

Country factsheet Germany

Based on its 2010 Work Programme, the European Union Agency for Fundamental Rights (FRA) carried out a study on access to justice for asylum seekers. This study illustrates the perspective of asylum seekers on two specific issues relating to the asylum procedure, namely information on the procedure itself and access to remedies against a negative decision.

The FRA interviewed almost 900 asylum seekers throughout the European Union. The information received has been analysed taking into account the relevant national legal provisions and the responses to a questionnaire on information received from national asylum authorities. The research has resulted in two comparative reports, the first on the duty to inform and the second on access to effective remedies.

This factsheet complements these two comparative studies by providing some basic background information, including statistics and relevant domestic legal provisions relating to the issues covered in the two reports.

1. Statistics

Statistics on asylum applications (Total and top 10 nationalities)

2009 Top 10 Nationalities		2008 Top 10 Nationalities	
Total	33,035	Total	26,945
Iraq	7,320	Iraq	8,155
Afghanistan	3,520	Serbia	2,250
Kosovo	1,900	Turkey	1,775
Turkey	1,845	Iran (Islamic Republic of)	1,350
Iran (Islamic Republic of)	1,815	Vietnam	1,275
Vietnam	1,350	Russian Federation	980
Russian Federation	1,190	Syrian Arab Republic	890
Syrian Arab Republic	1,175	Afghanistan	815
Unknown	1,020	Unknown	695
Serbia	890	Lebanon	590

Statistics on first instance asylum decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	8,155	405	1,205	17,090	26,855	9,765	36.4
Iraq	5,540	30	180	3,100	8,850	5,750	65.0
Afghanistan	295	70	585	645	1,595	950	59.6
Iran (Islamic Republic of)	570	20	10	525	1,120	600	53.6
Sri Lanka	270	155	30	135	595	460	77.3
Eritrea	350	50	25	40	465	425	91.4

Statistics on final decisions (Total positive decisions - top five nationalities)

2009							
	Geneva Convention Status	Subsidiary protection status	Humanitarian ¹	Rejected	Total number of decisions	Total positive decisions	Recognition rate ² %
Total	1,410	140	740	4,445	6,740	2,295	34.1
Iraq	375	20	70	410	875	460	52.6
Iran (Islamic Republic of)	310	35	40	315	695	385	55.4
Afghanistan	55	15	165	175	410	235	57.3
Turkey	155	5	65	535	760	230	30.3
Russian Federation	90	5	40	335	470	135	28.7

Notes: These tables are based on categories used by Eurostat. The way Eurostat presents its data may not necessarily correspond to categories used at national level. This can particularly be the case with statistics provided under 'humanitarian status'. For more detailed understanding of the data, the reader is invited to consult national statistics at: http://www.bamf.de/cln_092/nn_441792/DE/DasBAMF/Statistik/statistik-node.html?_nnn=true.

Data has been rounded to the nearest 5. Due to the rounding, the sum of individuals may not necessarily match the given total. 0 means less than 3; n.a. = not available. Kosovo (under United Nations Security Council Regulation 1244).

¹ Covering persons granted authorisation to stay for **humanitarian reasons** under national law by administrative or judicial bodies. It includes persons who are not eligible for international protection as currently defined in the first stage legal instruments but are nonetheless protected against removal under the obligations that are imposed on all Member States by international refugee or human rights instruments or on the basis of principles flowing from such instruments.

² The **recognition rate** corresponds to the proportion of positive first instance or final on appeal decisions out of the total number of decisions in 2009. Positive decisions include the provision of refugee status, subsidiary protection and humanitarian protection (where data is available).

Source: Eurostat, Data extracted on 01 September 2010.

2. Background Information

Asylum legislation¹

[Grundgesetz](#) (Basic Law) (in German)

[Aufenthaltsgesetz](#) (Residence Act) (in German)

[Asylverfahrensgesetz](#) (Asylum Procedure Act) (in German)

Asylum authorities

First instance authority

[Federal Office for Migration and Refugees](#) (BAMF) (in charge of deciding on asylum applications)

Aliens Offices in the respective local community (in charge of determining applications for subsidiary protection, if these are submitted separately from the asylum application)

Second instance authority

[Administrative Courts](#)

3. Duty to inform asylum seekers

According to Section 24(1) second sentence of the Asylum Procedure Act (APA), the BAMF shall inform the asylum seeker, in a language s/he can reasonably be supposed to understand and after the submission of the asylum application, of the course of the proceedings and of his/her rights and obligations in the proceedings, especially on time limits and the consequences of disrespecting them.

In July 2010, the Federal Office for Migration and Refugees (BAMF) provided the following information to the FRA as regards written information materials.

Written information materials	Various information leaflets. The main leaflet about the asylum procedure is translated into 59 languages; and the Dublin procedure leaflet into 15 languages.
Provided when?	At the time of the asylum claim and respectively when the decision is made. An information flyer about the asylum procedure is further available on the website of the Federal Office (BAMF).
Provided by whom?	By the Federal Office (BAMF).
Has an evaluation of information tools been carried out?	No.

¹ The legal information in this factsheets has been updated to reflect the situation on 1 September 2010.

4. Effective Remedy (Article 39 APD)

Type of procedures

German law distinguishes between the constitutional asylum (Article 16a, Basic Law) and the Geneva Convention status (Section 60(1), Residence Act). Every asylum application for Convention refugee status is also treated as an application for constitutional asylum, unless the foreigner expressly objects.

The authorities initially examine whether the Dublin II Regulation applies; in case of a decision determining the responsibility of another State, the claim is rejected as inadmissible (Section 27a in conjunction with Section 34a, APA). A special procedure exists for applications submitted at airports (Section 18a) and at land borders (Section 18). If an application submitted at the airport cannot be rejected as manifestly unfounded within two days of its submission, the applicant shall be admitted to the territory and the application examined in the regular procedure. A decision on the asylum application examined in the regular procedure should be taken within six months; otherwise the BAMF informs the applicant upon his/her request about the expected date of issuance of the decision (Section 24(4), APA).

Irrelevant and manifestly unfounded applications (e.g. when the asylum seeker has come from a safe country of origin and was not able to rebut the presumption of safety (Section 29a(1), APA)) is regulated separately by Section 36 of the APA.

Duty to state reasons for rejection and procedure to appeal

Section 39 of the [Administrative Procedure Act](#) requires that a written administrative decision rejecting an application is accompanied by a statement of grounds. This statement of grounds must contain the main material and legal grounds that led the authority to take its decision. Pursuant to Section 31(1) of the APA, the decision on the asylum application shall contain a justification in writing and be delivered to those concerned, along with information on legal remedies. If the asylum seeker has no representative for the procedure, a translation of the operative provisions of the decision and the information on legal remedy in a language the foreigner can reasonably be assumed to understand shall be enclosed. A translation of the reasoning is not provided.

Time limits for appeal

In case of rejection of the asylum application in the airport procedure as manifestly unfounded, an application for an interim measure against deportation needs to be filed within three days after the decisions of the Federal Office on the asylum application and that of the Federal Border Police on the non-entry were served (Section 18a(4), APA). The time limit for submitting an appeal against a decision taken in the regular procedure is two weeks from the service of the decision, or one week, where the law provides that this is the deadline for requesting suspensive effect (Section 74(1), APA). The latter applies in cases in which the application is rejected as irrelevant or manifestly unfounded (Section 36(3)(1), APA), or where a subsequent application was filed and the resumption of proceedings was denied (Section 71(4), APA referring to Section 36(3),(1), APA).

Type of procedure	Time limits	Right to remain
Regular procedure	2 weeks	Automatic suspensive effect.
Subsequent applications, manifestly unfounded and irrelevant applications	1 week	No automatic suspensive effect, unless the administrative court decides otherwise upon the request for suspensive effect.
Airport procedure	3 days (for submitting an application for an interim injunction)	No automatic suspensive effect, but the court may suspend removal in the individual case.
Dublin cases	2 weeks	Suspensive effect excluded by law (Section 34a(1), APA); however, it is disputed whether courts may order suspensive effect based on reasons of constitutional law ² or the European Convention on Human Rights.

Right to remain in the country during appeal

Generally, there is automatic suspensive effect of an appeal. There are, however, several exceptions (Section 75, APA). In case of a decision on manifestly unfounded applications issued in the airport procedure, the asylum seeker may apply for an interim measure for granting leave to enter and preliminary protection against deportation within three days of notification (Section 18a(4)). Similarly, in case of decisions on irrelevant or manifestly unfounded applications, or where a subsequent application was filed and the conduct of further proceedings was denied after completing the preliminary examination of the application, the asylum seeker must submit a request for suspensive effect within one week of service of the decision (Section 74(1) in conjunction with 36(3),(1), APA).

Legal Aid

Legal representation is required for appeals before the Higher Administrative Court and the Federal Administrative Court (Section 67(4), [Code of Administrative Court Procedure](#)). At the appeal stage, the appellant may be represented by a legal counsel of his/her choice (Section 67 (1) (2), [Code of Administrative Court Procedure](#)). The court may grant legal aid to the appellant upon his/her application (so called 'Prozesskostenhilfe') if justified by the economic situation of the appellant and provided that the appeal has good prospects to succeed (Section 166, [Code of Administrative Court Procedure](#) in conjunction with Section 114 of the [Code of Civil Procedure](#)).

Language assistance

During the procedure before the Federal Office for Migration and Refugees, an interpreter is available to the asylum seeker if needed (Section 17, APA). An interpreter is provided by the court for the oral hearing (Section 185(1), Law on Courts Constitution). In general, documents have to be presented to the court in German (Section 55, [Code of Administrative Court Procedure](#) in conjunction with Section 184 of the Law on Courts Constitution). However, their translation would be covered by legal aid if granted (Section 162(1), Code of Administrative Court Procedure).

² The Federal Constitutional Court has granted interim measures in a number of cases where a person was facing transfer to Greece based on a Dublin decision. Decision on the merits of the respective constitutional complaints is still pending on 2 September 2010.

Hearing

Unless otherwise stated, the court decides on the basis of oral proceedings. With the agreement of the parties, the court may decide without oral proceedings. Where nothing is provided to the contrary, decisions of the court, which are not judgments may be made without oral proceedings (Section 101, Code of Administrative Court Procedure). With regard to a request for suspensive effect, the decision of the court is adopted in the form of an order (Section 123 (4), Code of Administrative Courts Procedure) and the appellant is not given the opportunity of a hearing (Sections 18a (4) and (5) and 36(3) and (4), APA). Exceptionally, an interview may be conducted within temporary legal remedy proceedings if the asylum authorities attached incorrect relevance to the applicant's submissions or if procedural errors occurred.