

This panel will examine the process of challenging the German asylum agency's (BAMF) negative asylum decisions in administrative courts.

Much of German refugee law is situated within or directly derived from EU law (Directives on Asylum Procedures, Qualification, Reception Conditions and Dublin), the European Convention on Human Rights and the Geneva Refugee Convention. However, there are features specific to Germany's legal proceedings around asylum, such as the applicable asylum and residence law as well as rules on the legal procedure itself.

Taking challenges of negative decisions of the 48 first level administrative courts to the 15 second level courts is very difficult. Especially challenging determinations of factual circumstance or credibility is virtually impossible.

There is extensive higher level case law on procedural issues in asylum law. But on questions of fact – i.e. does the draft in Syria imply not only subsidiary protection but also refugee status – there is no unified jurisprudence, as the Supreme Administrative Court in Leipzig cannot rule on those.

In addition, even for regular “unfounded” claims for refugee status, there is only a two-week limit of filing a lawsuit (a much shorter time frame than in other fields of administrative law) – with just one month to submit a statement of claim in writing. For cases designated “manifestly unfounded”, Dublin procedures and refugees already recognized in another EU member state, the time to file is only one week. In these cases, there is also a requirement to file and justify an urgent application (as otherwise the order of deportation becomes operative immediately).

Before and beyond these procedural barriers, one central issue for LGBTI refugees in the asylum system is a lack of information and trust. Many never receive systematic information about SOGI as a potential basis for asylum claims in Europe before the hearing, and there is widespread concern about the trustworthiness of translators of shared cultural background who often openly express homophobic views in asylum interview settings. These issues remain major challenges for asylum seekers, counseling and advocacy staff and lawyers to overcome - despite some clear CJEU jurisprudence on delayed coming out in the asylum procedure (CJEU judgment of 02.12.2014 - C-148-150/13).

In addition, the BAMF as well as some courts follow stereotypical notions of what constitutes LGBTI identity and lived reality outside of urban European settings. They also often rely heavily on documented cases of LGBTI persons serving prison sentences or becoming victims of visible homo- and transphobic violence in their country of birth, though in many countries, these incidents are underreported by media and NGOs alike. LGBTI persons who have experienced an unprecedented level of freedom and visibility in Germany face increased risks upon potential deportation, as they are unable and unwilling to return to a life of discretion – this, too, is often overlooked by the BAMF and courts. BAMF and courts should especially take cognizance of the Decision by the German Constitutional Court on January 22 2020 that ruled that requiring LGBTI to hide their identity (“requirement of discretion”) would be per se untenable and arbitrary (2 BvR 1807/19 - <https://www.asyl.net/rsdb/m28078/> ).

The COVID-19 epidemic and resulting rules and regulations are incurring additional uncertainty and delays for asylum seekers generally, and for those currently appealing a negative asylum decision more specifically. Dublin transfers as well as majority of court hearings have been suspended, while information and counselling provided by both BAMF and specialized NGOs are severely limited.