



Federal Office  
for Migration  
and Refugees



# The German Asylum procedure

Lodging an asylum application - The decision -  
The consequences of the decision

# Distribution and accommodation

An asylum application can only be filed in Germany at the Federal Office for Migration and Refugees (short form: Federal Office).

If a person in need of protection expresses an interest in lodging an asylum application<sup>1</sup>, he/she<sup>2</sup> is referred to the nearest reception centre operated by the respective Federal State (Land). The initial distribution takes place on the basis of the country of origin and of a quota system (“Koenigstein Key”)<sup>3</sup>, which provides for distribution throughout the Federal States (Laender).

Once the appropriate Land has been determined, the person in need of protection reports to the appropriate reception centre. The reception centre provides accommodation for them, takes care of their needs and informs the closest branch of the Federal Office.

Minors in need of protection not accompanied by an adult, who is responsible for them, are taken to the local welfare office. A legal guardian is appointed by a court. During the subsequent clearing procedure, the guardian discusses the situation of the unaccompanied minor in detail with the authorities involved at Federal Land level: the immigration authority and others, such as welfare organisations or churches. During this clearing process, it is also decided whether a claim for asylum is being pursued.

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<sup>1</sup> In Germany every application for asylum constitutes an application for recognition of refugee status as well as for recognition of asylum status, unless the foreigner expressly objects.

<sup>2</sup> Note.: In order to make the text easier to read, the text below uses the male form in general, indicating (members of) both sexes.

<sup>3</sup> The Koenigstein Key takes into account the tax revenue and population sizes of the Federal Laender, and is calculated by the Federal Laender Commission on an annual basis.

## The asylum application

Applicants must generally make their applications in person at a branch of the Federal Office. The Federal Office arranges for an interpreter to attend this appointment. During the application procedure the applicant is informed about his rights and obligations during the asylum procedure. This important information is provided in written form in his own language.

The Federal Office creates an electronic file and records the personal data. All asylum applicants older than 14 years are photographed and fingerprinted. These measures provide information whether the applicant has already been in Germany before or if another European state might be responsible for implementing the asylum procedure.

In the course of the application procedure, an identity card (ID), referred to as temporary permission to stay (Aufenthaltsgestattung), is issued. The applicant is required to carry this ID at all times, and be able to produce it to the Police if requested.

## The responsibility of the Federal Office for examining applications for asylum

With every application the following is requested based on the Asylum Procedure Act (Asylverfahrensgesetz – AsylVfG)

International protection  
(section 1 subsection..1 No. 2 of the Asylum Procedure Act)

Refugee protection  
(section 3 subs. 1 of the  
Asylum Procedure Act)

Subsidiary protection  
(section 4 subs. 1 of the  
Asylum Procedure Act)

and

Entitlement to political  
asylum  
(Art. 16a para. 1 of the Basic  
Law (Grundgesetz – GG))

If it is impossible to grant international protection and to recognize as entitled to asylum, the Federal Office decides whether prohibition of deportation applies in accordance with section 60 subs. 5 or subs. 7 of the German Residence Act (Aufenthaltsgesetz – AufenthG).

## The Dublin procedure

The third version of the Dublin Regulation has been in force since 1 January 2014. It further updates the Dublin Convention from 1990.





The Dublin Regulation generally states that each asylum application filed in the “Dublin Area” is only examined by one Member State of the European Union, including Norway, Iceland, Switzerland or Liechtenstein.

The “Dublin procedure” therefore determines which Member State is responsible for implementing the asylum procedure and processes the actual asylum application. Therefore the Dublin procedure is a system determining the responsibility for the asylum procedure and is made before the actual asylum procedure. The Federal Office informs the applicant that the Dublin procedure is being reviewed, and asks him to provide reasons why he should not be transferred to the responsible Member State.

If the Member State has agreed to the transfer, the Federal Office issues a notification ordering the transfer to the Member State. The applicant may appeal against this decision.

The immigration authority and the Federal Police are responsible for the implementation of the transfer, whilst the Federal Office coordinates it.

## The interview

If Germany is responsible for examining the asylum application, the applicant is interviewed in person by an employee at the Federal Office – a case worker – with regard to his reasons for seeking asylum and international protection.

In principle the interview shall not be open to the public. Attending are the applicant, his legal representative (lawyer or guardian) and the case worker. An interpreter is provided. If requested, the applicant may be accompanied at his interview by a “trusted” individual, such as a legal representative or UNHCR representative. Additional attendees may only be present with the express agreement of both the applicant and the Federal Office.

The interview is the applicant’s most important appointment within his asylum procedure. At the interview, the applicant is required to present his reasons for need of protection personally, which prove his fear of persecution or the risk of a serious harm. He is also required to relate all other facts or circumstances which preclude returning to his home country.

The interview starts with the case worker asking questions about the applicant’s personal situation, too. The applicant is obliged to provide a credible account and to provide any evidence he has or is able to obtain. The duration of the interview depends on the details and complexity of the



individual claim. A report is made of the interview containing the essential statements made by the applicant. The applicant receives a copy.

## Special qualified case workers

The Federal Office has been deploying special qualified case workers for

- unaccompanied minors,
- victims of torture and trauma, and
- persons persecuted because of their gender
- victims of human trafficking.

## Types of protection and order of assessment

### 1. Granting of refugee status, section 3 subs. 1 of the Asylum Procedure Act

A refugee means a person who, owing to a well-founded fear of being persecuted for reasons of

- race<sup>4</sup>,
- religion,
- nationality,
- political opinion or
- membership of a particular social group<sup>5</sup>,

<sup>4</sup> The term “race” is used in accordance with the wording of the Geneva Refugee Convention.

<sup>5</sup> A group can also be regarded as a specific social group which is based on the joint characteristic of sexual orientation.

is outside the country of origin or as a stateless person, being outside of the country of former habitual residence, is unable or, owing to such fear, unwilling to avail himself or herself of the protection of that country.

The meaning of the above mentioned persecution can originate from both, state and non-state actors.

If there exist exclusion clauses in accordance with section 3 subs. 2, 3 and 4 of the Asylum Procedure Act, for example being a war criminal, the applicant is excluded from being a refugee.

### 2. Recognition as entitled to asylum, Art. 16a para. 1 of the German Basic Law (Grundgesetz – GG)

Persons entitled to asylum are people threatened by serious risk to their life, limb or liberty, in the event of returning to their country of origin, or in case of stateless persons, returning to the country of their usual residence/habitation because of their

- political opinion,
- fundamental religious beliefs, or
- unchangeable characteristics which define their “otherness” (e.g. nationality, etc.),

and have nowhere else to take refuge within their home country, or other protection against persecution.

Actions attributable to the state can also lead to entitlement for asylum.

A person who entered the Federal Republic of Germany from a “safe third country” will not be recognised as refugee. “Safe third countries” are determined by the Asylum Procedure Act as the Member States of the European Union, as well as Norway and Switzerland.

### 3. Granting of subsidiary protection status, section 4 subs. 1 of the Asylum Procedure Act

Persons are entitled to subsidiary protection if they provided substantial grounds for the assumption that they are at risk of serious harm in their country of origin and that they are unable to, or, owing to such risk, unwilling to avail themselves of the protection of that country.

The above mentioned meaning of serious harm can originate from both state and non-state actors.

If there are grounds for exclusion in accordance with section 4 subs. 2 of the Asylum Procedure Act, the applicant is excluded from being granted subsidiary protection.

The following are regarded as serious harm:

- the death penalty or execution,
- torture or inhuman or degrading treatment or punishment, or
- a serious individual threat to a civilian's life or person by reason of indiscriminate violence in situation of international or internal armed conflict.

### 4. Establishment of prohibition of deportation in accordance with section 60 subs. 5 and subs. 7 of the Residence Act

An applicant for protection may not be deported, if

- the deportation to the country of destination is inadmissible under the terms of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (ECHR) (section 60 subs. 5 of the Residence Act)

or

- there is a substantial and definite danger to life and limb or liberty in the country of destination (section 60 subs. 7 of the Residence Act)

## The decision

The decision on the asylum application is made in writing and communicated to the applicant by the Federal Office.

The reasons for the decision are justified and will be notified to the parties. Instructions on how to appeal are provided. If the applicant does not have a legal representative, he is also provided with a translation of the operative provisions of the decision and of the appeal information.

The decision about an application for asylum is in principle determined by the individual's fate.

If further investigations are necessary in order to clarify the circumstances prior to taking the decision, the case worker can obtain information via the Federal Office's Asylum and Migration Information Centre, which contains amongst other things an extensive database ("MILo")<sup>6</sup>.

The European Asylum Support Office (EASO)<sup>7</sup> also provides extensive information.

In order to examine documents, evidence and facts, the case workers can rely on the following:

- language and text analyses,
- physical and technical document examination,
- medical or expert reports,
- contacts at the Federal Foreign Office,
- liaison officers.

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<sup>6</sup> <https://milo.bamf.de/milop/livelink.exe?func=llworkspace>  
<sup>7</sup> <http://easo.europa.eu/>

# Possible decision outcomes and consequences of the decision

Possible decision outcomes and their consequences in terms of the national residence laws:

The decision	Residence titles and duration	Settlement permit
<b>Granting of refugee status</b> (section 3 AsylVfG)  <b>and possibly additional entitlement to political asylum</b>  (Art. 16a GG)	Residence permit for 3 years	Settlement permit* is to be issued after 3 years, if the refugee status is not revoked.

OR

<b>Granting the status of subsidiary protection</b> (section 4 AsylVfG)	Residence permit for 1 year  Can be extended for two more years	Settlement permit can be awarded after 7 years
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OR

<b>Establishment of prohibition of deportation</b>  (section 60 subs. 5 and subs. 7 of the Residence Act)	Residence permit is to be granted for at least one year.	Settlement permit can be granted after 7 years.
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\* The settlement permit is a permanent residence title (section 9 of the Residence Act).

If the conditions for any of these types of protection are not fulfilled, the applicant receives a rejection notice with an order to leave the country and a deportation order. He is then obliged to leave the country.

## Appeals

Applicants may appeal to a court against the decisions of the Federal Office. The applicant is informed of the types of appeal and of the respective deadlines in the appeals notice.

If the court decides that the conditions for granting protection are met, it revokes the decision, or the respective parts of the decision, and obliges the Federal Office to reach a positive decision (to grant protection).

If the appeal is rejected and the rejection of all types of protection confirmed, the obligation to leave the country is upheld.

Should the applicant not comply with this obligation, he is deported to his country of origin. The respective immigration authority is responsible for the implementation of the deportation.

If the deportation is not possible, the immigration authority may grant temporary suspension of deportation (Duldung) or even a residence permit.

## Special features

When arriving by plane and lodging an asylum application, a special procedure ("airport procedure") is applied.

In this case the asylum procedure is carried out before the Federal Police decides whether the foreign national - still

being in the transit area - may enter the country. Factors taken into account include whether an individual has genuine identification documents, and whether they have arrived from a safe country of origin<sup>8</sup>.

If the asylum application is rejected as “manifestly unfounded”, entry is refused.

The applicant may submit an emergency appeal against this rejection to the administrative court. If the ruling is positive, the applicant may enter Germany, but if it is negative, the individual is then subject to deportation.

## **IMPRINT**

### **Published by**

Federal Office for Migration and Refugees (BAMF)  
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### **Last updated**

October 2014

### **Printed by**

Bonifatius GmbH  
 Druck-Buch-Verlag  
 Karl-Schurz-Straße 26  
 D-33100 Paderborn

### **Designed by**

Jana Fischer, Central services, Publications, event management/  
 visitor service

### **Photographs**

iStock: pages 4 & 6  
 Miramedia GmbH Hamburg: page 7  
 Fotolia: Title

### **Drafted by**

Federal Office for Migration and Refugees  
 Directorate-General 4/ Policy on the asylum procedure, security

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<sup>8</sup> Safe countries of origin are the Member States of the European Union, Ghana, Senegal, Serbia, Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia.

