

ADVICE FOR AFGHAN REFUGEES AND THEIR ADVISORS

Afghanistan is not a safe country for refugees, and most certainly not a safe country of origin in accordance with German asylum law. Claims that asylum applications by Afghan nationals have no chance of success are wrong.

The treatment of Afghan refugees is currently characterised by a government-approved strategy of destabilisation and discouragement. Increasing pressure to depart, as well as ostentatious media coverage of individuals departing voluntarily, attempt to create a public perception that a return to Afghanistan is possible – if not through voluntary departures then possibly through an increased number of future deportations.

There is method to the discrediting of causes of flight for Afghans. The fact that long drawn-out asylum procedures demoralise people is accepted in the interest of the politics of deterrence. Afghan refugees are thereby to be deterred from setting off on their way to Germany in the first place.

Refugees and their supporters, advice centres and lawyers should not waver in their efforts to fight for Afghan refugees' right to asylum and should publicly counter the narrative that Afghan refugees do not require protection.

Afghans in Germany

Millions of Afghans live in exile, some for decades. Approximately 54,000 Afghans have been granted German citizenship over the past 15 years. At the end of 2015, according to the Central Register of Foreign Nationals (AZR), some 131,000 Afghan nationals were recorded as residing in Germany. However, in actual fact this figure can be assumed to be higher by several tens of thousands, as many of those who arrived as asylum seekers during the course of 2015 had not yet been registered in the AZR by the end of that year. One thing is certain: the vast majority of Afghan nationals in Germany do not have a secure status of residence.

At the end of 2015, 35,000 Afghans with temporary permission to stay were in the middle of their ongoing asylum procedures. Around 9,000 people were registered with merely a temporary suspension of deportation and, in principle, face possible deportation. A further 31,600 people were registered in the AZR at the end of 2015 without status. The majority of these were probably individuals who had arrived over the course of that year and wanted to apply for asylum, but had not yet formally been called to file an application by the German Federal Office for Migration and Refugees (BAMF). In addition there are those

who had not been registered at all with the AZR by the end of 2015. By the end of May 2016, BAMF had registered a further 37,000 newly arrived Afghan asylum seekers.¹ Despite some uncertainty in the data these figures suggest that significantly more than 120,000 Afghan people are currently living in Germany without secure status of residence, hoping for protection or the right to remain.

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Afghan asylum seekers are among those groups who have to suffer the longest delays in their asylum procedures: many refugees have to wait for many months just to be given a hearing to be able to present their reasons for applying for asylum, after which they again have to wait for months to be given an initial decision. During this entire period they are excluded from access to integration courses, simply because the Ministry for Internal Affairs is of the dubious opinion that Afghans have little chance of being able to remain in the country. In actual fact, the notion that all pending asylum cases can be dealt with in the near future is as unrealistic as the impending deportation of tens of thousands of people to Kabul.

By contrast, an entirely foreseeable social problem of considerable proportions is the abuse of Afghan refugees as experimental subjects in the politics of deterrence: excessive waiting times, existential uncertainty and an ever-looming fear of deportation are hardly going to reduce their numbers. Instead, chances for integration are blatantly thwarted, with negative consequences for everyone involved. Given the large backlog of asylum applications at the German Federal Office, PRO ASYL is calling for a system under which the right to remain is granted to anyone who has been in the country for more than a year.

Prospects in asylum procedures

The rate of successful applications in cases of Afghan asylum seekers has been high and underlines the need for protection of this group. Officially, the success rate in 2015 is given as 47%. However, a further almost 39% of decisions was purely “formal”, in which BAMF does not even consider the substance of an application, but instead passes it on to another state for reasons such as lack of responsibility. By only taking into account cases in which BAMF actually considered the causes for flight and the need for protection of the individuals, an adjusted rate for need of protection can be calculated. In 2015 this was 78%, while in the first half of 2016 it was 52.9%.²

**Applications are not without chance for success.
If necessary one should litigate.**

1 BAMF, EASY Statistik ([http://www.bamf.de/SharedDocs/Meldungen/DE/2016/20160606-asylgeschaefsstatik-mai.html?nn=1367522](http://www.bamf.de/SharedDocs/Meldungen/DE/2016/20160606-asylgeschaefsstistik-mai.html?nn=1367522)).

2 BAMF, Antrags-, Entscheidungs- und Bestandsstatistik 2015, 2016.

From the viewpoint of the alleged existence of safe regions, the Federal Office for Migration and Refugees will continue to examine the asylum applications by Afghans more restrictively and will attempt to further lower the rate of successful applications. Nevertheless, increasing numbers of failed applications do not mean that the Federal Office's arguments will be accepted by the courts, and filing law suits contesting negative decisions by BAMF should be considered.

It is of the utmost importance that Afghan asylum applicants at the official hearings give truthful, extensive and nuanced accounts of their background and fate; including their individual reasons for fleeing the country, the whereabouts of family members, their family structure, as well as the concrete dangers and chances for survival should they be returned or deported.

This also goes for individuals who never lived as refugees in Afghanistan, but instead in another country, such as Iran. As Iran does not re-accept Afghan refugees, there is a genuine risk of deportation onwards to Afghanistan, which – if no ties to family or clan exist any longer – could be relevant for a possible granting of protection in Germany.

Detailed accounts should be given, especially for the region in and around the capital Kabul. BAMF seems to be of the opinion that certainly Kabul, but by now also Herat and Mazar-i-Sharif, are safe – especially for young men. It should be demonstrated through individual cases that, given the numbers of internally displaced people and the scarcity of resources, survival there is extremely difficult, even for young people, especially when family ties or other functioning social networks (no longer) exist in Afghanistan.

It is advisable for refugees to visit an advice centre at the earliest opportunity.

Furthermore, refugees have the right to be accompanied at their hearings by an advisor (paragraph 25, asylum law). A corresponding regulation can also be found in Point 7 of BAMF's service instructions: "If an applicant is accompanied to a hearing by an advisor (paragraph 14, VwVfG), that person is only to be admitted if the applicant puts on record an appropriate statement and the advisor's identity can be verified at the hearing. It is therefore important to make prior contact with BAMF, to carry ID and to have the refugee's permission to attend.

Guidance and personal advice are useful.

As hearings form a crucial part of the protection procedure, and many refugees might be nervous and need support, it can be very useful to accompany refugees. The advisor is not allowed not speak in place of the applicant but does have the right to ask questions to clarify and follow up points, for instance if facts are recorded wrongly or ambiguously. On such occasions it is worth intervening, in order to avoid subsequent inconsistencies. In addition, the advisor can require the interviewing person to ask additional questions to ensure that aspects of the refugee's situation are addressed that in the heat of the moment might otherwise be forgotten about. It has happened in the past that an interviewer might add documents produced by the refugee into the files before properly reading them. In such a situation the advisor could intervene and insist that such evidence is taken note of.

Integration and participation

Unlike Syrian refugees, who are allowed to participate in BAMF's integration courses while their asylum applications are ongoing, Afghans are only allowed onto such courses once their applications have been approved. The reason given by the German Ministry for the Interior is the insufficiently high number of successful asylum applications, which, given the numbers, is a spurious argument, designed to impede the integration of tens of thousands of people.

Having said that, with support Afghan refugees can try to self-finance alternative German language courses or to access such courses run by volunteers. After leaving a first reception centre, refugees are also allowed to enter into employment or education; however it is worth noting that work permits have to be issued by the foreigners' registration office and that other jobseekers might be given "priority".

School attendance for minors is compulsory! In the past year, children's right to visit schools was often violated, as children often were not allowed to access education for months. In particular, unaccompanied minors from Afghanistan had to endure long waiting times. In all places where local authority structures are still not functioning properly, children's right to access education should be claimed actively and unequivocally.

Deportations

Until 2005, a complete ban on deportations was in place, and in the years since then very few deportations of Afghans have been carried out – most recently nine cases (in 2015) and 12 cases (in 2011). In most cases the federal states restricted themselves to deportations of men who had committed criminal offences.

While these policies are set to change, mass deportations to Kabul are not to be expected in the near future. To what extent it will be possible to carry out deportations will depend on many factors, not least the actions of the Afghan government, which is under enormous pressure from the German and other European governments to co-operate. The fact remains that, given the desperately inadequate infrastructure in the country, deportations of thousands of Afghan refugees to Kabul would constitute a humanitarian catastrophe.

It is expected that official pressure on Afghan refugees, who are to an increasing degree not protected by the asylum procedure, will build up. More and more often they will be compelled to acquire passports and to leave the country "voluntarily". In order to increase the number of voluntary departures, the German government will not shy away from making living conditions for people affected considerably more difficult, as has been the case in the past.

**While pressure is mounting on Afghans to leave the country,
mass deportations are (still) unrealistic.**

It is clear that in the current political climate Afghan refugees are not entirely safe from deportation. However, a general feeling of panic should be counteracted by all involved, including advisors. It is, for example, worth pointing out that in Germany no-one can be deported before the end of any asylum procedure. Often asylum seekers are afraid of deportation before this is even a potential threat.

Investigating alternative options for right of residence

Afghan nationals who, despite unsuccessful asylum applications, have been living in Germany for some time under temporary suspension of deportation, should check their legal situation with the aid of a refugee advice centre or legal aid advisor, and clarify if they might be eligible to be granted the right to remain on grounds other than the right to asylum.

There are a number of different residence permit options and specific reasons for discretionary leave to remain. In some cases, for instance, a period of residence of 6-8 years can be sufficient for a permanent right to remain (paragraph 25b, Residence Act), though most types of residence permit require at least proof of (partial) means of subsistence and good integration.

For minors, a successful 4-year period of attending a school can also have a positive impact (paragraph 25a, Residence Act) on the chances of gaining the right to remain. If an apprenticeship has been started, no deportation can take place during the training period and, for the entire duration of the apprenticeship, at least a temporary suspension of deportation must be arranged (paragraph 60a, section 2, Residence Act). If no such legal provisions are effective, it is possible to apply to the Commission for Cases of Hardship at the federal state level.

Avoiding hurried advice on “voluntary” returns

The number of voluntary returns by Afghan nationals has been increasing. There are several reasons for this: frustration with the length of asylum procedures, sometimes hardly bearable living conditions in refugee shelters, disillusionment with a future in Germany, and worrying about family members left behind when no chance of family reunification seems to be on the horizon.

It is important that, even under the pressure of the circumstances, decisions to return “voluntarily” are not made over-hastily and without proper consideration. Some returnees have reported that in making the decision to return they were reacting to being told that their asylum applications in Germany had no chance of success. However, this is not the case for most people. In Germany, every asylum seeker has the right to an official decision on their application, before being requested to leave “voluntarily”.

Other, often young, refugees are disheartened, feeling abandoned and missing their families. Refugees’ decisions must be respected, but experience shows that “empty-handed” returnees are often not welcomed by their families and have to live with the

stigma of having failed or acted irresponsibly. This should give refugees pause for thought. Only too often do returnees feel compelled to flee their countries a second time.

PRO ASYL is critical of any advice that urges a voluntary return early on during the application proceedings. Advice should always be given based on a sound knowledge of the individual circumstances and must not be based solely on the situation in the country of origin. In any case, requests for (voluntary) departure can only be issued following a legally binding decision. It is important to note that anyone who wishes to annul their previous decision to depart “voluntarily” (because they had been advised over-hastily as described above, or they are changing their mind about returning voluntarily for another reason) should seek immediate legal advice.

**“Advice for Afghan refugees and their advisors”
is an excerpt from the brochure
“Afghanistan: No safe country for refugees. An investigation into
the country’s political and economic situation, its internal
security and the situation of refugees”
that was published by Förderverein PRO ASYL e.V. in May 2017
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The complete brochure is available online:

www.proasyl.de/en/material