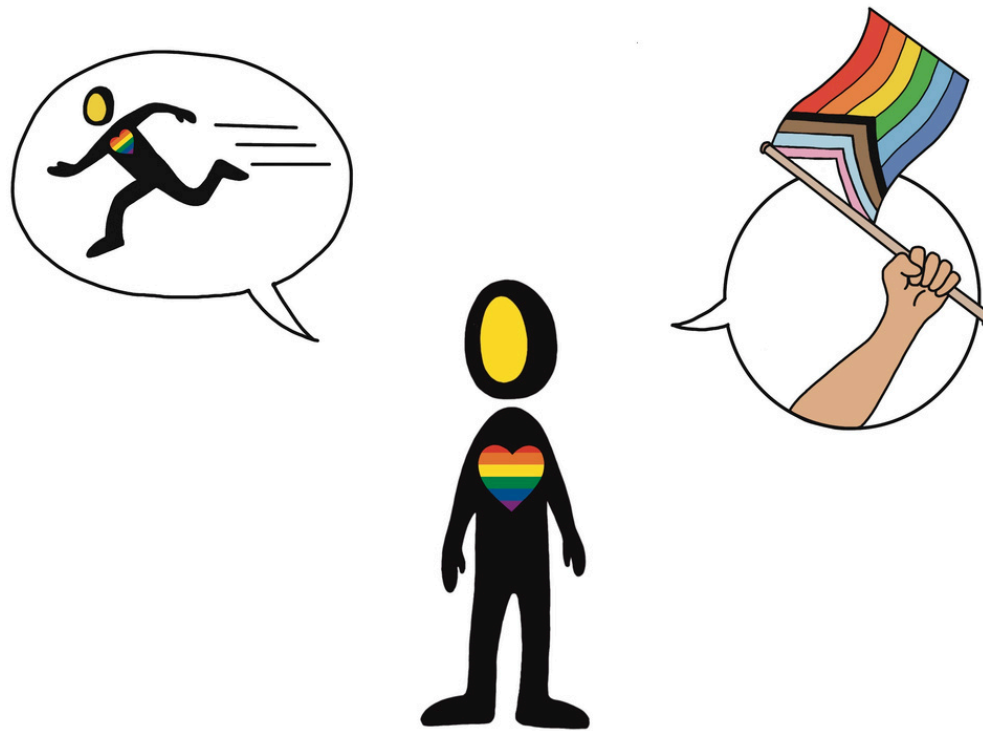


# LGBTIQ\* REFUGEES IN THE ASYLUM PROCEDURE

## A GUIDE TO THE HEARING

A project of the Kölner Flüchtlingsrat e.V.

As of July 2024



# WELCOME

Have you come to Germany as a queer refugee or migrant and want to seek protection from persecution or discrimination? If people are persecuted in their country of origin because of their sexual orientation or gender identity, this constitutes grounds for asylum in Germany.

If you apply for asylum in Germany, you must explain in detail why you had to leave your country of origin in a personal interview at the Federal Office for Migration and Refugees (BAMF). This is not always easy, can take a long time and the stories can be complicated.

It is important that you prepare well for the hearing. This guide is designed to help you do this. It is aimed in particular at lesbian, gay, bisexual, trans\*, inter\* and queer refugees. The guide gives you an insight into how the interview in Germany works and what you, as a queer person, should be aware of so that you can make full use of your right to asylum.

There are many ways to get help and support!

You are not alone!



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# 1. LGBTIQ\* REFUGEES IN GERMANY

LGBTIQ\* refugees have a right to special protection in Germany. We define important terms and give you an insight into the general situation of LGBTIQ\* refugees in the asylum procedure.



# 1.1 DEFINITIONS



## **LGBTIQ\***

The term LGBTIQ\* stands for lesbian, gay, bisexual, trans\*, inter\* and queer people. The asterisk\* aims to include more than just one or two genders. The term LGBTIQ\* also includes people with sexual orientations and gender identities other than those mentioned and is thus intended to take account of the great diversity.

It may be that the conceptual distinction between homosexuality, bisexuality, transgender and intersexuality that is common in Germany is not used in your country of origin, or that other terms are used. It can be very difficult to talk about this in the asylum procedure and to find the appropriate terminology. In addition, many LGBTIQ\* refugees have experienced the dangers of coming out (voluntarily or involuntarily) first-hand or in their own environment.

## **Coming out**

There are two types of coming out: the internal and the external one.

The internal coming out describes the individual process of becoming aware of one's own gender identity or sexual orientation and accepting it, even though it does not conform to established social norms.

External coming out then describes the self-determined sharing or "making public" of one's sexual orientation or gender identity, for example among friends, in the family or at work. There are many people who do not have an external coming out or only tell a few people about it, especially if it is for example forbidden in their country to be homosexual or trans\*.

The phases of internal and external coming out can take different lengths of time and sometimes run in parallel.

## 1.2 GENERAL SITUATION

LGBTIQ\* refugees are particularly exposed to violations of their fundamental and human rights, such as multiple discrimination and persecution, due to their origin, sexual orientation or gender identity and legal status. They are therefore regarded as a particularly vulnerable group of individuals entitled to special protection.

As a member of a particularly vulnerable group of individuals, you are entitled to certain rights during the asylum procedure. For example, you have the right to have your interview conducted by a specially-trained interviewer who is familiar with LGBTIQ\* issues and to live in a shelter where gender-specific aspects are taken into account. Germany must also take special measures to protect LGBTIQ\* refugees from violence in collective accommodations.

### **Excursus: General Equal Treatment Act**

The Allgemeine Gleichbehandlungsgesetz (General Equal Treatment Act) aims to ensure that all people are treated equally – no matter where they come from or how old they are; what gender they are or who they love; how old they are or what religion they belong to; whether they are deaf or sit in a wheelchair.



## 1.3 ASYLUM PROCEDURE

In the asylum procedure the BAMF proves whether you will be granted protection in Germany because of your reasons for fleeing. Grounds for asylum are the reasons why you had to leave your country of origin. The BAMF usually conducts two interviews during the asylum procedure. You will be asked many questions in the interviews. The answers are written down in a transcript.

### First hearing (Dublin system)

In the first interview, you will be asked questions about yourself, your family and your escape route.

It will also be clarified which Dublin state is responsible for your asylum procedure. Dublin states are all EU member states and currently also Iceland, Liechtenstein, Norway and Switzerland. The Dublin state where you first entered and where you gave your fingerprints is often responsible for your asylum procedure. If you entered a Dublin state with a visa, the Dublin state that issued the visa for your entry is responsible for you.



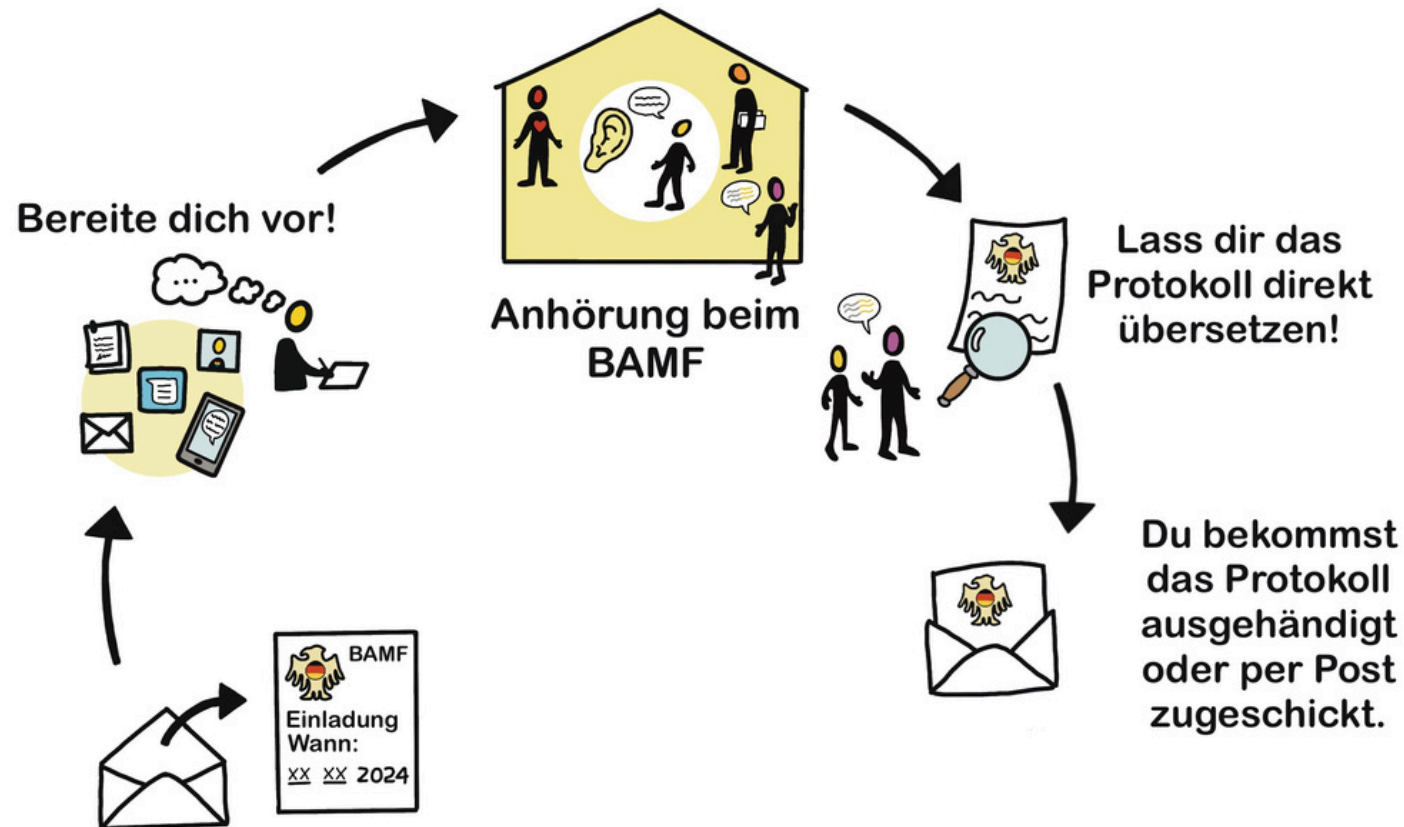
### Second hearing (reasons for fleeing)

The second hearing focuses on the reasons for fleeing. This is the most important part of the asylum procedure. This is because the BAMF uses the information from the interview to decide on your asylum application and thus whether you can be granted protection in Germany for these reasons.



## 2. THE HEARING (INTERVIEW)

The interview focussing on the grounds for asylum is the most important part of the asylum procedure. We explain how the interview works and what you should definitely bear in mind.





## 2.1 GROUNDS FOR ASYLUM



### **LGBTIQ\* identity**

If people are persecuted in their country of origin due to their sexual orientation or gender identity, this is considered grounds for asylum in Germany. Even if you did not live out your sexual orientation or gender identity in your country for fear of violence and discrimination and therefore left the country without being persecuted, you can still be granted asylum in Germany.

If you had to hide your LGBTIQ\* identity for fear of persecution, the BAMF may not demand that you return to your country and continue hiding your sexual orientation or gender identity.

An important requirement for being granted protection in the asylum procedure is that the BAMF believes your LGBTIQ\* identity. This means that LGBTIQ\* refugees must provide detailed information about the self-discovery of their own queer identity during the interview.

### **Other grounds for asylum**

People around the world also have to leave their country of origin because they are being persecuted due to their ethnicity, political opinion, religion or nationality. War, torture or humanitarian disasters also force people to leave their country. Often, people do not have the opportunity to find protection in another part of their country.

Asylum is complicated. Whenever you have questions, contact an advice center. On page 29 of this guide you can find some places you can turn to.

## 2.2 PERSECUTION

### Acts of persecution

In many countries around the world, people are persecuted because of their sexual orientation or gender identity. Persecution means that you are at risk of violence, torture, death, imprisonment, discrimination or other forms of inhumane treatment such as forced marriage, conversion therapy, forced medication or medical (surgical) interventions in your country of origin because of your LGBTIQ\* identity.

Homophobic or transphobic attitudes held by the majority of society are not themselves grounds for asylum. However, if the discrimination in your country of origin is so severe that it constitutes a serious violation of human rights, this is grounds for asylum.

Most LGBTIQ\* refugees are fleeing countries where consensual same-sex sexual acts between adults are prosecuted. Not only gay, lesbian and bisexual people, but also trans\* and inter\* people are affected by these homophobic laws. In many places, state authorities are involved in the oppres-

sion of LGBTIQ\* people. They refuse to protect them from hostility and violence. In these countries it is not possible for LGBTIQ\* people to live openly.



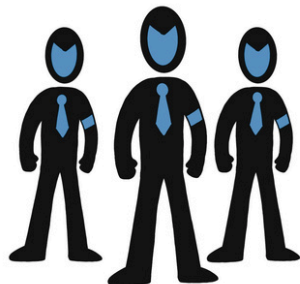
## 2.2 PERSECUTION

People can be persecuted by different agents. In the asylum procedure the BAMF distinguishes between state and non-state agents.

### State agents

Someone can be persecuted by state institutions such as the police or the judiciary. In this case, the state is not the protector, but the persecutor.

If you have been persecuted by the state in your country of origin, it is not enough that homosexual acts are punishable by law. It is only considered an act of persecution in the asylum process if punishments for being LGBTIQ\* are actually imposed in that country.



### Non-state agents

A person can also be persecuted by other groups, such as their own family, a militia or civil society. Without the protection of the state, LGBTIQ\* people are often left defenceless in the face of non-state violence.

If you have been persecuted by non-state agents in your country, this only counts as grounds for asylum if the state is demonstrably unable or unwilling to protect you from persecution and if you cannot find protection in any other part of your country. For example, if the police cannot protect you from violence or threats of violence from your family and you are also not safe from persecution of your family elsewhere in your country, this is considered grounds for asylum.



## 2.3 RIGHTS AND OBLIGATIONS

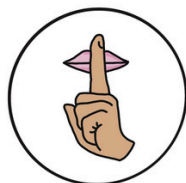
### Fair procedure

The BAMF must listen to your entire story and carefully consider your asylum application. You have the right to say everything that you find important during the interview without being interrupted.



### Duty of confidentiality

The hearing is confidential and the employees of the BAMF are subject to a legal duty of confidentiality. No one is allowed to pass on anything you say.



Psst!



### Specially-trained employee from the BAMF

As an LGBTIQ\* person, you have the right to have your interview conducted by a specially-trained employee of the BAMF. For this, the BAMF must know about your need for special protection. Inform the BAMF that you are an LGBTIQ\* person and request in writing that your interview be conducted by a person specially-trained in gender-specific persecution.

Advice centers can also help you with this. You can find some on page 29 of this guide.



## 2.3 RIGHTS AND OBLIGATIONS

### Translation

You have the right to be heard in your mother language. An interpreter will translate everything into your language during the hearing. The interpreter must translate everything you say correctly.

It is very important that you understand the interpreter well. For example, you should speak the same dialect. It is also important that you can trust the interpreter. If you feel uncomfortable or cannot understand everything well, say so in the hearing, even if it feels difficult. You then have the right to stop the hearing and continue it on a new date with another interpreter.

If you want you can bring your own interpreter. You must apply for this in writing before your interview. However, the translation will only be provided by the interpreter from the BAMF.

### Breaks

You have the right to take breaks during the hearing. If you need a break, say so!



## 2.3 RIGHTS AND OBLIGATIONS

### Assistance

Everyone has the right to take a person with them to the interview. This person can provide emotional support during the interview. The person can make sure that the interview goes well. For example, that communication during the interview works well and that everything you say is fully recorded in the minutes (transcript). The accompanying person also has the right to ask questions. If the person thinks that you have forgotten important details of your story, she can remind you of this during the interview.

You should trust this person. You should also feel comfortable talking to this person about your reasons for fleeing, especially with regard to sexual orientation or gender identity.

It is best to prepare for the hearing together with the accompanying person and get support from a advice center.

Being accompanied by a person also has to be applied for in advance in writing. If the BAMF refuses the person access to the interview, you should insist on your right.



## 2.3 RIGHTS AND OBLIGATIONS

### **No "discretionary prognosis"**

In the past, asylum applications from LGBTIQ\* refugees were often rejected by the BAMF on the grounds that they could hide their sexual orientation or gender identity in their country of origin in order to avoid persecution. This is not allowed!

As sexual orientation and gender identity are an important part of human identity, the BAMF can no longer demand that you hide them if you return to your country in order to avoid persecution. Even if you say that you want to hide your sexual orientation or gender identity in your country, this must not be the reason for rejecting your asylum application.

### **Gender-sensitive approach**

The BAMF may not assess your statements on sexual orientation or gender identity on the basis of questions that are based solely on stereotypical ideas about LGBTIQ\* people. Furthermore, the BAMF must make an effort to address LGBTIQ\* people in a gender-sensitive way.

If other terms are used in your country to describe your queer identity, that is fine. This must not cause any disadvantages for you.

If your story contains gender-related issues or intimate details, you have the right to say whether the interviewer and interpreter should be a person of the same gender. You can also request that only people of a certain gender attend the hearing. However, all this has to be applied for in advanced in written. Advice centers can help you with this (-> page 29).



## 2.3 RIGHTS AND OBLIGATIONS

### Minutes of the interview (transcript)

The interview transcript plays a very important role in your asylum procedure. All the information it contains must be correct. At the end of the interview, the content of the interview is translated back into your language word by word. If there are any mistakes or misunderstandings, this is the last opportunity to correct them.



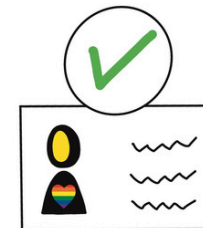
### Hearing date

It is important that you keep the appointment for the interview, otherwise your asylum application may be rejected. You can only cancel the appointment in an emergency.



### Establishment of identity

You are obliged to prove your identity to the BAMF if you are able to do so. In addition to your national passport, other identity documents such as your birth certificate and driving license are also important.



### Change of address

During the asylum procedure, you have to make sure that the BAMF always has your up-to-date address. This is the only way the BAMF can send you important documents regarding your asylum procedure, such as the letter with the decision on your asylum application.





## 2.4 IMPORTANT NOTES

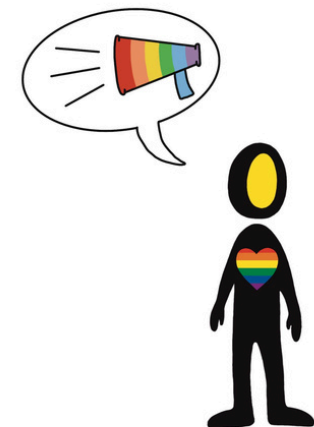
### **Reveal your sexual orientation or gender identity!**

If queer refugees can credibly explain in the interview that they belong to the LGBTIQ\* group and that they are being persecuted because of their sexual orientation or gender identity, they have a good chance of being granted asylum. It is therefore important that you reveal your sexual orientation or gender identity in the interview and talk about the self-discovery of your own queer identity.

Many queer refugees experience their LGBTIQ\* identity as something forbidden due to the violence and discrimination they have suffered. Out of fear of persecution, they have learned to hide their sexual orientation or gender identity. Many find it difficult to reveal this in the asylum procedure in front of unfamiliar BAMF employees and an interpreter. You don't need to be ashamed of this.

If you have hidden your LGBTIQ\* identity in your country of origin for fear of violence and persecu-

tion, it is important that you say so in the interview. If you cannot or do not want to talk about this in detail, you should explain it in the hearing. Some queer refugees have never spoken to anyone about their LGBTIQ\* identity before the hearing. Others do not know the terms used here or find it difficult to find the right terms for their identity. The process of coming out is very individual, as each person copes with their own sexual orientation or gender identity in a different way. It can take several months or even years. There are LGBTIQ\* organisations that can support you in this process. You can find them on page 29 of this guide.



## 2.4 IMPORTANT NOTES

### **Tell your story in full!**

During the interview, tell as precisely as possible all the reasons why you had to leave your country of origin. It is normal that the stories are long and complicated. Don't let yourself be rushed. You have the right to tell everything you think is important without being interrupted.

It is important that you freely describe all experiences of discrimination and violence that you have experienced in your country. Also tell who persecuted and discriminated against you. Have you been attacked, threatened, tortured or discriminated against by the police, courts or other state authorities? Were you persecuted by non-state agents, such as your family, friends or neighbors, and if so, did you turn to the police? Did the state protect you? If the state did not protect you, explain why not. Had you previously sought protection in vain? Or would it have been dangerous for you to turn to the police for help? Could you have found protection in another region of your country? If you are not safe any-

where in your country, explain why.

This is all important information for the hearing. It is difficult to state these reasons at a later date.

If you were, or are, politically or religiously active in your country or after your escape, tell the interviewer. Explain if returning to your country of origin poses an increased risk for you.



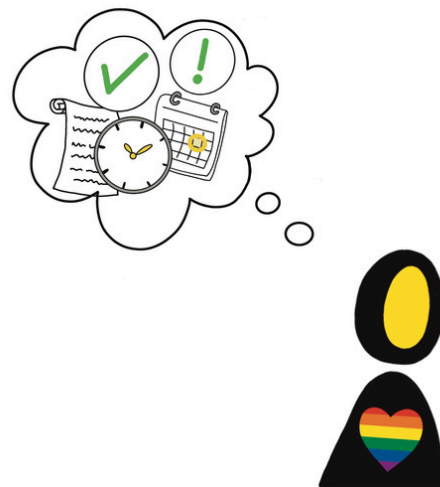
## 2.4 IMPORTANT NOTES

### **Stick to the facts!**

Only tell what actually happened. Try to remember the date, time and place. These specific details have a big impact on whether the BAMF believes your story. If you are not sure anymore about certain dates or details, it is important that you say so. Don't make anything up. This will usually be noticed by the BAMF and can lead to your asylum application being rejected.

### **Avoid contradictions!**

The decision on your asylum application depends largely on the credibility of your statements. The BAMF checks whether what you say is credible. It assesses the credibility of your statements based on the criteria of completeness, richness of detail, chronological order and consistency. You should therefore make sure that your story is as complete as possible and that it does not contain any contradictions.



## 2.4 IMPORTANT NOTES

### Provide evidence!

It is very important that you bring everything with you to the hearing that backs up your story. It is best to provide the BAMF with copies of documents and keep the originals for yourself. If there is other evidence that you still don't have, mention it in the hearing and say you will submit it when you can. Make sure that a note is made in the minutes of the hearing about which documents you will submit.

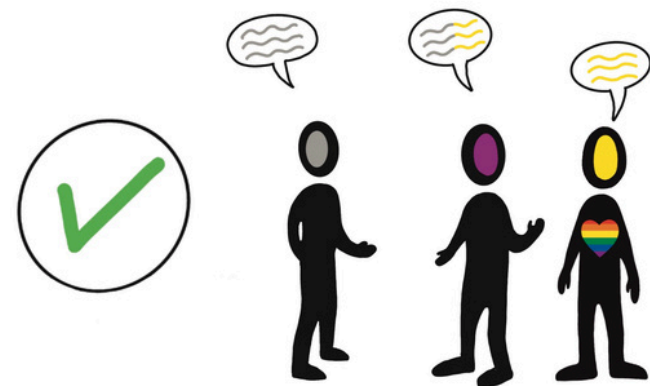
It is not always possible for refugees to provide evidence of their reasons for fleeing. If you do not have any evidence, do not let this discourage you. Even without evidence, you have the right to be fully heard by the BAMF. It is essential that what you say is credible.



### Good communication with the interpreter!

At the beginning of the hearing you will be asked whether you understand the interpreter. It is very important that you not only speak the same language, but also the same dialect. Good communication is essential to ensure that no misunderstandings arise and that everything is recorded correctly in the minutes.

If communication does not work, say so at the beginning of the hearing and ask for a new appointment with another interpreter.



## 2.4 IMPORTANT NOTES

### **Have the transcript translated back!**

Everything you say in the hearing is noted in a transcript. At the end of the hearing, the minutes of the interview will be translated back into your language so that you can check it. Even if the hearing was stressful and long, it is very important that the translation is done literally. Be sure to check that everything has been noted down correctly. Make sure that the circumstances of your hearing are also noted in the transcript. For example, it should also state who took part in the hearing, when breaks were taken, if you communicated non-verbally (e.g. crying) and what evidence you submitted.

If there is something missing or has been translated incorrectly, you should say so immediately so that it can be changed. If there are any problems during the hearing, these should also be noted in the minutes. You should insist that the correct minutes are taken, even if you are urged to sign them beforehand. You must not be disadvantaged by this.

Only sign the report when it is complete and correct. This is important as the minutes will be used to decide on your asylum application. The prospects of success in the event of an appeal against the BAMF's decision are also largely determined by the content of the minutes of the hearing.



### 3. BEFORE THE HEARING

It is important that you are well prepare for the interview. We explain how best to do this and who can support you.



## 3.1 PREPARATION FOR THE HEARING

### Seek advice!

Contact an advice center that can advise you on your rights and obligations in the asylum procedure and prepare you for the interview.

If you need advice on LGBTIQ\*-specific issues, contact a LGBTIQ\* organisation.

You can find advice centers on asylum and residence law as well as gender-specific issues on page 29 of this guide.



### Plan plenty of time!

The hearing can take several hours. It may also take some time before it is your turn. Be prepared and take something to eat and drink with you.



## 3.1 PREPARATION FOR THE HEARING

### Prepare your story!

You should use the time before the hearing to prepare for it.

For many LGBTIQ\* refugees it was not possible to talk about their sexual orientation or gender identity in their country of origin. As a result, they may not have the words to talk about it and describe the background during the interview. It is therefore important that you practise talking about your LGBTIQ\* identity and persecution. There are advice centers that can help you practice talking about your LGBTIQ\* identity and reasons for fleeing (-> page 29).

It can also help writing down your story before the interview. Try to remember everything. Make sure you write down all events in chronological order with date, time and place. Writing them down can help you to sort out your experiences and describe them clearly.

Please consider that your notes are a memory aid. You should definitely describe your story freely during the interview. Otherwise, the BAMF may doubt the credibility of your story.





## 3.1 PREPARATION FOR THE HEARING

### Collect evidence!

Collect all evidence that back up your story. This could be photos, videos, police or court documents, letters, medical records, medicines or their packaging, newspaper articles, facebook posts, messages or chat histories, witness statements and so on. Keep the originals for yourself and make copies of any evidence you want to submit to the BAMF.

It is often more difficult for queer refugees to provide evidence. This is because there is rarely valid evidence of persecution on the grounds of sexual orientation or gender identity in countries where LGBTIQ\* people are criminalised and discriminated against. However, if you have documents from your country proving that you are persecuted because of your sexual orientation or gender identity, bring them with you to the interview.

If you already take part in LGBTIQ\*-specific groups or consultation offered by LGBTIQ\* orga-

nizations in Germany, ask the staff whether they can provide you with a certificate of attendance or statement. If you have proof of your participation in queer-political demonstrations or events such as Christopher Street Day (CSD), bring it with you to the hearing. If you have physical/mental illnesses or complaints or have already started gender transitioning, you should get a medical report as soon as possible and bring it to the hearing. If there are witnesses to your story, get a written statement.

Photos and videos with sexual content are not accepted as evidence. Personality tests and forensic psychological reports to determine sexual orientation are also not accepted.



## 3.2 POSSIBLE QUESTIONS FROM THE BAMF IN THE HEARING

You may be asked many questions in the hearing. Don't let that put you off. However, the interviewer may also ask you to tell your story without asking many questions. On the following pages you will find questions that can be asked in the hearing in one way or another.

### **General questions about biography and country of origin**

Here you will be asked a few questions about your personal situation and your escape route. You will also be asked questions about your school attendance, profession, family and religion.

### **Questions about the reasons for fleeing**

The hearing will focus on these two questions, to which you should answer as detailed, complete and clear as possible:

- What were the reasons why you left your country of origin?
- What would you fear if you had to return to your country of origin?

### **Questions about sexual orientation and gender identity**

During the interview, you will also be asked questions about your private life, your self-discovery or coming out and your previous relationships. Questions about sexual practices are forbidden.

In our opinion, many of these questions should be viewed critically, as they reproduce Western stereotypes about LGBTIQ\* people and existing discrimination and can affect human dignity. Nevertheless, we will list the questions here to give you the opportunity to prepare for the hearing as well as possible.

## 3.2 POSSIBLE QUESTIONS FROM THE BAMF IN THE HEARING

### Coming out:

- How did you realize that you were homosexual? When did you first realize that you were also interested in women/men?
- Can you remember in which situation you first suspected that you were also attracted to a woman/man?
- What thoughts did you have when you realized you were homosexual? How did you deal with the realization that you love women/men?
- Describe for me the process from the moment you suspected you were bisexual/homosexual/trans\* to the moment you also identified with it and accepted it for yourself.
- Did you talk about your emerging feelings?
- When did you perceive and accept your own homosexuality/bisexuality/transidentity as positive?
- Please describe to me the feelings you have towards a woman/man you love and those you have towards a man/woman you like very much.
- How many relationships have you had so far?
- Have you had other partners before?
- Was your sexual identity immediately apparent to you or was it a continuous process of recognition?
- How was the development of your identity influenced by the threat of prosecution in your country of origin?
- What thoughts did you have about possible consequences of your sexual identity?
- Is there any particular experience that was especially important or formative for your sexual orientation or gender identity?

## 3.2 POSSIBLE QUESTIONS FROM THE BAMF IN THE HEARING

### Relationships:

- Where did you meet women/men?
- Please describe to me how it came about that a more intense relationship developed between you and X.
- How did it come to be a physical relationship?
- Can you please describe to me what you felt after this first physical contact?
- What changed in your relationship with your boyfriend/girlfriend after you first had physical contact?
- Tell me more about your relationship with X.

### Social environment:

- How did those around you find out about it and when?
- Where did you get the courage to talk to others about it?
- Where did you meet with your partner\*/other people with the same sexual orientation, how often, etc.?
- How did you behave in public?
- Did your orientation/identity affect your advancement in your career or educational opportunities?
- Who knew about your sexual orientation?
- What did you do to hide your sexual orientation from your family and social circle?
- Did you seek advice from other people/institutions?
- Did you contact other persons with your sexual orientation in your country of origin?
- Do you know people who were punished in your country of origin because of their orientation/identity?
- Do you know any places/organizations/websites for LGBTIQ\*?

## 3.2 POSSIBLE QUESTIONS FROM THE BAMF IN THE HEARING

### Life in Germany:

- Have you had any contact with homosexuals in Germany?
- How did you meet women/men here in Germany?
- What is the process of meeting through a dating app?
- Have you already talked to people in Germany about your sexual orientation?
- Have you already entered into a committed relationship in Germany?

### General questions:

- How would you describe your sexual orientation?
- What is Christopher Street Day?
- Can you describe to me what your sexual orientation means to you? What are your internal feelings?
- For bisexual people: Is your inclination towards women or men stronger? Or is it the same?
- For trans\* people: How do you know that you are a woman/man?

## 3.3 IMPORTANT ADVICE CENTERS

There are many non-governmental human rights organizations in Germany that stand up for the rights of LGBTIQ\* refugees. There you can get information as well as legal and psychosocial consultation, among other things. Some of them are:

### **Advice on asylum and residence law**

Asylum procedure advice can help you to prepare for your interview. They can also answer questions about your rights in the asylum procedure.

As a rule, hearings are held in the initial reception facilities of the respective federal state. Many initial reception facilities offer independent advice on asylum procedure. Here you can prepare for your interview. If there is no such advice center in your facility, you can contact a refugee advice center in your area.

<https://adressen.asyl.net/>



### **Psychosocial advice and psychotherapy**

In psychosocial counseling centers for refugees and victims of torture, refugees can already be supported during their asylum procedure. The specialists there can later provide significant support in finding a suitable offer for long-term, LGBTIQ\*-sensitive psychotherapy.

### **Advice and support on gender-specific issues**

Psychosocial counseling provided by LGBTIQ\* organizations can support queer refugees in their coming out process. They give you space to ask questions and express concerns in the context of your sexual orientation or gender identity.

<https://www.queer-refugees.de/anlaufstellen/>



# IMPRINT

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