

UNIVERSAL PERIODIC REVIEW
Session 44
Federal Republic of Germany
Freedom of religion or belief for asylum-seekers
Stakeholder Report
Submitted: 05 April 2023



European Baptist Federation (EBF)

The EBF was founded in 1949 to unite European Baptists as Europe emerged from WWII. Today the EBF is comprised of approximately 825,000 members in 61 member bodies representing nearly every country in Europe and Euro-Asia as well as five Baptist Unions in the Middle East. The EBF is one of the five regions that make up the Baptist World Alliance, and serves as European representative for the BWA. The EBF is diverse in language, culture, and tradition but remains united in Baptist identity, evangelistic zeal, and a concern for human rights and religious freedom.



Union of Evangelical Free Churches in Germany (BEFG)

The Union of Evangelical Free Churches in Germany (*Bund Evangelisch-Freikirchlicher Gemeinden in Deutschland* – BEFG) was established when the Baptists and Brethren congregations in Germany merged in 1941. It is a free church and a corporation under public law, consisting of twelve regional associations. The BEFG sees itself as part of the worldwide Christian Church, and our mission is that of all Christians: to share the Good News of God’s love with all people and to serve our neighbours. The National Headquarters and departments in Elstal-Wustermark, near Berlin, are partners for local congregations and the National Council is the church’s parliament of all congregations and organisations within the Union, but on a local level, each congregation makes its own independent decisions. The BEFG is a member of the Baptist World Alliance (BWA), the Council of Christian Churches in Germany (ACK), the Conference of European Churches (CEC), and many BEFG members are active in the German Evangelical Alliance.

Abbreviated Summary

This report takes the issue of religious freedom for refugees and asylum-seekers in the Federal Republic of Germany as its primary object. In a 2021 empirical study, Open Doors found serious problems with the consistency and impartiality of the asylum process for Christian converts applying for asylum in Germany. They found significant room for improvement in this area and indeed these constitute necessary improvements for Germany to fulfil its international and national human rights commitments in both the areas of religious freedom and the rights of asylum seekers. Significant discrepancies have been documented between the rates of positive decisions across the 16 federal states. Further, the issue of attributed apostasy in the evaluation of religious-based asylum claims has not been sufficiently taken into account in every case. Additionally, the issues faced by asylum-seekers in temporary public housing are raised. In such contexts, religious converts, ethnic minorities, and LGBTQ persons are disproportionately targeted for harassment by their peers. This leaves many in extremely vulnerable situations, particularly unaccompanied minors. It is necessary for the German authorities to review and strengthen capacities to help those in such situations. The report closes with a set of recommendations which can be easily applied and adapted by State actors participating in the 42nd Universal Periodic Review of the Federal Republic of Germany.

Summary Report

1. *Germany's international obligations and legal commitments*

The 1951 UN Convention Relating to the Status of Refugees, applies the term *refugee* to any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his nationality and is unable, or owing to such fear, is unwilling to avail him or herself to the protection of that country.”¹ Further, Article 3 of said Convention states that the so-called *contracting States* evaluate asylum claims without discrimination as to race, religion, or country of origin. Regarding return or “refoulement”, no contracting state should expel or return a refugee in any manner whatsoever to the frontiers of their territories where her/his life or freedom would be threatened because of her race, religion, nationality, membership of a particular social group or political opinion.

As established, the 1951 Refugee convention protects the right to asylum for those whose life or freedom is threatened in their country of origin or residence due to their religious belief or affiliation. Article 18 of the International Covenant on Civil and Political Rights (ICCPR), obligates State parties to protect the freedom of religion or belief for *all* within its territory. This includes “the right to freedom of thought, conscience, and religion; this right includes the freedom to change his or her religion or belief and freedom, either alone or in community, with others in public and private, to manifest his/her religion or belief in teaching, practice, worship and observance.”² When these rights are violated in a person’s country of origin such that a person cannot practise their religion or choose or express their religious convictions in peace and safety, this constitutes legal grounds to seek asylum in another country. Germany has signed and ratified the 1951 Convention, the ICCPR, and is also party to the Common European Asylum System and is thus answerable for the proper and just implementation of these conventions in asylum cases for which it is responsible.

¹ Article 1A(2), *The 1951 Convention relating to the status of Refugees*.

² Article 18. *International Covenant on Civil and Political Rights*, signed by Germany 09. Oct 1968, ratified 17. December 1973.

2. Documentation of religious conversion asylum cases by BAMF and Open Doors

The German Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge* or BAMF) releases annual aggregated demographic statistics on asylum-seekers in Germany. These include data on the national origin, ethnicity, gender, and religious affiliation of asylum-seekers as well as data on asylum and protection status decisions, cases of voluntary return, and the regional distribution of asylum-seekers within Germany, etc. The latest BAMF data from 2022 indicates that of the asylum-seekers hailing from the ten most common countries of origin, 75.7 percent were Muslim, 12,8 percent were Christians, 2,0 percent Yazidis, 3.2 percent were religiously unaffiliated, 0.4 percent were Hindu and 5.9 percent were of another religious affiliation.³ While BAMF publishes statistics on the religious affiliation of asylum-seekers each year, information on the number of asylum applications based on instances of religious persecution is not made available. Further, it is unclear from BAMF reports whether converts to Christianity from Islam are understood to be Christians in the data collection, or if they are considered Muslims until their conversion can be “authenticated” through the asylum process. The standards used to determine a person's religious confession are not only statistically relevant but also relevant to understanding the status and frequency of asylum-cases on the basis of religious conversion in Germany. Neither does BAMF specify what proportion of these asylum-seekers were offered protection status. Such information would not be difficult to aggregate and include in the BAMF statistical reporting. These are notable omissions, as religious persecution is an explicitly protected ground for asylum in all international treaties and conventions regarding asylum and by our assessment a more thorough and transparent data collection should be undertaken and published in BAMF's public reporting.

In 2021, Open Doors⁴ released an independent survey of religious-based asylum cases which sought to address this deficit in the data. The documentation for these cases were voluntarily submitted by 133 Lutheran, Reformed, Evangelical, and Free Church congregations in each of the German federal states, which were involved with or supporting Christians seeking asylum on the basis of religious persecution. Information was provided for 5,207 Christian converts hailing from Iran, Syria, Afghanistan, Iraq, Pakistan, Eritrea, and Nigeria whose asylum cases were reviewed by BAMF (*Bundesamt für Migration und Flüchtlinge*) and/or the German administrative courts from January 2017 to May 2021. Statistically significant discrepancies were found between the asylum decisions amongst the sixteen federal states of Germany. Discrepancies were also found on the basis of the asylum applicant's country of origin. While virtually all Syrians received a protection status during the survey period, almost no converts from Nigeria or Afghanistan received asylum and 82% of Iranian converts received at least one rejection in the course of their asylum process.⁵ This empirical data collected by Open Doors is significant inasmuch as it casts doubt upon the impartiality and integrity of the evaluation of asylum cases in Germany. Open Doors poses the question as such:

In a state of due process, one would expect a uniform approach to the asylum proceedings, so that there should only be minor deviations from one federal state to the next. Therefore, if rejection rates for converts of similar background (i.e. Iran) vary greatly between the individual federal states, the neutrality of the authorities is brought into question...How can the authorities account for the fact that more than 90% of Iranian converts are rejected in Berlin versus only 9% in Lower Saxony?⁶

³ “Das Bundesamt in Zahlen 2022 Asyl”, *Bundesamt für Migration und Flüchtlinge* 2023, p. 24.

⁴ Open Doors is a civil society and advocacy organisation focusing on religious persecution of Christians worldwide with offices in 25 countries, including Germany.

⁵ “Disregard of the human dignity of refugees in Germany. Representative survey on the asylum status of 5,207 Christian converts”, *Open Doors Deutschland e.V.*, 2021, p.5.

⁶ *Ibid.*, p. 20-21.

Germany is bound by international treaty to offer protections to persons seeking asylum from religious (and other forms of) persecution. This means that asylum decisions may not be made on the basis of demographic or political interests of the State, but rather on the impartial evaluation of each individual asylum case. The data suggests that factors other than the impartial and individual evaluation of cases are playing a role in asylum decisions in Germany. Discrepancies are not only found in decisions by BAMF but also in decisions of administrative courts.

3. *Legitimate standards of assessment for religiously based asylum cases*

The central focus in assessment of asylum cases should be the assessment of the applicant's risk of religious, political, or social persecution if they were to return to their country of origin. A 2004 decision by the German Constitutional Court (*Bundesverwaltungsgericht or BVerwG*)⁷, established an "existential minimum" of religious practice which did not include a public profession of faith. According to the decision, if it were judged that converts could safely practise their religion in private or secret, even if this private worship constituted an illegal act in their home country, then they had no grounds for asylum in Germany on the basis of religious persecution. The clear problem with this 2004 decision, which specifically named the situation in the Islamic Republic of Iran, was that this safe "existential minimum" of religious practice only remains "safe" if converts do not get caught. Further, this decision was in violation of Germany's international human rights commitments, as outlined in Article 18 of the ICCPR, in which peaceful religious practice is protected for individuals and groups in public *and* in private. As such, a 2012 decision overturned this legal precedent of an "existential minimum" of religious freedom and introduced a new legal standard which explicitly named prohibitions on both public and private expression of faith as grounds for asylum. A further 2020 decision from the German Constitutional Court affirmed decisions from the Federal Administrative Court in 2013 and 2015 which establishes the evaluation of the following question as the competency of BAMF and the administrative courts: **if and if so what aspects of a religious belief or practice substantiates a fear of persecution and [to what degree and intensity these beliefs or practices] are formative for the religious identity of the person seeking protection.**⁸ This decision effectively tasks BAMF and the administrative courts with a threefold evaluation in religiously based asylum application:

- a) *the objective evaluation of dangers in the religious convert's country of origin,*
- b) *an objective evaluation of the facts of the case and the probability of persecution if the asylum-seeker is returned to their country of origin,*
- c) *evaluation of the subjective aspects of the asylum seeker's religious faith and practice to establish if such faith practices would credibly endanger them in their country of origin.*

Category A has little to do with the specifics of an asylum case and much more to do with a general evaluation of the political situation in a given country of origin. In some countries (i.e. Nigeria) conversion to Christianity is not legally barred but interreligious tensions are such that some converts face a credible threat of persecution, depending on their region and specific situation. In such cases,

⁷ BVerwG 1C9.03, < <https://www.bverwg.de/200104U1C9.03.0>>

⁸ „ob und bejahendenfalls welche Aspekte einer Glaubensüberzeugung oder Glaubensbetätigung in einer die Furcht vor Verfolgung begründenden Intensität für die religiöse Identität des individuellen Schutzsuchenden prägend sind oder nicht“, in : Lehnert, Matthias, "Wer glaubt meinem Glauben?. "Konversion und Asylverfahren", *Verfassungsblog. On matters constitutional*, 25 May, 2020, <<https://verfassungsblog.de/wer-glaubt-meinem-glauben/>>

asylum status can only be determined following a thorough evaluation of the specific case and in which there is demonstrable or concrete evidence of religious persecution. However in other countries, such as Iran and Afghanistan, conversion to Christianity from Islam is a legal offence punishable by death. In such cases, religious persecution is a formalised, structural, and universally applicable reality instantiated by national laws. Germany is bound by a principle of non-refoulement, in which deportation to countries is forbidden when persons face obvious, credible threats to their life and civil liberties on the basis of their religious belief or religious conversion, particularly when these threats are legally enshrined. Further, the non-refoulement principle holds generally for countries in which the human rights situation is sufficiently deteriorated. Many of the negative asylum decisions submitted to Open Doors from the period of 2019-2021 which suggested refoulement to Iran and Afghanistan based their evaluations on government assessments made between 2012-2013. This was suspicious as more recent and more negative assessments of the human rights situation for the countries in question were readily available at the time. Due to the negative developments in the human rights situation in Iran, all deportations to Iran from Germany have been discontinued as of December 2022. Similarly, all deportations to Afghanistan have been halted since the Taliban takeover of the country in August 2021.

4. *Debates and EU recommendations on the issue of evaluation conversion in religious-based asylum claims*

In many contexts, it can safely be assumed that religious persecution is a widespread reality and it is only necessary to establish that the asylum-seeker in question either belongs to a persecuted religious group *or* to document that the asylum-seeker is a victim of *attributed apostasy*. Within this framework, the overdue emphasis in both public discussions and specialist discourses on evaluating the authenticity or sincerity of religious conversion is perplexing. In cases of attributed apostasy in particular, the individual piety of the asylum-seeker is *per definition* wholly immaterial. In cases where an asylum-seeker truly holds a religious belief attributed to them, a detailed evaluation of the character and intensity of the belief is usually at most a matter of auxiliary value. Still, it is common practice for members of the clergy to provide certificates of baptism and letters certifying that an asylum-seeker is an active member of a faith community and demonstrates a sincere commitment to the Christian faith. Troublingly, it is also common practice for BAMF and the administrative courts to disregard or contest the veracity and authenticity of the clergy's assessment. This disregard for the competence of the churches and their clergy to act as expert witnesses in these asylum cases has motivated widespread criticism.⁹ BAMF and the administrative courts have also been criticised for shallow or poorly-informed evaluations of the religiosity of asylum-seekers. Some argue that the State is not in fact the competent authority to evaluate religious conversions and that it should defer fully to the clergy in such matters. The aforementioned 2020 BVerfG decision affirmed the basic competency of State authorities to make a final decision on asylum applications. Affidavits, Baptismal certificates and expert evaluations from clergy are not themselves decisive in an asylum case, but neither are State authorities permitted to ignore, disregard, or delegitimize the expert opinions of the clergy regarding a religious conversion.¹⁰

⁹ These debates have also motivated multiple highly detailed and helpful studies by theologians, legal scholars, and sociologists which seek to parse out the complex theological nuances and social ramifications of religious conversion particularly as they relate to the responsibilities and function of the State in the asylum process. See especially, Reinhold Strähler, *Einfach und komplex zugleich. Konversionsprozesse und ihre Beurteilung*, Evangelische Verlagsanstalt, 2021; Conrad Krannich, *Recht macht Religion. Eine Untersuchung über Taufe und Asylverfahren*, V&R, 2020.

¹⁰ Lehnert, Matthias, "Wer glaubt meinem Glauben?. "Konversion und Asylverfahren", *Verfassungsblog. On matters constitutional*, 25 May, 2020, <<https://verfassungsblog.de/wer-glaubt-meinem-glauben/>>

Open Doors has documented multiple instances of quite arbitrary evaluation of religious conversions by the BAMF and court authorities. An overemphasis on religious knowledge is paired with an underemphasis on the objective dangers in many countries of origin is commonplace. Evaluation of sincerity of religious belief is a secondary issue and should only be considered to rule out the possibility that the asylum case is being built on false pretences—that is to say, to rule out cases of asylum seekers professing a faith they do not actually hold with the sole instrumental goal of being granted political asylum which they do not actually need. The finer points of relative piety, scriptural knowledge, or positions on doctrinal issues are in most cases quite irrelevant to the question of religious persecution and yet they continue to play a significant role in BAMF intake interviews as well as in many asylum decisions of the administrative courts. Open Doors also documented cases in which empirical evidence such as arrest warrants in the country of origin have been disregarded in asylum decisions of administrative courts due to a judge’s subjective impression that an asylum seeker’s faith was not sufficiently sincere.¹¹

Such instances—of which Open Doors only documents a sampling—raise significant concerns about the integrity of the asylum process in cases of religious conversion. What has been lost in the heated European debates around migration is that asylum is a human rights obligation and a humanitarian matter—not a matter of political preference or national interest. The central question regarding asylum is not the preferences and politics of the receiving country, but the political situation in the country which the asylum-seeker has fled and the specific dangers which they might individually face in that country. The politicisation of the asylum process in Germany and indeed throughout Europe presents a significant challenge to human rights throughout the region.

5. *Further issue of protections for asylum seekers and unaccompanied minors in group homes*

Multiple groups have raised the issue of insufficient protections for asylum-seekers facing violence and discrimination from other asylum-seekers in the temporary housing in the early stages of the asylum process. Converts to Christianity, ethnic minorities, and LGBTQ persons are at particular risk in these situations and the risks are even further heightened for unaccompanied minors. We urge German authorities to offer reliable and rapid protections for persons who face safety concerns, especially on grounds of ethnic or religious discrimination, or discrimination based on other identities.

6. *UPR Recommendations*

In recent years, multiple civil society organisations have recommended that States implement religious literacy and cultural sensitivity training to civil servants responsible for asylum claims.¹² Similar recommendations for best practices have been adopted European Union’s Agency for Asylum (EUAA) in a report from November 2022.¹³ We affirm these recommendations and developments while emphasising that the evaluation of the sincerity of religious belief is only one component of a religiously based asylum claim. Questions around the authenticity of conversion and the separation of Church and State which have figured so prominently in the German public debates around religiously based asylum claims serve as something of a “red herring” or distraction, as the sincerity of a converts religious belief usually serves as a poor indicator of the credibility of their fears of religious persecution.

The evaluative criteria cited by German authorities are often inconsistent with Germany’s international legal obligations to grant asylum protections to persons with credible claims of political

¹¹ “Disregard of the human dignity of refugees in Germany. Representative survey on the asylum status of 5,207 Christian converts”, *Open Doors Deutschland e.V.*, 2021, pp. 34, 47-49.

¹² See for example the advocacy of the GAVE Foundation in the Netherlands, <<https://juridisch.gave.nl/international/assessment-asylum-claims>>.

¹³ “Interviewing Applicants with Religion-based Asylum Claims”, *European Union Agency for Asylum (EUAA)*, Nov. 2022.

or religious persecution. BAMF and the administrative courts still at times disregard the evaluatory guidelines put forth by the BVerfG and frequently fail to evaluate asylum claims on the basis of religious persecution in a transparent, non-discriminatory, and legally consistent manner. This constitutes a significant human rights concern in the Federal Republic of Germany. Additionally, protections against violence and discrimination must be strengthened in public housing for asylum seekers, especially in cases of unaccompanied minors. The EBF and BEFG offers the following recommendations which might be used in the UPR Process to help ameliorate these issue:

- a) *Provide cultural and religious sensitivity training in every federal state to civil servants and judges responsible for asylum decisions.*
- b) *Ensure an asylum process that is non-discriminatory, transparent, and evidence-based. This process should both respect the expert opinions of clergy and other professionals and centre upon an evaluation of the dangers which the asylum-seeker faces in their country of origin. An arbitrary and subjective assessment of the piety of the asylum seeker should not supersede the two aforementioned aspects in decisions on asylum cases based on religious conversion.*
- c) *Include aggregate data on asylum decisions on the basis of religious persecution in the statistical reporting of the Federal Office for Migration and Refugees (BAMF).*
- d) *Ensure for the safety of all persons residing in temporary housing for asylum-seekers, and especially unaccompanied minors. Provide for an appropriate and prompt process of shelter and relocation for persons who experience discrimination or endangerment in these temporary accomodations.*