zone.

In general, there are four different outcomes of the airport asylum procedure. First of all, the BAMF can decide within two days, that the lodged asylum application is 'manifestly unfounded' and therefore the entry to German territory will be denied. Secondly, the BAMF could come to the conclusion within two days, that the lodged asylum application was successful or classified as 'unfounded'. In both of these cases, entry to German territory, and in the case of an 'unfounded' application the access to legal assistance, will be granted. Thirdly, the Federal Office decides that it is not able to come to a conclusion on the lodged asylum application within two days and therefore entry is granted. And finally, the BAMF has not taken any decision in the case and thus entry is granted as well.

Appeal

Any appeals to the rejection of an asylum application have to be lodged at one of the 50 Administrative Courts dealing with asylum matters. The following appeal procedure depends on the nature of the rejection of the asylum application:

a. Rejection without further qualification

In this case an appeal has to be submitted to the Administrative Court within two weeks and the appeal has suspensive effect. It is not necessary at this point to submit all required documents and evidence, as the appellant has one month to finalise the appeal.

b. Rejection as 'manifestly unfounded'

In the case were an asylum application has been classified as 'manifestly unfounded', an appeal against it will not have suspensive effect. Therefore, an appeal and a request to the Administrative Court to restore suspensive effect have to be submitted within one week.

c. Abandonment of application or rejection as 'inadmissible'

This sort of appeal applies to cases that have been declared abandoned for failure to pursue the application or if another State has been deemed to be responsible for the examination of the asylum application. An appeal of this nature does not have suspensive effect.

In all of these three cases, the Administrative Court will examine the case, which in most cases includes a hearing of the concerned asylum seeker. Once the appeal to the Administrative Court is successful, the court obliges the concerned border and asylum authorities to grant the asylum seeker asylum or refugee status. In most cases, this decision by the Administrative Court is the final one and only in exceptional cases it is possible to lodge another appeal with higher instances.

The second stage that an appeal can be made to is the High Administrative Court, which reviews and examines the decisions taken by the Administrative Court both on points of facts and law. As pointed out earlier, it is rather difficult for an appeal to reach this second stage and an appeal to the High Administrative Court is only admissible if:

a. The case is of fundamental importance,
b. The Administrative Court's decision deviates from a decision taken by a higher court, or
c. The decision is in violation with basic principles of jurisprudence.

Only in exceptional cases, appeals can be brought forward to a higher third stage, namely the Federal Administrative Court, which only reviews decisions that have been taken by the lower courts by reviewing only the points of law.

Besides using the possibility for an appeal within the administrative court system, failed asylum applicants also have the opportunity to lodge a constitutional complaint at the Federal Constitutional Court. These complaints however are only valid in cases where basic and fundamental rights might have been violated during the asylum procedure, so in this context this could be the right to political asylum as well as the right to a hearing in accordance with the law. However, the standards for a constitutional complaint to be admitted are very high and rather difficult to meet, which is why the Federal Constitutional Court is only accepting a very limited amount of asylum cases.

Legal assistance

When it comes to legal assistance throughout the whole asylum procedure, it is crucial to point out that it is not systematically available to asylum seekers in Germany. Very often free basic legal assistance and advice is provided by welfare organisations or other NGOs. In some cases, welfare organisations or NGOs offer regular office hours in which they provide the asylum seekers with legal advice in the initial reception centres, however this is not the norm in all of the reception centres. Therefore, most of the times, the asylum seeker will go into the asylum procedure interview without previously being advised by a lawyer. Furthermore, there is no legislative or administrative measure in place that would guarantee the access to free legal advice from an independent institution to asylum seekers before their interview. The access to legal advice becomes even more difficult when the asylum seeker leaves the initial reception centre, as the access to legal advice is then dependent on the place of residence. So as an example, asylum seekers located in a rural area might have to travel long distances in order to reach lawyers specialised on asylum matters (AIDA, 2015).

As mentioned earlier, NGOs and welfare organisations are the key player in providing legal advice to asylum seekers, however they are not entitled to legally represent an asylum seeker during the asylum procedure. Hence, if an asylum seeker wishes to be

represented and support by a lawyer during the asylum procedure, they will have to pay the costs for this by themselves.

However, during court proceedings asylum seekers have the opportunity to apply for legal aid in order to pay for a lawyer. The problem with this is, that the granting of legal aid is depending on how the court thinks the case will be successful. The decision on granting legal aid is also taken by the same judge that is deciding on the case itself, and therefore lawyers often recommend to not apply for legal aid as a negative decision on this might have an impact on the overall case. In addition to this, it might take a long time to get the legal aid granted, so lawyers often have to accept a case without knowing whether their client will receive the legal aid or not (AIDA,2015).

When it comes to appeals, it is possible at the first stage before the Administrative Court for an asylum seeker to be unrepresented by a lawyer, however if the asylum seeker wants to bring an appeal to the second or third stage, he will not be able to do so without legal representation.

6.2.Asylum procedures in the Netherlands

Overview of the asylum application procedure

In general, asylum applications in order to obtain refugee status in the Netherlands can be lodged at the border or directly on Dutch territory. Asylum seekers that arrive in the Netherlands by plane or boat, are refused the entry to the country and are detained. In the case an asylum seeker arrives in the Netherlands by plane, they need to apply for asylum directly before crossing the Dutch external border, at the Application Centre of Schiphol Amsterdam airport (hereafter: AC). In the case an asylum seeker entered the Netherlands by land or is already present on Dutch territory, they have to lodge their application at the Central Reception Centre (hereafter: COL) in Ter Apel, where they are registered as an asylum seeker. Once registering has been done, the asylum seeker is transferred to a Process Reception Centre (hereafter: POL).

The main authority that is handling the asylum application and the implementation of policies regulating the treatment of third country nationals in the Netherlands on behalf

of the Ministry of Security and Justice, is the Immigration and Naturalisation Service (hereafter: IND). The main responsibilities of the IND are to:

a. Take care of applications for short stay visas (visas).
b. Administer applications concerning residence permits for living and working in the Netherlands (regular).
c. Handle applications to obtain Dutch citizenship (naturalization).
d. Manage applications of foreign nationals that seek protection in the Netherlands (asylum).

Just by expressing the wish to apply for asylum it is not implied that a request for asylum has been lodged officially. The application for asylum only becomes official, once the asylum seeker has lodged an asylum application using forms issued by Dutch authorities. Once the forms are signed, the asylum procedure formally starts with a rest and preparation period, which last at least six days. During this period, asylum applicants are given the opportunity to cope with the stress and obstacles of fleeing their country and the journey to the Netherlands (Aliens Resolution, 2000). Besides this, this period is also used by authorities to undertake various preparatory actions and investigations, such as investigations by the Royal Military Police, medical examinations, counseling and preparations for the asylum procedure together with legal assistance. Furthermore, it is checked whether the asylum seeker has already an entry within the Eurodac-system.

Once the rest and preparation period has expired, the asylum procedure commences. As a rule, all asylum seekers follow the so called regular asylum procedure, which is theoretically lasting eight days and is called ‘short asylum procedure’. If it is determined by the Immigration and Naturalisation Service that is responsible for the asylum applications, after 4 days that it will not be possible to decide on a case within the eight days, the application will continue according to the extended asylum procedure (VA), which should not last longer than six months with a possible extension of another 6 months.

It can be noted that there is only one asylum status in the Netherlands, nevertheless there are two grounds on which asylum can be granted:

I. Refugee status: An asylum seeker qualifies as a refugee under Article 1 of the Geneva Convention, in the case that there is a “well-founded fear of

prosecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion".

II. Subsidiary protection: An asylum seeker is granted asylum under subsidiary protection if he falls under the scope of Article 15c of the Refugee Qualification Directive or the Article 3 of the European Convention on Human Rights.

The IND must first check whether the asylum seeker is qualifying for refugee status under ground I, before continuing to examine ground II. Hence, an asylum seeker can only qualify for protection under ground I, if they are not qualifying on the grounds of II. Since it is more difficult for the IND to withdraw a residence permit based on the first status than on the second status, it seems to be of interest to the asylum seeker to appeal for a better refugee status, however once an asylum seeker receives a residence permit on ground II, they cannot appeal for the 'higher' status, due to the fact that every asylum permit comes with the same rights concerning social security.

In the case, that an asylum application is rejected, the asylum seeker has the right to appeal against this decision at a regional court. Regarding a negative decision in the short regular decision, an appeal against it should be submitted within one week to the regional court and it has no suspensive effect. Hence an asylum seeker can be expelled before a ruling is issued by the court. Therefore, the legal representative of the concerned asylum seeker has to request a provisional suspension of the removal within 24 hours after the rejection of the asylum application. After the asylum application is rejected, the asylum seeker still has the right to be accommodated for a period of four weeks irrespectively of whether an appeal has been handed in or whether a suspension has been granted.

In the case where an asylum application is rejected in the extended procedure, an appeal has to be submitted within four weeks and it has direct suspensive effect. Similarly, as in the short asylum procedure, the asylum seeker also continues to have the right to be accommodated during the appeal process.

Regular procedure

As pointed out earlier the regular asylum application procedure can be divided into a short procedure and an extended procedure. Every asylum application will automatically be first examined in the short asylum application procedure. During this procedure, the IND can take the decision to refer the asylum application to the

extended. For the understanding and overview of the Dutch asylum procedure it is crucial to explain what is happening during the eight days of the short procedure. On the day that the asylum application is officially lodged, the IND is conducting an initial interview with the asylum seeker in order to verify his identity, nationality and the route that they traveled in order to get from their country of origin to the Netherlands. Furthermore, a lawyer is automatically supporting the asylum seeker from the first day on. After the first interview, the asylum seeker together with the lawyer review the first interview, and they have the opportunity to submit corrections and additions to the first interview. Besides this, the second day is used for preparing the interview on the following day. In the second interview, the IND focuses on finding out the intentions and reasons of the asylum seeker for seeking asylum in the Netherlands. Just as after the first interview, the asylum seeker and their lawyer have the opportunity to review the second interview and submit corrections if needed. After this, the IND assesses the asylum application. It can either grant asylum or choose to continue the regular procedure or refer the case to the extended procedure.

On the fifth day, if the IND decides to reject an application, they will issue a written intention pointing out the reasons for a possible rejection. Following this the lawyer of the concerned asylum seeker is given the chance to submit their opinion on the written intention.

After this opinion has been submitted, the IND evaluates the case once more and decides either to accept the application and grant asylum or to reject the asylum request. But it may as well choose to continue the examination of the asylum application in the extended asylum procedure.

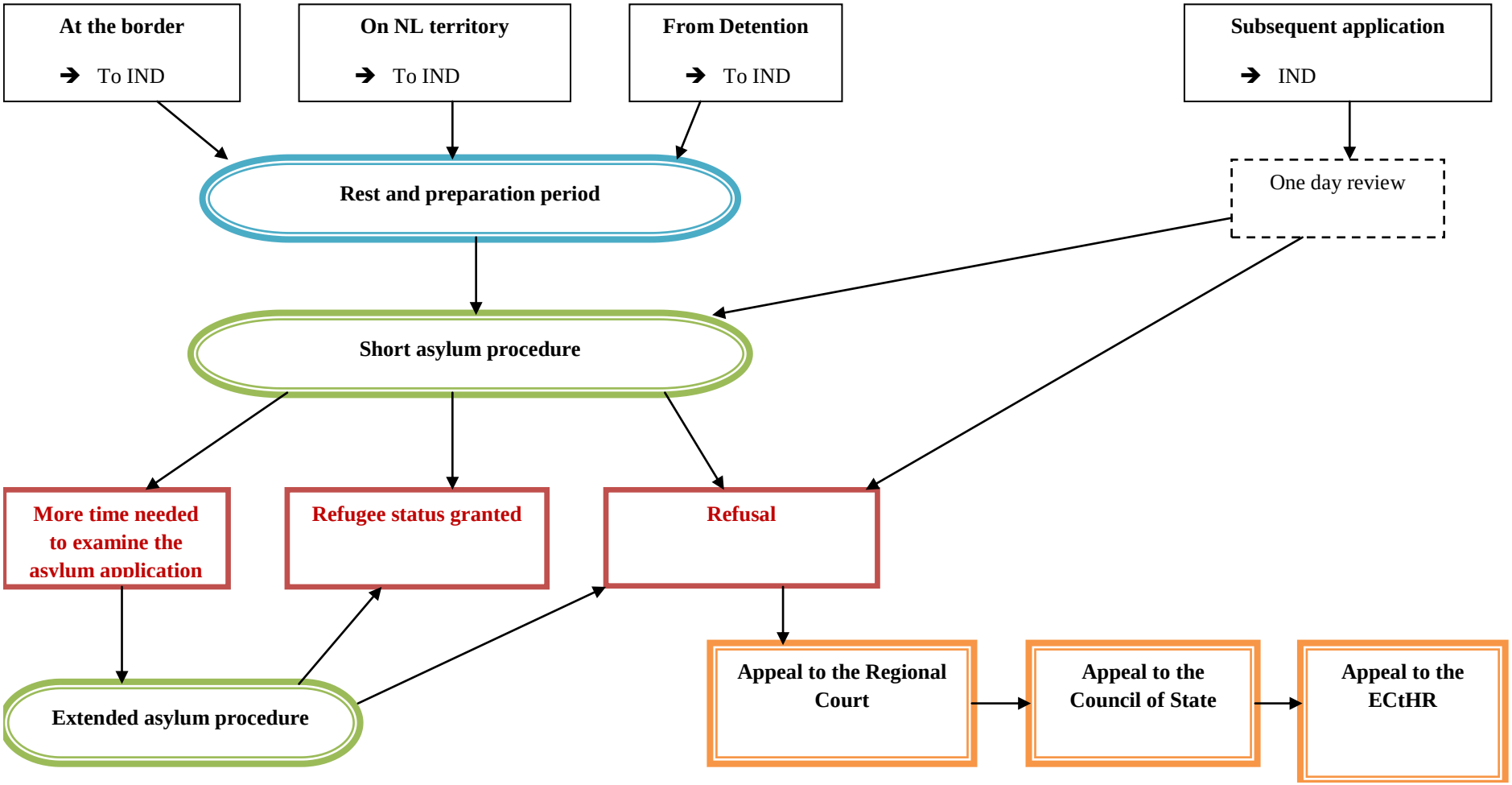
In the case that the IND is not capable of reaching a decision on an asylum application in the short asylum procedure, the application is referred to the extended asylum procedure. In general, one can say that there are no conditions or reasons specified on which the IND can refer an asylum application. However, in the majority of the cases, the IND needs more time to investigate the identity of the concerned asylum seeker or their motivation for seeking asylum in the Netherlands.

Once the asylum application is reviewed in the extended procedure, the maximum time frame for a decision is six months, yet this limit can be extended by another six months, only if the IND has to cooperate with other parties during the investigation.

In contrast to the short asylum application process, the lawyer, on behalf of the asylum

seeker, can submit an opinion on the intention of the IND to reject the asylum application within four weeks. In addition to that, in the extended procedure, the IND has to deliver a new intention to reject the asylum application in the event it changes its reasoning.

Table 6: Asylum procedure in the Netherlands



If, the IND decides to continue the process as an extended asylum application procedure, the asylum seeker will be transferred from the Process Reception Centre (POL) to a centre for asylum seekers (AZ), where he remains until the end of the asylum application procedure.

Dublin procedure

As mentioned earlier, the IND starts an investigation during the rest and preparation period on whether there might be another EU Member State that is responsible for the examination of the asylum application. In order to find out whether this is the case, the IND makes use of the EURODAC system by checking whether the asylum seeker has already been fingerprinted or registered in another EU Member State. Additionally, to this the Aliens Police collects other evidence such as a visa of another Member State or other information by searching luggage and clothes that might give rise to a Dublin claim. In some cases, this Dublin investigation can continue for a few weeks up to several months. If there is enough evidence, that another EU Member State is in fact responsible for an asylum claim, the IND will start the Dublin procedure.

In the case that another Member State is responsible, the Dutch authorities may reject the asylum application and not examine the content of the application. Hence, the IND will only conduct the regular initial interview with the asylum seeker as pointed out in the regular short asylum application process; but the follow-up interview will be replaced by an interview concerning the transfer to the responsible Member State.

During this interview, the concerned asylum seeker will be informed that the Netherlands is not the first responsible country for their asylum claim in the EU and the Dublin process will be explained to them.
In the case of a Dublin decision and a potential transfer to another Member State of the EU, the asylum seeker has the right to appeal against this decision with the regional court. The appeal will not have a suspensive effect, therefore the lawyer that is supporting the asylum seeker, has to request a provisional measure to prevent the transfer of the asylum seeker during the appeal procedure from the court. Once the court approves and issues such a measure, the asylum seeker keeps the right to be accommodated in the Netherlands for the period of the appeal procedure. However, in

most cases the court relies upon the principle of mutual trust and mutual recognition in the sense that the responsible EU Member State will provide adequate reception conditions to the asylum seeker.

Border and transit zones procedure

Theoretically there is no difference in the asylum procedure whether the asylum seeker lodges an application on Dutch territory or at the Dutch border. However, if the asylum seeker enters the Netherlands via the Schiphol airport or a harbor, he can be detained. So, every asylum seeker that is arriving in the Netherlands by plane or boat will be detained by the Royal Military Police and they will be transferred to a closed Application Centre (AC) at the Schiphol airport in order to lodge their asylum application. Taking this into consideration, one can say that the asylum seeker is refused the entry to the Netherlands in this case and is deprived of their right to free movement.

The fact whether this approach can be seen as a specific border asylum procedure is currently discussed, as it might be in breach with the provisions pointed out in the Asylum Procedures Directive. Especially the Recast of the Asylum Procedures Directive has put increased pressure on the Dutch government to clarify whether or not a specific border asylum procedure exists.

Subsequent applications

After an asylum application has been rejected, there is still a chance for the asylum seeker to submit a subsequent asylum application, which is following the principle of non-refoulement set out in the European Convention on Human Rights. The subsequent asylum application process is in contrast to the other procedures a one-day assessment only. In this respect, the asylum seeker has to fill out a request form for a subsequent asylum application and after the IND has decided that this form is complete, the asylum seeker will be invited to submit another asylum application at an IND application centre. The asylum seeker receives an appointed date and time for submitting this new application and he has to register himself and his belongings at the IND application centre. Once again, his identity will be checked and afterwards the asylum application will be signed off and an interview is taking place. This interview will however not go through the details of the travel route or the reasons for applying for the refugee status, but will rather focus on whether there is new evidence

or circumstances that might justify a new asylum application. After the hearing, the IND assesses whether the subsequent asylum application will be granted, rejected or whether further research is needed. In the latter case, the application will be assessed in the short or extended asylum procedure.

6.3.Asylum procedures in the United Kingdom

In the United Kingdom, the Secretary of State for the Home Department is legally obliged for registering asylum applications (National Immigration and Asylum Act, 2002). This task is transferred and carried out by civil servants working in the UK Visas and Immigration Section of the Home Office (UKVI) (Immigration rules, para 328, 2014).

There is no fixed time limit in which asylum seekers have to lodge their asylum application, however an asylum application can be refused on the grounds that an asylum seeker "fails, without reasonable explanation, to make a prompt and full disclosure of material facts" (Immigration rules, para 339, 2014). Nevertheless, the legislation also points out that "applications for asylum shall be neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible" (Immigration rules, para 339, 2014). In reality, if someone is already in the UK for different reasons, such as a student, and is lodging an asylum claim after several years, this might be seen as evidence that they are not entitled to the refugee status. Furthermore, financial and material support can be reduced or even refused if the asylum seeker did not claim asylum as soon as possible (National Immigration and Asylum Act, 2002).

Asylum applications that are made within the UK have to be registered at the Asylum Intake Unit (AIU) in Croydon by appointment, unless the asylum seeker is in detention. This is also applicable to claims not made at the port of entry, even if the asylum seeker has left the port only hours after arrival. Only, applicants with a disability or severe illness that is hindering them from traveling or those are imprisoned can request an exemption from the rule and have their asylum application registered in writing (Home Office, 2015).

Asylum seekers are required to call the AIU in advance and provide basic personal details, excluding details of their asylum claim. After this, they are given an appointment for registering their asylum claim and the screening interview. In general,

there is no rule on how fast an asylum application must be registered, once the responsible authority has first been notified of the application. However, appointments for the registration and the screening interview are normally arranged within one or two weeks after the telephone call (House of Commons Home Affairs Select Committee, 2014).

At the screening interview, finger prints are taken in order to compare them with the Eurodac system and details are asked about the route the asylum seeker traveled to the UK. Before 2012, the arrangements at the Asylum Intake Unit were criticized, especially the lack of private spaces for the screening interviews, as sensitive issues discussed during the screening interviews could be overheard by other asylum seekers waiting (Independent Chief Inspector of Borders and Immigration, 2012). After this, the Home Office improved the facilities in the AIU and the screening interviews now take place in private areas within the Unit.

In contrast, to the other countries presented in this thesis, there is no legal provision available for legal assistance and support at the screening interview except for those with mental illness and unaccompanied children. The AIU does not have the opportunity to make appointments with legal representatives for the asylum seekers, nevertheless they might use a website run by the government called "Find an Adviser" which makes it possible to find contact details of lawyers listed by subject matter and by region.

Although the aim of the screening interview is not to discuss the details of the asylum claim, the decision as to which kind of asylum application route will be taken, is decided on the basis of the screening interview. In general, there are four possible routes or procedures the asylum application will be decided upon.

Regular procedure

As mentioned earlier, the Home Office is responsible for all issues around immigrations, while the responsibility for border control lies within the UK Border Force, which is an executive agency of the Home Office. Within the Home Office, asylum caseworkers deal with all of the asylum applications. Asylum caseworkers can be found in the Local Immigration Teams across the country, but they all belong to a single Asylum Casework Directorate.

As for now, there is no legal time limit for the decisions on asylum claims, however the immigration rules point out that the decisions have to be taken as soon as possible (Immigration rules, para 333, 2015). In the case, that a decision on the application is not reached within six months, the case worker has the responsibility to inform the asylum seeker of the delay or make an estimate of the time that the decision will take.

In all of the different procedures, the asylum seekers are entitled to a personal interview and this rule is applied in practice (para 339NA, Immigration rules). The interview is conducted by the responsible authority for taking a decision, in the regular procedure it is the Home Office caseworker. Asylum seekers have the right to be accompanied by a legal representative in the interview, however the lack of public funding means that this is rarely the case in practice. Besides legal representatives, that are optional, interpreters are required by the immigration rules and they are provided by the Home Office. Nonetheless NGOs and lawyers have frequently mentioned that there are various problems with interpreters, e.g. misinterpretation or if the interpreter is not fluent in the asylum seekers' language or dialect (AIDA,2015). This poses a severe problem, since inconsistencies concerning details in the asylum interview are a common reason for refusing asylum. If the asylum seeker wishes to take an interpreter they chose to the interview, that is allowed, but in most cases, there is no public funding available for this.

It is permitted to audio-record the interview, if the asylum seeker is requesting this in advance; however, the caseworkers are advised by the Home Office to not arrange recording if the asylum seeker has not requested it in advance and they need not to ask again once the asylum seeker arrives for the interview (Home Office,2015).

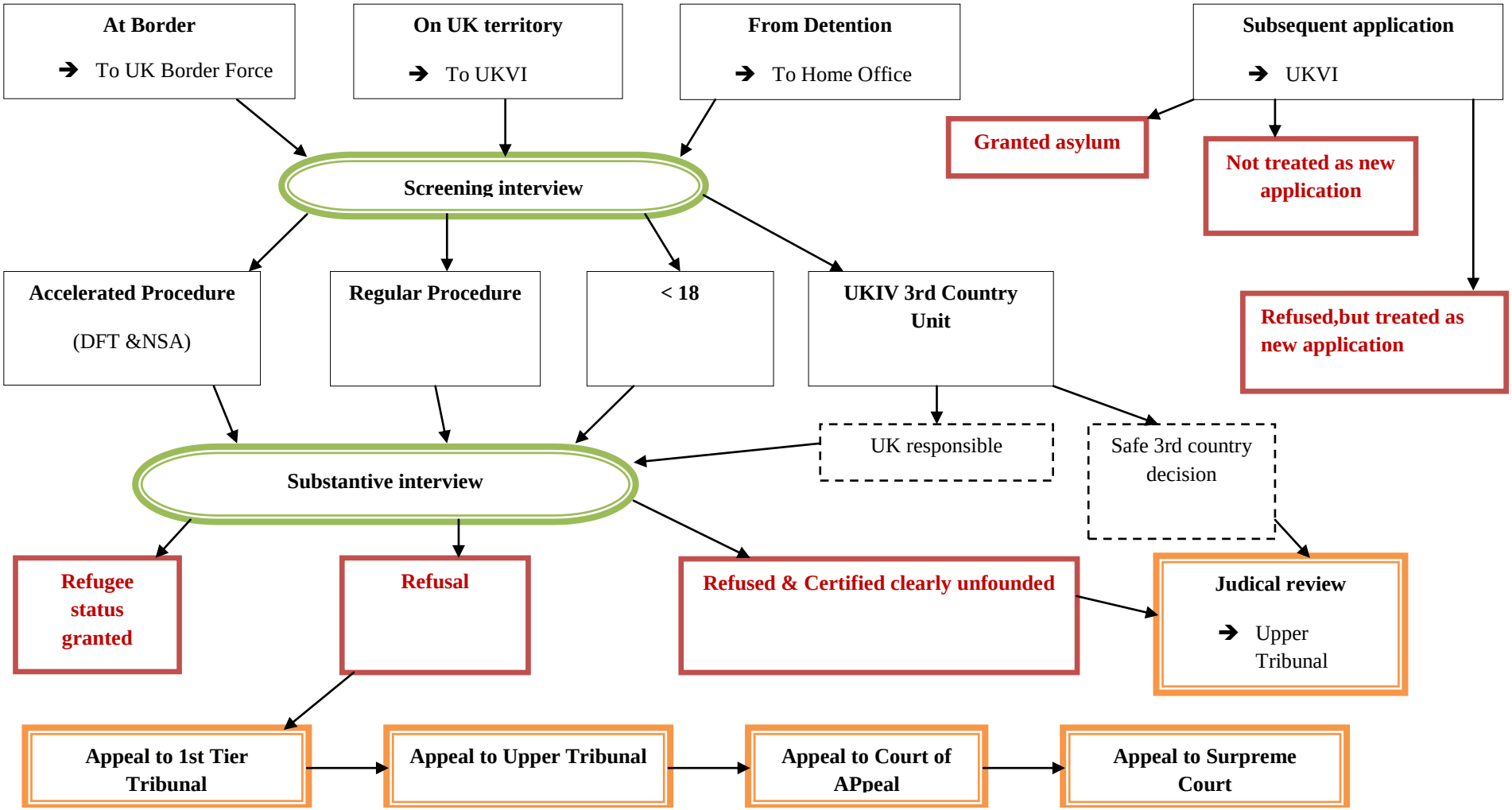
Once the asylum seeker has received an asylum decision, they have the right to appeal against the decision. Appeals are in general made to the Immigration and Asylum Chamber of the First Tier. The Tribunal will assess the decision on the basis of the evidence presented but also evidence that was not presented to the Home Office asylum caseworker. The time limit for making an appeal to the Tribunal is two weeks from the date that the asylum seeker has received the decision (Immigration and Asylum Chamber, 2014).

In practice, the complexity of the law and the time limits pose obstacles for the asylum seeker to appeal successfully. Due to the scarcity of publicly funded legal representation, many asylum seekers decide to send in the appeal forms that are

provided by the Home Office with the refusal letter, without consultation with a legal representative. This can lead to administrative mistakes and can result in the appeal not being accepted by the Tribunal. Furthermore, it is difficult for an unrepresented asylum seeker to know what is required, what the Tribunal rules are, to get access to resources and advice to prepare paper for the hearing.

Besides appealing to the First Tier Tribunal, there is the possibility of onward appeal to the Upper Tribunal, with the permission of the First Tier Tribunal. Once again, the application for an appeal must be made within two weeks of receiving the refusal letter. If the permission is granted to appeal to the Upper Tribunal, the Upper Tribunal's decisions can be appealed as well with permission to the Court of Appeal. Only rarely, asylum seekers receive the permission for a final appeal to the Supreme Court.

Table 7: Asylum procedure in the United Kingdom



Admissibility procedure

The only admissibility procedure in the UK is the safe third country procedure, which means either transferring the asylum seeker to an EU country using the Dublin procedure, or another safe country.

There are two lists of 'safe third countries' to which an asylum seeker can be returned to. The first list is compromising EU Member States and will be discussed later. The second list is made out of countries that are seen as countries, where it is assumed that human rights claims against removal to it of non-nationals are unfounded and to which non-nationals can be returned to without a violation of the 1951 Refugee Convention, either in this country or via the risk of being sent elsewhere (Schedule 3 Part 3 & 4, Asylum and Immigration Act, 2004).

There is no appeal on asylum grounds against a safe third country decision. However, asylum seekers can make an appeal on the grounds that he would be removed by that third country to another country, which would constitute indirect refoulement on human rights grounds and would therefore be in breach with the European Convention on Human Rights. These sorts of appeals can only be made if the Home Office does not certify that they are clearly unfounded. Furthermore, there is the obligation to guarantee human rights claims as unfounded unless the caseworker or any other responsible person for the decision is satisfied that they are not unfounded (Schedule 3 Part 3 & 4, Asylum and Immigration Act, 2004).

Dublin procedure

The second route that an asylum claim can be processed at, is the Dublin procedure. In the legislation, there is no direct connection or reference made to the Dublin Regulation, but the UK legislation is providing different lists of "safe third countries" to which an asylum seeker can be returned to without their asylum application being considered in the UK. The first list is consisting of EU Member States, Iceland, Switzerland and Norway. The countries on this list should be treated as countries in which a person will not be at risk of persecution as set out in the Refugee Convention and from which they will not be sent back to their country of origin (Schedule 3, part 2, Asylum and Immigration Act, 2004).

In order to determine, whether an asylum seeker can be transferred to any of the countries of the list, it has to be proven that they have travelled through this country. This is often assessed via fingerprinting and using the Eurodac-system as well as enquiring as to the route of travel, which is part of both the screening and the substantive interview. Once it has been decided, that one of the countries from the list is indeed responsible for the asylum claim, the asylum application is referred to the Third Country Unit, which will make a Dublin decision. Once the EU Member State takes responsibility for the examination of the asylum claim on grounds of the Dublin Regulation, the asylum application is refused.

There is no possibility to appeal on asylum grounds against a Dublin decision. The only possible rationale for appeal is that the asylum seekers rights, as set out in the ECHR, would be breached in the receiving country. However, an appeal on the basis of possible human rights violation can only be brought if the Home Office does not "certify that the human rights appeal is clearly unfounded", but the Home Office is required to certify that it is "clearly unfounded unless there is evidence to the contrary" (Schedule 3 part 2, Asylum and Immigration Act,2004). Resulting from this, the only suspensive appeal against a Dublin decision, is a claim of human rights violation which is not certified by the Home Office as clearly unfounded. In any other cases, a Dublin decision and the decision to transfer an asylum seeker to another country can only be challenged by judicial review.

Comparing the legal provisions governing the appeals in the Dublin cases and the other safe third country cases, one can say that the main distinction is that in Dublin cases there is no possibility for an appeal from outside the UK on the grounds of indirect refoulement in breach of the human rights set out in the ECHR.

Border and transit zones procedure

In contrast to other EU Member States, such as the Netherlands, there is no specific provision in the UK for asylum decisions to be taken at the border. However, an asylum application can be lodged at the border, and immigration officers from the UK Border Force can carry out the initial screening interview, but after that they will refer the asylum claim to the UKVI, which is going to examine the details and substance of the asylum application.

In the case that an asylum seeker is lodging an asylum application, immigration

officers grant temporary admission so that the application can be made. This does however not entail any further rights for the asylum seeker.
Since 2010, immigration officers at the border have the right to discriminate persons on grounds of nationality if there is an authorization by a minister (schedule 3part 4, Equality Act, 2010). This might include stricter and more rigorous examinations of certain groups of passengers. In order for a ministerial authorization to be made, statistical data and information of a higher number of breaches of immigration law or of adverse decisions of certain nationalities is examined and analysed. Furthermore, immigration officers have the right to refuse entry into the country if someone is not having a valid entry clearance or claims asylum.

Besides their own borders, the UK is also carrying out controls in Belgium and France, where it is not possible to claim asylum to the UK border authorities. The rationale behind these control zones in Belgium and France is to stop people who want to travel further to the UK to claim asylum (Independent Chief Inspector of Borders and Immigration, 2013). This becomes evident in Calais, where UK border officials have stopped to process and register people that try to reach the UK in secret and just handed them over to the French police (Independent Chief Inspector of Borders and Immigration, 2013).

Another agreement between the UK and France when it comes to asylum and immigration issues, is the contested "Gentleman's Agreement" (Matthews, 2012). This agreement is focusing on people who have been caught on landing in the UK and who are considered to have entered the country illegally and who do not explicitly voice that they want to lodge an asylum application. In these cases, the Agreement obliges France to accept the transfer and return of those people if this can be dealt with within 24 hours. Transfers and returns following the Gentleman's Agreement are carried out without any official and formal refusal of leave to enter.

Accelerated procedures

Finally, there are two different types of accelerated procedures. First of all, in the case where the asylum application is found to be clearly unfounded by the Home Office, there is no in-country appeal available. This sort of cases are called non-suspensive appeal cases (NSA). In most of NSA cases asylum applicants are originating from purposively safe countries of origin. Sometimes, asylum applicants in NSA cases are

detained and this is referred to as detained non-suspensive appeal (DNSA). The major rationale for an asylum application to be processed via the NSA procedure is, as mentioned, that the applicant is coming from a country that is seen as safe. Countries that are considered to be safe are laid out in the Nationality Immigration and Asylum Act (2002).

In general, there is no specific time limit set for a decision in an NSA case, but the guidance issued by the Home Office, which is taking the final decisions in these cases, points out that a decision should preferably be made within two weeks. According to policy guidance, a decision in a NSA case should only be taken by caseworkers, that are specifically trained in taking NSA decisions and they have to be evaluated by a second 'accredited determining officer' who has to decide whether to agree with the first officer's assessment of the case (UK Visas and Immigration,2015).

The second accelerated procedure is the so-called detained fast track procedure (DFT), where the Home Office is considering an asylum application as capable of being decided quickly. The main characteristics of the DFT procedure are detention and speed throughout the whole asylum application decision process. In contrast, to the NSA procedure, the criteria for a decision being made via the DFT are wide, as long as it is considered that an asylum case can be decided upon fast after the screening interview, the case is routed into the DFT procedure. Another important criterion is that the asylum seeker is not excluded from the DFT. Currently the following people are excluded from the detained fast track procedure:

a. Those that are regarded as victims of trafficking,
b. Victims of torture,
c. Those under 18 and adults with dependent children,
d. Applicants who do not have the mental capacity to understand the process,
e. Asylum applicants with mental or physical problems, which cannot be treated in detention,
f. Asylum seekers with physical disabilities that cannot be managed in detention,
g. Applicants with health conditions who require 24-hour medical care,
h. Women who are 24 weeks pregnant or over.

Finally, according to Home Office guidance, an asylum application might be suitable for the DFT if further examination of the case is not needed, such as legal advice, correlative evidence or the translation of significant documents (UK Visas and

Immigration, 2015).

This legal provision seems to be problematic, due to the fact that theoretically details of the asylum claim are not part of the screening interview, so the complexities of the asylum application do not become visible in a screening interview. This has also been acknowledged by the UN Committee against Torture, which raised concern to the fact that asylum seekers with mental health conditions or that survived torture are often channeled through the DFT, because of a "lack of clear guidance and inadequate screening processes, and the fact that torture survivors need to produce independent evidence of torture at the screening interview to be recognized as unsuitable for the DFT system" (UNCAT, 2013).

Until 2007, the Home Office published lists containing countries whose nationals were regarded as suitable for the DFT procedure. These lists of countries from which asylum applications came from were generally seen as unmeritorious and hence refused. The practice of using these lists was stopped in 2008, however asylum seekers from countries that were previously on the lists still from the majority in the DFT (Home Office Research and Statistics Directorate, 2006).

As the goal of the DFT is to process an asylum application as fast as possible, decisions should be taken within 3 days of detention, and the decision is taken by Home Office caseworkers that are based in the detention centers.

The whole DFT procedure has been questioned by the NGO Detention Action in 2014. As a result of this, the High Court decided that the shortcomings of the DFT process required proper legal representation for the concerned asylum seeker. In order to guarantee this, the High Court pointed out that it was essential to provide enough time between finding and working with a legal representative and the substantive interview. According to High Court this did not exist in the DFT and this could be seen as a "crucial failing, which is sufficiently significant that the DFT as operated carries with it too high risk of unfair determinations for those who may be vulnerable applicants" (Detention Action v SSHD and Equality and Human Rights Commission, 2014). As a result of this ruling, the Home Office adjusted the DFT by including a clear four days between instructing a legal representative and the substantive interview (House of Lords debates, 2015).

6.4. Discussion

This chapter presented the asylum procedures in Germany, the Netherlands, and the United Kingdom. During the analysis, various similarities as well as differences became apparent. One of the differences between the asylum procedures in Germany, the Netherlands and the United Kingdom is the complexity of the application procedure itself. In Germany and the Netherlands, there is only one asylum procedure, regardless of the type of the asylum application, which means all of the asylum application are channeled through one procedure. In contrast to this, there are various different ways that asylum applications are processed in the United Kingdom. This approach taken by the United Kingdom could lead to administrative delays in the processing of the asylum applications as it might not be clear which route the individual asylum seeker has to go in order to submit their asylum application.

Another point that became apparent during the analysis of the different asylum procedures, that might lead to non-compliance with EU regulations and could jeopardize the human and fundamental rights of the asylum seekers is the lack of free legal assistance during the process in Germany and the United Kingdom. While asylum seekers in the Netherlands are provided with the possibility to access free legal assistance in the Netherlands already from the very beginning of the asylum procedure; asylum seekers do not receive any free support during the asylum procedure in the Germany and the United Kingdom. In order to receive legal assistance in those two countries, asylum seekers heavily rely on the support of volunteers or NGOs, or if there is no access to this, they have to cover the cost for legal advice themselves. This can lead to fact, that asylum seekers enter the asylum procedure and the interviews without having the opportunity to be advised by legal experts.

Although the aim of the Common European Asylum System (CEAS) was to streamline the asylum processes and the achievement of higher administrative efficiency in the EU Member States, it became evident through the analysis of the asylum procedures in Germany, the Netherlands and the United Kingdom, that in reality and in practice it has rather led to fragmentation of asylum procedures depending on the location where the asylum application has been lodged. In addition to this, it seems that the EU Asylum Procedures Directive has enabled Member States to speed up the examination of individual asylum applications for reasons of administrative convenience. In this

regard, before even giving asylum applicants to be interviewed, national authorities have the right to presume the admissibility and well-fondness of individual asylum applications. Especially, if the asylum applicants come from a “safe third country” or a “first country of asylum”, asylum seekers can be removed to exactly these countries on grounds of inadmissibility, unless they can prove that their asylum application should be taken into consideration.

Therefore, one can say that the fragmentation of asylum procedures can not only be seen as a problem itself but it has also served as a means towards an overall objective of diversion and deflection, in the sense that growingly complex procedures are allowing EU Member States to deflect the responsibility for asylum seekers and their asylum applications more easily and move them away from their territory and jurisdiction.

6.5. Chapter summary

This chapter 6 presented the various asylum procedures in Germany, the Netherlands and the United Kingdom. During the comparison of the three countries it became apparent, that there are a few differences amongst Germany, the Netherlands and the United Kingdom. This is in contradiction to the overall aim of the Common European Asylum System in harmonizing the national asylum systems in order to provide uniform procedures and reception conditions to asylum seekers in the European Union. In addition to this, it became evident that the length of all the asylum procedures in the three analysed countries is extensive, which underlines the importance of the provision of adequate reception conditions to asylum seekers during this lengthy procedure.

Chapter 5 and 6 were crucial for the following chapter 7, as they created a foundation in order to understand the different approaches that Germany, the Netherlands and the United Kingdom have taken in regard to the provision of reception conditions to asylum seekers.

The following chapter 7 will outline and discuss the reception conditions that are available to asylum seekers in the Netherlands, the United Kingdom and Germany. The focus of this presentation will be on three areas: a. access to material reception conditions, b. access to health care, and c. the access to employment. Comparing these three areas of the provision of reception conditions in the three analysed countries, the

focus will not only be on a detailed representation of the reception conditions but also on an analysis of whether the different provided reception conditions to asylum seekers can be classified as cosmopolitan using the indicators established in chapter 3.

Chapter 7

Provision of reception conditions to asylum seekers in Germany, the Netherlands and the United Kingdom

After presenting the historical and administrative backgrounds, as well as the asylum procedures in Germany, the Netherlands and the United Kingdom, the following Chapter 7 will focus on the reception conditions provided to asylum seekers in these three countries. The emphasis of the analysis will be on three different aspects: (a) the access to material reception conditions, (b) the access to employment and education, and (c) the access to health care.

Before turning to the different aspects that will be analysed in regard to the provision of reception conditions, it is important to briefly discuss the EU provisions that are in place guaranteeing that harmonized reception conditions are provided to asylum seekers across the EU Member States.

The EU agreed upon a Directive establishing minimum standards for the reception conditions of asylum applicants, in order to ensure them a dignified standard of living in the European Union. For this purpose, the Member States decided upon the Council Directive 2003/9/EC. In general, the Directive defines key terms related to asylum, e.g. applicant for asylum or Geneva Convention; but it is also defining the reception conditions and guarantees of asylum seekers.

Basically, there are three main points that Member States are obliged to guarantee to asylum seekers:

1. Material reception conditions (accommodation, food, clothing),
2. Access to medical and psychological care
3. Access to employment and education system

Furthermore, Member States cannot deny asylum applicants the access to the labour market and vocational education nine months after they have lodged their application for asylum (Council Directive 2003/9/EC, Article 11(2)).

Another crucial point is that the material reception conditions as well as the medical

and psychological care have to be guaranteed during all the types of procedures (Article 17 (1)).

Only under special conditions can Member States reduce or withdraw the reception conditions, e.g. if an applicant has unduly benefited from material reception conditions or if he/she presents a threat to national security. But in any case, a decision on the reduction or withdrawal must be taken objectively and impartially, based exclusively on the individual behaviour of the specific person (Article 16 (1)). However, even if it is decided that the conditions will be reduced or withdrawn, emergency medical care has to be available unconditionally (Article 16 (4)). The Reception Conditions Directive states that Member States should provide reception conditions that guarantee adequate living standards for asylum seekers, which are protecting their physical and mental health (Article 13 (1)). Furthermore, asylum seekers are to be lodged in accommodation centres or other facilities that are adapted to host asylum seekers (Article 18).

In the accommodations there should be the possibility for asylum seekers to communicate with family members, legal advisers, as well as NGOs, which should be granted unlimited access to the premises of the reception centres (Article 14 (2c)). Finally, Member States have to ensure that gender and age-specific concerns and the situation of vulnerable groups are taken into consideration within the allocation of accommodation (Article 17).

Besides accommodation, Member States should also provide material reception conditions, which can be in the form of vouchers or financial allowances, and where the amount thereof should be established on the basis of the level established by the Member States either via legislation or practice to guarantee an adequate standard of living for nationals. In this respect, the Member States are entitled to employ less favourable standards than for nationals (Article 17 (5)).

After the asylum seekers have been placed in the reception facilities, they should enjoy the right to move freely within the MS or within an assigned area. Although this might sound like a restrictive measure, the Directive clearly highlights that the assigned area should not have a negative effect on the access to the benefits or a bad influence on the private life of the asylum seeker (Article 7).

The asylum procedure can be an interminable and complicated process, which is very often difficult to understand for asylum seekers. To provide them with all relevant information concerning this procedure, MS, according to the Directive, should inform asylum applicants of the rights and duties they have, as well as provide them with information on how they can further assistance and advice relating to the asylum procedure (Article 5).

Very often assistance and advice, for example legal counseling, is provided by third parties, such as NGOs. In order to guarantee that those organizations can effectively support the asylum seekers, the UNHCR and other legal advisors and counselors should have free access to the reception facilities. The access can only be restricted or prohibited in the case where security issues are raised (Article 14 (7)).

7.1. Access to material reception conditions

Table 8: Overview of the access to material reception conditions to asylum seekers in Germany, the Netherlands and the United Kingdom

	Germany	**Netherlands**	**United Kingdom**
Are asylum seekers entitled to material reception conditions according to the national legislation (in the regular and Dublin Procedure) ?	Limited	Yes	Yes
Number of places in all the reception centers	Not available	Not available	1200 places in the initial accommodation centers
Types of accommodation used during the regular asylum procedure	Reception centres Private accommodation	Reception centers	Private housing
Are there any problems of overcrowding in the facilities?	Yes	No	Yes
Is it legally possible to reduce the material reception conditions?	Yes	Yes	No
Is there a legal possibility to completely withdraw material reception conditions?	No	Yes	Yes

Do third parties have access to the reception facilities?	Limited	Limited	Limited
Are asylum seekers able to move freely?	Restricted	Restricted	Restricted
Monthly financial support	222.04 €	224.97€	226.56€

In Germany, reception conditions for asylum seekers are laid out in the Asylum Procedure Act (*Asylverfahrensgestz*) and the Asylum Seekers' Benefit Act (*Asylbewerberleistungsgesetz*). In 2005, the new Immigration Act was implemented, but only slight improvements were made to the existing reception conditions of asylum seekers. In this regard, provisions ensuring social benefits to asylum seekers below the standard of German welfare recipients remained unchanged.

In 2007, the German Federal Cabinet decided on a Draft Transposition Act in order to transpose and implement all EU Directives dealing with migration and asylum within one act. But this Act addressed only areas regarding documentation and information provisions (Articles 5 & 6). The other essential areas covered by the Reception Conditions Directive, for instance access to medical care, residence and freedom of movement, are not mentioned in the Draft Transposition Act. In August 2007, the Parliament voted in favour of the Draft Transposition Act and implemented the Directive Implementation Act (*Richtlinienumsetzungsgesetz*) which should ensure the incorporation of EU directives into German national legislation.

In Germany, following the Asylum Seekers' Benefit Act, asylum seekers are entitled to reception conditions until a final decision on their application has been made. The Act points out, that asylum seekers are granted benefits, which are substantially lower than the standard social benefits that are granted to German citizens. After a period of 48 months, asylum seekers are entitled to regular social benefits. Until 2012, for example, a single adult asylum seeker was entitled to 224.97€, but 184.07€ out of this allowance were assigned for basic needs, hence it could only be provided in kind. Therefore, the final amount that asylum seekers got paid was 40.90€ (AIDA, 2013). This provision in the Asylum Seekers' Benefit Act has been deemed unconstitutional by the Federal Constitutional Court in 2012, due to the fact, that the benefits that asylum seekers received have not been changed since 1993 and they have not been

adjusted in a comprehensible manner. The Court advised to “immediately enact new provisions in the area of application of the Asylum Seekers’ Benefit Act, which serve to secure a dignified minimum existence”, and for the transition period, authorities were asked to calculate the basic benefits for asylum seekers on the basis of the generally applicable provisions of the Social Code (Federal Constitutional Court. Decision of 18 July 2012. 1 BvL 10/10, 1 BvL 2/11). Therefore, at the moment, since no new bill has been passed by the German government correcting the Asylum Seekers Benefit Act in this respect, asylum seekers are entitled to benefits similar to standard social benefits.

In this respect an interviewee, working as a policy officer in a support organization said, that

“very often people complain that asylum seekers receive more money than the people receiving regular welfare benefits. They argue for example that it is unfair, that people receiving regular welfare benefits only receive 4,70 € a day for food, while asylum seekers have access to apparently free food cooked by caterers in the reception accommodations. However, the situation that asylum seekers are in is completely different, starting off with the fact that they don’t even have the access to cooking facilities which would enable them to cook their own food. Even if an asylum seeker is moved to independent flats later on in the asylum process, he is still receiving less money than the actual welfare benefit rate, which is at 404 € a month in contrast to 354 € a month that asylum seekers receive"(G2, policy officer, NGO 2013).

In the Netherlands, the process of access and delivery of reception conditions to asylum seekers is guided by various legislative measures, of which the Central Agency Act for the Reception of Asylum Seekers (WetCOA) is the most important one on which more specific regulations, such as the Regulation on benefits for asylum seekers from 2005 (RVA), are based upon. In the regulation it is defined who is entitled to reception conditions and who is exempted from these rights (Regeling verstrekkingen asielzoekers en andere categorien vreemdelingen, 2005). Besides the regulation, that is setting out requirements on the entitlement to reception conditions, the Secretary of Justice has the right to exclude certain groups of asylum seekers from receiving

reception conditions in the case where there is an emergency regarding the capacity (European Commission, 2013).

According to the Regulation on benefits for asylum seekers, all asylum seekers are entitled to material reception conditions, though according to Dutch legislation only those asylum seekers, who lack own resources, should have the access to material reception conditions (Article 2 sub 1, Regeling verstrekkingen asielzoekers, 2005).

The provision of reception conditions to asylum seekers in the Netherlands is centralized and is carried out by the Central Agency for the Reception of asylum seekers (COA). The COA is an independent administrative body, which is realizing the tasks, that have been established in the Act of the Agency of Reception and they are accountable for their actions to the Ministry of Security and Justice (Wet Centraal Opvang Orgaan, 1994).

In the Netherlands, the access to material reception conditions to asylum seekers is pointed out in the Regulation on Benefits for Asylum Seekers. According to Article 9 of the Regulation on Benefits for Asylum Seekers, the right to reception conditions encompasses the right to:

1. Accommodation,
2. Financial allowance for food, clothing and personal expenses, which ought to be paid on a weekly basis,
3. Public transport tickets in order to visit a lawyer,
4. Opportunity to attend educational and recreational activities,
5. A provision for medical costs,
6. An insurance which is containing the legal civil liability of the asylum seeker,
7. Payment of exceptional costs, which might occur during the process (Art.9.1, Regeling verstrekkingen asielzoekers en andere categorien vreemdelingen, 2005).

The provisional weekly support for asylum seekers consists out of two components, the weekly amount they receive for food, which varies depending on whether the asylum seeker chooses to take care of their own food or decides on being catered by the reception facility, and a fixed amount for clothes and other expenses. In the case, an asylum seeker decides to attend to their own food, his monthly support amounts to

222.04 €. In contrast to this, the social welfare support which Dutch citizen receive is 627.93€, so an asylum seeker in the Netherlands is not even receiving one fourth of the social welfare allowance for Dutch citizen (AIDA,2014).

"So as long as asylum seekers stay in initial accommodation centres, where they receive regular meals and accommodation provided, the allowance that they receive on top of that is sufficient. However, once they are accommodated in follow-up accommodation, the financial allowance they receive is just not enough to live a decent life" (NL3, education officer, NGO, 2014).

In the United Kingdom, all asylum seekers, in all procedures, are entitled to accommodation or a weekly financial support in the case that they are destitute. While authorities are examining the eligibility of the asylum seeker for support, they are being paid a temporary support sum, which is called section 98 support (Immigration, Asylum and Nationality Act, 1999). Once it is assessed that the asylum seeker is in fact entitled to support, he receives section 95 support.
In practice in order to receive support from the government, asylum seekers have to prove that they are destitute. To prove this, all assets which are available to them are disclosed, no matter whether it is in the UK or elsewhere. In the case that relevant assets are discovered, which were not declared by the asylum seeker beforehand, support can be declined and payments made can be recovered (Asylum Support Regulations,2000).

Asylum seekers in the United Kingdom are excluded from claiming the regular welfare benefits. However, they are eligible to receive support in the form of housing and basic living expenses through a scheme set up by Part VI of the Immigration and Asylum Act in 1999. Basically, there are two different types of support available: a. support for those whose asylum claims are ongoing and b. support for refused asylum seeker. Eligible for the first support package, also known as section 95 support, are asylum seeker who made an application under Art.3 of the ECHR and their dependents, will also be entitled to support regardless of their own status. Besides that, the Home Office must record the asylum claim. Furthermore, the asylum application must not yet be decided upon. So, if the asylum seeker applies for 95 support, they still have to be waiting for a final decision. Finally, to receive section 95 support, an asylum seeker has to prove that he is destitute. Someone is classified as 'destitute', if they do not have

adequate accommodation or enough money to meet living expenses for themselves and any dependents now or within the following two weeks.

As mentioned before, an asylum seeker will only be eligible for 95 support while they remain an asylum seeker. If the asylum application is refused, the support will end after 21 days. In the case that the asylum claim is refused, but the concerned asylum seeker has a dependent child, he will continue to receive asylum support. If the asylum seeker has been granted refugee status in the UK, the support will end after 28 days. However, in this case, usually they become entitled to work and claim regular benefits by the Department of Work and Pensions.
Other reasons that might lead to an end of section 95 support are if the asylum seeker is no longer destitute; the asylum seeker is violating and breaching the conditions of support (e.g. house rules of the provided accommodation) or if they are absent from the accommodation without permission or conceal financial resources.

The financial support of the section 95 provision amounts to 373.91 € per calendar month for a couple, 226.56 € for a single parent, 188.81 € for a single asylum seeker aged 18 or over and 273.05 € for children under the age of 16 (AIDA,2014).
As one can see, the amount of the financial support is not adequate to meet the basic needs of asylum seekers. Originally, the financial support under section 95 was calculated and set at 70 % of the regular social welfare benefits for nationals. Nevertheless, since 2011, asylum support rates have not been increased and adjusted to the regular social benefits and therefore, asylum seekers now receive only 52% of the rate for a UK national (British Red Cross,2013).
The inadequacy of the section 95 support has been pointed out in a court ruling in 2014 and it was ruled that the section 95 support as it is now unlawful due to the fact that: "the Secretary of State had failed to factor into the assessment of the level of support necessary the following essential living needs:

a. Essential household goods such as washing powder, cleaning materials and disinfectant.
b. Nappies, formula milk and other special requirements of new mothers, babies and very young children.
c. Non-prescription medication.
d. The opportunity to maintain interpersonal relationships and a minimum level of participation in social, cultural and religious life.

The Secretary of State had failed to consider whether the following were essential needs:

a. Travel by public transport to attend appointments with legal advisors, where this is not covered by legal aid.
b. Telephone calls to maintain contact with families and legal representatives, and for necessary communication to progress their asylum claims, such as with legal representatives, witnesses and others who may be able to assist with obtaining evidence in relation to the claim.
c. Writing materials where necessary for communication and for the education of children" (R v The Secretary of State for the Home Department,2014).

In response to the judgment, the Secretary of State was asked to review and improve the available support in light of the court's guidelines. However, the government reviewed the existing support system and decided that it was adequate and the support rates would not be adjusted.

If an asylum application is refused, s.95 support ends except for families with children. In this case, many asylum seekers become completely destitute, with no rights to accommodation or support. Often asylum seekers in this position become dependent on family or friends. Other sources of support are charities and NGOs that provide the asylum seeker with food vouchers, and in some cases with accommodation or small amounts of financial support.

Some refused asylum seekers might be eligible for section 4 support, if they fulfill one of the following criteria:

a. The asylum seeker is taking all steps to leave the UK, e.g. applying for a travel document or seeking assistance for voluntary return.
b. The asylum seeker is unable to leave the UK due to a physical impediment to travel or because of a medical condition.
c. There is no safe route of return (currently there are no countries to which this applies though it has been used in the past).
d. The asylum seeker has been granted permission to apply for a judicial review relating to the asylum application.
e. Support is required to avoid breaching a person's human rights (AIDA,2014).

The application procedure for s.4 support is via an online and telephone service, but vulnerable asylum seekers have the opportunity to apply for s.4 support during a face to face appointment at the initial accommodation centers.

Once they qualify for s.4 support, they are provided with accommodation on a no-choice basis and a pre-paid payment Azure card, which is valued at 35,39 pounds a week per person. Especially the restrictive nature of the Azure card is one of the issues that the Red Cross (2014) is pointing out in their report "The Azure payment card: the humanitarian cost of a cashless system". Besides the restrictions on what asylum seekers can purchase with the card and the fact that only a designated range of shops accept the card, which are not always the nearest shops, which means that some asylum seekers have to walk long distances in order to get to a supermarket that is accepting the card. It is also mentioned that the Azure card often fails to work due to technical problems, leaving asylum seekers without the possibilities to buy anything for days. Furthermore, it is difficult for asylum seekers to attend important appointments as the card cannot be used to purchase travel fares. The Red Cross (2014) also highlights that the amount of money on the card is simply not enough to support asylum seekers and people are often being left hungry not able to have three meals a day.
Furthermore, living on the Azure card is having negative impact on the mental health and stability of asylum seekers, as it creates unnecessary suffering for people who have already had to deal with violence, persecution or war. Additionally, it can affect their ability to maintain relationships and participation in cultural, religious and social life. Finally, the use of the Azure card can lead to stigma as it singles out its users at the checkout.

One of the interviewees, working with asylum seekers, mentioned that "often the card just doesn't work at the check-out, which is humiliating for the asylum seekers and they feel ashamed and stigmatized by using the card". He added that the card can lead to hostile attitudes from staff working at the stores due to the fact that the card is 'labeling' them as asylum seekers leading to a feeling of isolation and anxiety (interview UK3, volunteer, NGO, 2014). Regarding the restrictions on what can be bought with the card, the same interviewee told a story about one of the asylum seekers they are working with, reporting that their child had to start school without having a uniform, due to the fact that the card does not allow the purchase of clothes (interview UK3, 2014).

But not only the Red Cross criticized the s.4 support, the Home Affair Select Committee found in their Asylum report (2013) that:

> "We are not convinced that a separate support system for failed asylum seekers, whom the Government recognize as being unable to return to their country of origin, is necessary. The increasing period of time which asylum seekers have to wait for an initial decision suggests that staff resources could be better used by being allocated to asylum applications. Section 4 is not the solution for people who have been refused but cannot be returned and we call on the Government to find a better way forward" (House of Commons Home Affairs Committee, 2013).

This opinion is supported by one interviewee, a research officer working for the local government: "All the support systems for asylum seekers and refused asylum seekers create an additional administrative hoop for not only asylum seekers but also for us, as it is time consuming and costly" (UK5, 2014).

Accommodation

In Germany, the accommodation for asylum seekers is organised as an interaction between uniform national regulation and conducting of the asylum process on the one hand; and on the other hand, the reception of asylum seekers by the federal *Länder*. Although there are regulations dealing with the reception and accommodation of asylum seekers on both national and *Länder* level, the *Länder* enjoy the exclusive responsibility of the administrative implementation of these regulations (Müller, 2013).

In general asylum seekers are obliged to stay in an initial reception centre for a maximum period of three months. Asylum seekers are placed in those centres via a special allocation system in order to guarantee an equal distribution amongst the 16 *Länder*. After the initial reception period is over, asylum seekers are moved to other accommodation facilities within the same federal state and they are obliged by law to remain in the municipality or region they have been assigned to for the whole period of their asylum procedure (*Residenzpflicht*). The local governments of the *Länder* have the sovereignty to organise the accommodation and distribution of asylum seekers and the responsible authorities have the discretion to decide upon whether they confer the

management of the reception centres to private facility management companies or whether they supervise those centres on their own (Asylum Seekers Benefit Act, Section 10).

Often asylum seekers are provided accommodation in the form of a place in a local accommodation centre, but in certain cases, the possibility exists that the authorities cover the rent for an apartment or flat. However, these are only exceptional cases, e.g. when the asylum seeker is not able to live in a reception centre due to medical reasons (Asylum Procedure Act, Section 47).
Furthermore, there are no legal provisions which guarantee separated facilities for single women, families or other vulnerable groups. Nevertheless, few reception centres introduced policies to accommodate families and other vulnerable groups separately from the other asylum seekers, but very often the practical implementation of these policies failed due to overcrowded facilities.

In general, one can distinguish between three different types of accommodation facilities for asylum seekers, namely reception facilities, collective accommodation, and local accommodation.

According to the Asylum Procedure Act the federal *Länder* are obliged to provide accommodation facilities to asylum seekers (Asylum Procedure Act, Section 44).

In accordance to the Act, asylum seekers, who file their asylum request with a branch office of the Federal Office for Migration and Refugees, are obliged to stay in an initial reception centre for the procedure, which can take up to six weeks, but not exceeding three months. The responsibility of establishing these initial reception facilities lies with the *Länder (*Asylum Procedure Act, Section 47 & 48).

The initial reception centres are normally operated centrally by the responsible federal state. The centres always include a branch office of the Federal Office for Migration and Refugees, where the asylum seekers have the opportunity to lodge an asylum application. The reason for transferring the organisation of the initial accommodation to the same authority that is responsible for the implementation of measures to terminate residence should ensure that the asylum procedure is shortened as far as possible.

> "Trough having a contact partner that can assist in lodging an asylum application within the reception facilities, we can guarantee that asylum seekers receive all the support that they need during the whole asylum process" (G5, state official, local government, 2013).

Hence, in the case that the Federal Office is able to decide on an asylum application within the initial period and the application is rejected or found to be unfounded, the authorities have the guarantee that the asylum seeker, who is in this case obliged to leave the state, is available for the responsible foreigners' authority (Müller, 2013).

After the initial period has expired, asylum seekers are placed in follow-up accommodation, which is to a large extent provided in accordance with the provisions of the responsible federal state.

In this respect, the Asylum Procedure Act points out that "Foreigners who have filed an asylum application and are not or no longer required to live in a reception facility, should, as a rule, be housed in collective accommodation" (Asylum Procedures Act, Section 53). However, this provision is leaving considerable latitude for the *Länder* when it comes to the selection and set-up of the accommodation. The *Länder* can choose to lodge asylum seekers either in collective accommodation facilities, where large groups of asylum seekers are accommodated centrally; or they can house asylum seekers in local accommodation, which means that they are placed in individual flats or houses (G8, state official, case worker,2013).

As mentioned, unlike the organization of the initial reception centres, there is a wider variation in the organization and set-up of the follow-up accommodation. The *Länder* can not only choose in what form of accommodation they want to house asylum seekers, but there are also differences between the *Länder* concerning the executive responsibility and the political and administrative responsibility for the design of the follow-up reception facilities (Müller, 2013). Most of the *Länder* assign these tasks to the municipalities with various degrees of sovereignty, so in this respect in Baden-Württemberg, the accommodation of asylum seekers is organized by the district commissions and the city administrations (Landesrecht Baden-Wuerttemberg,Aufenthalts- und Asyl-Zustaendigkeitsverordnung (AAZuVO) (Baden-Wuerttemberg Residence and Asylum Comptence Ordinance), Section 12 subs.1 No1.).

In contrast to other *Länder*, the municipalities in Baden-Württemberg have rather

limited latitude in the design of the follow-up accommodation facilities, due to the fact that the Baden- Württemberg Refugee Reception Act is already outlining the reception conditions in detail. Therefore, accommodation "as a matter of principle must take place in collective accommodation facilities" and exceptions are only possible in special circumstances with the consent of the responsible Regional Commissioners' Office (Landesrecht Baden-Wuerttemberg. Fluechtlingsaufnahmegesetz (FlueAG). Section 6 subs.1). Unlike in other *Länder*, the assignment of the operation of the reception facilities to other non-state actors is precluded by federal law in Baden-Württemberg. Hence, the "facilities of temporary accommodation shall be established, managed and operated by the lower reception authorities. The city and rural districts shall provide the necessary staff" (Section 6).

In contrast to Baden-Württemberg, other *Länder* enjoy more latitude in the provision and management of reception facilities. In Brandenburg, the accommodation of asylum seekers, which are no longer required to live in the initial reception centres, have been assigned to rural and urban districts, and the responsible authorities carry out their task in local self-administration (Landesnorm Brandenburg.Auslaender- und Asyl-Zustaendingkeitsverodrnung (AAZV Brandenburg) Section 1 subs.1). Generally, asylum seekers are lodged in collective accommodation, and the operation of these facilities has been in most cases assigned to welfare associations and private facility management companies (Ibid, section 2).

In Thuringia, the federal government has assigned the accommodation of asylum seekers to rural and urban districts, following the provisions made in the Thuringian Refugee Reception Act (Thueringer Fluechtlingsaufnahmegesetz (ThuerFlueAG). Section1). Besides this, the *Land* has the sovereignty to establish new collective accommodation facilities, which are operated either by the federal state and local authorities themselves or by non-state providers (Ibid, Section 2).

In contrast to most of the *Länder*, Bavaria and the city states operate and monitor the follow-up reception facilities themselves.

In Bavaria, the set-up and operation of the follow-up facilities is carried out directly by the administrative regions and tasks are mostly not assigned to local authorities. The nature of the accommodation in Bavaria is uniformly regulated by federal law without any general provision that is involving the cooperation with non-state facilities

in providing accommodation (Asyldurchfuehrungsverodnung (DVAsyl Bayern) Section 3).

In Hamburg, the Authority of the Interior and Sport is in charge for the implementation of the provisions set out in the Asylum Procedure Act Ordinance (Auslaender- und Asyl-Zustaendigkeits-Anordnung (AuslAsylZustAn). Art.2 para.2). Considering that there is no separate federal law that is regulating the reception of asylum seekers, the Authority of the Interior and Sport is also responsible for the follow-up accommodation. And since there is no specific legislation on this account, the Authority can choose how they implement it in practice. In Berlin, the follow-up accommodation is handled by the Land with the cooperation of non-state actors. For instance, the Berlin Land Office of Health and Social Affairs is in charge of the "establishment, operation, occupation and closure of initial reception facilities and collective accommodation facilities, as well as for procuring home and residential places for asylum seekers […] through contracts with third parties" (Act Establishing Land Offices (LAmtErG). Annex 1 No13 to Section 2 subs. 1).
Concerning the type of accommodation in Berlin, the provisions point out that asylum seekers "are as a rule to be accommodated in houses or flats where accommodation in a house or flat is cheaper than collective accommodation in the individual case, if there is no obligation to live in a reception facility and if the right to benefits is not restricted in accordance with section 1a of the Asylum Seekers Benefits Act" (Implementation Regulations on the Renting of Housing by Beneficiaries in accordance with the Asylum Seekers Benefits Act (AVWohn-AsylbLG). No1 subs.1).

However, the privatization and outsourcing of providing accommodation to asylum seekers can have a negative impact. Several follow-up accommodation facilities were reported to have overcrowding and poor hygiene standards (Interview G2, policy advisor, NGO, 2013). One interviewee brought up a specific case of an accommodation facility that was managed by a private housing company. According to him:

> "around five to eight people lived in one room, mostly equipped with three-bed bunk beds with only one shower and toilet per floor. Often, some of these facilities were not working and it took up to several weeks for the facility manager to repair them" (Interview G7, state official, local government 2014).

He added that there was no social support or contact persons available in this facility, which was leading to the fact, that many asylum seekers living there "felt left alone and isolated".

In the case that an asylum seeker enters the Netherlands by land they have to lodge their asylum application at the Central Reception Location (COL) in Ter Apel, where they will be accommodated for a maximum of three days (Art.6. Vreemdelingwet,2000). After this initial period, the asylum seeker will be further transferred to one of the four Process Reception Locations (POL) in the Netherlands. At the Process Reception Location, the asylum seeker has the opportunity to take the next steps of the asylum application preparation and waits for the moment to officially lodge an asylum application at the application centre (Art.3, Regeling verstrekkingen asielzoekers en andere categorien vreemdelingen, 2005).

If the Immigration and Naturalisation Service (IND) decides to deal with an asylum application in the short regular process taking eight days, the asylum seeker remains in the POL until the final decision. In the case that the IND examines the asylum application in the extended regular procedure the asylum seeker is transferred to a centre for asylum seekers (Asielzoekerscentrum, AZC), where they will be accommodated until they receive housing in the Netherlands (European Commission, 2013).
In the event that the asylum application is rejected the asylum seeker is transferred to a return centre (Terugkeerlocatie, TL), where he can stay for a maximum duration of four weeks.

If it is expected that the return of an asylum seeker can be carried out within two weeks, Article 59 of the Aliens Act allows for detention with the aim of removal. If the expulsion of an asylum seeker whose application has been rejected cannot be completed within two weeks, the Act allows imposing a measure restricting freedom for a period of maximum twelve weeks (Art. 56 juncto Art. 54, Aliens Act, 2000). So, an asylum seeker, after the four weeks' period has expired, will be offered an additional period of twelve weeks' reception conditions in a restricted reception centre (Vrijheidsbeperkende Locatie, VBL).

In the case that children are involved and their asylum application is rejected, a similar procedure applies. Following a decision of the Dutch Supreme High Court, the State

assumes responsibility for unlawfully residing minors on Dutch territory from the moment that the parents are not able to take care of their child (Supreme Court of the Netherlands, 2012) Therefore if families with minors lose their right to reception conditions and their asylum applications are rejected, they are relocated to one of the six family housing facilities (Gezinslocatie, GL) which are special restricted reception centres.

This specific measure of family accommodation has been criticized by the Dutch Council for Refugees and Defense for Children and UNICEF expressing that this sort of reception in combination with the restrictive nature is violating the Convention on the Rights of the Child (Dutch Council for Refugees and Defence for Children, 2012). However, the restricted housing centres are justified by the fact that asylum seekers that are accommodated in those centres do not fall under the scope of the 2005 Regulation on Benefits for asylum seekers, while asylum seekers residing in POL, COL and AZC do fall under its scope (AIDA,2013).

In the United Kingdom, in the beginning of their asylum process, asylum seekers are usually accommodated in initial accommodation centers, which are set out for around 200 people. In the case that there is no available space in one of the initial accommodation centers, asylum seekers are accommodated in hotels or interim hostels, which are used as emergency accommodation, until suitable accommodation is found.

This short-term use of hotels and hostels to accommodate asylum seekers, is limiting the access to reception-related rights that asylum seekers would normally be able to access if they are placed in reception centers. Furthermore, being accommodated in these 'emergency' accommodation might lead to a delay in the access of the asylum seeker to the support system and other welfare services, as it might take longer to receive advice and complete an application for asylum support (AIDA,2014).

In the initial accommodation centers, it cannot always be guaranteed that single asylum seekers will be placed on single sex corridors; some centers have implemented this, but not all of them. In one of the centers, single sex corridors were only introduced after an incident, where a woman was followed into the showers and watched by a fellow male asylum seeker (Refugee Council and Maternity Action,2013). Bedrooms, mostly consisting of bunk beds, are shared with one other person, while the showers and toilets are shared with six people. In theory, there are designated bathrooms for

women and men, however this is not always taken into account. The condition of the bathrooms was said to be dirty and unsafe and lacking women-only space or special facilities for babies (Refugee Council and Maternity Action, 2013).

Asylum seekers should not be accommodated in the initial accommodation for longer than 19 days, but in certain areas asylum seekers are stuck in the centers for longer than 3 weeks due to a lack of further accommodation. Once an asylum seeker qualifies for support, he is moved into smaller units, mainly flats or shared accommodation within the same region. These accommodation facilities are mostly managed by large private companies which are under contract with the Home Office. Whether accommodation is eligible to house asylum seekers is still assessed by the Home Office, as legally it is still the responsible unit for providing accommodation to asylum seekers. The companies are only responsible for the provision and management of the accommodation facilities.

Despite contractual commitments regarding quality, there is evidence of slow and inadequate repairs and insanitary conditions (Grayson 2016; Home Affairs Committee 2017). In addition to this, financial pressures to acquire large quantities of cheap accommodation as fast as possible in order to comply with the provisions set out in the Home Office COMPASS contract, have led to difficulties in maintenance capacities (National Audit Office, 2014). Furthermore, it was reported, that there were problems of pest infestations, lack of hot water or heating, broken doors and windows, the lack of basic amenities and a clean environment (National Audit Office, 2014). These observations can be underlined by a PR officer working for a British support organization, who described the living conditions of one of their clients as the following:

> "She is living in one room in a flat provided by the Home Office and managed by a private housing company with her three children. The whole flat is infested with cockroaches and mice, it is damp throughout and has dirty carpets which are impossible to clean" (UK1, 2014).

Since the beginning of 2012, the accommodation of asylum seekers after the initial accommodation centres is managed by large private companies which are contracted by the Home Office and in some cases sub-contracted to local companies. Just like with the initial accommodation, the assessment process for the eligibility for the

accommodation stays with the Home Office and the companies remain responsible to the Home Office.

In general, the contracts require that families should be accommodated in self-contained accommodation. In practice, families with small children are often lodged in hostel-type accommodation, however it is always guaranteed that nuclear families are housed together (UK3, NGO, volunteer, 2014).

Freedom of movement

The distribution of asylum seekers amongst Germany takes place at two different levels: at the federal and at *Länder* level. In a first step, in order to guarantee an even and fair distribution of the burdens that are connected to the asylum process and the reception of asylum seekers between the individual *Länder*, asylum applicants are distributed among the *Länder* using a quota that is taking into account the size of the population and the tax revenue. In this way, the reception quotas of the individual *Länder* are established according to the *Koenigsteiner Schluessel* and are re-defined on an annual basis (Asylverfahrensgesetz (AsylVFG). Section 45).
On the *Länder* level, a similar system that is comparable to the *Koenigsteiner Schlussel,* is used in order to coordinate the distribution of asylum seekers after their redistribution from the initial reception accommodation. In most of the cases, a quota is used for the individual rural and urban districts and the asylum applicants are allocated according to the share accounted for by their populations among the number of inhabitants of the *Land* (Müller, 2013). Some *Länder* also take into account the economic and financial situation of the respective *Land* when calculating the reception quotas.

The freedom of movement, as already mentioned, is further restricted by the residence obligation, which forbids asylum seekers to leave the municipality to which they have been allocated on their own initiative. If they want to do so, they have to apply for a permission, which will be granted if there are ‘compelling reasons’ to leave the area. Different actors have criticised this, since it has proven to be difficult to obtain such permission, due to the fact that there are no common standards for the issuing of permissions.

In contrast to the German approach, in the Netherlands, the freedom of movement of asylum seekers who have a pending asylum application and who are not in detention,

is not restricted to a certain area. However, asylum seekers, whose application for asylum has been rejected and who are accommodated in the restricted locations (VBL) or in the family housing (GL) are not detained, but they are restricted to a certain area or municipality. In reality, it is not checked by the authority if an asylum seeker is out of their assigned area; however, asylum seekers are required to report six days a week to the responsible at the housing facility, so it is rather difficult to leave the area or municipality (NL2, PR manager, NGO, 2014). Furthermore, in the case of not reporting asylum seekers can be penalized by a fine or even criminal detention (Article 108, Vreemdelingenwet, 2000).

A similar approach is taken by the United Kingdom, where asylum seekers can theoretically move around the UK freely, however temporary admission, which is the usual status of asylum seekers, is linked to residence at a particular address, and asylum seekers are required to inform the Home Office should there be any changes in the address.

In the case that asylum seekers are accommodated by the Home Office, they are not permitted to be absent from their accommodation and the Home Office has the right to cancel the provision of accommodation if an asylum seeker stays elsewhere for a few days.

Although asylum seekers are not restricted in their movement, the allocation to accommodation is done by private housing providers in the region and it is based on available housing options. Therefore, there is a limit on the asylum seekers' choice of location.

Access by third parties

As mentioned before, according to the EU Reception Conditions Directive, family members, legal advisers and NGOs should be given the possibility to access the reception centres. By law the UNHCR is entitled to visit foreigners, but there is no general rule for other third parties. In Germany, the access of other parties to the reception facilities can be restricted by house rules set out by the management or the owner of the centres. Besides restricting rules, the location of the reception centres can pose another problem for visits, in the sense that they are difficult in rather remote areas difficult to reach (G2, interview, 2013). In this respect, in several privately managed facilities, volunteers that were openly criticizing the management and

pointing out the shortcomings and deficits in these facilities, were banned from accessing the facilities and threatened with the police if they would violate the 'house rules' again (Interviews G6, G1, 2013/14).

> "It is absolutely irrational, that the management has so much control over who they allow to visit the centre and who not. One of our volunteers was reported to the police, because he entered the facility after he was banned from accessing because the management didn't like that he pointed out flaws and issues within the facility" (G4, research officer, NGO, 2013).

Besides the EU Reception Conditions Directive, in the Netherlands, Article 9 of the Regulation on Benefits for Asylum seekers points out that during a stay in the reception centre, the asylum seeker should have the possibility to communicate with family members, as well as representatives of the UNHCR and NGOs, and legal advisors. In reality, these provisions are mostly maintained by the responsible authority in the reception centre (NL8, state official, 2014).

There seems to be a good cooperation between COA and the relevant NGOs, with an employee of a national NGO reporting that

> "COA is open for recommendations and advice by the NGOs and volunteers in order to maintain and improve the situation in the accommodation facilities" (NL1, PR manager, NGO 2014).

In the United Kingdom, according to the contractual terms between the private housing providers and the Home Office it should be guaranteed that there is sufficient access and appropriate facilities in the initial accommodation centers for third parties to offer advice and support. Furthermore, there is normally access available to an initial health screening, which is provided by homeless health service or a GP. When it comes to the access of legal representatives to the initial accommodation centers, this is guaranteed by the use of an electronic appointment system, through which asylum seekers can make appointments with local solicitors, who have their offices close to the centre (AIDA,2014).

Information

When it comes to the access of information, the EU Asylum Procedure Act places an obligation on the authorities to provide general information within 15 days of lodging

the asylum application. In practice, in Germany the personnel in the reception facilities hands out leaflets containing general information on where and when asylum applicants can receive advice or assistance. However, asylum applicants are expected to contact the responsible social services in order to get more detailed information (G7, interview, 2013).

In the Netherlands, the access to information to asylum seekers is enshrined in Article 2(3) & (4) of the Regulation on Benefits for asylum seekers.

In this respect Article 2(3) points out that

> "The Central Agency for the Reception of asylum seekers provides, within a term of 10 days after placement in a reception location;
>
> i. Information concerning the rights and obligations of the asylum seeker regarding reception
> ii. Information concerning legal aid and reception conditions" (Article 2(3), Regeling verstrekkingen asielzoekers en andere categorien vreemdelingen, 2005).

Furthermore, Article 2(4) states that "The Central Agency for the Reception of asylum seekers provides information in writing in a language that is understandable for the asylum seeker" (Article 2(4), Regeling verstrekkingen asielzoekers en andere categorien vreemdelingen, 2005).

Just like the Netherlands, the United Kingdom has the right to information pointed out in legislative measures. Article 344C of the Immigration Act entitles asylum seekers to be provided with information in a language that they understand about the rights and duties relating to their refugee status.
In most cases, the charity Migrant Help is providing asylum seekers with general information, guidance and advice on the asylum process via a Telephone Advice Centre, or through face to face appointments in the initial reception centers. Information in various languages in the form of audio or written briefings and videos can be accessed via the Migrant Help's website.

7.2. Access to employment and education

Table 9: Access to employment in Germany, the Netherlands and the United Kingdom

	Germany	Netherlands	United Kingdom
Does the national legislation allow for access to the domestic labour market for asylum seekers?	Yes	Yes	Yes
If yes, what is the time limit after which asylum seekers are allowed to access the labour market?	9 months	6 months	1 year
Are there restrictions to access employment in practice?	Yes	Yes	Yes

One of the crucial factors for a successful integration into a society is the free access to employment and the possibility to receive education. In this respect, according to the EU Reception Conditions Directive, Member States should guarantee that asylum seekers have the possibility to enter the labour market no later than 9 months after they lodged their asylum application. Member States have the right to decide on the conditions that are applicable for asylum seekers in order to enter the labour market, but these conditions have to guarantee that the asylum seekers still have an effective access to the labour market. However, on the grounds of labour market policies, Member States can prioritize nationals as well as other Union citizens or citizens with other residential status (Council Directive 2003/9/EC, Article 15).

Table 10: Access to education in Germany, the Netherlands and the United Kingdom

	Germany	**Netherlands**	**United Kingdom**
Are children able to access education in practice?	Yes	Yes	Yes
Are people able to access further education or university in practice?	Limited	Limited	Limited

In the matter of access to education, Member States ought to grant asylum seekers who are minors access to the education system under similar terms as their own nationals. Furthermore, the authorities in the Member States should offer classes, such as language classes, to the minors in order to assist minors in the participation and integration in the education system (ibid, Article 14).

Similarly, as the access to the education system for minors, Member States should also give asylum seekers the opportunity to receive vocational training (Ibid, Article 16).

With the provisions of the Asylum Procedure Act from 2012, asylum seekers were not allowed to enter the German labour market for a period of one year. With the Recast of the Reception Conditions Directive and its transposition into German legislation, this restriction of not being able to access the German labour market has been reduced to nine months and in November 2014 it was further reduced to three months.

However, with the adoption of new legislative measures in October 2015, new restrictions on the access to the German labour market have been imposed. No asylum seekers that remain in the initial reception centres are banned from entering the German labour market for six months.

Besides these time restrictions preventing asylum seekers to enter the German labour market, asylum seekers are not able to work on a self-employed basis for the whole asylum procedure period, due to the fact that self-employment is only allowed on a regular residence title, to which the asylum seekers *Aufenthaltsgestattung* does not belong (Asylum Seekers Benefit Act, Section 61).

After the six-month period is expired, asylum seekers are theoretically able to enter the labour market; however, they have to face certain restrictions:

A. In order to work in Germany, asylum seekers first have to apply for an employment permit. In pursuance of this, they have to provide proof for a 'concrete' job offer, e.g. they have to hand in a declaration by an employer, which is stating that the asylum seeker will be employed in case the employment permit will be granted.
B. If this declaration is made available to the job centre, the responsible authority will carry out a priority review, hence an examination of whether other job seekers with a better status in terms of employment provisions might be suitable for the available position
C. Finally, the job centre is reviewing the labour conditions, so whether the wages are appropriate and whether labour rights are respected (Ibid).

Besides these restrictions, the residence obligation (*Residenzpflicht*) poses another obstacle for asylum seekers in entering the German labour market. Theoretically, asylum seekers are granted the permission to travel to their work, if they are located outside the allocated area (Ibid, Section 58). However, the residence obligation is diminishing the opportunities to get in contact with potential employers that are outside the allocated area (G4, research officer, NGO, 2013).

> "But not only the legal restrictions are a big hurdle for asylum seekers in finding a job. In many cases, asylum seekers don't find a job even after the three-month working restriction, due to the fact, that nationals from other EU Member States, that are also looking for jobs, have an advantage on the domestic labour market. In structurally weak areas, this basically means a total work restriction as the job center in those cases will mostly prefer Europeans for open job positions" (G1, policy officer, NGO, 2013).

When it comes to the right and obligation of school attendance, it is important to note that it is valid for all children living in Germany, disregarding their status. But since education is within the competencies of the different *Länder*, access to education can vary amongst the *Länder*. For instance, in a variety of the *Länder* compulsory education ends at the age of 16, hence children in those states do not have the possibility to go to school when they are older than 16 years. Another flaw in providing education to minor asylum seekers is the fact, that the German education system is not

adequately equipped to address the demands of refugee children, such as language or literacy courses (G6, PR manager, state official, 2014).

In regard to vocational training for asylum seekers in Germany, the requisites are similar to those for the access to the labour market. So, asylum seekers are only able to receive vocational training if there is no other applicant with a better residential status for the same position. Besides this, asylum seekers normally receive a residence permit for a period of six months, while vocational training has a duration of two to three years. Therefore, sometimes employers are hesitant, to provide asylum seekers vocational training, since there is a risk that the vocational training cannot be completed in the case of a rejection of the asylum application. (G2 & G8, 2014).

Following Dutch legislation, theoretically asylum seekers have the access to the labour market (Art.2a, Besluit uitvoering Wet arbeid vreemdelingen, 1995). However, in reality, it is rather difficult for an asylum seeker to find employment, due to the fact that employers are rather hesitant to hire an asylum seeker because of administrative obstacles and the supply on the labour market (NL4, case worker, NGO, 2014).

Despite the fact that asylum seekers have the right to work in the Netherlands, various regulations such as the Aliens Labour Act establish rules concerning the access to the labour market for asylum seekers. Following the Aliens Labour Act asylum seekers are only allowed to work a limited time, to be exact maximum 24 weeks each 12 months (AIDA, 2013).

But already before an asylum seeker is employed, the employer has to request an employment license for asylum seekers. In pursuance of acquiring this license the concerned asylum seeker has to fulfill the following conditions:

a. The asylum seeker has lodged an asylum application at least six months before the commencement of employment and the application is still pending for a final decision;
b. The asylum seeker is residing legally in the Netherlands on the basis of Article 8 of the Aliens Act;
c. The asylum seeker is receiving reception conditions as pointed out in the Regulation on benefits for asylum seekers;
d. The total time of employment of the asylum seeker does not exceed the maximum time limit of employment mentioned earlier;

e. The anticipated work is compliance with general labour market conditions;
f. The future employer has to submit a copy of the W-document.

This procedure to apply for an employment license for asylum seekers should, according to Article 6 of the Aliens Labour Act, not take longer than five weeks (Art. 6, Vreemdelingenwet, 2000).

If the future employer has acquired the license and the asylum seeker is being employed, the asylum seeker is required to contribute a fair amount of their wage to the accommodation costs, in the case that they are staying in a reception centre which is arranged by the COA. However, the contribution to the accommodation costs is depended on the salary the asylum seeker is receiving and it should on no account be higher than the economic value of the accommodation facilities (AIDA, 2013).
Besides contributing to the accommodation rate, in certain cases, contingent upon the extent of the salary that the asylum seeker is receiving, the financial support for food and personal expenses can be withdrawn for the period that the asylum seeker is employed (Wet Arbeid Vreemdelingen, 1994).

In addition to having access to the labour market, the Dutch legislation provides for access to do internships or voluntary work for the asylum seekers (Art. 3, Besluit uitvoering Wet arbeid vreemdelingen, 1995).

When it comes to the right to education for asylum seekers in the Netherlands, Dutch legislation is providing access to education in the sense, that it is mandatory for every child under 18 to attend school without exception (Art. 3, Leerplichtwet, 1969).
As a result of this, every centre for asylum seekers (AZC) is cooperating closely with elementary schools in the vicinity. Though if parents want to choose another school for their children, they are free to do so, hence there is no obligation for the minor asylum seeker to attend a specific school.

As mentioned before, children below the age of twelve are required to visit a regular elementary school in their proximity or a school of their preference. Children between the age of 12 and 18 are obliged to visit an international class first in order to assess their level of education. Once their level of the Dutch language is sufficient, they are transferred into an appropriate educational program.

While this approach might seem suitable to the provision of education to minor asylum seekers, UNICEF examined the access to education available to asylum seekers in the

Netherlands and found various problems. Firstly, children very often have to change school resulting from the asylum procedure, which is leading to an interruption in the educational programme for those children (Kloosterboer, 2009). According to UNICEF (2009), children need to change their schools on average once a year during the asylum procedure, which renders it difficult for the minor asylum seekers to integrate into a school.

> "It is difficult for the kids to settle and live like a normal child, because once they get used to their surroundings and get acclimatize to the culture and procedures in their school, they have to move on and start the whole integration process at a new school, which can be very difficult and traumatic for those young kids" (NL3, education officer, NGO, 2014).

Furthermore, another problem is the fact that the AZC are often located in isolated areas, so the close elementary schools have a majority of asylum seekers as students, which does not necessarily promote integration and interaction with the Dutch society (Kloosterboer, 2009).
Finally, there is a lack of appropriate spaces to do homework and a lack of computers in the centres for asylum seekers where the children can study and learn (NL3, education officer, NGO, 2014).

But not only minor asylum seekers should have the access to education; the same is true for adults. Therefore, the Regulation on benefits for asylum seekers (2005) points out, that the Central Organ for the Reception of Asylum Seekers (COA) should be responsible for the provision of educational programmes for adults at the AZC. Hence, the COA is offering various courses including vocational training, language courses and integration programmes.

In the United Kingdom, asylum seekers are not allowed to do paid work. However, they have the opportunity to apply to the Home Office for a permission to enter the labour market when their asylum application has been outstanding for a year (para 360, Immigration rules). If permission is granted by the Home Office, asylum seekers are limited to apply for employment in special listed shortage occupations, which are specialist professions and trades that are in short supply in the UK and they are defined in very narrow terms. This also poses and obstacles to the asylum seekers in entering the labour market since the chances that they might qualify are very low.

Besides that, there is no possibility to re-train in order to facilitate better access to employment.

When it comes to the access to education for asylum seekers in the United Kingdom, one can say that it is compulsory for children from 5 to 16 years. There are no special classes for asylum seekers, but they attend mainstream schools which are close to their housing. However, children that are living on s.4 support might face difficulties in the access to education, in the sense that they are not entitled to free school meals or other benefits, but they also don't receive any money to pay for school meals.

But asylum seekers can face further obstacles in having access to education in further and higher education. Up until now, the UK is still maintaining different provisions and agreements for 'home' and 'overseas' students, which means that universities are entitled to charge higher fees from overseas students in comparison to home students. In most cases, asylum seekers fall into the 'overseas' student category and therefore have to pay fees of up to 29,000 pounds per year. As mentioned, many asylum seekers barely receive enough financial support to survive, so studying at a university is simply not manageable for a majority of them (AIDA,2014.) Hence, theoretically there is no bar to asylum seekers wishing to enter into higher or further education, however there are financial barriers, such as high fees and a lack of access to loans.

7.3. Access to health care

Table 11: Access to health care in Germany, the Netherlands and the United Kingdom

	Germany	**Netherlands**	**United Kingdom**
In practice, do asylum seekers have adequate access to health care?	Limited	Limited	Limited
Is specialised treatment for the victims of torture or traumatised asylum seekers available in practice?	Yes	Limited	Limited

Concerning general rules on health care, the EU Reception Conditions Directive points out, that Member States should ensure that the material reception conditions that are provided enable an adequate standard of living for asylum applicants, which in turn

should ensure the protection of their mental and physical wellbeing (Council Directive 2003/9/EC, Article 17 (2)). In this respect, Member States are obliged to provide the necessary health care to asylum seekers, which should encompass, at minimum, the basic treatment of illnesses and of severe mental disorders as well as emergency care (Ibid, Article 15 (1)). Besides this, asylum seekers with special need should have access to necessary medical or other assistance (Ibid, Article 15 (2)).

German legislation is limiting health care for asylum seekers to "acute diseases or pain", in which case "necessary medical or dental treatment has to be provided [...] for convalescence, recovery, or alleviation of disease or necessary services addressing consequences or illnesses" (Asylul Seekers Benefit Act, Section 4). Furthermore, further benefits and medical services can be granted "if they are indispensible in an individual case to secure health". One problem with this formulation is the fact, that there is no clear definition of "necessary treatment", therefore it is often assumed that only unavoidable medical care is provided.

Another rather practical problem is posed by obtaining a health insurance form (*Krankenschein*), which allows asylum seekers to receive medical treatment. The problem is that, these forms are handed out by the authorities in the initial reception centres, but if asylum seekers are transferred to other forms of accommodation, they have to apply for the forms at the municipality, which is often causing a delay in the delivery of medical treatment (G8, interview, 2013). But the issuing of health insurance forms does also pose administrative obstacles on the authorities, due to which a variety of local and regional governments decided to abolish the system of issuing special health insurance cards to asylum seekers, and instead provide them with normal health insurance cards, which enable them to visit a doctor without obtain permission by the authorities.

Once asylum seekers have received reception conditions and benefits for longer than 15 months, they are entitled to apply for 'regular' social benefits. In the case that asylum seekers receive 'regular' social benefits, they become eligible for the same health care that German citizen receiving social benefits are entitle to as well.

In the Netherlands, the relevant legislation in regard to the access to health care can be found in Article 9 of the Regulation on Benefits for asylum seekers (2005). Furthermore, the Regulation on Healthcare for asylum seekers (RZA) is building up

on the provisions made in the 2005 Regulation (Regeling Zorg Asielzoekers, 2009). According to the Regulation on Healthcare for asylum seekers (2005), they should have the access to basic healthcare, which is including consultations with a general practioner, physiotherapy, dental care, hospitalization and the possibility to consult a psychologist. In the case that an asylum seeker requires hospitalization on grounds of psychological problems, the asylum seeker can be referred to a mental hospital for a day treatment. Besides this, there are a variety of specialized NGOs that support and help asylum seekers with mental problems, such as Phoenix (Pro Persona, 2014).

However, in reality, "asylum seekers were not receiving a medical intake upon arriving in the country, minor asylum seekers were not quickly started on the national vaccination programmes and TB screenings were not done in a timely manner" (NL4, case worker, NGO, 2014).

The main responsible institution for the provision of health care in the reception centres is the COA and in principle the available health care to asylum seekers should be in compliance with the Dutch regular health care. Hence, an asylum seeker should have the same right as any other person in the Netherlands to visit a general practioner or hospital. However, in practice, asylum seekers have to contact a special health centre for asylum seekers (Gezondheidscentrum Asielzoekers) first in case of health issues, and the health centre will then, if they decide that it is necessary, refer them to specialists (NL1, PR manager, NGO, 2014).
Another difficulty arises in the provision of health care to those asylum seekers that are accommodated in the restricted family housing facilities. They do not fall under the scope of the Regulation on benefits for asylum seekers and therefore they only have the access to emergency health care, which can lead to problems if there is a chronical or other medical problem, which is not classified as an emergency (Art. 10, Vreemdelingenwet, 2000).

In the United Kingdom, there is free hospital treatment available to asylum seekers with a current asylum application, those refused asylum seekers that are receiving s.95 or s.4 support and unaccompanied asylum-seeking children (National Health Service, 2011). Furthermore, asylum seekers that have not yet received a decision on their asylum application are entitled to register with a GP.
In contrast to this, asylum seekers who are not receiving s.95 or s,4 support are not

entitled to free hospital treatment. However, doctors should not refuse treatment that is urgently needed for those asylum seekers. Nevertheless, the hospital is required to charge for it, but they have the discretion to write off the charges.
When it comes to accident and emergency services, as well as treatment for listed diseases, they are available without charge for all asylum seekers.

The access to mental health services is not guaranteed. Special treatment for traumatized asylum seekers and victims of torture is available, but it is limited. This treatment is mainly provided by a variety of independent charities and NGOs, such as the Refugee Therapy Centre, the Helen Bamber Foundation and Freedom from Torture. However, due to the high demand of specialist treatment it cannot be guaranteed that all asylum seekers will be able to access it (AIDA,2014).

One interviewee, working as a research and policy officer for an NGO, underlined the importance of special treatment for asylum seekers and refugees:

> "The most important thing to do is treat asylum seekers and refugees with respect and dignity, preserving their self-efficacy and autonomy. Helping asylum seekers and refugees to find a way of anchoring themselves in their new situation is also important" (UK2, research and policy officer, NGO, 2014).

7.4. Discussion

In this chapter 8, the different approaches taken by Germany, the Netherlands and the United Kingdom concerning the provision of reception conditions to asylum seekers have been discussed on the basis of analysing (a) the access to material reception conditions; (b) the access to employment and education, and finally (c) the access to health care.

When it comes to the access to material reception conditions to asylum seekers, all of the three analysed countries- Germany, the Netherlands and the United Kingdom- are obliged by their national and regional legislation to provide asylum seekers with financial support and the amount of the support as well as the conditions of receiving the support and the withdrawal of it are also regulated in the national and regional legislative measures (Asylverfahrensgesetz; Asylbewerberleistungsgesetz; Wet Centraal Opvang Orgaan (1994); Immigration and Asylum Act (1999).

Even though asylum seekers are entitled to receive financial support and the access to material reception conditions, they are excluded from claiming regular welfare benefits in the concerned countries. Instead of regular welfare benefits, asylum seekers in Germany, the Netherlands and the United Kingdom are subject to specific regulations and benefit rates. However, what can be noted is that one common factor among the three compared countries is the fact that the financial support that asylum seekers receive is always set a rate that is below the welfare benefits rate that a regular citizen is able to claim (British Red Cross, 2013).

Furthermore, although Germany, the Netherlands and the United Kingdom are obliged by the EU Receptions Conditions Directive and their own national legislative measures to provide asylum seekers with the necessary means to guarantee a dignified minimum of existence, it varies from country to country what the amount of provided reception conditions is encompassing. While asylum seekers in the Netherlands enjoy a rather high amount of benefits they are entitled to receive, which a cover a variety of different aspects of the daily life, ranging from financial support and accommodation to coverage of medical costs and public transport tickets to attend lawyers and other important meetings (Regeling verstrekkingen asielzoekers en andere categorien vreemdelingen (2005); the range of material benefits that asylum seekers are entitled to in the United Kingdom is rather basic and is only encompassing accommodation and financial support (AIDA,2014).
That this difference in the calculation and set up of the material reception conditions can lead to the fact, that asylum seekers are not able to cover all their costs with this financial allowance, can be witnessed in the United Kingdom.

Another aspect that is distinguishing the United Kingdom and their approach to the provision of financial benefits from the Netherlands and Germany, is the introduction and the use of pre-payment cards. As mentioned in the case study on the United Kingdom, the Azure card is a contested measure due to its restrictions and limitations that it poses on asylum seekers and their choice, as it can only be used in certain stores selected by the home office and it can only be used for the purchase of food and essential toiletries (Red Cross, 2014). One of the interviewees, working with asylum seekers, mentioned that “often the card just doesn’t work at the check-out, which is humiliating for the asylum seekers and they feel ashamed and stigmatized by using the card”. Furthermore, he adds that the card can lead to hostile attitudes from staff

working at the stores due to the fact that the card is 'labeling' them as asylum seekers leading to a feeling of isolation and anxiety (UK4, 2014).

Therefore, one can say, that although in general all of the compared countries provide asylum seekers with the same amount of financial support, if one takes a closer look at the details, the costs and provisions that are encompassed in this financial allowance provided, there are major differences.

Besides financial benefits, asylum seekers are entitled to being provided with accommodation in all the compared countries. When it comes to the regulation and supervision of the accommodation that is provided to asylum seekers, the countries take different approaches. In the Netherlands, the main authority, which is created and instructed by the Dutch government and that is responsible for the provision of reception conditions to asylum seekers, is the Central Organ for the Reception of Asylum Seekers (COA). In this respect COA is in charge of everything involving the reception process, from providing accommodation up to providing health care in the accommodation center (Wet Centraal Opvang Orgaan, 1994). In contrast to this rather centralized approach of regulating reception conditions in the Netherlands, Germany and the United Kingdom have chosen a more decentralized approach. Hence, although there are uniform national regulations in place in both Germany and the United Kingdom, the responsibilities of transposing those regulations into reality have been transferred to the local level (Mueller, 2013; Asylum Support Regulations, 2000). In return, this decentralized measure of accommodating asylum seekers can lead to local differences in the level and quality of the chosen housing options for asylum seekers, depending on what approach the different local governments have chosen to take.

In the initial period, all asylum seekers in the United Kingdom, the Netherlands and Germany are accommodated in initial reception and accommodation centers, where the first stages of the asylum application process are started and handled and where the asylum seekers are receiving initial support and advice on the asylum procedures and their new life in the respective countries. The time that asylum seekers are hosted in their initial accommodation is often limited to a few weeks in all of the three countries, and after that asylum seekers are dispersed within the country. One commonality amongst the three countries which can be noted is the fact that the initial accommodation centers are located in rather remoted areas, which make it difficult for asylum seekers to integrate themselves into the society and participate in recreational

and educational activities that take place outside the centers (AIDA, 2014; Dutch Refugee Council, 2014).

Due to the increased inflow of asylum seekers in the recent months, the initial reception centers in the United Kingdom, the Netherlands and Germany have reached their capacity and due to this, the governments of these countries have started to use hotels, hostels, old schools or gyms as a short-term solution to accommodate asylum seekers (AIDA,2014; interview G3, 2014). The problem with this approach however is, that these emergency accommodations are not laid out for asylum seekers and their needs, so they limit their access to reception-related rights that asylum seekers would normally be able to access if they would have been placed in reception centers. Hence, this might lead to a delay in the access of asylum seekers to the support system and other welfare services, as it might take longer to receive advice or complete their asylum application (AIDA, 2014; Refugee Council and Maternity Action,2013; Dutch Council for Refugees and Defence for Children, 2012).

Once the reception period in the initial accommodation centers is over, asylum seekers are moved to different follow-up accommodation facilities. In the Netherlands, asylum seekers will be transferred to a local centre for asylum seekers that is operated by the COA, until they receive housing in the Netherlands. In Germany, the local governments have the sovereignty to organize the follow-up distribution and accommodation of asylum seekers; hence the housing could be in the form of collective accommodation facilities, where larger groups of asylum seekers are housed centrally; or in the form of local accommodation facilities, where asylum seekers are placed in individual flats or houses (Asylbewerberleistungsgesetz).

Since the local governments have the authority to decide on the nature of how they provide reception conditions, they can also assign the responsibility of creating and managing those accommodation facilities to private organizations and companies. This approach is also taken by the United Kingdom, where the Home Office remains to be the legal responsible unit for providing accommodation to asylum seekers, however it has assigned the responsibility for the provision and management of accommodation facilities to private companies (Immigration, Asylum and Nationality Act, 1999).

That this privatization of certain parts of the asylum process and the provision of reception conditions can lead to difficulties and inadequate reception conditions can

be witnessed in both the United Kingdom and Germany. In several follow-up accommodation facilities overcrowding and inhuman hygienic standards have been witnessed (interview G2, 2014; interview G5, 2014).

The second aspect, which was analysed in-depth in this chapter 7 was the access that asylum seekers have to the domestic labour market in the concerned countries, as well as opportunities to access education.

Comparing the three countries, one can say that, in contrast to the provision of material reception conditions; Germany, the Netherlands and the United Kingdom take very similar approaches in regard to measures for asylum seekers and the access to the domestic labour market. In general, the national legislation in Germany, the Netherlands and the United Kingdom is not imposing any bans on the possibility for asylum seekers to access the labour market. However, there are various restrictive provisions in place making it difficult for asylum seekers to de facto find employment in these three countries. As presented in the individual country case studies, all concerned countries have imposed a time frame, in which asylum seekers are not able to work or look for possible employment.

Besides the time limit, that is restrictive in the free access to employment for asylum seekers, there are other legal hurdles and administrative obstacles in place in Germany, the Netherlands and the United Kingdom to complicate the chances for asylum seekers to enter the labour market. In both Germany and the Netherlands, asylum seekers, in order to be allowed to work, have to apply for an employment permit beforehand and provide proof that they have a 'concrete' job offer, e.g. a declaration by the future employer, which is stating that the asylum seeker will be employed once the employment permit is granted

While asylum seekers in the Netherlands and Germany are theoretically able to access the labour market without restrictions to occupations; asylum seekers in the United Kingdom are limited to apply for employment in special listed shortage occupations, which are specialist professions and trades that are in short supply in the UK and they are defined in very narrow terms. This poses quite a high obstacle to the asylum seekers in entering the British labour market since the chances that they might qualify are very low and there are opportunities in place to re-train in order to qualify for the access to these specialist professions.

Besides the access to the labour market, the possibility to attend school or further education can be seen as a crucial aspect in the life of asylum seekers, not only does it help with integrating into the society but it also is helping them to return to a 'normal' daily life after all that they have been through in their home countries and their journey to the European Union.

When it comes to basic education, all children, that seek asylum in all of the analysed countries, have the right and obligation to attend school disregarding their status at least until they are 16 (the age restriction on compulsory education varies amongst the countries as well as the different areas within the countries). In general, minor asylum seekers are send to regular schools that are in vicinity to their accommodation, however if parents express the wish to choose a different school for their children, that is also in line with the provisions on access to education in the Netherlands, the United Kingdom and Germany. Although the idea behind sending minor asylum seekers to regular schools and promoting integrating and socialising with other children is valuable, the problem is that the national education systems are not adequately equipped to address the demands of refugee children, such as language or literacy courses.

While, there are no restrictions or difficulties for minor asylum seekers to attend school per se, there are indirect problems that might have an impact on their school experience. In this respect, one prominent example is the United Kingdom, where children that are living on s.4 support might face difficulties in the access to education, in the sense that they are not entitled to free school meals or other benefits, but they also don't receive any money to pay for school meals.

But asylum seekers can face further obstacles in having access to education in further and higher education. Up until now, the UK is still maintaining different provisions and agreements for "home" and "overseas" students, which means that universities are entitled to charge higher fees from overseas students in comparison to home students. In most cases, asylum seekers fall into the "overseas" student category and therefore have to pay fees of up to 29,000 pounds per year. As mentioned, many asylum seekers barely receive enough financial support to survive, so studying at a university is simply not manageable for a majority of them (AIDA, 2014.)

Hence, theoretically there is no bar to asylum seekers wishing to enter into higher or further education, however there are financial barriers, such as high fees and a lack of access to loans.

The final aspect, that was analysed in this chapter was the access to health care for asylum seekers in Germany, the Netherlands and the United Kingdom.

German legislation is limiting health care for asylum seekers to "acute diseases or pain", in which case "necessary medical or dental treatment has to be provided [...] for convalescence, recovery, or alleviation of disease or necessary services addressing consequences or illnesses" (Asylum Seeker Benefit Act). Furthermore, further benefits and medical services can be granted "if they are indispensible in an individual case to secure health". One problem with this formulation is the fact, that there is no clear definition of "necessary treatment", therefore it is often assumed that only unavoidable medical care is provided.

In the Netherlands, relevant legislation relating to the access to health care for asylum seekers points out that, asylum seekers should have the access to basic healthcare, which is including consultations with a general practioner, physiotherapy, dental care, hospitalization and the possibility to consult a psychologist.

In the United Kingdom, there is free hospital treatment available to asylum seekers with a current asylum application, those refused asylum seekers that are receiving s.95 or s.4 support and unaccompanied asylum-seeking children (National Health Service, 2011). Furthermore, asylum seekers that have not yet received a decision on their asylum application are entitled to register with a GP.
In contrast to this, asylum seekers who are not receiving s.95 or s,4 support are not entitled to free hospital treatment. However, doctors should not refuse treatment that is urgently needed for those asylum seekers. Nevertheless, the hospital is required to charge for it, but they have the discretion to write off the charges.

Certain restrictive provisions in national asylum legislation lower the reception standards, for instance restricted access to health care and therapy. Especially, the demands and needs of vulnerable groups are not always taken into account.

7.5. Chapter summary

In this chapter, the main focus was on the comparison of the provision of reception conditions to asylum seekers and the different approaches taken by the national authorities in the analysed countries.

What became apparent in all of the three countries was the fact that the asylum seeker is immediately classified as an asylum seeker once they enter the country. So already from the beginning, the individual is pushed into this role of someone who is seeking refuge and protection from prosecution, oppression and violence, without taking into account that they might also be "an individual, a human being, a parent or a partner, someone with ambitions, dreams and skills" (NL1, 2014).

In other words, the individual asylum seeker or refugee is not in the focus of the concerned national asylum systems. Instead asylum seekers are directly put into the same category and group without actually acknowledging the individual background of asylum seekers.

The second issue with the analysed asylum systems and the provision of reception conditions to asylum seekers is the fact, that the main aim seems to be on 'control and domination' of the whole reception process instead of upholding human rights and the provision of 'adequate' reception conditions as pointed out in the EU Reception Conditions Directive.

Therefore, based on the presented analysis on can say that there is still a strong discrepancy between the international human and fundamental rights provisions and the various EU legislative measures on asylum and the national approaches to the issue of providing reception conditions.

It became clear, that there is still room for improvement and there are four main aspects that the German, Dutch and English approaches concerning adequate provision of reception conditions to asylum seekers should focus on.

Firstly, one of the main driving forces of the whole asylum system should be a 'progressive rights approach', so the longer an asylum seeker is spending in the country, the more rights they should enjoy. Secondly, the accommodation in the reception centers should be as short as possible and it should be detached from the

asylum procedure, in the sense that it should be focused on the wellbeing of the individual instead of on the fast and efficient asylum procedure.

Besides this, the focus of the reception should not be control of the asylum seeker, but instead support of the asylum seeker. In this respect, the national authorities should help asylum seekers in preparing for a life in the Germany, the Netherlands and the United Kingdom and offer them opportunities of integrating themselves into the society. Finally, the last important aspect that should be changed, is the fact, that not all facets of the provision of reception conditions to asylum seekers meet the standards set out in EU and national legislation, especially when it comes to the accommodation facilities and the support that should be available to vulnerable groups.

The following Chapter 8 will focus on the second emphasis of this study and will therefore discuss in how far the approaches of Germany, the Netherlands and the United Kingdom concerning the provision of reception conditions to asylum seekers can in fact be classified cosmopolitan.

Chapter 8

Discussion – Can Germany, the Netherlands and the United Kingdom and their approaches to reception conditions be characterised as being cosmopolitan?

8.1. Discussion

This study had two main research aims: Firstly, discuss whether the approaches taken by Germany, the Netherlands and the United Kingdom in regard to the provision of reception conditions to asylum seekers is in compliance with EU regulations as well as human and fundamental rights. Secondly, the goal is to analyse whether these approaches show a cosmopolitan nature.

In Chapter 7, the provision of reception conditions to asylum seekers in Germany, the Netherlands and the United Kingdom was analysed by discussing (a) the access to material reception conditions, (b) the access to education and employment, and finally (c) the access to health care. The emphasis of this analysis was on discussing whether the different Member States comply with the EU regulations concerning the provision reception conditions to asylum seekers.

In order to answer the second part of the main research question, this Chapter will discuss the different approaches taken by Germany, the Netherlands and the United Kingdom in relation to the provision of reception conditions to asylum seekers in light of the cosmopolitan outlook developed in Chapter 3.

As it has already been discussed in the literature review, the concept of cosmopolitanism is difficult to define universally due to its highly normative nature, however with a more grounded social theory approach and a proper methodological rationale; cosmopolitanism can be used as a post-universalistic analytical category to explain current events and social life in the 21st century. Following the creation of different indicators and statements of cosmopolitanism by discussing and reviewing existing literature on cosmopolitanism, the following part will connect those indicators to the provision of reception conditions and discuss whether different traits of the various national asylum systems can be deemed cosmopolitan.

On a first glance, one can say that the three analysed countries attempt to guarantee that the rights of asylum seekers and refugees are not violated during the whole asylum process and beyond, due to the fact that the Member States of the European Union are theoretically subject to three distinct layers of human rights protection. These consist out of (i) the European Convention for the Protection of Human Rights (ECHR) together with the 1951 Geneva Convention, (ii) the Charter of Fundamental Rights, and (iii) finally national human rights law.

This commitment to legislative measures that promote human and fundamental rights and campaigning for these rights is supporting Van Hooft's (2007) argument of the 'desire to make the world more 'cosmopolitan' through campaigning for human rights and Delanty's (2009) idea of 'creating a shared normative culture'.

Thus, one might think, that asylum seekers and refugees can rely on the protection of their fundamental human rights in the European Union and in this case in the concerned countries. However, if one takes a closer look at the different national provisions in regard to reception conditions, various violations of human rights become apparent.

In the case of Germany, the right of asylum is enshrined in Article 16a of the German constitutional law, which grants "persons persecuted on political grounds" the right to asylum. So theoretically, Germany is committed to human rights, but an analysis of the reception conditions of asylum seekers that are provided, shows that Germany is not always in line with cosmopolitan commitments.

One example for a human rights violation can be found in the provision of welfare support and social benefits. According to Article 1 of the Charter of Fundamental Rights, "human dignity is inviolable. It must be respected and protected" (European Union 2010). The German Basic Constitutional Law adds that human dignity must be secured by all public authority and it is the obligation of the state to support people who are unable to live a life above the existential minimum (Bundesrepublik Deutschland, 1949). In Germany, the lowest social support available is the welfare support, hence it is considered as the existential minimum to life a life in dignity. However, as the analysis has demonstrated, until the judgement by the Federal Constitutional Court in 2012, asylum seekers were receiving benefits that were significantly lower than the welfare support. Although the German government was obliged by the Court to change this provision, it is important to point out, that Germany

has violated the commitment to the protection of human dignity for a long period until the judgement.

A similar violation of human dignity, which is in contradiction to cosmopolitan values, can be found in the United Kingdom. The financial support for asylum seekers in the UK under the section 95 provision amounts to 188.81 € for a single asylum seeker aged 18 or over (AIDA, 2014). Originally, the financial support under section 95 was calculated and set at 70 % of the regular social welfare benefits for nationals. Nevertheless, since 2011, asylum support rates have not been increased and adjusted to the regular social benefits and therefore, asylum seekers now receive only 52% of the rate for a UK national (British Red Cross,2013).

The inadequacy of the section 95 support has been pointed out in a court ruling in 2014 and it was ruled that the section 95 support as it is now is unlawful due to the fact that, the Secretary of State had failed to factor essential living needs, such as essential household goods or goods that are essential for babies and very young children; and in this respect the Secretary of State was asked to review and improve available support in light of the court's guidelines(R v The Secretary of State for the Home Department,2014). However, the government reviewed the existing support system and decided that it was adequate and the support rates would not be adjusted.

In addition to this, this study showed that the Member States of the European Union realized that conflicts, environmental disasters and other factors force people to flee in one part of the world, but because the EU is the main destination for those seeking refuge, it is a global issue that has to be solved together. Hence, one could say that with the creation of the Common European Asylum System in 1999, which attempted to tackle the challenges posed by the refugee crisis at a European level and which tried to harmonize and streamline all the various national asylum approaches into one universal European approach; this creation of the Common European Asylum System could be described as the response to the realization that we live in a world of 'collective fortunes' which require collective solutions (Held, 2010), as well as an awareness of global risks and the global 'community of fate', as described by Beck (2006). In this regard, one could say that just analyzing this aspect, the three countries can be described as being cosmopolitan.

However, in autumn 2015, the European Commission adopted 40 infringement decisions against 19 Member States for failing to fully implement legislation that is

creating the CEAS (European Commission, 2015). This step was highly criticized by many of the states that were issued with these formal notices, one of those countries being Germany, which received a formal notice for not having communicated the national measures taken to fully transpose the updated Reception Conditions Directive (2013/33/EU) which sets out common minimum standards for the reception of applicants for international protection across Member States (Reuters, 2015). The strict measures though have been justified by Frans Timmermans, First Vice-President European Commission, who said that

> "Solidarity and responsibility are two sides of the same coin. EU leaders in an extraordinary European Council in April called for the rapid and full transposition and effective implementation of the Common European Asylum System to ensure common European standards under existing legislation. The European Commission is the guardian of the Treaties and today's 40 infringement proceedings are meant to ensure that Member States actually implement and apply what they had previously agreed to do - and agreed to do rapidly and fully. Our Common European Asylum System can only function if everyone plays by the rules" (European Commission, 2015).

So, one could argue, that initial steps towards collective solutions in the field of reception conditions have been made, however there is still room for improvement.

The creation of the CEAS and the resulting implementation of various EU legislative measures into the respective national legislation, and in the context of this thesis the implementation of the Reception Conditions Directive, can however also be seen as an intention of the respective national governments to collaborate with other national governments and the willingness to participate in supranational entities, such as the European Union.

This would also support the notion of 'a willingness to expand political community' (Pichler, 2008) and a trust in supranational institutions (Norris & Inglehart, 2009) Furthermore, this participation of the EU Member States in the European Union on the topic of asylum can also be described as an awareness of the interconnectedness of different political communities (Held, 2002/05). Following Held's (2003) argument, states realize that in the present global environment, states are tied together by different

links, such as economic relations or old colonial connections, and therefore it is simply impossible for a state to act completely independent from other global political actors.

However, although the EU Member States agreed upon the creation of the CEAS and set up common minimum standards for the provision of reception conditions to asylum seekers, it can still not be guaranteed that asylum seekers receive similar and adequate reception conditions. As it has been shown in this thesis, there are various flaws and discrepancies when it comes to the implementation of EU regulations into national legislation. The main reason for that is the broad definition of the minimum standards of reception conditions, which leaves a broad scope to the Member States in determining what they deem to be the most appropriate standards and procedures in the provision of reception conditions to asylum seekers in their country. This means, that theoretically the awareness of the fact, that the refugee crisis can only be tackled on a European level is present, however what is lacking is the actual commitment to clear and specific standards that would really harmonize and streamline the various national asylum systems in Europe.

Another reason for the rather broad definitions of adequate reception conditions is the fact, that EU Member States-although they are willing one the one hand to cooperate on the issues of asylum, refugees and the provision of reception conditions- are reluctant to give up a certain degree of their sovereignty and competencies to the European Union in these fields. This argument is in contrast with the willingness to expand the political community (Pichler, 2009). In the case of asylum, and more specifically when it comes to a harmonized provision of reception conditions, it seems that EU Member States are only willing to expand the political community and the political cooperation to a limited degree. One could argue, that as long as the anticipated benefits and profits of cooperating with other EU Member States on the issue of the provision of reception conditions are higher than the expected costs and the concessions that the state has to make, the Member States are more likely to be interested in expanding the political community.

Following on from the point of the willingness to expand the political community, one also has to discuss, in how far Member States actually trust supranational institutions. According to Norris (1999), trust in the fairness, responsiveness and effectiveness of supranational institutions is crucial for the functioning of a cosmopolitan democratic order and is increasing the willingness of different actors to cooperate together.

Linking this argument to the reception of asylum seekers in EU Member States, one can argue once again, that at first glance, the Member States actually seem to be open to committing to common reception condition standards, which can be underpinned once again by the agreement of all Member States that the creation of a European asylum system is indeed necessary for tackling the increasing challenges posed by the refugee flows from conflict-torn regions. However, analyzing this in more detail shows, that Member States often don't comply with the regulations set out by the EU and rather implement their own national and regional measures to provide reception conditions to asylum seekers. Hence, one could argue that the level of trust in the solutions and measures offered by the European Union on how the reception conditions should look like is rather limited and national and regional approaches are preferred, as can be seen by the presented case studies of Germany, the Netherlands and the UK. In these three examined countries, only the bare minimum of EU legislative measures has been implemented into national law and besides that each country has developed their own strategy plans in providing adequate reception conditions to asylum seekers. But the degree of how high the trust in supranational institutions is; cannot only be defined by the fact to which extent the national governments have implemented EU legislative measures concerning asylum. In fact, another aspect that has to be considered, when discussing the level of trust in supranational institutions, is the reaction and opinion of citizen within the different countries towards those institutions. As an example for this, in the 2015, but especially after the refugee crisis in Eastern Europe, which led to thousands of refugees crossing the border to Germany in search of asylum, the attitudes of the civil society changed. Since summer 2015, there is an increase in demonstrations and protests against the EU regulations on asylum issues and a growing negative stance against Merkel's pro-European approach to deal with refugees. This negative attitude towards European solutions for the growing asylum and refugee issues can not only be witnessed within the civil society itself though. In Germany, Merkel is losing the support of not only many German citizen but also of her fellow party members, which shows that even within the political arena the trust in a EU solution to the challenges of refugee flows is getting smaller (dpa,2016).

One of the most known moral indicators of cosmopolitanism is the concept of universal hospitality, which is advocated by Immanuel Kant. In his essay "Towards a

Perpetual Peace", Kant (1795) points out several conditions that countries should respect if they want to reach perpetual peace. One of those conditions, is that as a human being one is automatically a human being in the world community and should therefore enjoy the right of hospitality. By this, Kant argues that if someone comes upon one's border or shores, for commerce or through need, and their purposes are peaceful, one cannot deny them access to the country. In this respect, the right to universal hospitality can be classified as a fundamental human right. This right has to be regulated and margins have to be set out as well as obligations have to pointed out on what a country is actually owing to people wanting to make use of their right to universal hospitality. In this respect, Kant (1795) is pointing out that the right of universal hospitality should be rather seen as a right to visitation than a right to long-term stay and it is the host countries' discretion to decide upon this.

Applying this theoretical concept of universal hospitality to the area of asylum in the European Union and the reception of asylum seekers in the EU, one could start with the 1951 Geneva Convention and its 1967 Protocol on the status of refugees. In general, all countries that are signatories to the Geneva Convention are obliged to conduct themselves in a particular manner, which is described in detail in the Convention, vis-à-vis asylum seekers and refugees. In fact, the most important aspect, which is encompassed in the Convention, is the fact that if someone reaches a countries shores or borders and raises a claim to asylum and refuge, the country is legally obliged to examine the truthfulness of this application and make a decision upon it. Connected to this obligation is the concept of non-refoulement. A country should not send an asylum seeker or refugee back to a dangerous country without thoroughly examining their claim.

That the concept of non- refoulement and in turn the concept of universal hospitality is violated in many ways can be witnessed in the European Union (Mierswa, 2013). Although, one could argue, that through the elimination of internal borders within the European Union, the right to universal hospitality has been reached, as one could easily and freely travel, work and live within the EU; the abolishment of internal borders has created greater problems and questions at the external borders of the European Union, leading to the point that external borders actually have to be drawn.

Apart from the legislative and administrative prerequisites in Germany, the Netherlands and the United Kingdom concerning asylum provisions, one can also have

a detailed look at the actual reception conditions that are provided to asylum seekers in those countries, in order to discuss whether certain aspects of the reception conditions can be classified as being cosmopolitan.

Although the EU Member States agreed upon the creation of the CEAS and set up common minimum standards for the provision of reception conditions to asylum seekers, it can still not be guaranteed that asylum seekers receive similar and adequate reception conditions. As it has been shown in this thesis, there are various flaws and discrepancies when it comes to the implementation of EU regulations into national legislation.

As it has been presented in Chapter 7, asylum seekers in all three countries are entitled to financial support and access to material reception conditions, however they are excluded from claiming regular welfare benefits and are subject to specific regulations and benefit rates. One common factor among the three compared countries is that the financial support that asylum seekers received was set below the welfare benefits rate that a regular citizen is able to claim: they are thus substandard in a descriptive sense.

Applying a cosmopolitan framework to the provision of material reception conditions to asylum seekers in Germany, the Netherlands and the United Kingdom, one could say that this substandard level of material reception reflects a profound failure of universal hospitality (Kant, 1991), an absence of feelings of global responsibility (Nussbaum, 1996), and a failure to respond to suffering at a distance (Chouliaraki, 2008). The constitution of 'distance' here is an interesting one, constituted perhaps in cultural terms even if asylum seekers are physically nearby, and reinforced politically by their stigmatised definition as 'asylum seekers' distinct from the rest of the population. This distancing is reinforced by the absence of resources that would be necessary to play a full part in the life of society, for example by accessing cultural or social activities that require a fee or require significant travel as well as the accommodation of asylum seekers in remote areas, which may in turn limit opportunities for interaction and integration that could provide a basis for a shared normative culture (Delanty, 2009).

But also the discussion of the provision of accommodation in Germany, the Netherlands and the United Kingdom showed flaws in the respective national approaches. When it comes to the regulation and supervision of the accommodation

that is provided to asylum seekers, the three countries in our study take different approaches. In the Netherlands, the main authority is the Central Organ for the Reception of Asylum Seekers (COA). COA is in charge of everything involving the reception process, from providing accommodation up to providing health care in the accommodation center (Wet Centraal Opvang Orgaan, 1994). In contrast to this rather centralized approach of regulating reception conditions in the Netherlands, Germany and the United Kingdom have a more decentralized approach. Although there are uniform national regulations in place in both Germany and the United Kingdom, the responsibilities of transposing those regulations into reality have tended to be transferred to the local level (Mueller, 2013; Asylum Support Regulations, 2000). In the UK, this has changed to some extent since 2011, with the consolidation of asylum housing into a smaller number of 'Compass' contracts, although these are still contracted out to private providers and in many cases further subcontracted to local landlords. In Germany accommodation falls into the competencies of the different *Länder* and municipalities. Due to the privatization and outsourcing of various aspects of the provision of accommodation to private providers, asylum seekers often had to live in inadequate living conditions and being separated from the rest of the society and third parties, such as NGOs and welfare organisations.

Within a cosmopolitan frame, the provision of accommodation that does not always meet adequate standards could be seen as a failure of the principle of universal hospitality (Kant 1991), deepened by the symbolic association of the home with hospitality. Asylum seeker's segregation in separate housing programmes to citizens could be seen as a refusal to engage with the other (Appiah, 2007), failing in cultural cosmopolitanism, and as a form of institutional protectionism by reserving better housing for citizens, indicating a failing in political cosmopolitanism (Roudometof, 2005). Combined with limitations on access to visits and support from third parties in Germany and the UK, the separation of housing could act as a barrier to the sense of asylum seekers and citizens all belonging to a 'greater society' (Merton 1949/1968). The differences associated with outsourcing raise an interesting question: given that the more centralised system in the Netherlands appears to conform more fully with cosmopolitan values expressed in the Reception Conditions Directive, are nations states more adequately equipped to deliver such values than more decentralised arrangements involving for-profit providers?

In regard to accessing the labour market, national legislation in Germany, the Netherlands and the United Kingdom does not impose an absolute ban on asylum seekers. However, there are various restrictive provisions in place making it extremely difficult in practice for asylum seekers to find employment in all three countries.

In both Germany and the Netherlands, in order for asylum seekers to be allowed to work, they have to apply for an employment permit beforehand and provide proof that they have a 'concrete' job offer, e.g. a declaration by the future employer, which is stating that the asylum seeker will be employed once the employment permit is granted. Most asylum seekers in the United Kingdom have been prohibited from taking paid work since 2002, and today have very limited rights to apply for the right to work on the basis of holding skills required for a very limited list of occupations, which are specialist professions and trades that are in short supply in the UK. This makes it impossible in practice for most asylum seekers to qualify for the right to work.

Besides these restrictions, there are other obstacles in place, which make it indirectly difficult for asylum seekers to find work. An example for this is the residence obligation (Residenzpflicht) in Germany. Theoretically, asylum seekers are granted the permission to travel to their work, if they are located outside the allocated area. However, the residence obligation is diminishing the opportunities to get in contact with potential employers that are outside the allocated area.

Within a cosmopolitan frame, denying asylum seekers the right to work, or prioritising citizens, could be seen to contradict political cosmopolitanism by embodying a high level of economic protectionism (Roudometof, 2005), and setting limits to the extent of asylum seekers' membership of political communities based around work (Pichler, 2008). It could be seen to contradict cultural cosmopolitanism through a prioritisation of the local context through creation of obstacles for asylum seekers in contrast to nationals in regards to accessing the labour market (Roudometouf, 2005), and to present barriers to the further expansion of cultural cosmopolitanism by removing the opportunity for cultural interpenetration (Beck, 2006) and encounters with the 'other' (Appiah, 2007), through contact at work. It can also be viewed as a failure of moral cosmopolitanism, by denying the full humanity of asylum seekers (Nussbaum, 1996)

including their right to make a productive contribution to society. Whether these restrictions actually protect the interests of citizens by securing job opportunities is highly contested.

But not only when asylum seekers try to access the national labour market, they are facing difficulties and hurdles, but also when it comes to the access to education and health care in all of the three analysed countries.

The access health care in particularly is significant because a high number of asylum seekers originate from countries with less well-resourced health systems, or they come from areas where the provision of health care was limited due to factors such as war or uprisings. Besides this, many asylum seekers flee their countries of origin due to reasons of oppression, persecution or conflicts, which can have a severe impact on physical and mental health (Roberts and Harris 2002). Once the asylum seeker arrives in the new designated country, stress and uncertainty about the future and the new and unknown environment can also affect health. According to Norrendam (2005) these factors contribute to asylum seekers experiencing higher levels of illness than other groups of the population. As a consequence, access to health care forms a particularly vital part of the provision of adequate reception conditions to asylum seekers.

German legislation limits health care for asylum seekers to “acute diseases or pain”, in which case “necessary medical or dental treatment has to be provided [...] for convalescence, recovery, or alleviation of disease or necessary services addressing consequences or illnesses” (Asylbewerberleistungsgesetz, 1997). Further benefits and medical services can be granted “if they are indispensable in an individual case to secure health”. One problem with this formulation is the fact, that there is no clear definition of “necessary treatment”, therefore it is often assumed that only unavoidable medical care is provided.

In the Netherlands, relevant legislation stipulates that asylum seekers should have access to basic healthcare, which includes consultations with a general practitioner, physiotherapy, dental care, hospitalization and the possibility to consult a psychologist. In the United Kingdom, free hospital treatment is available to asylum seekers with a current asylum application, those refused asylum seekers that are receiving s.95 or s.4

support and unaccompanied minors (National Health Service, 2011). Furthermore, asylum seekers that have not yet received a decision on their asylum application are entitled to register with a GP. In contrast to this, asylum seekers who are not receiving s.95 or s.4 support are not entitled to free hospital treatment apart from emergency care and treatment for certain listed diseases.

When it comes to basic education, all children that seek asylum in all of the analysed countries have the right and obligation to attend school at least until they are 16 (the age restriction on compulsory education varies amongst the countries as well as different regions in some countries). There is some evidence that national education systems are not adequately equipped to address the demands of refugee children, such as language or literacy courses (Taylor & Sidhu, 2012). There are also indirect problems that might have an impact on their school experience (Fazel, 2003; Anderson, 2001).

Asylum seekers can face further obstacles to accessing further and higher education. The UK maintains different provisions and agreements for "home" and "overseas" students, which means that universities are entitled to charge higher fees from overseas students in comparison to home students. In most cases, asylum seekers are classified as "overseas" students and therefore have to pay fees of up to £29,000 per year, although universities have discretion to charge asylum seekers Home fees and some do so, as well as offering a range of specific bursaries. As mentioned, many asylum seekers barely receive enough financial support to survive, so studying at a university is simply not manageable for a majority of them (AIDA, 2014).

The Netherlands are taking a similar approach as the United Kingdom when it comes to the access to higher education for asylum seekers. Some universities in the Netherlands have also introduced international tuition fees for asylum seekers and refugees that want to study at a Higher Education institution. In Germany however, it depends on the *Bundesland,* as there are differences in regard to the implementation of tuition fees amongst the *Bundesländer*. In this respect, some Bundesländer introduced tuition fees which are set, irrespectively of being a home or international student, while other in other *Bundesländer* there are no tuition fees at all (AIDA, 2014)

From a cosmopolitan perspective, restrictions on access to healthcare and education represent limits of political cosmopolitanism, as these services are delivered by

national rather than transnational institutions (Vertovec and Cohen, 2002), which differentiate between citizens and non-citizens, indicating another form of institutional protectionism (Roudometof, 2005). Education and health might provide a sound basis for an awareness of a shared 'community of fate' (Beck, 2006) because of the impact on the whole society of educational levels of its members, and because the wider consequences for public health if a section of society is denied access to health care. However, this is evident only in a limited way. Limits on access to Higher Education could be seen as restricting cultural cosmopolitanism by denying opportunities to expand mutual understanding of cultures and identities, and to set one's own cultural in a wider perspective relative to others (Delanty 2009). The restrictions on access to health care could also be seen as a failure of moral cosmopolitanism, by failing in global responsibility (Nussbaum, 1997) and to act on pity for suffering (Chouliaraki, 2008).

8.2. Chapter summary

This chapter brought together both the cosmopolitan framework developed in Chapter 3, as well as the findings concerning the provision of reception conditions to asylum seekers from Chapter 7. Through the application of the cosmopolitan statements and tenets to the different aspects of the provision of reception conditions to asylum seekers in Germany, the Netherlands and the United Kingdom, two main conclusions can be drawn.

Firstly, this discussion underlined that the normative concept of cosmopolitanism, if it is operationalised in a detailed and methodological manner can indeed be applied in empirical research in order to describe and explain social phenomena.

Secondly, this discussion pointed out that in theory, the three analysed countries can be characterised as being cosmopolitan, especially when it comes to their commitment to international and human and fundamental rights provisions, however in practice in the actual provision of reception conditions to asylum seekers, various flaws and challenges became evident, which were contradicting the cosmopolitan indicators. Hence, on a moral level, all the three countries can be described as having a cosmopolitan outlook.

In the following chapter, all the findings and discussions of this thesis will be brought together and the main points will be summarized. In addition to this, directions for further research will be presented.

Chapter 9

Concluding remarks

9.1. Discussion

This thesis started off with the intention of answering the following main research question:

To what extent do EU Member States comply with EU regulations, human and fundamental right obligations in respect to the provision of reception conditions to asylum seekers and in how far can their approaches to the provision of reception conditions be characterised as cosmopolitan?

Hence, the main aim of this thesis was twofold: (a) to present the reception conditions that are provided to asylum seekers in Germany, the Netherlands and the United Kingdom in the period of 1999 until 2015 and discuss whether these three countries comply with the EU provisions and human rights obligations that are in place in regards to asylum matters and (b) analyse the different legislative and administrative measures and approaches taken by Germany, the Netherlands and the United Kingdom to provide adequate reception conditions in the light of cosmopolitan values, such as the compliance with human rights provisions.

In pursuance of understanding and answering the main research question, the first step of this thesis was to point out the context of this study, hence what international and European legislative measures are available in order to guarantee that human and fundamental rights, especially of asylum seekers and refugees are guaranteed; and what European legislative and administrative framework is existing concerning asylum. Setting the contextual framework of this study was crucial, due to the fact, that it was important to point out what safeguards asylum seekers can rely upon and what duties EU Member States actually have in regard to asylum.

In a second step, this thesis has developed the theoretical framework that is underpinning this study, through the development of cosmopolitan indicators and their

operationalisation into cosmopolitan statements, that can be used in the empirical analysis in this study.

The second part of the thesis aimed at answering the main question. In this regard, in a first step, the different approaches of Germany, the Netherlands and the United Kingdom concerning the provision of reception conditions to asylum seekers in light of their compliance with the existing EU regulations and international human and fundamental rights have been analysed. Secondly, the given findings of Chapter 7 were discussed considering the developed cosmopolitan statements and indicators developed in Chapter 3, in order to discuss whether the different approaches or aspects of the provision of reception conditions to asylum seekers by Germany, the Netherlands and the United Kingdom can be deemed cosmopolitan.

During the analysis it became evident, that there is a discrepancy between the obligations of the analysed countries to international human rights provisions and their commitment to the Common European Asylum System; and the actual provision of reception conditions to asylum seekers.

According to this study, the EU has failed to find humane responses and solutions to the dilemma of refugees and asylum seekers which in turn had a negative impact on the living conditions of those seeking asylum in the Member States of the European Union. In general, the Common European Asylum System, and in the case of this thesis the Reception Conditions Directive and the Recast of this Directive, lays down an extensive list of obligations on EU Member States in respect to the circumstances that asylum seekers should be received, ranging from the access to employment and education, to health care and accommodation. In spite of that, the implementation of these provisions and measures has been undermined by the Member States' strong uphold of their sovereignty and especially recently, with the emergence of the refugee crisis in 2015, the emergency-driven response to accommodating a large number of asylum seekers and refugees at once in the EU Member States.

Through the decision of comparing Germany, the Netherlands and the United Kingdom, which were chosen due to not only similarities in their historical background, as well as their position and role in the European Union, a novel approach has been taken in regard to the existing studies of not only asylum in Europe but also the different reception conditions provided in the European Union. As it became

evident during the literature review for this study, there is a gap of academic knowledge when it comes to a thorough comparative analysis of different national approaches in regard to the provision of reception conditions to asylum seekers in the European Union. With its multidisciplinary nature, due to discussing the topic from not only the sociological angle, but also pointing out historical, legal and political characteristics, this study provided an approach to close this gap in academic knowledge.

The analysis of the case studies of Germany, the Netherlands and the United Kingdom has revealed that there is a strong divide between the theoretical approaches and legislative measures in place and the reality of reception conditions provided to asylum seekers in the European Union, and with the increasing arrival of asylum seekers in the EU and the continuing lack of preparation of the European asylum acquis, this gap will only get bigger.

Through the analysis of the case studies and the discussion of the EU asylum acquis in general, several flaws of the European asylum system in terms of the provision of reception standards to asylum seekers become apparent.

Broad formulation of duties and responsibilities

One of the major issues of the current provision of reception conditions to asylum seekers in the European Union and the asylum system in general, are the European legislative measures itself. The Reception Conditions Directive and the rest of the asylum acquis are framed in a very broad and vague nature, which leaves a lot of leeway to the Member States to interpret the provisions in their way and implement it into their national legislation. One could argue, that through this broad design of the European asylum acquis, the sovereignty of the Member States is upheld, which was a crucial necessity in order to convince all of the Member States to agree upon a common European system in regard to asylum matters. However, the issue with choosing a rather broad definition of the reception conditions to asylum seekers and framing only the minimum standards that have to be met, is the possible creation of a race to the bottom, where Member States are only inclined to satisfy the lowest and basic criteria instead of going above and beyond and provide the best reception conditions to asylum seekers that their national circumstances would allow.

In this respect, an overhaul of the current European asylum system is drastically needed. EU Member States have to be prepared and willing to delegate a certain extent of their sovereignty in asylum matters to the European Union in order to achieve more harmonised reception standards across the European Union. In addition to this, more detailed standards for the reception of asylum seekers have to be established encompassing clearer specifications and performance indicators, which all EU Member States can be monitored and evaluated on by an external, independent body, like the European Asylum Support Office in Malta. In addition to this, especially in light of the migrant crisis 2015 and the increased influx of migrants and asylum seekers, stricter sanctions and fines should be established by the EU in order to deal with EU Member States that are not complying with the EU asylum acquis and are reluctant to share the burden that the influx of asylum seekers might create.

Destitution and overcrowding

Firstly, the Article 17 of the Reception Conditions Directive points out that the provided material reception conditions and standards ought to "provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health". This stance to safeguard that asylum seekers in practice receive adequate reception conditions by the EU Member States, has been strengthened by the judgement on the *Saciri* case taken by the Court of Justice of the European Union, which highlighted, that measures and provisions that are appropriate to warrant subsistence, mental and physical health and dignified living standards to asylum seekers, the provision of reception conditions has to be sufficiently and satisfy the needs, whether it is material or mental, of those that lodge an asylum application.

The Court of Justice of the European Union declared in their decision on the case, that if a Member States decided to provide material reception conditions to asylum seekers in the form of financial support instead of direct public service, the Member State has to ensure that the financial support is high enough to guarantee a dignified and adequate living standard. In addition to this, the financial support provided has to be adequate to safeguard the health of the asylum seekers and guarantee their subsistence.

Comparing this judgement to the reality of the provision of reception conditions, especially in the analysed countries, it cannot always be guaranteed that adequate living standards are available to asylum seekers. Actually, these guarantees have rather

been jeopardised throughout the discussed countries, and as a result, overcrowding in insufficient accommodation facilities and destitution have become an integral part of the various national asylum processes, which is in stark contrast to the reception obligations of the Member States and human rights provisions.

Taking into account the refugee crisis of 2015, however it has also become evident at the same time, that some Member States of the EU are in fact able to adapt to the rapid increase of incoming asylum seekers and establish temporary accommodation facilities for the arriving asylum seekers. Responses like that could be witnessed in Germany especially, where an increased inflow of asylum application could be witnessed. Saying this though, Member States should be aware that emergency accommodation facilities should not be the rule and turn into a long-term solution for lodging asylum seekers for a long period of time.

Weak guarantees and focus on vulnerable people with special needs

Another strong flaw of the European asylum systems and a proof that the European Union is not entirely fulfilling its obligations, is the obligation of the Member States to identify vulnerable groups and special needs of asylum seekers and in return provide reception conditions to those asylum seekers that address the vulnerabilities and special needs. This has been enshrined in Article 22 of the Recast Reception Conditions Directive, however Germany, the Netherlands and the United Kingdom, as shown in the analysis of these countries, have failed to provide adequate support for those with special needs, as well as been unsuccessful in providing tailored accommodation responses to those that require special reception arrangements. An example for the failure of addressing the needs of vulnerable people is Germany and the Netherlands, where separated asylum seeking children have been forced to stay in large accommodation facilities without receiving proper support or assistance.

The unstable nature of the provision of accommodation to asylum seekers in the European Union has had a strong impact on the ability of Member States to evaluate the needs and conditions of vulnerable groups, up to a point where the identification of those groups and their special needs has been disregarded in some cases. In this respect, it is recommended to impose provisions that make it possible to filter out and distinguish those asylum seekers that require special assistance and support as early as

possible in the asylum procedure, so that appropriate measures can be taken in order to cater to their needs.

Use of detention as a legitimate tool

In general, the detention and reception of asylum seekers are superficially two distinct legal and factual concepts, which is further underlined by the provisions in the Recast Reception Conditions Directive. However, the line between providing accommodation to asylum seekers and actually detaining them is still not clear, even though European case law has highlighted that a strong distinction has to be made between those two concepts (Amuur v. France, Application no 19776/92, 25 June 1996). The boundaries between those two concepts are blurred, which means that asylum seekers are actually deprived of their human and fundamental rights, especially their liberty of free movement, in transit areas, such as the airports. Such an approach of detaining asylum seekers that lodge an application in transit or border zones have been witnessed in Germany and the Netherlands (D3, D5 & NL1, 2013/2014). In this respect, it is recommended that clearer provisions are established distinguishing the criteria for detention from the general provision of reception to asylum seekers.

Use of vouchers as material reception conditions

Another flaw of the asylum system, which has been witnessed especially in the United Kingdom, but could be problematic in other countries of the European Union, is the use of vouchers, or in the case of the UK, the Azure card. As mentioned in the case study on the United Kingdom, asylum seekers that receive section 4 support receive the Azure card, which is pre-loaded with 35.39 pounds a week which can only be spend on the essential necessities that asylum seekers might require in their daily life. The flaws of this approach to the provision of material reception conditions has been discussed in detail, however the main remark that can be made in this respect is that the Azure card or any other type of pre-loaded vouchers makes asylum seekers feel less human (UK4, 2015). As one interviewee mentioned in this respect, was that "I feel like I am beggar and I am humiliated every time that I use the Azure card. I am always wondering why I can't be trusted with 36 pounds in cash" (UK2, 2014). Therefore, it is recommended to abolish the use of pre-loaded cards and food vouchers as a manner of providing material reception conditions to asylum seekers in the Member States of the European Union. Instead, it would be suggested to integrate the

asylum support into the existing national welfare regimes in the EU Member States and introduce measures that guarantee that this material asylum support is ensured throughout the whole asylum application, irrespectively whether an asylum seeker is still waiting for his asylum application decision or whether he is a refused asylum seeker. In addition to this, it is advisable to provide the material reception conditions in cash, excluding accommodation and access to health care, just like other regular national welfare benefits.

Restrictive measures in regard to the access to the labour market

Besides the already mentioned flaws that became apparent in the provision of reception conditions to asylum seekers in the United Kingdom, the Netherlands and Germany, another major shortcoming in the domestic asylum systems is the limiting nature of measures that restrict and impede the access to the labour market to asylum seekers. Not only do the Reception Conditions Directive and the Recast limit the access to possible employment to asylum seekers to 9 months, but also the national legislative and administrative procedures get in the way of asylum seekers, which are motivated and have the right professional and educational background, to actually find work and get employment. These measures range from the implementation of a variety of criteria that asylum seekers have to fulfil in order to be eligible to even apply for an open position (e.g. the Netherlands and Germany), up to a restriction of to the freedom of movement, that makes it difficult for asylum seekers to travel to job interviews and their working place (as witnessed in Germany) or imposing barriers that restrain potential employers to hire asylum seekers. In this respect, it is recommended to either abolish the limitations imposed on the access to the domestic labour market for asylum seekers, in particular if their asylum application is decided upon in the regular asylum procedure and a decision on their case is still pending, or to reduce the period in which an asylum seeker is impeded to enter the labour market to a maximum of three months. In addition to this, once a decision on the asylum application has been taken and it was determined that refugee status will be granted, refugees should have similar opportunities and possibilities to access the labour market in the respective EU Member States as the nationals in the concerned countries.

Centralisation vs. decentralisation

During the analysis of all the different aspects of the provision of reception conditions to asylum seekers in Germany, the Netherlands and the United Kingdom, the difference in the administrative set-up of the countries seemed to be having an impact on their approaches to providing reception conditions. While the Netherlands have a centralized administrative background; Germany and the United Kingdom have a fairly decentralised approach in regard to the administrative layout. This has evidently led to differences in the provision to reception conditions to asylum seekers within Germany, as well as the United Kingdom, due to the fact, that a uniform standard of the reception conditions to asylum seekers cannot always be guaranteed due to the involvement of various actors. Linked to the concept of decentralisation in Germany and the United Kingdom is the privatization of certain aspects of the asylum and reception procedure. Through the involvement of private providers, which are just adding to the list of the many involved actors in the provision of reception conditions in those two countries, it became more difficult to control and monitor the compliance of the different provided reception conditions to asylum seekers.

Even though the analysis made use of a comparative and multidisciplinary approach and analysed various aspects that encompass the provision of reception conditions to asylum seekers, such as the (a) access to material reception conditions, (b) the access to education and employment, and finally (c) the access to health care, there were some limitations posed to the study.

The topic of this thesis is of a delicate nature, due to the fact that it is looking at the reception conditions of asylum seekers, which are a vulnerable group of people; and on the other hand, it analyses the different national approaches to provision of these reception conditions and it discusses the flaws of their approaches. During the data collection process, especially during the interview phase, this second aspect has become evident. Due to the fact, that this study aims at understanding the approaches and the decision-making processes of Germany, the Netherlands and the United Kingdom in relation to the provision of reception conditions to asylum seekers, it appeared to be rather difficult to find adequate interview partners from the governmental sphere, that would be willing to share their experiences. In a few cases, the interview partners were hesitant, due to the fact, that they didn’t want to criticize the approaches of their government or point out flaws of the existing system.

This study focused on the experiences and views of state officials and NGOs in relation to the reception of asylum seekers and its compliance with existing EU and international provisions. In addition to this, it might be interesting for future research, to include asylum seekers in the actual data collection process, as they are the ones that actually are affected by the provision of reception conditions and their opinion would add value to the existing findings.

The second focus of this study was the analysis of the findings concerning the provision of reception conditions to asylum seekers in light of the cosmopolitan idea. In existing literature, cosmopolitanism is very often described as a normative concept, and this study aimed at highlighting the potential of cosmopolitanism to not only be used as an empirical tool that can explain social phenomena and incidents of the 21st century, but also the ability of the concept of cosmopolitanism to illuminate the field of asylum. In this regard, Chapter 3 extensively discussed the different aspects of cosmopolitanism and developed a comprehensive list of cosmopolitan indicators, which were divided into three categories: (a) moral, (b) political, and (c) cultural cosmopolitan indicators. Hereafter, the study continued to transform these theoretical tenets of cosmopolitanism into statements and indicators, that could be applied in the analysis of the provision of reception conditions to asylum seekers.

During the further operationalisation of the theoretical indicators of cosmopolitanism, it became clear, that the individual theoretical tenets can not necessarily be operationalized individually into empirical indicators and utilized to capture the complexity of the cosmopolitan concept. Thus, the methodological solution and discussion presented in the table in Appendix 3 followed the assumption that the theoretical cosmopolitan indicators are operationalized into indicators and applied in empirical research and are manifested in a multi-dimensional nature. Through this original approach to cosmopolitanism, it was proven that, cosmopolitanism can indeed be used as an analytical tool in social sciences.

When the cosmopolitan statements and indicators were combined with the findings of Chapter 7, which presented the reception conditions provided to asylum seekers in Germany, the Netherlands and the United Kingdom, it became evident, that in regard to the adequate provision of reception conditions to asylum seekers, the three analysed countries can barely be described as being cosmopolitan. In theory, they all comply

with and commit to various human and fundamental rights provisions, which would be in line with many aspects of a moral cosmopolitan approach. However, if one looks beyond this theoretical commitment and focuses on the provision of reception conditions in practice, it becomes clear, that Germany, the Netherlands and the United Kingdom in relation to their approaches to the reception of asylum seekers are far from being cosmopolitan. Especially the high degree of economic, cultural and institution protectionism of many aspects of the reception of asylum seekers, such as the access to employment or health care upholded the fact, that in reality EU Member States are far from being cosmopolitan in relation to asylum.

This conclusion raises the question though, what consequences these findings have for the European Union, which is being seen as the prime example of a cosmopolitan actor? How can the European Union uphold this cosmopolitan ideal, when in practice their Member States are acting against cosmopolitan principles and values?

The created cosmopolitan framework with its extensive list of indicators and statements that constitute a cosmopolitan outlook, can be helpful in analyzing other areas of the European Union in order to find out whether similar findings can be demonstrated, for instance when looking at culture and media in the European Union, or trade within the EU. But the theoretical framework of cosmopolitan indicators can also be applied to the analysis of other social phenomena, which makes it an original contribution the existing knowledge.

9.2. The 2015 refugee crisis and its impact

So far, the thesis discussed the provision of reception conditions to asylum seekers in Germany, the Netherlands and the United Kingdom from 1999 until 2015. While this thesis was written events occurred that in the long-run will have a crucial impact on the approach that Member States will take in terms of asylum matters and the provision of reception conditions to asylum seekers.

In 2015, the European refugee and migrant crisis began, when increasing numbers of migrants and asylum seekers travelled to the European Union, in most cases via the Mediterranean Sea, to seek asylum. Most of these people that crossed the Mediterranean Sea in the time from January 2015 and March 2016, according to the

United Nations High Commissioner for Refugees, were from Syria, Afghanistan and Iraq. With growing illegal ship crossings of the Mediterranean Sea, the number of tragic shipwrecks and deaths at sea also increased to record levels by the summer of 2015, when five boats carrying around 2,000 migrants and asylum seekers sank in the Mediterranean Sea, which lead to the death of around 1,200 people (UNHCR,2015).

The increased number of people fleeing across the Mediterranean Sea to seek shelter in Europe took place in a time of ongoing conflict and refugee crises taking place in a variety of African and Asian countries, which led to a dramatic increase in the number of forcibly displaced persons worldwide hitting the 60 million mark, which constitutes the highest level since World War II (UNHCR, 2015). This high number of sea crossings meant a high influx of migrants and asylum seekers into the EU Member States bordering the Mediterranean Sea, and in this respect Italy received the highest amount of sea arrivals from Libya in 2014. As a response to the growing number of sea arrivals, the Italian government asked for further funding for the Operation Mare Nostrum, which as an operation started by the Italian government in 2013 in order to tackle the increased immigration to the European Union and to prevent further ship wreckages such as Lampedusa. However, the other EU Member States dismissed the idea of further funding of the Operation Mare Nostrum arguing that the required funding would exceed the EU budget. As the Operation Mare Nostrum was suspended, the EU introduced the Operation Triton, which is a border security operation supervised by Frontex. Even though Operation Triton aimed at minimizing the deaths at sea, the number of migrants drowning while crossing the Mediterranean Sea in order to reach Europe has significantly increased culminating in April 2015 with various Libyan migrant shipwrecks resulting in 1,000 deaths just in that month. The International Organisation for Migration criticised Operation Triton for the fact that the deaths at sea have risen nine times after Operation Mare Nostrum ceased its operation. Following on from the Libya migrant shipwreck, the EU and the governments of the Member States came together in order to increase the budget available to Operation Triton to tackle the increasing migrant crisis. This step however was strongly criticised by Amnesty International, which is arguing that the response taken by the European Union to the 2015 migrant crisis and the increasing incidents in the Mediterranean Sea is rather “a face-saving not a life-saving operation” (Amnesty International, 2015).

But not only Italy suffered a high influx of migrants in a short period of time. In the beginning of 2015 Greece overtook Italy as the first EU country of arrival. In summer 2015, a shift started to happen with migrants and refugees travelling through south-eastern Europe in order to reach northern European countries, such as Germany and Sweden. Since April 2015, the European Union has increasingly struggled to cope with the migrant and refugee crisis, increasing funding for border patrol operations in the Mediterranean, preparing approaches to fight migrant smuggling and human trafficking, launching Operation Sophia and proposing a new quota system to relocate and resettle asylum seekers among EU Member States and minimize the burden on EU Member States on the outer borders of the European Union.

According to Eurostat, EU Member States have received 1.2 million asylum applications in 2015, a number more than double than that of the previous year. In this respect, Germany, Hungary, Sweden, and Austria received around two-thirds of the EU's asylum applications in 2015, with Hungary, Sweden, and Austria being the top recipients of asylum applications per capita (Eurostat, 2015).

In summer 2015, at a meeting of the European Council, the Member States of the European Union agreed to relocate migrants from Greece and Italy, in order to disperse the burden of the migrant crisis more equally across all of the EU Member States. In order to deal with the migrants and asylum seekers present in the EU it was agreed though that this relocation scheme would be on a voluntary basis and there would be no mandatory quotas imposed on the Member States pointing out how many migrants they actually have to take in (BBC News, 2015). Besides this agreement at the European Council, several European countries started to build fences and barriers along their borders in order to prevent migrants from crossing into the European Union, in this respect Hungary closed off its border with Serbia, while Bulgaria erected a fence along its border with Turkey. As a result of the growing incentives of shutting of the EU borders, the Hungarian government closed off the railway station in Budapest in order to stop migrants to travel through the European Union. The Hungarian government justified this action by claiming, that they just attempt at enforcing provisions set out in the Dublin Regulation, which states that asylum seekers should lodge their asylum application in the first EU Member State that they actually enter. But many of the migrants that were at the railway station wanted to make their way to Germany and claim asylum there. As Hungary closed off any possibilities for

migrants and asylum seekers to get to Germany or the rest of the EU Member States, the Austrian chancellor issued a statement saying that Austria and Germany have agreed to let migrants and asylum seekers cross their borders. Following on from this, the Hungarian government stop all of the attempts to register asylum seekers and migrants, and instead organised buses to bring them to the border, so that they can enter Austria and Germany.

On the 5th of September 2015, Angela Merkel, the German Chancellor, announced that there are "no limits on the number of asylum seekers" that Germany is willing to take in. In addition to this, Merkel argue that "as a strong, economically healthy country we have the strength to do what is necessary" (Irish Independent, 2015). This comment by Angela Merkel led to hundreds of migrants and asylum seekers attempting to travel to Germany and lodge their asylum application. As an example, migrants broke through police barriers on Hungary's border with Serbia chanting "Germany, Germany" and making their way to Budapest to be transported to Germany (BBC News, 2015). Migrants that tried to get from Germany to Sweden by train, were stopped on the 9th of September by border authorities and police in Denmark. Many of the migrants refused to leave the trains and they started walking along the motorway to make their way to Sweden. In response to this, the Danish police had to close off the motorway and immediately suspend all rail connections with Germany. The main rationale for the migrants to get to Sweden, was the fact that Sweden promised to issue residence permits to all Syrian asylum seekers (BBC News, 2015).

Although the German government proclaimed that they are able to deal with the increasing number of asylum seekers and migrants, the government had to introduce temporary controls on its border with Austria in order to tackle the inflow of asylum seekers and migrants. In pursuance of this, all trains between Austria and Germany were suspended temporarily. Sigmar Gabriel, the German vice-chancellor announced that Germany was "at the limit of its capabilities" (BBC News, 2015).

On the 22nd of September, the Justice and Home Affairs Council, consisting out of the EU interior ministers attended a meeting and decided with a majority vote to relocate 120,000 refugees across the territory of the European Union. However, Hungary, Romania, Slovakia and the Czech Republic voted against the relocation scheme, which intended at distributing the refugees over a period of two years from Italy and Greece. The scheme is restricted to refugees in need of international protection specifically and

not including economic migrants. The European Commission furthermore proposed that the relocation scheme should be mandatory for all EU Member States (BBC News, 2015).

In autumn 2015, the European Council agreed on an action plan in cooperation with Turkey in order to limit the flow of migrants to Europe. The European Council and Turkey agreed upon a faster visa liberalization for Turkish nationals and renewed talks on Turkey's accession to the European Union in return.

During the New Year's celebrations 2016 in Germany, hundreds of accounts of thefts, sexual assaults, and five rapes were reported in various cities, predominantly in Cologne though. The Chief Prosecutor stated that 'the overwhelming majority' of the suspects were illegal immigrants and asylum seekers who had just recently arrived from the Middle East and North Africa (Associated Press, 2016). These incidents led to criticism against mass migration and started the debate about the sustainability of the asylum policies in Germany as well as the social and cultural differences between Islamic and European countries (BBC News, 2016).

In spring 2016, the Balkan countries proclaimed the introduction of stricter restrictions on the entry of migrants, as an attempt to close the 'Balkan route'. In this respect, Croatia, Serbia, Macedonia and Slovenia announced that only those migrants that plan to apply for asylum or those that need humanitarian help will be allowed to enter these countries, while everyone else without valid documents will be banned from entering (BBC News, 2016). In addition to this, the Hungarian government declared the state of emergency as a result of the migrant crisis and send additional police and military personnel to the borders.

But the increasing resentment against migrants and asylum seekers could also be felt in Germany. On the 12th of March 2016, about 3,000 people took part in a demonstration against the German government's 'open door' asylum policy (Deutsche Welle, 2016). In addition to this, the right-wing nationalist party AFD gained a lot of votes in the German state elections, with their campaign against mass immigration and the 'open door' asylum policy of the German government (Reuters, 2016).

Besides this, the EU and Turkey implemented their action plan and agreed to tackle illegal migration. It was decided, that illegal migrants that arrive in Greece will be send back to Turkey in cases where they don't apply for asylum or their asylum claim is

rejected. Each Syrian migrant that will be send back though will be replaced with a Syrian refugee who will be resettled in the Member States of the European Union. In return to this, the European Union is bound to support Turkey financially in order to provide reception to refugees and will implement provisions enabling Turkish nationals to travel freely into the Schengen area (BBC News, 2016).

In May 2016, the European Commission proposed the introduction of fines for EU Member States that do not comply with taking their quota of asylum seekers. In this respect, the Commission proposed to fine Member States 250,000 □ for each asylum seeker that they fail to accommodate. The income of the fines could then be used in order to support those countries that suffer the most from the inflow of migrants and asylum seekers such as Italy and Greece (BBC News, 2016).

Up until the completion of this thesis, the situation in the European Union in regards to the refugee crisis and the influx of migrants and asylum seekers has barely changed. Kim Clausen, the field coordinator on the search and rescue boat Bourbon Argos of the NGO MSF, is of the opinion that "we are living in a really shameful chapter for European history- we can't even treat people like human beings" (The Independent, 2016). In addition to this, Maria Grazia Giammarinaro, working for the Office for the UN High Commissioner for Human Rights, said that

> "Some countries have adopted restrictive approaches, which exacerbated vulnerabilities of migrants, refugees and asylum seekers to human trafficking. […] It is time to take action, and put in place policies based on shared responsibilities, aimed at ensuring survival, relocation and social inclusion of people fleeing conflict, and preventing trafficking and exploitation in the context of missed migration flows of people" (The Independent,2016).

Especially, the recent incidents have shown the importance and necessity of a thorough examination of the current asylum system in the European Union. This thesis can be seen as a starting point for the analysis of the area of asylum in the European Union. In this regard, future research can build upon the framework established in this study and extend the comparative analysis of the provision of reception conditions to asylum seekers to other Member States of the European Union. How would Member States located at the European borders approach the provision of reception conditions to asylum seekers? Could their approaches be characterised as being cosmopolitan?

9.3.Concluding remarks

As a concluding remark, one can say, that when put to test, the established common standards on the provision of reception conditions have not only failed to guarantee adequate living conditions for those seeking asylum in the European Union but the approaches of the Member States in relation to the provision of these reception conditions cannot be characterised as being cosmopolitan. Although the creation of the Common European Asylum System aimed at a closer cooperation and coordination between the EU Member States and a further harmonisation of the various national standards, the European Union and the analysed countries seem to be rather reluctant to establish common and resilient asylum systems that guarantee that asylum seekers receive adequate reception conditions.

In a nutshell, Zeid Ra'ad Al Hussein, the current United Nations High Commissioner for Human Rights sums up the dilemmas of the current asylum system perfectly in one of his speeches reflecting on the first year in this position:

> *"I feel exhausted and angry. Exhausted, because the system is barely able to cope given the resources available to it, while human misery accelerates. […] And angry, because it seems that little that we say will change this. Unless we change dramatically in how we thing and behave as actors – Member States, inter-governmental organisations and non-governmental organisations alike – all of us will be inconsequential in the face of such mounting violations. Our lives are connected to one another. Actions and decisions in one country affect many other States; they shake the lives of many people, no less important and no less human than you and I. When the fundamental principles of human rights are not protected, the centre of our institution no longer holds."*

Appendix 1:

Interview Questions I

State Authorities/ Governmental Bodies

1. Could you tell me something about your role and responsibilities within this institution/ organisation?
2. Could you tell me something about the factors that might impact your policy-/decision-making related to asylum seekers?
3. Besides national asylum policies, the EU has brought forward the asylum acquis, which regulates different aspects of asylum. In how far are those regulations and directive translated into national and regional asylum policies?
4. What are the main challenges you face providing accommodation for asylum seekers?
5. What do you see as the main obstacles asylum seekers face in relation to work and education?
6. What are, in your opinion, the main burdens in providing health care to asylum seekers?
7. What is your perspective on how asylum seekers should integrate?
8. What are the main challenges in supporting integration of asylum seekers?
9. What do you consider the strength of the centralized/ decentralized approach of dealing with the accommodation of asylum seekers?
10. What do you see as its limitations?
11. In how far is the state regulating/ supervising the private reception centres?
12. Have you encountered any differences in the human rights outcomes for asylum seekers in private and state accommodations?
13. To what extent are NGOs involved in your work?

14. Could you think of advantages and limitations, when it comes to the cooperation with NGOs or other volunteering bodies?

15. What do you see as the main challenges in translating asylum policies that seek to guarantee appropriate living conditions into practice?

Appendix 2:

Interview Questions II

NGOs /Advocacy

1. Please could you tell me something about your role and responsibilities within this organization?
2. Could you elaborate in how far your organization works with asylum seekers or supports them?
3. Could you tell me something about factors that influence and shape your work related to asylum seekers?
4. What are the main challenges you face providing accommodation for asylum seekers?
5. What do you see as the main obstacles asylum seekers face in relation to work and education?
6. What are, in your opinion, the burdens in providing health care to asylum seekers?
7. What is your perspective on how asylum seekers should integrate?
8. What are the main challenges in supporting integration of asylum seekers?
9. To what extent do you work together with state institutions or bodies?
10. Could you give an example of a good cooperation with the governmental institutions in terms of working together in the provision of reception conditions to asylum seekers?
11. Have you ever encountered limitations or problems in the collaboration with these institutions?
12. Would you say that the state is using the potential and expertise of NGOs to provide appropriate reception conditions to asylum seekers?
13. What do you see as the main challenges that the state could face in terms of translating asylum policies that seek to guarantee appropriate living conditions in practice?

14. Would you say that the existing provisions and measures that are in place guarantee the compliance with human right norms?

15. Where do you see potential for improvement of the compliance with human right provisions (e.g. more involvement of NGOs, revision of existing policies)?

Appendix 3: Operationalisation of cosmopolitan theoretical indicators

Statements and characteristics		***Theoretical cosmopolitan indicators***
Understanding that the causes of the refugee crisis are global and therefore collective approaches and solutions must be developed, e.g. responses to climate change, civil wars	⇨	A recognition of 'collective fortunes' which require collective solutions (Held,2010) An awareness of global risks and the global 'community of fate' (Beck, 2006) Feeling pity and acting on images of distant suffering (Chouliaraki, 2006/ 2008)
Understanding that the refugee crisis is not 'something happening far away' but actually having an impact on everybody	⇨	A recognition of 'collective fortunes' which require collective solutions (Held,2010) An awareness of global risks and the global 'community of fate' (Beck, 2006) Feeling global responsibility (Nussbaum, 1994/ 1997)
Campaigns for human rights by NGOs or other organisations or groups	⇨	Desire to make the world more 'cosmopolitan' through campaigning for human rights (Smith, 2007; Van Hooft, 2007)
Commitment to legislative measures that promote human rights	⇨	Desire to make the world more 'cosmopolitan' through campaigning for human rights (Smith, 2007; Van Hooft, 2007) The capacity to create a shared normative culture (Delanty, 2009)
Free access to the domestic labour market, health care and education for migrants and asylum seekers	⇨	Low degree of economic, cultural & institutional protectionism (Roudometof, 2005) An awareness of global risks and the global 'community of fate' (Beck, 2006) The capacity to create a shared normative culture (Delanty, 2009) Feeling global responsibility (Nussbaum, 1994/ 1997)

		Feeling pity and acting on images of distant suffering (Chouliaraki, 2006/ 2008)
Possibility for asylum seekers to contribute to the culture of the receiving country	⇨	Low degree of economic, cultural & institutional protectionism (Roudometof, 2005) All local ethnic, religious and cosmopolitan cultures and customs interpenetrate (Beck, 2006) Inclusive valuing of the cultural other
Willingness of national government to collaborate with other national governments	⇨	Willingness to expand political community (Pichler, 2008) Low degree of economic, cultural & institutional protectionism (Roudometof, 2005)
Participation of countries in supranational entities, such as the UN or the European Union	⇨	Trust in supranational institutions (Norris & Inglehart, 2009) Awareness of the interconnectedness of different political communities (Held, 2002/2005)
Willingness to give up the national sovereignty in regard to legislation in certain fields, such as asylum and immigration to higher entities, e.g. the European Union	⇨	Trust in supranational institutions (Norris & Inglehart, 2009) Awareness of the interconnectedness of different political communities (Held, 2002/2005)
Imposing hurdles for non-citizen to enter the European Union and the creation of the 'European Fortress'	⇨	The impossibility of living in a world society without borders (Beck, 2006)
Promoting multicultural societies and the integration of migrants and asylum seekers, through programmes and initiatives	⇨	Willingness to engage with the other (Hannerz, 1990) A willingness to take risks by virtue of encountering the "other" (Szerszynski & Urry, 2002) Curiosity about many places, people and cultures (Beck, 2006)

Provision of adequate reception conditions to asylum seekers		The concept of universal hospitality (Kant, 1795) Belonging to a ‘greater society’ (Merton, 1968)

List of references

AIDA (2013). *National Country Report Germany*.

AIDA (2015). *National Country Report Germany.*

AIDA (2014) *National country report: The Netherlands.*

AIDA (2014). *Country Report: The United Kingdom*.

Anderson, P. (2001). 'You Don't Belong Here in Germany…': On the Social Situation of Refugee Children in Germany. *Journal of Refugee Studies* 14(2):187-199.

Appiah,K.A. (2007).*Cosmopolitanism: Ethics in a World of Strangers.* London: W.W. Norton & Company.

Archibugi, D. (2008). *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy.* Princeton University Press.

Archibugi, D. (2010) 'The Architecture of Cosmopolitan Democracy' in Held, D & Brown G.W. (eds) *The Cosmopolitanism Reader*. Cambridge: Polity Press.

Archibugi,D. & Held,D. (2011). *Cosmopolitan Democracy: Paths and Agents*. ISA Annual Convention 2011.

Arendt, H. (1968). The Decline of the Nation-State and the End of the Rights of Man, in *The Origins of Totalitarianism.* New York: Harcourt Brace.

BAMF (2012). *Asylmigration nach Deutschland*. Retrieved from: http://web.apb-tutzing.de/apb/cms/uploads/media/Schimany_Asylmigration_nach_Deutschland.pdf.

Barry,B. (1998). International Society from a Cosmopolitan Perspective, in D.Maple and T.Nardin (eds.), *International Society*. Princeton NJ: Princeton University Press.

BBC (2000). *58 dead in port lorry*. Retrieved from: http://news.bbc.co.uk/1/hi/uk/796791.stm.

BBC (2004). *Tide kills 18 cockle pickers*. Retrieved from: http://news.bbc.co.uk/1/hi/england/lancashire/3464203.stm.

Beck, U. (2000). The Cosmopolitan Perspective: Sociology of the Second Age of Modernity. *British Journal of Sociology* 51(1). pp. 79-105.

Beck, U. (2002) 'The Cosmopolitan Society and its' Enemies' in Theory, Culture & Society 19(1-2): 17-44. SAGE Publications.

Beck, U. (2002) 'The Cosmopolitan Perspective: Sociology in the Second Age of Modernity' in Vertovec, S & Cohen, R (eds) Conceiving Cosmopolitanism: Theory, Context, and Practice. Oxford: Oxford University Press.

Beck, U. (2006). *The Cosmopolitan Outlook.* Cambridge: Polity Press.

Beitz,C. (1975). Justice and International Relations, *Philosophy and Public Affairs*, Vol 4 (4), pp.360-89.

Boom,J de,Leerkes,A. & Engbersen,G. (2011). Illegale migranten in Jennissen,R.P.W. (ed.) (2011). *De Nederlandse migratiekaart*. Den Haag.WODC.

British Red Cross & Boaz Trust (2013). *A Decade of Destitution: Time to Make a Change*.

British Red Cross (2014). *The Azure Payment Card: The Humanitarian Cost of a Cashless System.*

Bolini,P.(1997). Asylum Seekers in Europe: Entitlements, Health Status, and Human Rights Issues, in European Journal of Health Law, Volume 4, Issue 3, pages 253 – 265.

Brown, G.W. (2010). Kant's Cosmopolitanism, in *The Cosmopolitanism Reader*. Edited by Garrett Wallace Brown & David Held. Cambridge: Polity Press.

Brown,G.W. (2011). Bringing the State Back into Cosmopolitanism: The Idea of Responsible Cosmopolitan States, *Political Studies Review*, Vol. 9, pp.53-66.

Bundeszentrale für politische Bildung (2005). *Migration, Ausländerbeschäftigung und Asylpolitk in der DDR*. Retrieved from: http://www.bpb.de/gesellschaft/migration/dossiermigration/56368/migrationspolitik-in-der-ddr?p=all.

Chouliaraki, L. (2008). 'The Mediation of Suffering and the Vision of a Global Public' in Television and New Media. SAGE Publications.

Caney, S. (2005). *Justice beyond Borders*. Oxford: Oxford University Press.

Delanty,G.(2009).*The Cosmopolitan Imagination.* Cambridge:Cambridge University Press.

Delanty, G. & Inglis, D. (2011). *Cosmopolitanism.* Oxford: Routledge.

DESA United Nations (2006). *Federal Republic of Germany- Public Administration Country Profile.* Retrieved from: http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023309.pdf.

Diogenes Laertius (1958) (Translated by R.D. Hicks). *Lives of Eminent Philosophers,* vol. II. London: Heinemann. p.103.

Dutch Council for Refugees and Defence for Children. (2012). Gezinslocaties voor uitgeprocedeerde gezinnen schadelijk en nutteloos.

Duchrow,J. & Spieß,K. (2006*). Flüchtlings- und Asylrecht. Mit dem neuen Zuwanderungsgesetz und den europäischen Regelungen*. München: Deutscher Taschenbuch Verlag.

Ersanili,E. (2007). Country Profile Netherlands. *Focus Migration* No.11.

Eurostats (2014). *Eurostats Pressemitteilung vom 24.März 2014*. Retrieved from: http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-24032014-AP/DE/3-24032014-AP-DE.PDF.

European Commission. (2013). EMN Focused Study: The Organisation of Reception Facilities for Asylum Seekers in Different Member States. Retrieved from: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/19.netherlands_national_report_reception_facilities_final_en.pdf.

Fazel Mina, Stein Alan (2003). Mental health of refugee children: comparative study. *BMJ* (327): 134.

Fine,R.(2009) Cosmopolitanism and Human rights: Radicalism in a global age. *Metaphilosophy* vol.40 no.1.

Fine, R. (2011). Cosmopolitanism and Natural Law: Rethinking Kant, in *The Ashgate Research Companion to Cosmopolitanism.* Edited by Rovisco, M. & Nowicka, M. Ashgate Publishing Limited.

Glenn,H.P. (2012). The Cosmopolitan State, Kansas Law Review, Vol.61. pp.736-751.

Gilroy, P. (2004) *After Empire: Melancholia or Convivial Culture*.Abingdon, Oxon, Routledge.

Grayson, J. 2016. Solidarity Activism, Campaigning and Knowledge Production: Challenging Refugee Inc. The Case of G4S and Corporate Asylum Markets. *Concept*, 7(2), 1-10.

Guardian (2002). *Sangatte refugee camp*. Retrieved from: http://www.theguardian.com/uk/2002/may/23/immigration.immigrationandpublicservices1.

Habermas,J. (2006). *The Divided West*. Cambridge: Polity Press.

Hannerz,U. (2004) .Foreign News: Exploring the World of Foreign Correspondents. University of Chicago Press.

Hannerz, U. (2010). 'Afterthoughts: A World Watching' in Social Anthropology/Anthropologie Sociale 18(4): 448-453. European Association of Social Anthropologists.

Hansen,D.T. (2010).'Chasing Butterflies Without a Net: Interpreting Cosmopolitanism' in Studies in Philosophy and Education 29(2): 151-166. Springer.

Harvey, D. (2009). Cosmopolitanism and the Geographies of Freedom. New York: Columbia University Press.

Held,D. (1995). *Democracy and the Global Order*. Cambridge: Polity Press.

Held, D. (2002). Law of states, law of peoples. *Legal Theory* 8 (1). pp.1-44.

Held,D.(2005). Principles of cosmopolitan order, in G.Brock & H. Brighouse (eds.). The *Politcal Philosophy of Cosmopolitanism*. Cambridge: Cambridge University Press.

Held,D. McGrew,A. (2007). *Globalization Theory*. Cambridge: Polity Press.

Held, D. (2010) Cosmopolitanism: Ideals, Realities and Deficits. Cambridge: Polity Press.

Held, D. (2011). Cosmopolitanism, Democracy and the Global Order, in *The Ashgate Research Companion to Cosmopolitanism.* Edited by Rovisco, M. & Nowicka, M. Ashgate Publishing Limited.

Herbert,U. (2001). *Geschichte der Ausländerpolitik in Deutschland. Saisonarbeiter, Zwangsarbeiter, Gastarbeiter, Flüchtlinge*.Bundeszentrale für politische Bildung 410. München:C.H.Beck.

Home Affairs Select Committee (2014). *Asylum Seventh Report of Session 2013-14, HC71.*

Home Office Research and Statistics Directorate (2006). *Immigration Statistics: Asylum Tables.*

Home Office, UK Visas and Immigration, *Immigration rules,* 2014, Retrieved from: https://www.gov.uk/government/collections/immigration-rules.

Home Office (2012). *Home Office Framework Document for the Migration Advisory Committee (MAC).* Retrieved from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257247/framework-document-mac.pdf.

Home Office (2015). *Asylum Policy Instructions.* Retrieved from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/420295/Further_Submissions_v8_0.pdf

Home Office. Various years. Asylum Statistics. London: Home Office.

Home Office. Various years. Control of Immigration Statistics. London: Home Office.

House of Commons- Home Affairs Select Committee (2014). *Asylum: Seventh Report of Session 2013-14, HC 71*.

House of Lords debates (6th January 2015), Column WA113.

Independent Chief Inspector of Borders and Immigration (2012). *Asylum: A Thematic Inspection of the Detained Fast Track.*

Independent Chief Inspector of Borders and Immigration (2013). *An Inspection of Juxtaposed Controls.*

Immigration and Asylum Chamber (2014). *The Tribunal Procedure Rules*.

Kant, I. & Reiss (1991). *Kant: Political Writings.* Cambridge: Cambridge University Press.

Kant, I. (1998) (Translated by Mary Gregor). *Groundwork of the Metaphysics of Morals.* Cambridge: Cambridge University Press.

Kant, I. (2007) (Translated by Allen W. Wood). Idea for a Universal History with a Cosmopolitan, in *Anthropology, History, and Education*. Cambridge: Cambridge University Press.

Kendall, G., Woodward, I. & Skrbis, Z. (2009) The Sociology of Cosmopolitanism: Globalization, Identity, Culture & Government. New York: Palgrave McMillan.

Karin Kloosterboer (2009). Kind in het centrum: kinderrechten in asielzoekerscentra.

Kontakt- und Beratungstelle für Flüchtlinge und Migranten e.V. *Geschichte der Asyl- und Flüchtlingspolitik der Bundesrepublik Deutschland*. Retrieved from: http://www.kub-berlin.org/index.php/ru/fachinformationen/36-geschichte-der-asyl-und-fluechtlingspolitik-der-bundesrepublik-deutschland.

Kurasawa, F. (2011). Critical Cosmopolitanism, in *The Ashgate Research Companion to Cosmopolitanism.* Edited by Rovisco, M. & Nowicka, M. Ashgate Publishing Limited.

Leibnizforum für Raumwissenschaften (2014). *Government and Administration*. Retrieved from: http://www.arl-net.de/commin/germany/government-administration.

Linn,M. (1985). Effects of Unemployment on Mental and Physical Health. *American Journal of Public Health*, 75 (5), pp.502-506.

Lu,C. (2000). The One and Many Faces of Cosmopolitanism, *Journal of Political Philosophy*, Vol.8 (2), pp.244-67.

Lucassen, J. and Penninx, R. (1997). *Newcomers. Immigrants and Their Descendants in the Netherlands 1550-1995*. Amsterdam/Gouda: Het Spinhuis.

Malcomson,S. (1998). The Varieties of Cosmopolitan Experience, in Cheah,P. & Robbins, B. (eds.), *Cosmopolitics.* Minneapolis, MN: University of Minnesota Press.

Matthews,A. (2012). *Landing in Dover: The Immigration process undergone by unaccompanied children arriving in Kent*.

Merton, R. (1949/1968) Social Theory and Social Structure. New York: Free Press.

Mueller,A. (2013). *The Organisation of Reception Facilities for Asylum Seekers in Germany.*Federal Office for Migration and Refugees.National Audit Office (2014). *COMPASS contracts for the provision of accommodation for asylum seekers.*

Norredam,M. et al. (2005). Access to Health Care for Asylum Seekers in the European Union – A Comparative Study of Country Policies. *European Journal of Public Health, 16 (3),* pp.285-289.

Norris, P & Inglehart, R. (2009) Cosmopolitan Communications: Cultural Diversity in a Globalized World. New York: Cambridge University Press.Nuscheler,F. (1995). *Internationale Migration. Flucht und Asyl*. Opladen: Leske + Budrich.

Nussbaum, M. (1996). Patriotism and Cosmopolitanism, in *For Love of Country: Debating the Limits of Patriotism.* Edited by Cohen, J. Chicago: University of Chicago Press.

Nussbaum, M.C. (1997) 'Kant and Stoic Cosmopolitanism' in Journal of Political Philosophy5(1): 1-25. Blackwell.

Nussbaum, M. (1997). *Cultivating Humanity: A classical defense of reform in liberal education*. Cambridge: Harvard University Press.

Phillimore,J. & Goodson,L. (2006). Problem or Opportunity? Asylum Seekers, Refugees, Employment and Social Exclusion in Deprived Urban Areas, in Urban Studies vol. 43 no. 10, p. 1715-1736.

Phillips, T& Smith, P. (2008). 'Cosmopolitan beliefs and cosmopolitan practices: An empirical investigation' in Journal of Sociology 44(4): 391-399. London: SAGE Publications.

Pichler, F. (2008) 'How Real is Cosmopolitanism in Europe?' in Sociology 42(6): 1107-1126. London: SAGE Publications.

Pichler, F. (2012) 'Cosmopolitanism in a Global Perspective: An International Comparison of Open-Minded Orientations and Identity in Relation to Globalization' inInternational Sociology 27(1): 21-50. SAGE Publications.

Pogge, T. (1992). Cosmopolitanism and Sovereignty. *Ethics* 103. pp. 48-75.

Pogge,T. (2002). *World Poverty and Human Rights.* Cambridge: Polity Press.

Pollard, N., Latorre, M. and Sriskandarajah, D. (2008) *Floodgates or turnstiles: Post-EU enlargement migration flows to (and from) the UK*. London: ippr.

Refugee Council and Maternity Action (2013). *When Maternity Doesn't Matter*.

Rienzo,C.(2016). Migrants in the UK Labour Market: An Overview. Retrieved from: http://www.migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/Briefing-Migrants_UK_Labour_Market.pdf.

Roberts, K. and Harris, J. (2002a) Disabled People in Refugee and Asylum Seeking Communities, Bristol, Policy Press.

Rosen, A.D. (1993). *Kant's Theory of Justice.* New York: Cornell University Press. p.9.

Rosenfeld, S. (2002). Citizens of Nowhere in Particular: Cosmopolitanism, Writing, and Political Engagement in Eighteenth- Century Europe. *National Identities* 4 (1). pp. 25-43.

Roudometof, V. (2005) 'Transnationalism, Cosmopolitanism and Globalization' In Current Sociology53(1): 113-135. SAGE Publications.

Roudometof, V. (2012) 'Cosmopolitanism and Empirical Social Research' in 210 Delanty, G (ed) Routledge Handbook of Cosmopolitanism Studies. London, New York: Routledge.

Saito, H. (2011) 'An Actor Network Theory of Cosmopolitanism' in Sociological Theory 29(2): 124-149. American Sociological Association.

Sanderse C., Verweij A., Beer J. de (2011). *Migratie: Wat waren de belangrijkste ontwikkelingen in het verleden?.* Volksgezondheid Toekomst Verkenning, Nationaal Kompas Volksgezondheid. Bilthoven: RIVM.

Scruton, R. (1982). *A Dictionary of Political Thought.* London: Macmillan.p.100.

Skrbis, Z & Woodward, I. (2007) 'The Ambivalence of Ordinary Cosmopolitanism: Investigating the Limits of Cosmopolitan Openness' in The Sociological Review 55(4): 730-747. Blackwell.

Smith, W. (2007) 'Cosmopolitan Citizenship: Virtue, Irony and Worldliness' in European Journal of Social Theory10(1): 37-52. SAGE Publications.

Somerville, W. (2007). *Immigration under New Labour*. Bristol: Policy Press.

Somerville, W. (2009). *United Kingdom: A Reluctant Country of Immigration*. Retrieved from: http://www.migrationpolicy.org/article/united-kingdom-reluctant-country-immigration.

Szerszynski, B & Urry, J. (2002) 'Cultures of Cosmopolitanism' in The Sociological Review 50(4): 461-481. Oxford: Blackwell Publishing.

Taylor,S. & Sidhu,R.K (2012). Supporting refugee students in schools: what constitutes inclusive education?.*International Journal of Inclusive Education*, Vol.16 (1).

Toulmin,S. (1990). *Cosmopolis: The Hidden Agenda of Modernity*. New York: The Free Press.

UK Visas and Immigration (2015).*Certification guidance for non-EEA deportation cases: section 94 B,* Retrieved from: https://www.gov.uk/government/publications/certification-guidance-for-non-eea-deportation-cases-section-*94b.*

UK Visas and Immigration (2015). Detained fast track processes. Retrieved from: https://www.gov.uk/government/publications/detained-fast-track-processes-instruction.

UNCAT (2013). *Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its 50th session* (6-31th May 2013).

Vanderputte,L. (2013*).Nederlands in de ABC-eilanden en Suriname: Een reflectie van de banden tussen het Koninkrijk Nederland en zijn ex-kolonies*. Retrieved from: http://lib.ugent.be/fulltxt/RUG01/002/064/444/RUG01002064444_2013_0001_AC.pdf.

Van Hooft, S. (2007) 'Cosmopolitanism as Virtue' in Journal of Global Ethics3(3): 303-315. Routledge.

Vertovec, S & Cohen, R (eds). (2002) Conceiving Cosmopolitanism: Theory, Context, and Practice. Oxford: Oxford University Press.

Vijfeeuwenmigratie (2015).*Surinaamse migranten tijdens en na de dekolonisatie*. Retrieved from: http://www.vijfeeuwenmigratie.nl/term/Surinaamse%20migranten%20tijdens%20en%20na%20de%20dekolonisatie/volledige-tekst.

Weber,F.(2016). Labour Market Access for Asylum Seekers and Refugees under the Common European Asylum System, in European Journal of Migration and Law, Volume 18, Issue 1, pages 34 – 64.

Wijkhuis,V., Kromhout,M., Jennissen,R., Wubs,H. (2011).Asielzoekers in in Jennissen,R.P.W. (ed.) (2011). *De Nederlandse migratiekaart*. Den Haag.WODC.

Yunker, J.A. (2007). Political Globalization: A New Vision of Federal World Government. New York: University Press of America.

EU legislation

Council Directive 2003/9/EC of 27th January 2003 laying down minimum standards for the reception of asylum seekers. OJ L31. 6.2.2003.

European Union (2010). *Charter of Fundamental Rights of the European Union*. Charter Preamble.

German legislation

Act Establishing Land Offices (LAmtErG).

Asylbewerberleistungsgesetz (AsylbLG) (1993).

Asyldurchfuehrungsverodnung (DVAsyl Bayern).

Asylverfahrensgesetz(AsylVfG). (1982).

Auslaender- und Asyl-Zustaendigkeits-Anordnung (AuslAsylZustAn).

Bundesrepublik Deutschland (1949). *Grundgesetz für die Bundesrepublik Deutschland*.

Federal Constitutional Court. Decision of 18 July 2012. 1 BvL 10/10, 1 BvL 2/11.

Gesetz zur Umsetzung Aufenthalts-und asylrechtlicher Richtlinien der Europäischen Union (2007).

Implementation Regulations on the Renting of Housing by Beneficiaries in accordance with the Asylum Seekers Benefits Act (AVWohn-AsylbLG).

Landesrecht Baden-Wuerttemberg,Aufenthalts- und Asyl-Zustaendigkeitsverordnung (AAZuVO) (baden-Wuerttemberg Residence and Asylum Comptence Ordinance).

Dutch legislation

Aliens Act (2000).

Aliens Resolution (2000).

Besluit uitvoering Wet arbeid vreemdelingen (1995).

Leerplichtwet (1969).

Regeling verstrekkingen asielzoekers en andere categorien vreemdelingen. (2005).

Regeling verstrekkingen asielzoekers (2005).

Regeling Zorg Asielzoekers. (2009).

Universal Declaration of Human Rights. (1948).

Vreemdelingenwet (2000).

Wet Arbeid Vreemdelingen (1994).

Wet Centraal Opvang Orgaan (1994).

Wet Wijziging Vreemdelingenwet en einige andere Wetten (1998).

Case law

DCI t. Nederland, judgement on 28th of February 2010. / Supreme Court of the Netherlands, 1/01153, judgement on the 21st of September 2012.

British legislation

Asylum and Immigration Act (AITOCA 2004), 2004.

Asylum Support Regulations, SI 704, 2000.

Gangmaster Licensing Act, SI 2857, 2004.

Immigration, Asylum and Nationality Act (IAA 1999), 1999.

Equality Act, 2010.

National Health Service Regulations, SI 1556, 2011.

National Immigration and Asylum Act (NIAA 2002), 2002.

Case law

Detention Action v SSHD and Equality and Human Rights Commission (2014), EWHC 2245.

R v The Secretary of State for the Home Department (2014). EWHC 1033.