

Important - advice from the lawyers - if you have friends/family in the EU and/or funds for the first days, consider NOT applying for asylum. Ukrainian people will be able to get residence for work/study purposes, this programme is going to be rolled out in the next few days. There will also be a programme for social help in those cases. If you apply for asylum, you will not be able to travel for a while and this process gives much less flexibility in your decisions.

"I would strongly advise against applying for asylum. First of all, after the 90 days have expired, you can apply for a residence title according to § 7 para. 1 sentence 3 AufenthG or another residence title (work, family, etc.). Otherwise, there is also an isolated ban on deportation. All this can be done at the local Ausländerbehörde (foreigners office), which can then also be chosen. There is no § 15a AufenthG procedure due to the lack of illegal entry. In addition, without an asylum application, there is no obligation to stay at the EAE (residence requirement) and the ban on issuing titles according to § 10 para. 3 AufenthG does not become a problem later."

On the asylum procedure

You can only apply for asylum in Germany (not from abroad). However, **people from Ukraine can enter without a visa.**

- Arriving in Berlin - the responsible offices (you can apply for asylum here - but you can also just go to the police)
 - LAF, BA
 - MF, ABH, Arrival Centre, (Social Welfare Office, Job Centre)
- At the arrival centre
 - Initial registration
 - Initial medical examination
 - Security check
 - Nationwide redistribution
 - Proof of arrival and social benefits
 - Formal asylum application

The EASY distribution

--> decides **where someone has to live during the asylum procedure** (which city).

- If a person is to be distributed, he or she receives a **start-up certificate** and a **train ticket** to the competent reception centre

- To **appeal** against a distribution decision, **proof** must be provided that the person cannot reasonably be expected to move due to **family ties or medical necessity** (§§ 50, 51 AsylG)
- The contact person is the **social service of the LAF** Application for revocation of the allocation decision
- **Important:** Evidence from psychologists or specialists is difficult to organise at short notice; good contact points are organisations such as Xenion or Zentrum Überleben.
- An unlawful allocation decision can still be reversed **afterwards** or an application for **redistribution** can be filed.
- If the person concerned refuses to move, this can have **negative consequences as a violation of the obligation to cooperate**, therefore this **cannot be advised**.

The hearing

Before the hearing, the following should be observed:

- **Preparation for the hearing:** information on the procedural rights, processing of the flight history, explanation of the different protection statuses and their prerequisites, if necessary.
- Identify **special needs**, language mediators, female hearers, etc.
- Possibly accompanying the asylum seeker to the hearing

Rights of the asylum seeker at the interview:

- Right to **participation/ accompaniment**; § 25 VI AsylG, § 14 VwVfG
- Right to **confidentiality of the interview**
- Right to an **interpreter**, § 17 AsylG
- Right to **back-translation of the transcript**
- Right **not to sign** the transcript

Obligations of the asylum seeker in the asylum procedure:

- **Residence obligation** (§ 56 Asylum Act) / **Residence requirement** (§60 Asylum Act) / EAE residence obligation (§ 47 Asylum Act)
- Obligation **to report and notify**
- Obligation to **present documents**, see here § 15 II No. 6 and § 15a AsylG: Toleration of the search of data media
- Further duties to **cooperate** such as conducting proceedings/appearance at the hearing (otherwise discontinuation, see § 33 Asylum Act)
- Substantiating the application by **providing information on the reasons for flight**

- Language analysis, §§ 15 I 1, 16 I 3 AsylG

The decision:

The granting or rejection of an asylum application is made by decision.

- At present, a decision can be **expected in a few weeks**.
- The **delivery** of the decision **triggers the time limit for appeal**, which is why it is so important that it is **delivered to the correct address**.
- The time limits for appeals in the asylum procedure are very short: **2 weeks** for a "**simply unfounded**" rejection and only **1 week** for "**inadmissible**" and "**manifestly unfounded**" rejected applications
- The **decision** is **served** in a **yellow envelope**, this must be kept at all costs

What are the four positive options for the BAMF to decide on the asylum application?

- **Granting refugee status**, § 3 ff. Asylum Act, § 60 I Residence Act (= **international form of protection**)
- **Recognition** according to Art. 16a GG (= **national form of protection**)
- **Granting of subsidiary protection**, § 4 AsylG (= **international form of protection**)
- **Determination of national prohibition of deportation**, § 60 V-VII AufenthG (= **national form of protection**)

Prerequisites for refugee status (§ 3 ff. Asylum Act, § 60 I Residence Act):

- **Act of persecution** by an actor of persecution
- Reasonable fear = **persecution prognosis**
- **Linkage of the act of persecution with a reason for persecution** ("race, religion, nationality, political conviction or membership of a particular social group")
- **Lack of effective protection** in the country of origin
- **No grounds for exclusion or termination**

Right of residence

The Federal Ministry of the Interior assumes

1. that, pursuant to section 5, paragraph 2, sentence 2, alt. 2 AufenthG, **it is currently unreasonable to expect Ukrainian nationals to complete the visa procedure due to the special circumstances** of the individual case and that the **foreigners authorities should** therefore **refrain from fulfilling the requirements** pursuant to section 5, paragraph 2, sentence 1; and

2. that it can currently be assumed that an **exceptional case** within the meaning of Article 20(2) of the Schengen Implementing Convention exists for Ukrainian nationals due to the current situation in Ukraine. Thus, pursuant to Section 40 of the Residence Ordinance, **Ukrainian citizens could obtain a residence permit for a further stay of 90 days following a short stay after entering the country**, provided they **do not engage in gainful employment** with the exception of the activities mentioned in Section 17 (2), cf. Section 40 No. 2 of the Residence Ordinance. In our opinion, the legal basis for issuing a corresponding residence permit is section 7, paragraph 1, sentence 3 of the Residence Act."

Information for people from Ukraine who are just arriving in Germany:

<https://pad.riseup.net/p/E0x-D-ZiZIHxbDAGG7W-keep>

Lawyers who specialize in residence and asylum law and focus on Ukraine are:

Johanna Künne (<https://www.anwalt-aufenthaltsrecht.de/rechtsanwältin-künne>)

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