

Short Guide

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1. What are the Preconditions for Homosexuals to get Asylum in Germany?

Homosexuals can get asylum in Germany if they are persecuted in their home country due to their sexual orientation and that they are in danger of being physically hurt, killed, imprisoned, prosecuted or being exposed to humiliating or inhumane treatment or punishment. **The acts of persecution have to be grave due to their kind or due to repetition, so that they are a severe violation of basic human rights.**

Also an accumulation of various measures can have the quality of a violating act, e. g. discrimination in access to education or health care, as well as existential job-related or economic restrictions. The individual acts of intervention don't have to be of the quality of a human rights violation, but as a whole cause an impact onto the individual matching the intensity of a severe human rights violation.

The mere fact that homosexual acts are criminalised does not represent an act of persecution. In contrast, an imprisonment threatening homosexual acts and actually imposed on people in the country of origin, are to be regarded as a disproportionate or discriminating punishment thus constituting an act of persecution.

Verbal abuses, vituperations and unsubstantiated threats as well as the conveyance of the impression of undesirability are not sufficient as "acts of persecution". These acts are not serious enough to constitute a severe violation of basic human rights.

The persecution may originate **from the state, from political parties or organisations** controlling the state or a significant part of the state territory, or **from non-governmental actors** provided that the state or the ruling parties and organisations are obviously unwilling or incapable of providing protection against persecution. This precondition is fulfilled in case of actual repeated attacks against homosexuals and if police had not been willing to identify and prosecute the perpetrators in order to protect the homosexuals.

If homosexuals have left their country of origin without having been persecuted themselves, occasional assaults are insufficient. The scope of assaults must have been extended, so that all homosexuals have to concretely expect to be persecuted as well.

2. Entry into Germany

Asylum can only be sought for within Germany. The entry into Germany is problematic. **Asylum seekers entering Germany overland will only be able to do so via a "Dublin State"**.

The [Dublin III Regulation](#) is applicable for all member states of the European Union and, in addition, to Norway, Iceland, Switzerland and Liechtenstein. This Regulation governs, which state is responsible for the performance of the asylum proceedings. That is the Dublin state, which an asylum seeker enters first (illegally) or in which asylum proceedings are or have been pending.

If the "Federal Agency for Migration and Refugees" ("Bundesamt für Migration und Flüchtlinge" - BAMF) determines, via which Dublin state the asylum seekers have entered, they will be deported into that state, provided that the state will agree to the assumption of the proceedings.

If it is impossible to identify the Dublin state, Germany will be responsible for the review of the application for asylum. This is probably the reason, why asylum seekers destroy their travel and identity documents after entering the country, [see below](#).

In these cases foreigners may not be deported into their country of origin, if their life or their freedom is in danger there, due to their race, religion, nationality, their affiliation to a specific social group or due to their political opinions. They will be accepted according to § 60 paragraph 1 AufenthG (Aufenthaltsgesetz - Residence Act) as refugees in the meaning of the Geneva Convention on Refugees (**so-called minor asylum**).

3. Prima Facie Evidence of the Claimed Persecution

The asylum seekers have to **present all facts** substantiating their fear of persecution or threatened serious harm **in the first hearing**. In order to present their submission plausibly, they have to describe all personal experience and incidents occurred within their sphere **completely and without significant contradictions**, so that the claimed asylum appears to be plausible. The presentation has to be **concrete, descriptive and full of details**, see ["Hearing"](#) and the following section.

Later corrections or amendments (enhanced plea) are **brushed aside as non-credible** and leads to a refusal of the application, because the whole submission seemed implausible.

4. Return Prognosis

If the asylum seekers manage to make credible **that they were persecuted because of their homosexuality before their flight**, it will be assumed that they will be persecuted again after returning to their country of origin.

If the asylum seekers **have left their country of origin without having been persecuted**, because they kept secret their sexual orientation, it will be reviewed whether they did this out of fear of persecution or because they wanted to avoid to expose their family or friends.

If they lived discreetly due to fear of persecution, refugee protection will be granted.

If they had lived discreetly, however, in order to avoid to upset other people, it is assumed that they have accepted this life style for themselves. Asylum will be refused in this case.

A more comprehensive description of asylum laws can be found in our [Guidebook Asylum Law for Lesbians and Gays](#).

5. Accelerated Proceedings

Certain groups of refugees are directed after their control by the Federal Police into "special reception centres", where the asylum proceedings will be carried out within one week. If the Federal Agency will not succeed, the proceedings will be continued as non-accelerated proceedings.

The "Accelerated Proceedings" will be carried out, inter alia, for:

- Foreigners from safe countries of origin. These are all member states of the European Union as well as Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia - former Yugoslavian Republic, Montenegro, Senegal and Serbia. The countries Algeria, Morocco and Tunisia shall also be declared as safe countries of origin.
- Foreigners, who have obviously deceived the authorities with respect to their identity or nationality and
- Foreigners, who have wilfully destroyed or have removed an identity- or travel document, which would have enabled the establishment of their identity or nationality.

We proceed on the assumption that all applicants for asylum without documents will be relegated to the Accelerated Proceedings.

The applicants for asylum are obliged to live in the special reception centres until the decision of the Federal Agency has been made and, if necessary, until their departure or deportation. **If they leave the district of the Foreigner's Registration Office, in which the special reception centre is located, their application for asylum will be regarded as withdrawn. The same will be assumed, if asylum seekers will not immediately proceed to the special reception centre after the control through the Federal Police.**

If the application of asylum seekers will be rejected as obviously unsubstantiated or inadmissible, they may file a legal action against this decision with the Administrative Court within one week and file an emergency petition with suspensive effect of the legal action. The emergency petition must be substantiated in detail, because the Administrative Court will only decide about this matter in writing. If the emergency petition will be rejected, the deportation of the asylum seeker can be explained in spite of the furthermore running complaint.

It is thus very important, that LSBTTI* asylum seekers will be professionally advised immediately. This will, however, not be possible in most cases, because many of the LGBTI asylum seekers will not be able to immediately report about their sexual orientation and the respective persecution, if homosexuality is a taboo subject in their country of origin and if it had been their survival strategy so far to keep secret their sexual orientation towards third parties.

6. LSBTTI* Refugees from Civil War Countries

Refugees from civil war countries, such as Syria, will receive the subsidiary protection status within the course of an accelerated procedure at the moment, if no other Dublin country is responsible (see here). The refugees will then receive a residence permit for one year, which may also be extended. **The subsidiary protection status will be revoked, however, as soon as the civil war is terminated. The refugees have to return to their home country in this case.**

LSBTTI* refugees from civil war countries shall thus not let themselves be fobbed off during the hearing with the remark, that they do not need to make any statement at that stage regarding their persecution as homosexuals or about their fear of such a persecution, because they were acknowledged as entitled to protection anyway.

They must absolutely insist, that they want to be acknowledged as "Refugees" as well and not only as "persons entitled to subsidiary protection" and that they want to make statements, for this reason, with respect to their persecution as homosexuals or to their fear of such a persecution. **If the decision maker will reject this statement, they must insist, that this will be included in the hearing protocol.**

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