

Berlin

A city state sues for its right of reception

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1. Abstract & Takeaways

Key Takeaways:

1

Regional states in Germany can make a difference by actively pushing the boundaries of national legislation.

2

Berlin has pioneered programs in housing, healthcare, and independent counselling that could easily be implemented by more cities and federal states in Germany.

What is unique about the city?

Interpreting federal law in favour of migrant interests: Following the 2016 state election, the Berlin senate commissioned lawyers and representatives from anti-racist civil society groups to determine how it should implement federal immigration regulations. The senate then instructed city authorities to use whatever discretionary powers left by federal law to benefit those most affected. Berlin is also the first state in Germany which took legal action to fight for its right to direct state reception.

What are the most outstanding results so far?

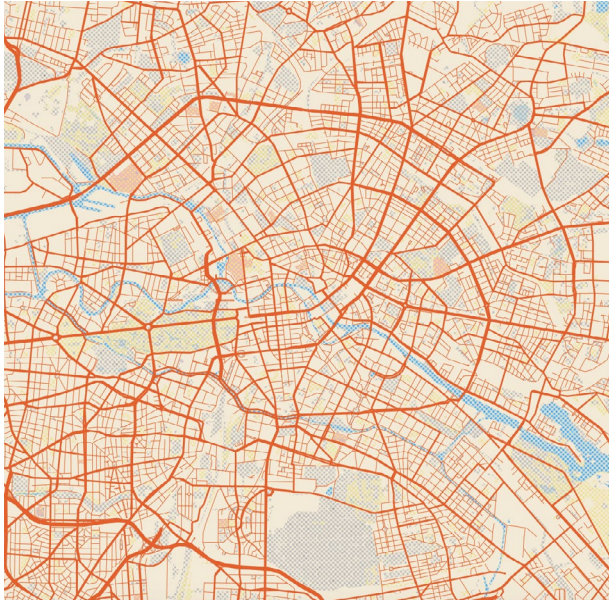
Improved access to healthcare, housing, and counselling: Following the Berlin senate instruction, the city has increased access to housing for asylum seekers. It has also extended healthcare access to all, regardless of official immigration status. It also offers independent counselling for asylum seekers early on. Particularly vulnerable groups receive special support from a system jointly developed between the senate and specialised counselling centres.

What are the key factors?

A left coalition and strong civil society: Berlin is both Germany's capital and largest city, with a liberal political culture and strong civil society. Its status as a city-state, governed by a left coalition of Social Democrats (SPD), Greens (Grüne), and Left (Linke) since 2016, makes it a place where progressive reception policy approaches can be tested.

Political activities and advocacy beyond the city level?

Berlin is active both on a national level and in international networks, in moving migration policy in a more inclusive direction. On a national level, Berlin has been at the forefront of local resettlement campaigns since the surge of the Seebrücke movement in 2018, and is pushing for more state autonomy on questions of migrant admission.



Population

approx. 3.7 million (urban), ca. 6 million (metropolitan)¹

Location

Northeast Germany (Berlin is one of three city-states in Germany, and thus governed as its own region)

Mayor

Until 2021 Michael Müller (SPD/Social Democrats)

2. Local background and context

Since 2016, Berlin is one of three federal states governed by a left coalition of Social Democrats (SPD), Greens (Grüne), and Left (Linke). Since Berlin is a city and one of Germany's 16 federal states at the same time, the left government has control over two levels of legislation, potentially opening a wider space for progressive migration and asylum policy.

The left-wing coalition has explicitly committed itself to this in its coalition agreement. It states:

“...federal regulations of the right of residence and asylum should be interpreted and applied in the enforcement of state law in such a way that they facilitate integration and offer prospects of residence even in previously unsolved cases.”²

¹ <http://www.deutsche-metropolregionen.org/mitglieder/berlin-brandenburg/>

² Coalition agreement, November 2016

Getting the most out of the existing legal framework

On July 2nd 2018, a commission of experts began its work, which revised the procedural instructions of the foreigner registration office. This commission included representatives from the Berlin Refugee Council, migrant organisations, welfare associations, trade unions, the commission on hardship cases, lawyers' associations, and the city administration. It submitted 56 proposals, of which more than 60 percent were accepted by Berlin's Senator for the Interior. In doing so, he said, the legally prescribed framework had been "exhausted" in order to achieve a "more integration-friendly interpretation of the regulations." The Foreigners Department was renamed "State Office for Immigration" in early 2020. On labour market issues, the state government's commission of experts amended the regulations on workplace training, the granting of residence for "well-integrated" persons (i.e. those with a job), and residence permits for the purpose of gainful employment. This should make it easier for people with an unconsolidated residence status to find employment. Work bans have been relaxed. People on a toleration certificate ("Duldung"), who are currently not allowed to work because of problems in obtaining a permit, will receive an employment permit for an initial period of six months. Approximately half of the 11,000 tolerated persons in Berlin had been banned from work before the new regulation came in place.

The Senate also funds a mobile multilingual consultation for refugees seeking assistance for entering the job market ("MoBiBe"³).

3. Selected local approaches

3.1 Accommodation

Berlin has taken a national lead in the field of accommodation. It improved housing access for asylum seekers by removing bureaucratic barriers, by establishing a central contact point for landlords, and by offering financial support.

Removing barriers

Normally, Germany has a three-step system of accommodation for newly arriving refugees. At first, they are housed in central accommodation owned by the federal states, and then later in communal collective accommodation. Both are generally marked by highly limited privacy and autonomy. Only after spending several months in these facilities, are refugees entitled to "decentral" accommodation, where they can look for their own flat. In Berlin, the second step is skipped. If asylum seekers find a flat, they can move there much earlier than in other federal states. On average, they are formally released from obligatory initial accommodation after three months.

³ Concept MoBiBe: [google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&ved=0C DkQw7AJahcKEwjYgqK J4riAAxUAAAAAHQAAAAQA g&url=https%3A%2F%2Fwww.berlin.de%2Fsen%2Farbeit%2F_assets%2Fberlinarbeit-ziel-3%2Ffachkonzept_mobibe-kurz_2-0.pdf&psig=AOv Vaw05sJc_ZISrpcQexs47_Qc&ust=1690886700899200&oi=89978449](https://www.google.com/url?sa=i&rct=j&q=&esrc=s&source=web&cd=&ved=0C DkQw7AJahcKEwjYgqK J4riAAxUAAAAAHQAAAAQA g&url=https%3A%2F%2Fwww.berlin.de%2Fsen%2Farbeit%2F_assets%2Fberlinarbeit-ziel-3%2Ffachkonzept_mobibe-kurz_2-0.pdf&psig=AOv Vaw05sJc_ZISrpcQexs47_Qc&ust=1690886700899200&oi=89978449)

Financial support and contact points

Unlike in other federal states, accommodation costs of up to 750 euros per person per month are also covered during the asylum procedure, in accordance with the Asylum Seeker Benefits Act. However, given Berlin's tough housing market, it is still very difficult, and sometimes virtually impossible for many asylum seekers to find a flat. Therefore, the state has created a central contact point for landlords wishing to rent to refugees. The eight state-owned housing companies offer a "protected housing segment," which may only be rented to refugees.⁴ Still, this only covers a total of 275 new flats per year.⁵ The demand is much higher, as almost 20,000 refugees live in collective accommodation.

Establishing quality standards

After many complaints on public accommodation conditions, a temporary government working group is now developing new quality standards ("Unterbringungs-TÜV"⁶) for public refugee housing. Accommodation conditions are to be recorded regularly and systematically. Exemplary conditions, as well as those in need of improvement are to be identified, the test results published, and included in the awarding of contracts. All agreed standards are to be enforced and the responsible body adequately equipped. Among other things, all accommodation should be equipped with Wifi. Measures against discrimination, violence and abuse of power by private security companies are also to be constantly evaluated. The complaint management system designed for this purpose was put out to tender in 2020.

In the long run, the city has requested the state-owned housing companies to develop and build affordable housing to meet the needs of refugees in the housing market.

During the corona crisis, courts in Saxony and North Rhine-Westphalia ordered the immediate release of asylum seekers "for reasons of public health care" from initial reception centres, as there was not sufficient protection against coronavirus there. Berlin nevertheless maintained the obligation to stay in initial accommodation centres, despite the health risks to its residents.

3.2 Healthcare

Another field in which Berlin implemented an exemplary approach is healthcare. Until their case is decided, asylum seekers in Germany are generally only entitled to reduced healthcare benefits. People without a residence permit normally do not get any public healthcare assistance. In response to these discriminating policies, Berlin established a "Clearing House" offering healthcare assistance to anyone without health insurance.

In October 2018, a so-called "Clearing House" took up its work, offering healthcare assistance to anyone, regardless of their residence status. This not only includes refugees and migrants, but anyone without health insurance. It is operated by the Berlin City Mission and financed by the senate with around 1.5 million euros per year. Various clinics and med-

⁴ <http://berlin-hilft.com/2020/05/25/interessenbekundung-anlaufberatungsstelle-vermeidung-gefluechtete/>

⁵ <https://www.berlin.de/lageso/soziales/geschuetztes-marktsegment/>

⁶ www.berlin.de/koordfm/themen/qualitaetsmanagement/gremien-und-arbeitsgruppen/artikel.709261.php

ical practices have agreed to cooperate with the Clearing House, and assistance seekers are transferred there. The two biggest shortcomings of this system are the absence of a free choice of doctor, and a capped budget. Once the state subsidy has been used up, all those who come afterward will not receive any more healthcare.

3.3 Identifying those in need

Berlin is an exceptional case in Germany for having implemented the EU's Reception Directive systematically across the board. Although the Directive was supposed to have been implemented into EU member state national laws by 2015, Berlin is the only German federal state to have done so comprehensively.

EU Reception Directive: Taking special needs into account

In its Reception Directive, the European Union states that some groups of people require special protection. Among other things, it obliges EU member states to take into account the respective special needs of these people in the asylum procedure. These special needs may affect accommodation, material services and medical care.

According to the directive, people in need of special protection include (unaccompanied) minors, people with disabilities, people with serious physical or mental illnesses, pregnant women, single parents, elderly people, and victims of human trafficking, torture or psychological, physical and sexual violence. LGBTIQ (lesbian, gay, bisexual and transgender) refugees can also be assumed to need special protection under the directive.

Implementing the EU Reception Directive: The Berlin Network for Particularly Vulnerable Refugees (BNS)

In 2008, the Berlin Network for Particularly Vulnerable Refugees (BNS) was founded with the aim of fulfilling the EU Reception Directive requirements. BNS coordination is managed by the ÜBERLEBEN Center, which treats victims of torture. The network consists of seven Berlin-based non-governmental organisations. In cooperation with the then senate Department for Health and Social Affairs (SenGesSoz), the network developed a three-stage procedure for the identifying and caring for particularly vulnerable refugees in Berlin.

The BNS developed an extensive 93-page guideline, which the Berlin senate later published, outlining best practice for identifying people who need special protection. Their cases are then processed more quickly at the foreigners' registration office, with specially sensitised employees onsite to hear their case.

Employees are given relevant background information on each group, which can help to classify the significance of any information they get during an interview. In addition, there are specific indicators for almost

every group that can point to a special situation for the refugee. For example, it is advised to “proactively convey to the asylum seekers in a credible manner that they will not face any danger or repression from the state if they disclose their gender identity and/or sexual orientation or that of their partner.”⁷ These procedures are unique in Germany. The city undertook further measures to set up a specialised unit supporting refugees with mental health issues, and to prevent mental illnesses from becoming chronic.

3.4 Independent support during the asylum procedure

Berlin stepped in to fund NGOs to provide independent counselling to asylum seekers during the asylum procedure—in response to recent federal decisions that compromise the provision of independent counselling.

Starting in the 2018/2019 financial year, Berlin funded ten independent non-governmental counselling centres providing legal and procedural advice for refugees and migrants. This funding has been continued through 2020/2021. The independent advisory service is intended “to ensure that all asylum seekers who have been admitted to Berlin receive, in good time before the asylum procedure is initiated at the responsible federal office, the offer, free of charge, to be comprehensively informed by a non-governmental agency about the asylum procedure and, as a matter of priority, about their rights and obligations in this regard,”⁸ the senate declared. This form of cooperation between the state and civil society was generally welcomed as exemplary.

Background: The shortcomings of centralised counselling

In 2019, the federal government began reorganising asylum seeker counselling. As part of a series of new migration laws, a 2019 bill included a provision in the Asylum Act to ensure “independent” counselling during the asylum process. This is now no longer the responsibility of states like Berlin, but of the federal government.

With counselling now carried out by the Federal Office for Migration and Refugees (BAMF), the very authority responsible for providing individual and “independent” advice to people seeking protection is also responsible for deciding their asylum applications. BAMF began training their own officials to provide counselling, many of whom were formally responsible for hearing and deciding applications. It also refused to fund independent counselling by NGOs.

The Federal Interior Ministry did not see any conflict of interest: “In order to guarantee the independence of asylum counselling within the authorities, asylum counselling employees are organisationally separated from the asylum department during their deployment and are not used for hearings and decisions in asylum proceedings,” it said in a response to a question from the Linke (Left) party in the Bundestag.⁹ NGOs may

⁷ https://www.berlin.de/lb/intmig/_assets/veroeffentlichungen/gefluechtete/leitfaden_schutzbeduerftige_gefluechtete.pdf

⁸ Berlin House of Representatives, answer to the written Question no. 18/15250 of 6 June 2018

⁹ <https://www.ulla-jelpke.de/2020/06/asyilverfahrensberatung-durch-das-bamf-ist-ein-irrweg-zulasten-von-gefluechteten-und-wohlfahrtsverbaenden/>

continue to provide advice, but should not receive any more money from the federal government. According to BAMF, EU funding for independent asylum procedure counselling will also no longer be possible in the future, as the service is covered by state services.

The response: offering independent counselling early on

Berlin created specifications for independent asylum procedure counselling at the arrival centre. These were the basis for a national tendering procedure. The contract was awarded to the German welfare association AWO.

The new team of AWO social workers provides advice primarily in the preparation for the asylum interview—a fundamentally important part of the asylum procedure. The focus of the new counsellors is on early, independent initial counselling and preparation for hearings. If a need for protection is identified, the asylum seekers are referred to special counselling centres.

Asylum seekers admitted to Berlin usually stay at the arrival centre for three days and are then assigned a place to stay at an initial reception facility. The hearing date at BAMF does not take place within this time. In order to ensure that all asylum seekers learn about the independent counselling service in good time before filing their asylum application, procedural counselling was set up at the arrival centre. All newly arrived asylum seekers who arrive there receive information about the AWO's independent counselling on a flyer they get from the accommodation operator.

4. Advocacy and network activities

Berlin is active both on a national level and in international networks to make migration policy change more progressive and inclusive. On a national level, Berlin has been at the forefront of local resettlement campaigns since the surge of the Seebrücke movement in 2018 and is pushing for more autonomy on migrant admission together with other Federal states. Internationally, Berlin is active in various solidarity networks.

Urban Partnership on the Inclusion of Migrants and Refugees (UPIMR)

Following the 2016 state election, Berlin was one of four cities to actively participate in the EU's Urban Partnership on the Inclusion of Migrants and Refugees (UPIMR). UPIMR is part of the "Urban Agenda for the EU"¹⁰, which also involves the EUROCITIES network.

¹⁰ <https://ec.europa.eu/futurium/en/inclusion-migrants-and-refugees/evaluation-report-urban-partnership-inclusion-migrants-and-refugees>

Save havens and local resettlement campaigns

Berlin has been at the forefront of local resettlement campaigns since the surge of the Seebrücke movement in 2018. In the summer of that year, rescue ship “Lifeline” sought a safe haven for 234 people. Berlin was one of the cities that offered refuge, in what was seen as a step towards a political redefinition of the role municipalities play in migration policy. In June 2019, eight municipalities signed the *Potsdam Declaration*¹¹. There, they emphasised their willingness to take in people additionally who were rescued from distress at sea.

On the 13 and 14 of June 2019, the Seebrücke network’s “Safe Havens” congress took place at Berlin city hall, with the Governing Mayor acting as patron.¹² At the congress, 13 municipalities, including Berlin, founded the “Cities of Safe Harbors” alliance. All declared their support for the Potsdam Declaration’s goals and demands.

Addressing national legislation

Berlin, however, lacks the political authority to act on its own in such situations. This prompted Berlin to introduce a reform proposal in Germany’s Bundesrat in 2019 to address difficulties in humanitarian admission programs. Until now, supreme state authorities, such as in city-states like Berlin, have been able to issue a residence permit for foreigners on humanitarian grounds. The prerequisite, however, is that the Federal Interior Ministry gives its consent.

Berlin sought to amend the Residence Act so that state governments could inform the Interior Ministry of an issued permit, rather than having to obtain consent. “This will allow the states themselves to take more responsibility for their decisions while providing uncomplicated assistance to refugees,” the senate explained. “We are not part of the Solidarity City network for nothing,” said Berlin interior senate spokesperson Martin Pallgen. However, the proposal was taken off the Bundesrat agenda in November 2019, since there was no majority for it.

Then, in September 2020, Berlin pushed again, following debates about admitting people from the burned-down Moria refugee camp in Greece. Berlin’s senator of the interior, Andreas Geisel (SPD), said the fire on the island of Lesbos had been a “humanitarian catastrophe with notice.” It “could have been prevented if the federal government had acted more quickly,” Geisel said, underscoring his desire for more decisionmaking options for the federal states. With a new Bundesrat initiative, Berlin sought to make it easier for federal states to again take in refugees on humanitarian grounds. In a bill introduced jointly with the left-wing governed Thuringia, it again proposed an amendment to the Residence Act. To this end, Berlin sought the support of other states by contacting SPD-governed states such as Rhineland-Palatinate and Hamburg. However, the state chambers again rejected the draft.

¹¹ <https://www.potsdam.de/potsdamer-erklaerung-der-staedte-sicherer-haefen>

¹² <https://www.seebruecke.org/sichere-haefen>

Legal actions against the Interior Minister

In November 2020, the Berlin senate decided to take legal action against the conservative minister of the interior, Horst Seehofer, after he forbade the city from starting a state reception program for particularly endangered persons from refugee camps in Greece. Through this program, 300 refugees from camps on the Aegean Islands were to be brought to Berlin. Seehofer had justified his “no” on the grounds that the European Dublin III regulation did not allow such a program, although other German states and cities are interested in supporting Berlin’s program. These developments suggest “larger European cities in particular are increasingly seeing themselves less as implementing bodies of national governments on integration policy, and more as independent actors with a broader agenda, also including access conditions,”¹³ wrote researchers from the Green Party affiliated Böll Foundation. “Increasingly, therefore, consideration is being given to whether and how cities and municipalities could gain greater influence on EU refugee policy, and possibly even be able to “revive Europe from below.”

5. Update: What is new in 2023?

- ◆ The state of Berlin had to repeat its election of September 2021 in February 2023 due to “serious electoral irregularities”¹⁴ during the elections for the House of Representatives (Landtag). In the wake of this election the former government (Social Democrats, Greens and Left) was replaced on 27 April 2023 by a new coalition between the CDU (Christian Democrats) and the SPD (Social Democrats). The incumbent mayor is Kai Wagner (CDU).

What is to be expected from the new government in terms of refugee inclusion policy?

In general, the CDU pursues a more restrictive inclusion policy than the former left coalition, who framed integration as policies that the state owed its people¹⁵. However, the coalition agreement¹⁶ with the SPD allows for hope that the migration policy achievements of the past years could be maintained and further expanded.

- ◆ The coalition of social democrats and conservatives also wants to continue to be actively involved in networks such as Solidarity Cities and the Cities Safe Harbours alliance.
- ◆ As before, the focus will be on the care of persons in particular need of protection and, if necessary, a clearing office will be set up for this purpose. Stronger and permanent funding for psychosocial centres is planned. “The coalition is committed to ensuring that the newly created right of opportunity to stay for long-term tolerated persons is actually taken up” and in cooperation with a commission on hardship cases, family reunification is also to be facilitated.

¹³ https://www.boell.de/de/2019/02/11/der-weg-ueber-die-kommunen?dimension1=division_euna

¹⁴ <https://www.bpb.de/kurzknapp/hintergrund-aktuell/515351/wahlwiederholung-in-berlin/#:~:text=September%202021%20in%20Berlin%20zu,langen%20Schlangen%20vor%20den%20Wahllokalen.>

¹⁵ <https://www.rbb24.de/politik/wahl/abgeordnetenhaus/agh-2023/wahlprogramme/berlin-gefluechtete-migration-check.html>

¹⁶ <https://berlin-hilft.com/2023/04/03/berlinkoalitionsvertrag-2023-cdu-spd-auszug-soziales-vielfalt-flucht-migration/#Gefluechteten>

- ◆ The goal continues to be the accommodation of refugees in their own flats; to this end, housing entitlement certificates (Wohnberechtigungsscheine, WBS) are to be issued in future, irrespective of the duration of the residence status in Berlin.
- ◆ In addition, third-country nationals who already resided in Ukraine before the outbreak of the war are to be granted the right to stay in Berlin with the help of scholarship programmes for students or transitional arrangements through fictitious certificates.
- ◆ In January 2023, the former Senator for Integration, Katja Kipping, abolished the housing obligation for asylum seekers in reception centres. Asylum seekers who have already been allocated to Berlin and have found their own flat or room no longer have to stay in the collective accommodation.¹⁷ Berlin is the first federal state to make use of this possibility, which is granted by section § 49 (2) of the Asylum Act.¹⁸
- ◆ In March 2022, the lawsuit filed by the federal states of Berlin and Thuringia against the decision of the Federal Ministry of the Interior from 2020 on the ban to accept refugees from the Greek camp Moria was rejected by the Federal Administrative Court. The scope of action of the federal states and municipalities thus remains significantly limited. Berlin responded as follows: The state of Berlin considers it “its humanitarian obligation to help people in need and will continue to fulfil this obligation with everything at our disposal.”¹⁹
- ◆ In Berlin, the legal possibility of introducing a municipal identity card (similar to the Zurich model: City-ID-Card) is currently being examined in order to facilitate access to health, housing, work and education for all citizens regardless of their residence status. The sociological and legal report on this is to be completed in December 2023.

¹⁷ <https://www.berlin.de/sen/ias/presse/pressemitteilungen/2023/pressemitteilung.1288274.php>

¹⁸ <https://www.proasyl.de/news/ueberfaellig-wohnungen-statt-sammelunterkuenfte-fuer-fluechtlinge-aus-allen-laendern/>

¹⁹ <https://www.tagesspiegel.de/berlin/innensenatorin-kritisiert-entscheid-zur-fluchtlingsaufnahme-aus-moria-4317487.html>

The **Moving Cities** project provides an in-depth research of progressive cities in Europe, exploring their most inspiring and successful approaches to migration policies. Find more city reports at www.moving-cities.eu.

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