

FAQ

Frequently Asked Questions

**at the Intersection of Flight
and Protection Against Violence**



FRAUEN GEGEN GEWALT E.V.



**Frauenhaus-
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FAQ – FREQUENTLY ASKED QUESTIONS AT THE INTERSECTION OF FLIGHT AND PROTECTION AGAINST VIOLENCE

This FAQ responds to questions revolving around the topic of protecting refugee women and girls against violence. It begins with a glossary that clarifies key terms and their consequences for female refugees. The glossary will be amended and updated as required on the websites of bff and FHK.

The FAQ then continues with a number of questions that are categorised according to ten broader topics. Some of the questions recur because they belong to different topics at the same time.

It is important to note that legal regulations frequently change in this field. This FAQ is concerned with the legal situation as of November 2017.

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GLOSSARY:**Termination of residence /
Obligation to leave the country**

As a general principle, every person who is not a EU citizen requires a permit to stay in Germany. The person is obliged to leave the country if the residence permit expires after a certain period or if it ends due to a negative decision on granting or renewing a residence title, or if, for example, an asylum application has been finally rejected.

This does not always imply that a person also immediately leaves or is entitled to immediately leave the country. Sometimes there are actual or legal obstacles, for example, if documents are missing, if a person is unable to board because of maternity protection, if there is no airport in the country of origin, or for other reasons. In such cases, the deportation will be temporarily suspended. This does not amount to a residence title. It merely certifies that, although the person is obliged to leave, the deportation cannot be presently enforced.

Deportation

Deportation refers to the execution of the obligation to leave. That is, deportation is in each instance preceded by a decision on terminating or discontinuing residence. Moreover, the person is at first required to voluntarily leave the country and thereby to comply with the obligation to leave. It is not until the person neglects to do so that authorities can prepare and enforce compulsory deportation.

Expulsion

Whereas deportation refers to authorities enforcing the termination of residence, expulsion solely lays down the revocation of the residence title along with a re-entry ban.

A person will be expelled if it has been determined that the person's residence in the Federal Republic of Germany compromises public safety and order or other compelling government interests. This is assumed if the person has been substantially or repeatedly involved in criminal acts, particularly in offences against the Narcotics Act or against the right to sexual self-determination.

In any case, the government agency or, in the event of an appeal against the decision, a court has to consider, in each individual case, whether the state's concern with having the person deported outweighs the person's wish to stay. In this regard, the person's 'rootedness' in Germany and their residence status are of special importance.

A person who has been expelled is not necessarily required to leave the country or rather will not necessarily be deported. If, for example, refugee status has been recognised and if it has been determined that the person is threatened with torture or other human rights violations in their country of origin, the state will, as a rule, abstain from deportation, even if the person has become liable to prosecution in Germany. In this case, however, a residence permit will not be granted. Such a person's deportation will more often be considered as permanently suspended.

Protection status

During the asylum procedure, the Federal Refugee Office will ascertain for each "asylum application" (application for protection), in descending order:

- whether the applicant is entitled to asylum according to article 16a of the German Constitution
- whether the applicant shall be recognised as a refugee according to the Geneva Refugee Convention (section 3, Asylum Act)
- whether the applicant shall be granted subsidiary protection (section 4, Asylum Act)
- or whether there exist other prohibitions of deportation concerning the applicant's country of origin (section 60, subsection 5, and section 7, sentence 1, Residence Act).

International protection:

The concept of international protection is derived from European Refugee Law. It subsumes both refugee protection and subsidiary protection under the category of international protection.

1. REGULATIONS RELATING TO ASYLUM AND RESIDENCE MATTERS

1.1 What rights and obligations do exist during the asylum procedure?

Basic information on regulations relating to asylum and residence matters, but also on family reunification or on particularly vulnerable refugee groups, can be found on the website of GGUA refugee support:

<http://www.ggua.de/aktuelles/>

1.1 What rights and obligations do exist during the asylum procedure?

The following compilation of materials on the rights and obligations during the asylum procedure is useful when it comes to counselling and supporting refugee women:

- Guidebook for refugees in Berlin 2017: <http://www.fluechtlingsinfo-berlin.de/fr/pdf/ratgeber.pdf>
- Work material by Asylnet on residence and asylum law: <http://www.asyl.net/index.php?id=329>
- Basic information by Asylnet on asylum procedure, rights and obligations of asylum seekers. and Dublin Regulation: <http://www.asyl.net/arbeitshilfen-publikationen/arbeitshilfen-zum-aufenthalts-und-fluechtlingsrecht/basisinformationen.html>
- Work material by German Parity Welfare Association (Der Paritätische): Foundations of the asylum procedure (2016): http://www.der-paritaetische.de/fileadmin/user_upload/Publikationen/doc/Broschue_A4_Asylverfahren_AUFL4_2016_web_FINAL.pdf
- Initial information for asylum seekers by the Refugee Council Lower Saxony (2015): https://www.nds-fluerat.org/wp-content/uploads/2014/01/erstinformation_n_broschuere_5te_auflage_WEB_DEU-2.pdf
- Work material and information on benefit entitlements during the asylum

procedure by the Federal Workgroup of Psychosocial Support Centres for Refugees and Victims of of Torture (BAfF e.V.):

<http://www.baff-zentren.org/veroeffentlichungen-der-baff/rechtliches/>

1.2 What are procedures according to the Dublin III Regulation?

Basic information on the Dublin III Regulation (2015) can be found under:

http://www.asyl.net/fileadmin/user_upload/redaktion/Dokumente/Publikationen/Basisinformationen/Basisinf_2_Dublin_fin.pdf

1.3 What are the differences between temporary suspension of deportation, individual residence titles, and protection status?

Work materials, prepared by a lawyer and the German Parity Welfare Association (Der Paritätische), on temporary suspension of deportation, individual residence titles, and protection status are listed below:

- For an overview of different residence titles and protection statuses: See attached table.
- Work material by the German Parity Welfare Association: Foundations of the asylum procedure, p. 24: http://www.der-paritaetische.de/fileadmin/user_upload/Publikationen/doc/Broschue_A4_Asylverfahren_AUFL4_2016_web_FINAL.pdf

1.4 What is particular about the situation of women (affected by violence) from so-called safe countries of origin?

In the case of refugees from so-called safe countries of countries and, by implication, female refugees who have been affected by violence, it should be noted that, based on an assessment of the situation in the respective country, the Federal Republic will assume that no political persecution or human rights abuses occur in these countries.

The so-called safe countries of origin appear in a list contained in the annex to the Asylum Act. The list is reviewed every two years. Currently (as of September 2017), the following countries are included: the member states of the EU, Albania, Bosnia and Herzegovina, Ghana, Koso-

1. Regulations relating to asylum and residence matters

vo, Macedonia, the former Yugoslav Republic of Montenegro, Senegal, Serbia (Asylum Act, annex II ad section 29a). Consequently, it will be presumed for any person from one of these countries that they do not have to fear being persecuted, so that their asylum application will be routinely rejected as “manifestly unfounded”. In this case, refugees will have to provide facts and evidence in a fast-track procedure and prove that, contrary to the statutory presumption, they have to fear persecution after all. This implies in particular that their account of such persecution shall be very precise and detailed and that, even less than in a regular procedure, it cannot be restricted to the generally difficult situation in their country of origin.

If “fast-track procedures” (Asylum Act, section 30a) apply, the Federal Office shall decide on requests for protection filed by persons from so-called safe countries of origin within one week.

There are **further restrictions pertaining to the accommodation of persons from so-called safe countries of origin**. There exist, among other things, special reception centres where they are obliged to reside for the duration of the asylum procedure and possibly until deportation. If the persons concerned file an appeal against the rejection of their asylum applications, they can be deprived of their mobility rights by imposing a residence obligation on them. Also, they will often be banned from taking up employment, just as it is possible to cut their benefits. How quickly and strictly authorities will resort to such sanctions varies from one federal state to the other. Not all federal states have implemented these legal provisions, so that these regulations still do not always apply practically. The cases in which women from so-called safe countries of origin can assert gender-specific violence as a reason for seeking asylum will be addressed under question 2.1.

1.5 What does it mean if an asylum application is rejected as “manifestly unfounded”?

Classifying an asylum application as “manifestly unfounded” (that is, rejecting it) entails a considerable restriction of legal protection and further restrictions concerning the stay in Germany.

In case an asylum request is considered “manifestly unfounded”, however, an appeal must be filed within one week only. But, in contrast to a request that is simply considered “inadmissible”, filing an appeal here does not by default mean that everything remains the same for the woman until the appeal procedure has been concluded.

Instead, the Foreigners Office can urge the women during the appeal proceedings to assist procuring travel documents that would facilitate the deportation, and, in extreme cases, the woman can even be deported to her country of origin.

In order to prevent this, an additional emergency appeal for legal protection should be filed. In this appeal, the personal story of persecution must be described completely and thoroughly, along with evidence. This involves an enormous effort that needs to be taken care of within a week right after the negative decision and represents an obstacle that is very difficult to overcome. This is aggravated by the fact that, in most cases, the prospects for success are limited.

1.6 What is the difference between the obligation to take up residence, residence restriction and residence obligation?

Once an asylum application has been filed, asylum seekers’ mobility rights will be temporarily regulated. Accordingly, they are required to take up residence, just as their freedom of movement can be curtailed.

Residence obligation

The residence obligation (Residenzpflicht) takes effect as of the day the asylum application is filed, usually for three months, but no longer than the applicant is required to reside in a reception centre. Residence obligation means that the person concerned may not leave the territory of the responsible municipality, city or district without permission.

In order to attend a court appointment that requires an asylum seeker to appear in person, a prior permission to leave the allocated residence is not mandatory.

Once the residence obligation has ended after three months, the person may travel throughout Germany and stay overnight with friends.

Obligation to take up residence (not “residence restriction”, see below on this point)

This obligation (Wohnsitznahmeverpflichtung) determines where asylum seekers are required to take up permanent residence, that is, where they have to live and be registered. Just as the residence obligation, this regulation takes effect from day one.

There is an additional provision implying that asylum seekers reside in a reception centre, as a rule for the first six weeks, but no longer than six months. Even once having relocated to private housing or a shared accommodation, there is still the obligation to reside in a particular district or independent town.

There are also special regulations that apply, among others, to persons from so-called safe countries of origin.

In the case of so-called safe countries of origin, the legislator assumes that, due to their democratic status and general political situation, there is no threat of persecution in these countries and that the respective state is capable of protecting citizens from persecution by non-state actors. The so-called safe countries of origin appear in a list contained in the annex to the Asylum Act. The list is reviewed every two years. Currently (as on September 2017), the following countries are included: the member states of the EU, Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia, the former

Yugoslav Republic of Montenegro, Senegal, Serbia (Asylum Act, annex II ad section 29a).

Persons from these countries, except for EU citizens among them, are required to reside in the responsible reception centre for the duration of their asylum procedure. This rule can even apply until deportation if their asylum application has been rejected as “manifestly unfounded” or “inadmissible”. During this time, they are not allowed to take up work and may only temporarily leave the area specified in their residence permit if they have received permission from the Federal Refugee Office.

Residence restriction

Lastly, there is the residence restriction (Wohnsitzauflage) that has been added to section 12a of the Residence Act in 2016. This provision does not apply during but after the asylum procedure. This means that, for three years after having been granted asylum, recognised refugees are obliged to reside in that federal state which was responsible for their asylum procedure. Hence refugees cannot simply relocate to another federal state once they have been recognised as refugees. Moreover, according to this law, it is possible to specify in which municipality exactly the person concerned has to reside. The cancellation of the residence restriction can be achieved if a person takes up a study program, an apprenticeship or an employment, or because of other important reasons, such as **violence and the ensuing necessity of taking refuge in a women’s shelter in a different municipality or in a different federal state.**

For further information:

- Work material on residential regulations according to section 12a of the Residence Act, also relevant for recognised refugees: Practical advice and background information

http://www.der-paritaetische.de/publikationen/migration-und-flucht/?tx_news_pi1%5Bnews%5D=62&cHash=811c280f6ba06143daf6ff72446ffc91

2. Gender-specific violence as a reason for asylum and its role during the asylum procedure

- Work material by the German Parity Welfare Association on residence restriction and relocation:
<https://www.nds-fluerat.org/wp-content/uploads/2017/02/Brosch%C3%BCre-Wohnsitzauflage-%C2%A712-AufentG.pdf>
- Fact sheet on residence restriction by the Refugee Council Lower Saxony:
<https://www.nds-fluerat.org/wp-content/uploads/2017/02/Fact-Sheet-%C2%A712-a-AufentG.pdf>

1.7 What is the relationship between Foreigners Office and the Federal Office for Migration and Refugees, and what are their particular responsibilities?

Federal Office for Migration and Refugees (BAMF)

The Federal Office for Migration and Refugees is subordinated to the Federal Ministry of the Interior. It is responsible for overseeing the asylum procedure, that is, for reviewing the asylum application in terms of both form and content. It has at least one branch office in every federal state. The asylum application has to be filed in person. The personal interview during the asylum procedure also takes place at the Federal Office or one of its branch offices.

The Federal Office registers and stores the personal data and fingerprints of asylum seekers. The data will be fed into the European database EURODAC, and at first it will be checked if, according to the Dublin III Regulation, another European country is responsible for the asylum procedure. If not, then Germany and thus the Federal Office of Migration and Refugees is responsible.

Moreover, in each federal state, there are several reception centres, which are often connected to the branch offices of the Federal Refugee Office.

Foreigners Offices

Foreigners Offices are state or municipal authorities. They are responsible for implementing the residential regulations (as laid down in the Residence Act). This includes the execution of decisions made during the asylum procedure, that is, as regards the permission to relocate, the provision of work permits, the resi-

dential regulations following the approval of asylum applications, but also the implementation of expulsions and deportations. Once an asylum application has been approved, the Foreigners Offices are bound to the decisions made by the Federal Office. That is, they issue residence and permanent settlement permits for recognised refugees, asylum seekers and persons eligible for subsidiary protection. In the case of all other migrants (foreign students, graduates, employees, relatives and so on), the Foreigners Offices are responsible for making decisions.

The Foreigners Offices also grant residence permits during the asylum procedure, just as they issue temporary suspensions of deportations during the Dublin procedure or after a final rejection of the asylum procedure.

2. GENDER-SPECIFIC VIOLENCE AS A REASON FOR ASYLUM AND ITS ROLE DURING THE ASYLUM PROCEDURE

2.1 In what way can gender-specific violence be asserted as a reason for granting asylum or as a factor that necessitates the prohibition of deportation / the classification as a case of hardship?

To which gender-specific forms of violence does the respective regulation refer?

In the context of flight, gender-specific violence can occur in different situations, so that its consideration during the asylum procedure varies greatly in Germany:

Gender-specific persecution in the country of origin

Only violence suffered or gender-specific persecution in the country of origin can lead to the recognition of refugee status or subsidiary protection status. Because, according to the Geneva Refugee Convention, “the term ‘refugee’” applies to any person who “owing to well-founded fear of being persecuted for reasons of race¹, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable

¹ The term race is used here because legal texts make use of it.

or, owing to such fear is unwilling to avail himself of the protection of that country". Hence the issue at stake is persecution in the country of origin. Persecution also implies forms of gender-specific violence.

In the course of interpreting and further specifying the reasons for persecution given in the Geneva Convention, gender-based persecution has been assigned to "membership of a particular social group". In doing so, the focus was at first on the gender-based persecution of women. The category of gender-specific persecution of refugees primarily pertained to sexualised violence committed by members of the state while exercising their authority in the country of origin (including torture, rape during police custody or incarceration). It also includes persecution measures by the state against women that are solely based on gender.

Such measures comprise, among others things, genital mutilation, forced marriage, or threats based on the supposed 'westernisation of women'.² If the danger of persecution does not emanate from the state but from husbands, neighbours or other community members, then it has to be determined in a second step that the persecution is substantial and that the state and the organs of state are unwilling or incapable of protecting against such persecution.

However, the jurisdiction is inconsistent in this regard. In the case of forced marriage, for example, courts have reached all kinds of decisions, sometimes considering it an obstacle to deportation, sometimes as crucial to the recognition of refugee status.

What is important for the persons concerned is that the establishment of refugee protection status or obstacles to deportation is always an individual case-by-case decision and that it is impossible to make generalizations in this context.

For an exemplary critique of the use of the term 'race', see: <https://heimatkunde.boell.de/2008/11/18/zur-problematik-des-begriffs-rasse-der-gesetzgebung> und http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Policy_Paper/policy_paper_10_und_welcher_rasse_gehoeren_sie_an.pdf.

² This term is derived from its use in jurisdictional practice.

Even if, for example, there are court cases in which a 'considerable westernisation'³ of women from Afghanistan has been recognised as a risk of persecution, such a decision cannot be expected from all courts and depends, moreover, on the particular person who is responsible for making the decision.

The persecution of LGBTI based on their sexual orientation or gender identity has meanwhile also been considered an indisputable reason for persecution owing to "membership of a particular social group".

Gender-specific violence during flight / in the host country

Gender-specific persecution during flight or in the host country, on the other hand, cannot result in the recognition of refugee status. However, if such persecution involves considerable physical and/or psychological suffering in such a way as to threaten the life (survival) of the person concerned, this might entail that a prohibition of deportation is declared and that the person concerned is granted a residence permit.

2.2 Do directives for the protection against violence have any impact on the asylum procedure? If yes, which one?

As a matter of principle, directives for the protection against violence do not directly influence the asylum procedure. The asylum procedure is primarily concerned with assessing the situation in the country of origin.

But, as explained above, violence committed by a husband can influence a woman's asylum procedure to the effect that such violence is considered an obstacle to deportation. In that case, it will be determined whether the violence

³ Verdict by the Higher Administrative Court Munich, September 21, 2015 - ref. no. 9 LB; verdict by Administrative Court Munich, August 14, 2007, ref. no. M 23 K 07.50455; verdict by the Asylum Court Austria, March 9, 2012, ref. no. C2 422385-1/2011/8E

committed by the husband or the circumstance that, for example, the husband's children were or are (temporarily) being seized, might involve persecution upon returning to the country of origin. This can, for example, be the case if, according to the jurisdiction of the country of origin, the children belong with the husband's family after a divorce and if the woman, who has fled together with her children from the husband, is threatened by the husband's family.

However, this issue can only be assessed on an individual case-by-case basis and cannot be generalised.

It is indispensable to consider, not only in the case of long-term separations but especially in the case of a directive for the protection against violence, that the asylum applications of marriage partners can be processed individually. In that case, it is crucial to consult a lawyer beforehand.

2.3 What happens in the case of a divorce if the residential status depends on the (marriage) partner?

In the case of a divorce, it needs to be clarified first which kind of residential status the marriage partners have and if both or one of their asylum applications is still being processed or if protection status has already been granted.

It should also be considered whether the stay – in our case, usually the women's stay – depends on cohabitation or marriage status. There are different constellations:

- The woman can be granted protection for family members of refugees, which means that it is because of the family unit that she will be recognised as a refugee. In that case, it will be determined if she “merely” followed her husband and if there are no individual reasons for flight or persecution. A divorce can affect a woman's residential status considerably, if she received refugee status for family members because her husband has been persecuted.
- The same applies if a woman has followed her husband for the purpose of family reunification and if she received a residence permit for family-related reasons.

In that case, a divorce can affect her residential title considerably. In the worst case, she might forfeit her residence permit.

Accordingly, in the case of a divorce, it should be taken into consideration if the woman might have her own reasons for having to fear persecution, which she as yet has possibly not asserted, or if the divorce could amount to a new obstacle to deportation (see above 2.2).

In many cases, the divorce as such or, for example, the circumstance that the children are supposed to remain with the husband in the country of origin, can be considered a new obstacle to deportation. This issue should be clarified in each individual case by consulting a lawyer.

What is different again is the situation in which parents have children together who receive refugee protection through the father. In that case, the divorced woman can as well secure her residence title by providing parental care.

3. MARRIAGE AND FAMILY LAW

3.1 What is the situation during the asylum procedure regarding matters of family law (right to determine the place of residence, right of care and custody, visitation rights, right of maintenance in case of divorce)?

Regarding issues related to family law, there are generally no particularities that apply to persons whose asylum applications are being processed. Any person who seeks asylum can file a motion at a family court in order to obtain the right to determine the place of residence, to care and custody, to maintenance and to protection against violence. Difficulties may arise as the persons concerned do not hold German citizenship, so that due to their different nationalities, there is often the question of which particular legislation applies.

Such questions likewise have to be approached by other non-German couples or families.

Moreover, couples and families whose asylum application is still being processed have to consider and clarify whether the asylum procedures are handled separately and what this implies as to

the authority to represent the children. If, for example, a woman breaks up with her partner and takes the children with her, then she would actually have to file a request, along with her application to custody rights, to obtain the right to act as the sole representative regarding all matters pertaining to the children during the asylum procedure. Or, in the opposite case, the woman would have to file a motion to the effect that she will also be informed about decisions pertaining to her children, even if she has no access to information regarding her husband's asylum application. In this context, the Federal Office for Migration and Refugees, lawyers and administrative courts frequently create legal facts that rest on shaky foundations in terms of family law.

3.2 Will a marriage that has been concluded in another country be recognised in Germany?

In general, marriage contracts that have been concluded in a foreign country do not require additional recognition in Germany. It is possible to file a request for the certification of a marriage contract to be included in the marriage register if one of the marriage partners holds the German citizenship.

The requirements for concluding a marriage contract are subject to the legislation of the country of origin. A marriage contract that has been concluded in the country of origin is also valid in Germany and will be officially recognised if the material and legal requirements for marriage (e.g. unmarried status, minimum age) were met by both partners in the country of origin at the time when the marriage was concluded and if the marriage has been recognised in the country of origin (according to section 13 of the Introductory Act to the German Civil Code). Exemptions from the recognition of marriages can be made if a foreign legal norm violates the public policy doctrine (the so-called "ordre public"). That is, if a foreign marriage is obviously irreconcilable with the basic principles of German law, it will not be recognised and therefore considered invalid in Germany.

An assessment regarding the violation of the basic principles of German law (see section 6 of the Introductory Act to the German Civil Code) can only happen on an individual case basis and

requires consideration of the special characteristics of the foreign legislation. A violation has been presumed if, for example, it is legal to marry at the age of 14 in the country of origin.

3.3 What is the situation of married underage refugees in Germany?

Unaccompanied underage refugees in Germany will be routinely entrusted to the Youth Welfare Office and appointed a legal guardian.

If, for example, an underage refugee arrives with their marriage partner, then it will first be determined whether the marriage is considered valid in Germany. In this context, there have been substantial changes since the introduction of the "Act Against Child Marriage" on July 18, 2017.

According to this law, it is now banned to conclude a marriage if one of the marriage partners is under 18 years of age, even with the consent of the parents or the Youth Welfare Office, as it was possible until now. Regarding marriages between minors concluded in a foreign country, it is now the case that marriages involving persons under 16 years of age are, as a rule, considered invalid and that marriages involving persons between 16 and 18 years of age shall be annulled upon request.

This has far-reaching legal consequences whose practical applications and effects remain to be seen.

The title alone, "Act Against Child Marriage", signals a stigmatising attitude towards marriage in the public sphere. The term "child marriage" suggests the forced marriage of children, especially of girls up to the age of 14.

In fact, marriages with and between underage persons arise out of various contexts, out of different realities of life. It seems inappropriate, for example, to frame the marriage between a 17-year-old and a 19-year-old adolescent, who married in order to flee from Syria to Germany, in terms of a "child marriage" (German Institute for Youth Human Services and Family Law, DIJuF e. V., February 22, 2017).

Further problems arise if, for example, a minor and their partner are already parents or if they have a child in Germany. In that case, paternity first has to be determined and recognised.

For this purpose, an underage person requires the approval of a legal representative (section 1596, paragraph 4, sentence 2, subsentence 2, German Civil Code). According to past experience, a legal guardian (representative) will only be appointed after a longer interval, in many cases only after months.

During that period, the legal representation of a child of an underage mother is restricted (section 1673, German Civil Code). It is possible to claim retroactive maintenance, but still such payments for supporting subsistence might be lacking for months.

Visitation rights are also not enforceable without legal paternity. The situation is similar when it comes to common parental care: The right to cooperative care involving the partner of an underage mother can only be claimed by issuing mutual custody declarations. This also requires the approval of the mother's legal representative (section 1626c, sentence 2, subsentence 1, German Civil Code), which means that delays and unclear legal situations are to be expected. It is also questionable if and when the parents will receive appropriate counselling / information in order, for example, to catch up on the acknowledgement of paternity and the submission of mutual custody declarations.

3.4 What happens in case of a divorce if the residential status depends on the (marriage) partner?

In the case of a divorce, it needs to be clarified first which kind of residential status the marriage partners have and if both or one of their asylum application is still being processed or if protection status has already been granted.

It should also be considered whether the stay – in our case, usually the women's stay – depends on cohabitation or marriage status. There are different constellations:

- The woman can be granted protection for family members of refugees, which means that it is because of the family unit that she will be recognised as a refugee. In that case, it will be determined if she “merely” followed her husband and if there are no individual reasons for flight or persecution. A divorce can affect a woman's residential status considerably, if she received refugee status for family members because her

husband has been persecuted.

- The same applies if a woman has followed her husband for the purpose of family reunification and if she received a residence permit for family-related reasons. In that case, a divorce can affect her residential title considerably. In the worst case, she might forfeit her residence permit.

Accordingly, in the case of a divorce, it should be taken into consideration if the woman might have her own reasons for having to fear persecution, which she as yet has possibly not asserted, or if the divorce could amount to a new obstacle to deportation (see above 2.2).

In many cases, the divorce as such or, for example, the circumstance that the children are supposed to remain with the husband in the country of origin, can be considered a new obstacle to deportation. This issue should be clarified in each individual case by consulting a lawyer.

What is different again is the situation in which parents have children together who receive refugee protection through the father. In that case, the divorced woman can as well secure her residence title by providing parental care.

4. MEDICAL CARE AND SOCIAL BENEFITS

Which medical, psychological, therapeutic and social benefits can be granted under the Asylum Seekers Benefits Act?

Below you can find an overview of medical support services and social benefits for refugees.

Medical support for refugees:

- <http://gesundheit-gefluechtete.info/>
- Legal situations in individual federal states:
<http://gesundheit-gefluechtete.info/regelung-in-den-bundeslaendern/>

- After 15 months: benefits (analogous to benefits payments according to Books II and V of the German Social Code) and electronic health data card
- The payment of benefits under the Asylum Seekers Benefits Act stops at the end of the month in which the decision on the asylum application is made

Medical support for person without regular residence status

- Medi-Büro locations throughout Germany: <http://medibueros.m-bient.com/standorte.html>
- “Illegal residence – guidebook”, 2013: <https://www.nds-fluerat.org/wp-content/uploads/2010/12/DRK-CARITAS-Handbuch-Illegalit%C3%A4t-2010-1.pdf>

Psychotherapeutic services

- http://www.baff-zentren.org/wp-content/uploads/2017/03/BAfF_Arbeitshilfe_Therapiebeantragung.pdf
http://www.baff-zentren.org/wp-content/uploads/2017/02/BumF_BAfF-Arbeitshilfe-Therapie-Jugend.pdf
- If such services are granted under the Asylum Seekers Residence Act, it is not required that therapists have a health insurance license
- Travel and interpreter costs will be covered for psychotherapeutic treatment

Social rights of refugees

- http://www.der-paritaetische.de/fileadmin/user_upload/Publikationen/doc/sozialleistungen-fluechtlinge-2016_web_18.01.2017.pdf

5. FUNDING OF COUNSELLING AND PROTECTION FOR REFUGEE WOMEN

5.1 Who will cover the costs for legal counselling and legal aid, and in which cases?

As long as the Federal Office (BAMF) or the Foreigners Office is still processing the asylum application, refugees – including female refugees who have been affected by gender-based violence – have to pay on their own for legal counselling.

In this case, however, it is possible, just as in the case of family or criminal proceedings, to apply for legal aid for extra-judicial proceedings. Still, a one-time legal aid amounting to roughly 100 € does not allow for appropriate legal representation during the asylum procedure.

Refugee support organisations, such as Pro Asyl, the German AIDS Service Organisation (Deutsche AIDS Hilfe), Reporters Without Borders and others, often subsidise the legal representation of refugees. It is also possible to consult women’s organisations on whether they can subsidise attorney fees in individual cases.

Who will cover the costs if an asylum seeker files an appeal against a rejected asylum application?

If the Federal Office (BAMF) partially or completely rejects an asylum application and if an appeal against this decision is filed at the administrative court, then it is possible to apply for legal aid to cover the costs of the complaint proceedings. The approval of such legal aid depends, for one thing, on whether the person concerned is in need of it. The person thus has to prove that she does not have the necessary financial means at her disposal. For another thing, the outcome of the proceedings at least needs to be still open. The state will not cover the costs for lawyers to get involved in court proceedings that are futile from the outset.

For this reason, the administrative court will decide on whether or not to grant legal aid based on the prospects of the complaint. This kind of decision-making process is as unpredictable as the outcome of the proceedings differs

from court to court. Hence it is by no means possible to predict whether or not legal aid will be granted when filing a complaint.

Since the decision on granting legal aid is often made only very late during court proceedings, lawyers generally ask for a retainer and for fees to be paid in monthly instalments, for which the client then can be reimbursed in case legal aid is granted.

During administrative court proceedings, legal representation is not obligatory. This means that the person concerned does not have to be represented by a lawyer. Hence, for example, a complaint can be filed within a certain period of time at the court's office for legal requests directly by the refugee herself. At this office, there will be court personnel who can assist with the application. Another option would be to consult an experienced circle of supporters in order to draft a sound statement for the application, so that it becomes possible to call in a lawyer only at a later time.

5.2 Is it possible for female refugees to receive a counselling voucher during the asylum procedure or once the asylum application has been rejected?

Yes, in general, a woman who has been affected by violence can receive a counselling voucher. It will be difficult, however, to find a lawyer who is willing to take over the extensive legal representation required by an asylum procedure in return for a counselling voucher of 100 € (see above under 5.1).

Once the procedure has been concluded, the possibility of making use of a counselling voucher depends on the prospects of a complaint. As soon as the court proceedings have commenced, the right to counselling assistance ceases and is followed by the right to legal aid (see above under 5.1).

5.3 How is the stay of female refugees in women's shelters funded?

For an overview of the possibilities for funding a stay in a woman's shelter: See attached table.

5.4 Which possibilities for funding interpreters do exist

There are possibilities for funding interpreters through public subsidies, namely through funding and support programs by federal states and municipalities as well as state shares in funds for women's shelters and expert counselling centres. However, such arrangements are not available in all federal states and not in all women's shelters and counselling centres.

The quality of interpretations, the access to funding possibilities, and the accounting procedures may vary considerably from region to region and from case to case.

For an initial consultation of a woman affected by violence or in order to determine which language she speaks, the nationwide hotline "Violence Against Women" can be contacted (see the info sheet of the hotline "Violence Against Women": Multilingual counselling upon request by a support organisation: https://www.hilfetelefon.de/fileadmin/content/Materialien/Infoblaetter/Hilfetelefon_Gewalt_gegen_Frauen_Infoblatt_Unterstuetzungseinrichtungen_barrierefrei617.pdf

The following list makes no claims as to the quality of interpretation, the access to funding possibilities, or the accounting procedure.

Fee-based, supraregional interpretation services:

- "LingaTel", phone-base interpretation service:
www.telefondolmetschen-sofort.com
- "Videodolmetschen", video- and phone-based interpretation service:
www.videodolmetschen.com

Further information

As yet there is no consistent nationwide arrangement regarding the funding of interpretation services. In practice, this leads to a dramatic shortage of professional translations.

As a result, it is often children or non-professional supporters recruited from a wider social context who take care of translations.

It is likewise problematic that, in many locations, public subsidies are not made available for professional interpreters but only for language mediation. This way the professional standards that are necessary when it comes to a sensitive subject such as violence cannot be ensured.

Moreover, poorly paid team members with the necessary language skills are often additionally hired (for example, as marginal employees on a 400€ basis) or deployed as interpreters in such a way that goes beyond their actual responsibilities. In refugee shelters, this task is frequently carried out by security guards, so that there is a mixing up of professional roles, which also constitutes a breach of the requirement of neutrality on the side of the interpreter.

Also, interpretation services are often only available for larger language groups (e.g. Arabic or Russian), while interpreters for other languages are hard to find.

Expert counselling centres and women's shelters have for a long time requested from federal, state and local authorities that adequate funding for interpretation services shall be made available in all federal states throughout Germany.

6. PROTECTIVE MEASURES FOR REFUGEE WOMEN LIVING IN SHELTERS

6.1 Which difficulties may arise for women affected by violence when disregarding the residence obligation?

The residence obligation (see above under 1.5) restricts mobility rights during the first few weeks after submitting an asylum application or, in the case of persons from so-called safe countries of origin, for the whole duration of the asylum procedure. This means that women affected by violence, who in order to escape their perpetrators have to relocate to a place that the residence obligation keeps them from going to, first have to obtain a permit (by filing a request, if possible in written form, at either the Federal Office or the Foreigners Office, depending on the stage reached in the asylum procedure). Otherwise they will violate the residence obligation and commit an offence. In the case of women affected by violence, such an offence, which occurs due to having to escape the perpetrator, is deemed justified and has no direct negative influence on the asylum procedure.

Since this often involves a situation of imminent danger, it is generally possible to file the request belatedly or rather the women's conduct will be considered as having been excused.

6.2 Is it possible for female refugees, in case they suffer violence, to take up their own residence earlier or to suspend the residence allocation?

At the beginning of the asylum procedure, there is the obligation to stay in a reception centre for a duration of up to six weeks, or for six months at most.

This obligation expires after six months if the asylum application has been previously approved, if the person obtains a legal claim to a residential title by way of marriage or civil partnership or if the person is allocated to a shared accommodation.

The question of whether a person is allocated to a shared accommodation or obtains the right to take up their own residence is settled differently from one state to the other.

Also, in cases of hardship, the obligation to stay in a reception centre can be repealed early, so that the corresponding residence restriction expires and the affected woman can move early into a shared accommodation or into an own apartment.

6.3 How do reallocation requests work? Is it possible to speed up the reallocation procedure if the applicant is in danger? Is it possible to influence the decision on where to reallocate an affected woman?

An allocation request (directly following the obligation to reside in a reception centre) or a reallocation request (i.e. a subsequent change of allocation within or outside the federal state) is filed so that a woman is granted permission to relocate to a particular place. In doing so, the domestic community of family members or “other equally important humanitarian reasons” shall be taken into account.

The person concerned herself (and possibly with the help of supporters) can at any time urge for fast-track processing of a reallocation request – in the case of experiences of violence, the request will be well-substantiated. There is no general legal or administrative provision stating that certain requests will undergo fast-track processing. As a general principle, if authorities remain inactive for at least three months, it is possible to take action against failure to act at the administrative court. In social lawsuits, however, there must be a period of inactivity of six months prior to filing a complaint.

It follows from the wording of the legal regulation that the internal distribution of a federal state takes precedence over cross-border distribution and that this shall be taken into account, especially in cases of reallocation requests due to humanitarian reasons. That Foreigners Office, which is responsible for a particular place of arrival, takes care of processing the requests.

Whether and to which extent the request will and can be granted according to the location of choice thus depends on which humanitarian reasons exist and will be claimed for the particular location. In this context, it is important, for example, to put forward that the woman will receive the support she needs at the location of choice, that supportive relatives live there or that there is a vacancy in a women’s shelter. In general, the requirements for substantiating a reallocation request are relatively high; however, in the case of women affected by violence, they can be substantiated by taking the abovementioned aspects into account.

Expressing a general desire to live in a particular place is usually not enough.

6.4 Is it possible to prohibit perpetrators from returning to shared accommodations and own apartments despite residence obligation and restriction?

It is, of course, possible for women who have been affected by violence and whose asylum application is still being processed to preclude perpetrators from returning to shared accommodations and own apartments. The police can impose a restraining order on the perpetrators, and accommodation providers can pronounce a house ban.

When issuing such orders, however, a potential residence restriction or obligation on the side of the perpetrator needs to be taken into consideration. If a residence obligation still applies to the perpetrator, then he will commit an offence by being expelled from his assigned territory. In case a residence restriction still exists, he cannot simply take up residence outside of that territory. In case of an order issued by the family court, the order thus has to make reference to a modified residence restriction or include an allocation to a different accommodation.

6.5 Do directives for the protection against violence have any impact on the asylum procedure? If so, which one?

As a general principle, directives for the protection against violence do not have any direct influence on the asylum procedure. The asylum procedure is first and foremost about assessing the situation in the country of origin.

However, as already explained above under question 3.4, violence committed by the marriage partner can influence the asylum application of a woman affected by violence to the effect that it might constitute an additional obstacle to deportation. In this case, it will be assessed whether the violence committed by the partner or, for example, the circumstance that the latter's children (temporarily) have been or are being taken away might entail persecution upon assumed return to the country of origin. This might be the case, for example, if, according to the legislation of the country of origin, the children belong to the husband's family after the divorce and if the wife, who together with the children has fled from her husband, is threatened by the husband.

Yet this question can only be answered for an individual case and does not allow for generalisation.

It is indispensable to keep in mind that the asylum applications submitted by the marriage partners can be processed separately, not only in the case of a long-term divorce but also when it comes to directives for the protection against violence. It is very important to consult a lawyer on this issue.

6.6 Which concepts for the protection against gender-based violence do already exist in refugee shelters?

An overview of concepts for the protection against violence can be found on the following website:

http://www.gewaltschutz-gu.de/weitere_materialien/gewaltschutzkonzepte_berichte_und_andere_veroeffentlichungen/

6.7 Is it possible to file complaints in accommodations?

As yet there is no consistent nationwide complaint structure for refugees and their supporters.⁴ Currently, different groups of persons address their complaints to various actors within and outside of shelters.

It should be possible to address complaints to all parties active within a shelter (management, staff, inhabitant representatives, external expert bodies or cooperation partners as well as volunteers).

Which higher-level actors can be approached?

Unless there are no formally defined complaint structures, the following actors are among the potential addressees of complaints:

a) actors capable of influencing political processes:

- regional and supraregional refugee and migrant self-organisations
- political interest groups (e.g. Refugee Council, ProAsyl, anti-discrimination offices)
- ombudspersons for refugees (e.g. in Cologne, Berlin or Hamburg, Baden-Württemberg)
- specialist services concerned with migration
- *International Women's Space Berlin (IWS)* is a feminist political group of women with experiences of migration and flight. Among a variety of other things, this group collects complaints pertaining to refugee shelters.
- complaints from all over Germany can be sent to the following email address:

⁴ The state of North Rhine-Westphalia constitutes an exception as it provides funding a complaint office in every state shelter. Moreover, the state has arranged for a supraregional coordination office, mobile controlling team as well as a round-table located at the state's ministry of internal affairs.

iwspace@iwspace.de

b) actors with political responsibilities and decision-making power

- public administration bodies (e.g. Federal Refugee Office, regional authorities, citizens' offices)

The "Minimum Standards for the Protection of Children, Adolescents and Women in Refugee Accommodation Shelters", issued by the federal initiative of the Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ) and UNICEF, demands the establishment of both internal and external complaint offices.

Further information

- Minimum Standards for the Protection of Refugees in Accommodation Shelters (pp. 16-17):
<https://www.unicef.de/informieren/materialien/minimum-standards-refugees/119842>
- FHK project on complaint management and protection against violence:
<http://www.frauenhauskoordination.de/gewalt-an-frauen/gewaltschutz-und-flucht.html>

7. ADMISSION OF FEMALE REFUGEES INTO WOMEN'S SHELTERS

7.1 In how far do residence restriction or obligation have an impact on the admission to a women's shelter or on moving to another shelter?

If a woman has already moved to a women's shelter due to acute violence, then the following issues should be noted: In case of an existing obligation to reside in another municipality or district, a request has to be filed with the authorities at the arrival location, so as to be reallocated to the municipality in which the women's shelter is located (see under 5.3 and 7.3 or see appendix).

There might also exist a residence obligation (see under 1.5), so that by changing the women's shelter, the woman concerned will commit an offence. However, if committed by a

woman who has been affected by violence and who flees to escape her perpetrator, such an offence will be considered justified and has no direct negative impact on the asylum procedure.

7.2 Which difficulties may arise for women affected by violence when disregarding the residence obligation?

A violation of the residence obligation constitutes an offence (section 86, Asylum Act), and repeated violations will already be considered a criminal offence (section 85, sentence 2, Asylum Act). However, if committed by a woman who has been affected by violence and who flees to escape her perpetrator, such an offence will be considered justified and has no direct negative impact on the asylum procedure.

7.3 How do reallocation requests work? Is it possible to speed up the reallocation procedure if the applicant is in danger? Is it possible to influence the decision on where to reallocate an affected woman?

An allocation request (directly following the obligation to reside in a reception centre) or a reallocation request (i.e. a subsequent change of allocation within or outside the federal state) is filed so that a woman is granted permission to relocate to a particular place. In doing so, the domestic community of family members or "other equally important humanitarian reasons" shall be taken into account.

The person concerned herself (and possibly with the help of supporters) can at any time urge for fast-track processing of a reallocation request – in the case of experiences of violence, the request will be well-substantiated. There is no general legal or administrative provision stating that certain requests will undergo fast-track processing. As a general principle, if authorities remain inactive for at least three months, it is possible to take action against failure to act at the administrative court. In social lawsuits, however, there must be a period of inactivity of six months prior to filing a complaint.

It follows from the wording of the legal regulation that the internal distribution of a federal state takes precedence over cross-border

8. Is it possible for female refugees to apply for name change as a protective measure?

distribution and that this shall be taken into account, especially in cases of reallocation requests due to humanitarian reasons. That Foreigners Office which is responsible for a particular place of arrival takes care of processing the requests.

Whether and to which extent the request will and can be granted according to the location of choice thus depends on which humanitarian reasons exist and will be claimed for the particular location. In this context, it is important, for example, to put forward that the woman will receive the support she needs at the location of choice, that supportive relatives live there or that there is a vacancy in a women's shelter. In general, the requirements for substantiating a reallocation request are relatively high; however, in the case of women affected by violence, they can be substantiated by taking the abovementioned aspects into account.

Expressing a general desire to live in a particular place is usually not enough.

8. IS IT POSSIBLE FOR FEMALE REFUGEES TO APPLY FOR NAME CHANGE AS A PROTECTIVE MEASURE?

When it comes to changing names, the legislation of the country in which the person concerned is a citizen is decisive. For this reason, German authorities may, as a general principle, only permit the name change of German citizens. In the relevant legal text, the Act on Changing Surnames and First Names (NamÄndG) and the corresponding administrative provision, stateless persons and recognised refugees as well as persons entitled to asylum have the same status. Hence first name and/or surname of such persons can be changed provided that such change is justified by an important reason.

Changing a name is not possible for persons whose asylum application is still being processed or persons who reside in Germany not as recognised refugees or as persons entitled to asylum but for other reasons and who could therefore consult the authorities of their countries of origin.

The right to name change is a legal exception that shall only be granted if the applicant's legitimate interest in protection outweighs the public interest in maintaining the current name. Discrimination on the job market, for example, is not considered a sufficient reason, since the naming law is not intended to counteract undesirable social developments. Case examples for important reasons can be found in the administrative provision accompanying the Act on Changing Surnames and First Names.

Another important provision is the simplified name change procedure that can be found under section 47 of the Introductory Act to the German Civil Code. According to this provision, a person who, for example, applies for German citizenship after having been recognised as a refugee can change their surname following naturalisation if that surname is particularly indicative of the person's foreign origin or if, in the interest of further integration, the person would prefer a less conspicuous surname. For this purpose, the person may as well adopt a German version of the current first name or surname or, if such a version does not exist, even a completely new name.

9. WHAT IS THE IMPACT OF THE NEW PENAL CODE FOR SEXUAL OFFENCES ON RESIDENTIAL REGULATIONS?

In September 2016, the new penal code for sexual offences came into force in Germany, implementing the long-demanded principle ‘no means no’. According to the new legislation, any non-consensual act of a sexual nature constitutes a punishable offence. However, this new legislation on sexual offences also involves a tightening of regulations governing the right of residence.

These amendments pertain both to the right of expulsion and the possibility of deportation. Expulsion means that a person holding a residence title in Germany may be deprived of that title. It does not necessarily mean that this person can be deported because factually and legally this is often not possible. In such a case, the person will be denied participation in many areas of social life, for example, by withholding a work permit or the access to an integration course.

What is relevant in this context is the section of the Residence Act concerning the interest in expulsion, which can be of serious and of particularly serious public interest (section 54, Residence Act). In the past, the interest in expulsion was, according to section 54, sentence 1 of the Residence Act, considered as particularly serious, and it was mostly imposed on persons who had been sentenced to a prison term of at least one year and who had committed an offence using violence or a threat of danger to life and so on. In the future, the interest in expulsion will be considered as particularly serious in the case of any kind of sentence according to section 177 of the Criminal Code, thus making expulsion or deportation far easier. In addition to expulsions, deportations will be possible even if persons are in danger in their country of origin or if they are entitled to asylum. According to section 60 of the Residence Act, deportation is also possible in those cases in which a person has been sentenced to a prison term of at least one year according to section 177 of the Criminal Code.

This means that persons can be excluded from refugee protection and that they will not be recognised as refugees. In any case, the Foreigners Office or the Federal Office of Migration and Refugees still has to determine whether or not there are obstacles to deportation. If, for example, persons have to face the death penalty in their country of origin or a form of incarceration that involves human rights violations or the like, they can still not be deported.

This tightened legislation entails more severe punishment for perpetrators without German passport, because this group of persons has to expect, in addition to being convicted according to the Criminal Code, a negative impact on their residential status. This legislation could also negatively influence the readiness to report offences, since affected persons might be reluctant to report a known perpetrator without German passport if this would lead to the perpetrator’s deportation.

Among the amendments was also the introduction of offences committed within a group (section 184j, Criminal Code). This provision states that “whosoever participates in a group that coerces another person to commit an offence” is liable to prosecution. This way persons can be punished for acts they have neither committed nor anticipated. This legal provision represents a political reaction to the assaults in Cologne on the night of New Year’s Eve 2015/2016. The media coverage of these events created the impression that sexual harassment in Germany is primarily a problem related to perpetrators who are non-“biodeutsch” (that is, migrants). There is reason to fear that, in the future, the definition of group membership will be strictly aligned with this very criterion.

10. CHURCH ASYLUM

10.1 What is church asylum?

Church asylum refers to religious communities temporarily accommodating refugees – at times also irrespective of the religious belief of the asylum seekers. It aims at preventing deportation in situations of danger (also in the case of deportations according to the Dublin III Regulation) and at resuming or re-examining an asylum procedure or the consideration of a case of hardship on the side of the responsible state authorities.

10.2 How does church asylum work?

The decision on granting church asylum is mostly made by the church leadership or council. The church community can receive advice from staff members of the Commissioner for Refugees and Migration or from parish offices for refugees that many state churches and dioceses have established. Moreover, the arrangement and implementation of church asylum can be supported by (church) counselling centres, migration services and the local working groups on “Church Asylum”.

The Foreigners Office or another responsible local authority will be informed by the church community on their decision on granting asylum.

The asylum-granting church community provides a space to live and prepare food and with sanitary facilities. Often there is a circle of supporters that assists the parish council and its members and the refugees in their everyday life (e.g. during conversations with lawyers and authority representatives and by connecting them with local initiatives).

In most cases, church asylum is financed through donations received by the parish. The duration of fundraising varies from a few weeks to several months.

10.3 Links and References

1. Homepage: Federal Ecumenical Workgroup on Church Asylum

The homepage lists events, news, statements, contact addresses, publications and further information.

The Federal Ecumenical Workgroup on Church Asylum is an “organised union of church asylum initiatives in Germany. It comprises the network of all church parishes that are willing to grant refugees church asylum in order to prevent their deportation if there is reasonable doubt about their safe return. As a federal workgroup, we support refugees and their supporters by means of public relations and lobby work, publications, conferences and community counselling.”

<http://www.kirchenasyl.de/>

2. Field report: Church asylum for a woman affected by violence and for her children

“Church asylum for a female refugee. Report from a women’s shelter.”

Newsletter, Association of Women’s Shelters, “Protecting female refugees against violence”, 1/2015, pp. 9-10:

http://frauenhauskoordination.de/fileadmin/redakteure/pdfs/Newsletter/newsletter_FHK_2015-1_web.pdf

3. More field reports on church asylum

<http://www.kirchenasyl.de/erfahrungsberichte/>

Current figures on church asylum throughout Germany

<http://www.kirchenasyl.de/aktuelles/>

11. UNDER WHAT CONDITIONS DOES HAVING A CHILD IN GERMANY IMPACT THE RESIDENCE PERMIT OF REFUGEE PARENTS?

Acquisition of German citizenship

A child who is born in Germany generally has the same nationality as its parents or one of its parents. The residence status of the child also derives from the residence status of its parents or one of its parents.

If one of the parents is a German citizen, the child will also acquire German nationality by birth (Nationality Act, section 4¹). This likewise applies if the child is not born in Germany.

Depending on the particular right of domicile to which the parents are subject in their home country, the child will additionally acquire their citizenship if the citizenship law of the parents' home country provides that a child who is born abroad acquires its parents' citizenship. Under such circumstances, the child is not required to choose one nationality upon attaining legal age. In this case, the child may possibly have one or two nationalities in addition to German citizenship.

If only the father is a German citizen at the time of the birth and if the parents are not married at the time of the birth, the father has to acknowledge paternity first. Only then, German citizenship can be conferred to the child.

In Germany, recognition of paternity does not necessarily require that the father who acknowledges paternity is also the biological father. Legal regulations are explicitly designed to also protect relationships in which a father who is not the biological father takes on responsibility for the child and acknowledges paternity.

But even if none of the parents are German citizens, a child who is born in Germany will acquire German citizenship, namely if

1. one of the parents has been residing lawfully in Germany for eight years **and**
2. holds an unlimited residence permit, also called settlement permit.

This definition does not apply to the period of the asylum procedure which is usually not considered as lawful residence, but only as permitted residence. Once that asylum has been granted, however, this period will be retroactively declared as lawful residence. Since persons whose asylum procedure is still pending cannot acquire a settlement permit, they are unable to meet the abovementioned requirements, even if their asylum procedure has been pending for years.

If both parents are not of German nationality, and if the parents' nationalities are different from each other, and neither of them has been residing in Germany long enough, then the mother's citizenship will be conferred to the child. If the mother is married to the father and if the father acknowledges paternity, then both parents' citizenships will be conferred to the child. In this context it is important to take heed of the citizenship laws of the countries in question. Problems often arise when parents cannot prove their citizenship by means of valid passports. As long as this is the case their citizenship cannot be determined.

The following sections start from the premise that the woman who is seeking advice has not (yet) secured a residence permit. If, however, the woman or mother holds a residence permit or perhaps even German citizenship, this situation might entail slightly different consequences for the father whose residence permit is, in turn, dependent on the child's status. In this case, the father's relationship to the child will be a matter of particular importance.

¹ Nationality Act: https://www.gesetze-im-internet.de/englisch_stag/index.html

The following family constellations are possible:

1. The father is a German citizen
2. The father has been lawfully residing in Germany for eight years and holds a settlement permit
3. The father holds a temporary residence permit
4. The father is a recognised refugee or entitled to subsidiary protection (and holds a residence permit according to section 25, subsection 2, sentence 1 or, alternatively, sentence 2 of the Residence Act)
5. The father is a citizen of an EU member state
6. The father's asylum procedure is still pending
7. The father is granted suspension of deportation after his asylum application has been rejected
8. The father refuses to acknowledge paternity
9. The father is unknown
10. Siblings

11.1. The father is a German citizen

If a father who is a German citizen is not married to the mother, he first has to acknowledge paternity for the child. The German citizenship will then also be conferred to the child, pursuant to sections 3 and 4 of the Nationality Act.

As it is the case with binational marriages, it will often be alleged that paternity is only acknowledged in order to secure German citizenship for the non-German mother.

A relatively new legal regulation in section 1597a of the German Civil Code (BGB) thus provides that notaries or other authorities with the right to issue notarisations, particularly the youth welfare office, are not allowed to record claims of paternity if there are "concrete indications for an abusive use of the acknowledgement of paternity".

The acknowledgement of paternity will be considered "abusive" if it serves the specific purpose of establishing the conditions necessary for the legal entry or residence of the child, father or mother or if it merely serves to obtain German citizenship for the child.

The legal regulation comprises five examples specifying situations in which abusive use will be assumed. The examples refer, among other things, to cases where there is an obligation to leave the country that can be enforced or to cases where the father, mother or child have filed an asylum application, although they are citizens of a safe country of origin, pursuant to section 29a of the Asylum Act. If such indications exist, then notaries, youth welfare office or civil registry office are required to report the "case" to the foreigners' office.

The foreigners' office will then establish whether the request for acknowledgement of paternity is actually "abusive" or not. Usually the parents will be personally interviewed for this purpose. If the foreigners' office establishes that the request for acknowledgement of paternity is not "abusive", then paternity will be certified. If the foreign mother and the child do not otherwise hold a residence permit, their deportation will be suspended until the procedure is concluded (section 60a, subsection 2, sentence 1 of the Residence Act²).

If the father is a German citizen, the German citizenship will also be conferred to the child. The mother will in this case be granted a residence permit until the child attains full age (section 28, subsection 1, sentence 3 of the Residence Act).

11.2. The father has been lawfully residing in Germany for eight years and holds a settlement permit

Another case in which the child acquires German citizenship by birth is when one of the parents has been lawfully residing in Germany for eight years **and** holds a settlement permit, because this is considered an example of successful integration. Once that paternity has been

² Residence Act; Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory: https://www.gesetze-im-internet.de/englisch_aufenthg/index.html

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recognised, the mother will thus be granted a residence permit pursuant to section 28, subsection 1, sentence 3 of the Residence Act.

11.3. The father holds a temporary residence permit

The child will NOT acquire German citizenship by birth, but will instead have its parents' nationality if

- the father "only" holds a temporary residence permit or
- holds a settlement permit, but has not been lawfully residing in Germany for eight years.

In such cases the decision on granting a residence permit is at the discretion of the foreigners' office. A child born in Germany can, for the time being, be granted a residence permit pursuant to section 33 of the Residence Act.

Generally, however, in any family constellation in which one of the parents is not a citizen of Germany or an EU member state, the decision on issuing a residence permit to mother and child depends on whether their subsistence is secure. If the family relies on public services, even if only partially, the parents will be told that they could as well lead a family life in their country of origin.

Some constellations are known as so-called patchwork families, for example, if a father looks after a child from another relationship or a child who has German citizenship.

Due to this relationship, the father will then be granted the right to stay and receive a residence permit. However, as the father-child-relationship with the second child is also protected by the constitution, the child and the mother will in certain constellations be granted a residence permit as well. But judicial practices have sometimes become more restrictive in this regard. The Higher Administrative Court of Berlin-Brandenburg (OVG), for example, has already decided that, where necessary, a child with German citizenship can also be expected to relocate to its country of origin if family reunification cannot be arranged otherwise.

Special case: Only the father is entitled to custody

A child who is born in Germany and who does not have German citizenship may be granted a residence permit ex officio (pursuant to section 33, subsection 2 of the Residence Act) only if

- for certain reasons, the father has the sole right of care and custody **and**
- holds a residence permit, a settlement permit, or an EU long-term residence permit.

The mother of the child will be granted a temporary suspension of deportation and in some cases also a residence permit (pursuant to section 25, subsection 5 of the Residence Act), namely if

- the parents have different nationalities so that the order to return to the country of origin together as a family is not feasible in practice **or**
- in case of other exceptional circumstances.

The protection of marriage and the family by article 6 of the German Constitution and by article 8 of the European Convention on Human Rights (ECHR) does not in itself involve a domestic prohibition of deportation and an obstacle to departure, but only in cases when the existing family unit can be reasonably expected to continue only in Germany and not in the shared country of origin or in one of the parents' country of origin and when no higher public interests still require departure or deportation.

The fact alone that one family member holds a residence or settlement permit does not represent an obstacle to (joint) departure and also does not constitute a prohibition of deportation (Federal Administrative Court, judgment delivered on April 30, 2009 – BVerwG 1 C 3.08). However, individual cases require examination as to the status of integration of those family members (especially underage persons) who would be affected by a possible separation and as to whether it is reasonable to expect the affected family members to (jointly) leave the federal territory. In such cases, equal consideration must be given to the concerned persons' rootedness in Germany and their uprooting from the country of origin.

If non-German family members have different nationalities, they must state that their joint entry to one of the countries of origin is not possible. Where necessary, the persons concerned have to consult with the responsible consulates on whether and under which conditions and at which time it is possible for them to continue to live as a family unit in one of their home countries (Administrative Court Berlin, order issued on April 17, 2008 – VG 24 A 80.08).

If one of the home countries has signed the European Convention on Human Rights (ECHR), it can be safely assumed that the country in question complies with article 8 of the ECHR and that family reunification will be possible in this country.

It is therefore generally possible to demand that a non-German relative joins a non-German citizen who is obliged to leave the country, so that both have to leave together for one of their countries of origin or a shared country of origin in order to start or continue to live as a family unit in this country.

When it comes to assessing whether this decision is reasonable or not, the objective circumstances matter and not the relative's personal attitude, which, by its very nature, cannot be verified (Higher Administrative Court Berlin-Brandenburg, order issued on July 7, 2008 – OVG 3 S 44.08; see also Higher Administrative Court Berlin-Brandenburg, order issued on May 20, 2011 – OVG 3 S 37.11, on a case regarding parents who live together and where the parent who holds a residence permit announces to remain in Germany even after the departure of the parent who is obliged to leave).

11.4. The father is a recognised refugee or entitled to subsidiary protection (and holds a residence permit according to section 25, subsection 2, sentence 1 or, alternatively, sentence 2 of the Residence Act)

This constellation also requires that a father who is not married to the mother acknowledges paternity. In case of doubt, the details laid out under section 1 will apply (determination of paternity). Once that paternity has been

recognised, the father's and/or the mother's nationality will be conferred to the child.

Upon request, the child will also be granted asylum status by way of the international protection of family members pursuant to section 25, subsection 2 of the Asylum Act.

The idea behind this is that family members are also at risk of persecution and therefore have to be included in the protection.

However, it is not mandatory that the child chooses this option and applies for refugee status – derived from the father's status – by way of the protective legislation for family members. If the father's child is a recognised refugee, the child can also apply for a residence permit pursuant to section 33 of the Residence Act.

A mother who has so far not been lawfully residing in Germany can – by way of her child's residence status – apply for a residence permit pursuant to section 36, subsection 2 or section 25, subsection 5 of the Residence Act.

11.5. The father is a citizen of an EU member state

If the father is citizen of an EU member state and acknowledges paternity, his citizenship will be conferred to the child as well. This, then, also allows the mother of the child to receive a residence permit for family members of EU citizens. In this case, the mother will primarily be subject to the European Freedom of Movement Act and not the German Residence Act. Also, she will not be granted a German residence title, but will receive an EU residence permit card. EU legal regulations are less restrictive in this regard than German residence laws.

Difficulties may arise in this context if the father abandons the mother and the child and, for example, leaves Germany. In this case, the child will continue to be a citizen of an EU state, for example, of France. The child will then be allowed to reside in Germany, but would, strictly speaking, have to possess sufficient means of subsistence for itself and its mother. Court decisions vary on this issue which means that each case will be assessed on an individual basis.

11. Under what conditions does having a child in Germany impact the residence permit of refugee parents

11.6. The father's asylum procedure is still pending

If both parents' asylum procedures are still pending, the Federal Office for Migration and Refugees demands that an asylum procedure for the child who is born in Germany shall also be initiated. If the parents neglect to do this, the Federal Office will initiate the procedure. The parents will be notified and asked if and on which grounds they wish to claim asylum for their child.

In case the parents choose to initiate the asylum procedure, the child will, just like its parents, receive a residence permit for the duration of the procedure. If the parents waive the procedure, the child will only be granted a temporary suspension of deportation that will be valid until the parents' asylum procedure is concluded. Depending on the outcome of the parents' or the father's asylum request, the abovementioned details will then apply.

11.7. The father is granted suspension of deportation after his asylum application has been rejected

In this case, the father has no right of residence and is obliged to leave Germany, so that no residence title of any kind can be conferred to the child.

Such a case often depends on the reasons why the father is not leaving, although he is obliged to, and possibly also on the reasons why he cannot be deported.

There are a number of reasons why the father cannot be forced to leave or why he cannot be deported. This is, for example, because

- there is no airport in his country of origin or
- despite strenuous efforts, his country of origin refuses to issue a passport or
- his country of origin experiences civil war, so that Germany desists from deportation.

If an end of this situation is not foreseeable, it is possible that both the father and the child and, as a consequence, also the mother will be granted residence pursuant to section 25, subsection 5 of the Residence Act. This becomes an option when the deportation of a person has been suspended for 18 months and for reasons which are beyond the person's control. In such cases, however, foreigners' offices decide at their own discretion, adopting a very restrictive interpretation of this legal regulation. Moreover, these cases are generally rather rare.

If the father is (partly) also responsible for creating an obstacle to deportation – **for example, when he does not cooperate in obtaining a passport –, then he himself brings about his residence status, as it were, and therefore shall not benefit from it. Such a situation often entails sanctions, such as an employment ban or the imposition of a residence obligation. Since the father will not be granted a residence permit, the child can also only expect a temporary suspension of deportation.**

The parents of a child who is born in Germany frequently come from different countries. Moreover, if the parents cannot provide adequate documents, then it is often difficult, if not impossible, to receive birth certificates for children born in Germany and to clarify their nationality. For lack of necessary documents and due to issues of family protection, these families cannot be deported to their countries of origin. Although authorities urge the persons concerned to take care of how they and their partner and children can gain entry to their country of origin, this request is often near impossible to satisfy. This is why it happens, time and again, that binational families remain in Germany, although neither parents nor children are granted a right of residence. Sometimes they continue to be tolerated for years, even if this situation involves many legal restrictions for them.

11.8. The father refuses to acknowledge paternity

If the father refuses to acknowledge paternity for the child, the mother can file a complaint to establish paternity at the family court. In this case, where it is likely that the father neither cares nor maintains any contact with the child, the family court will order the father to take a paternity test.

If the test confirms paternity, then the father's nationality is decisive for the residence status of the mother and the child. In case the father is a German citizen, the child acquires German citizenship by birth. The mother will, in turn, be granted a residence permit until the child is of legal age (see above). If the father is not a German citizen and refuses to maintain contact with the child, this constellation will make it very difficult for the mother and the child to receive a long-term residence permit.

11.9. The father is unknown

If the father is unknown, no rights can be derived from this situation. The child will acquire the mother's nationality, and the child's residence status will also depend on the mother's status.

Further information on cases of sexualised violence and on possible consequences for the residence status

11.10. Siblings

If the mother receives a residence permit because her child has acquired German citizenship by birth, this also means that any siblings will be granted residence permits: If one family member is a German citizen, the entire family will be tied to Germany, although this involves the legal restrictions mentioned above.

Appendix

Funding the stay of female refugees in women's shelters, written by Prof. Dr. jur. Dorothee Frings

Stage of procedure / Status	Assigned location	Duration since arrival	Residence obligation / restriction	Responsibility for reallocation	Responsibility for cost coverage	Legal basis
I. Seeking asylum	Reception centre (sec. 47, Asylum Act)	Regular stay for up to 6 months; extension for up to 24 months based on state law; indefinite for women from "safe countries of origin"	Residence obligation	Federal Refugee Office (BAMF) is responsible for approval of temporary stay outside of reception centre (sec. 57, sen. 1, Asylum Act). Responsible regional authority can issue release from reception centre and assign municipality where women's shelter is located (sec. 49, sen. 2, Asylum Act). Both requests can be filed at once.	While allocation to reception centre applies: Social welfare office (SWO) at assigned location. Forum necessitatis provision in case of service refusal or processing delays: SWO at location of women's shelter (sec. 11a, sen. 2, Asylum Seekers Benefits Act). After allocation to municipality where women's shelter is located: SWO at location of women's shelter.	Sec. 10, sen. 1, Asylum Seekers Benefits Act for accommodation expenses outside jurisdiction according to sec. 3, Asylum Act, and sec. 6, Asylum Seekers Benefits Act for socio-educational assistance (must be justified).
II. Seeking asylum	Municipality	Until first 15 months of stay (sec. 3, Asylum Seekers Benefits Act)	Residence restriction (until the end of the third month of residence obligation, see under I).	Responsible for reallocation within federal state: state authority in question (sec. 50, Asylum Act); for reallocation to another state: branch office of host state (sec. 51, Asylum Act).	Until reallocation: Social welfare office at assigned location, otherwise as set out under I.	See under I.
III. Seeking asylum	Municipality	Following the 16th month (sec. 2, Asylum Seekers Benefits Act, benefits analogous to payments according to Social Code Book XII)	Residence restriction	Reallocation as set out under II.	Responsibility as set out under II.	Sec. 10, sen. 1, Asylum Seekers Benefits Act for accommodation expenses in accordance with Social Code Book XII (sec. 2, Asylum Act); socio-educational assistance only in exceptional cases, at discretion of court (sec. 23, sen. 1, Social Code Book XII). Requires justification.
IV. Allocation when deportation has been suspended according to sec. 15a, Residence Act (unauthorised entry)	Municipality		Residence restriction for reception centre or municipality (sec. 15a, sen. 4, subs. 4, Residence Act)	The state authority, which issued a previous allocation, is always responsible for reallocation (sec. 15a, sen. 4 and 5, Residence Act).	Social welfare office at assigned location.	Sec. 10a, sen. 1, Asylum Seekers Benefits Act. Otherwise see under I. After 16th month: see under III.
V. Restriction issued by Foreigners Office when deportation has been suspended	Municipality		Residence restriction according to sec. 12, Residence Act.	No reallocation, instead it must be requested at location of women's shelter that deportation will be suspended anew.	Social welfare office at location of existing residence restriction.	See under IV.
VI. Residence permit for women recognised as beneficiaries of protection	Federal state	Within first three years after recognition	Residence restriction according to sec. 12a, sen. 1, Residence Act (pertaining to a federal state)	Request to suspend restriction due to case of hardship (sec. 12a, sen. 5, subs. 2, Residence Act) must be filed only when relocating to another federal state. Responsibility according to state jurisdiction.	Employment office at location of women's shelter, as allocation only pertains to federal state, not to locality (according to Higher Social Court NRW; Higher Social Court Berlin-Brandenburg disagrees).	Benefits according to Social Code Book XII (i.a. sec. 67) will only be granted in another federal state when considered appropriate under given circumstances (sec. 23, sen 5., Social Code Book XII). Requires justification.
VII. Residence permit for women recognised as beneficiaries of protection	Municipality	Within first three years after recognition	Residence restriction according to sec. 12a, sen. 2 or 3, Residence Act (pertaining strictly to a particular municipality)	Request to suspend restriction due to case of hardship (sec. 12a, sen. 5, subs. 2, Residence Act) must also be filed when relocating within a federal state.	Employment office at assigned location.	Coverage of accommodation expenses remains unresolved. On benefits according to Social Code Book XII, see under VI.

FAQ

Frequently Asked Questions at the Intersection of Flight and Protection Against Violence



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