



ADF INTERNATIONAL

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people.
2. This report outlines the situation of freedom of religion and freedom of expression in Germany. It expresses concern regarding cases of dismissal of religion-based asylum applications, particularly by Christian converts, despite significant risk to their lives upon return to their country of origin. Furthermore, the report addresses the violations of freedom of expression, of assembly and of religion or belief resulting from the laws and regulations authorizing so-called 'protection zones' around abortion centres.

### (a) Rights of Asylum-seekers

#### *National Asylum Law and Guidelines Concerning Religious Converts*

3. Article 16a of the German Constitution guarantees the right to asylum to persons persecuted on political grounds, excepting those arriving from a "Member State of the European Communities" or another country "in which the application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured", or from countries, determined by law, where "it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists."<sup>1</sup>
4. In August 2020, the Federal Office for Migration and Refugees (BAMF) revised its guidelines for assessing application of religious asylum. The new guidelines assert that every case requires an assessment of the severity of the threat of religious persecution. In this regard, circumstances amounting to a "serious violation" include "not only encroachments on the applicant's freedom to practice his faith in private, but also on his freedom to live out his faith publicly."<sup>2</sup>
5. With regard to the assessment of the credibility of a religious conversion, the guidelines establish that "belonging to a Christian religion is decided exclusively by the churches. The affiliation is documented through a certificate of baptism." In these cases, the affiliation "is not to be doubted or questioned during the asylum procedure." Only in cases where the conversion had taken place in a different country and no baptismal document is found can an assessment of the credibility of conversion be undertaken.<sup>3</sup>
6. This credibility assessment considers the self-identification of the applicant and the manner they live out their faith in everyday life. The requirement "must not be set too high", and does not require in-depth knowledge of the religion, but merely ought to demonstrate the inner reasons for the conversion and sufficient knowledge of the basics of the religion to substantiate the threat of persecution. Personality and cultural differences must also be taken into consideration. The central question is whether, if returned, the applicant would feel themselves compelled to express their religious identity to a degree that is likely to elicit persecution. Documentation from churches

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<sup>1</sup> Basic Law for the Federal Republic of Germany (adopted May 1949, last amended June 2022), [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html#p0092](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0092), Art. 16a.

<sup>2</sup> BAMF 'DA-Asyl: Verfolgung in Anknüpfung an das Merkmal Religion', [https://www.asyl.net/fileadmin/user\\_upload/DA-Asyl\\_02\\_2022.pdf](https://www.asyl.net/fileadmin/user_upload/DA-Asyl_02_2022.pdf), pg. 2.

<sup>3</sup> Id., pg. 6-7.

can be relied on to support the case in question.<sup>4</sup>

7. Despite the adoption of these improved guidelines, credibility assessments for convert refugees in Germany remain inconsistent. In particular, asylum applications of Iranian converts continue to be frequently rejected.
8. A 2021 survey of over 100 churches in Germany, conducted by Open Doors Germany, identified 5207 refugee converts served by the congregations between 2017 to 2021, 61% originating from Iran, followed by 17% from Syria, 15% from Afghanistan, and the rest originating from other countries.<sup>5</sup> Of the 5207, over two thirds had had their asylum requests rejected, while 99 converts were deported.<sup>6</sup> The report found that the BAMF's denial of protective status to Iranians increased from 50.6% in 2017 to 76.2% of cases by 2021. Notably, 44% of the Iranian refugees identified as Christian. These rulings are often based on outdated precedents and country reports which do not reflect the current situation of persons belonging to religious minorities in Iran.<sup>7</sup>
9. The increasingly inconsistent treatment of religious asylum-seekers in Germany, and the subsequent danger faced by them upon rejection, has been raised repeatedly by civil society organizations. Martin Lessenthin, spokesperson for the International Society for Human Rights, referred to asylum cases of ex-Muslim converts from Iran and Afghanistan as "often a pure game of chance."<sup>8</sup>
10. In 2018, H.H., an Iranian man, sought asylum in Germany after his family home was stormed by security forces in Iran as a consequence of their conversion to Christianity. The man's brother-in-law had been jailed and ultimately killed for his activities with a house-church in Iran. Despite repeatedly articulating his reasons for conversion, as well as receiving supporting testimony from his German pastor, H.H.'s application was denied, and a subsequent appeal was dismissed by the local court on the basis that a Muslim was "not particularly likely" to convert after witnessing the persecution of his Christian family members.<sup>9</sup>
11. In 2022, the case of H.H. was brought before the European Court of Human Rights, which declared the application inadmissible.<sup>10</sup>

### *The Obligation of Non-refoulement*

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<sup>4</sup> Id., pg. 8-10.

<sup>5</sup> Open Doors Germany, 'Disregard of the human dignity of refugees in Germany' (10 November 2021) [https://articleeighteen.com/wp-content/uploads/2021/11/2021\\_Converts\\_survey\\_english\\_digital\\_signiert.pdf](https://articleeighteen.com/wp-content/uploads/2021/11/2021_Converts_survey_english_digital_signiert.pdf), pg. 14.

<sup>6</sup> Id., pg. 12.

<sup>7</sup> Id., pg. 15.

<sup>8</sup> Evangelical Focus 'Iranian Christian converts struggle to get asylum in Germany' (5 August 2022) <https://evangelicalfocus.com/europe/18093/iranian-christian-converts-struggle-to-get-asylum-in-germany>.

<sup>9</sup> ADF International 'Germany denies refuge to Christian convert' (11 August 2022) <https://adfinternational.org/germany-denies-refuge-christian-convert/>.

See also: Article 18 'Iranian Christian convert's rejection reveals flaws in Germany's asylum process' (19 August 2022) <https://articleeighteen.com/analysis/11553/>.

<sup>10</sup> ADF International 'Germany denies refuge to Christian convert' (11 August 2022) <https://adfinternational.org/germany-denies-refuge-christian-convert/>.

12. Germany has ratified the 1951 Convention Relating to the Status of Refugees, Article 33 of which explicitly prohibits the repatriation of a refugee “where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>11</sup>
13. In order to fulfil its international obligations under international human rights, refugee, and humanitarian law, Germany must improve its credibility assessment in its asylum system, and guarantee protection to asylum-seekers facing a clear threat of persecution on the basis of their religion, especially when their deportation would expose them torture, imprisonment, or death in their countries of origin.

#### **(b) Freedom of Religion, Expression and Assembly**

14. The Basic Law of Germany establishes the rights of all persons to freedom of religion, expression and assembly.<sup>12</sup> In particular, Article 8 states that “All Germans shall have the right to assemble peacefully and unarmed without prior notification or permission. In the case of outdoor assemblies, this right may be restricted by or pursuant to a law.”<sup>13</sup>
15. Article 15 of the 1953 Federal Law on Assemblies and Processions further specifies that “The responsible authority may prohibit the assembly or procession or subject it to certain conditions if, according to the circumstances recognizable at the time the order is issued, public safety or order is directly endangered by the carrying out of the assembly or procession.”<sup>14</sup> Several Federal States have since passed laws superseding the Federal Law. However, in one way or another, all of these laws permit the imposition of conditions or restrictions on an assembly if public safety or public order are immediately threatened by it.
16. In March 2019, a group called ‘40 Days for Life’ was prohibited from holding silent and peaceful prayer gatherings outside an abortion counselling facility in Pforzheim, Germany. At the request of ProFamilia, an abortion advocacy organization which operates a network of counselling facilities as well as – in violation of the Pregnancy-Conflict-Law (SchKG) – four abortion clinics throughout Germany, the local government issued a ban on all gatherings within earshot or sight of the centre. The matter was taken to court, when in August 2022 the ban was struck down as an unjustified restriction on the participants’ freedoms of assembly, religion and expression. The Administrative Court of Baden-Württemberg ruled that gatherings around pregnancy crisis centres could not be prohibited as long as the participants did not “impose their opinions” in a manner that forced visitors to “run a physical or psychological gauntlet”, which would amount to a legitimate threat to public order and

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<sup>11</sup> UN General Assembly ‘Convention Relating to the Status of Refugees’ (adopted 28 July 1951) 189 UNTS 137, art. 33.

<sup>12</sup> Basic Law for the Federal Republic of Germany, (last amended 28 June 2022) [https://www.gesetze-im-internet.de/englisch\\_gg/englisch\\_gg.html#p0087](https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0087), arts. 4,5,8.

<sup>13</sup> Id., art. 8.

<sup>14</sup> Federal Law on Assemblies and Processions (last amended 30 November 2020) <https://www.gesetze-im-internet.de/versammlg/BJNR006840953.html>, art. 15.

safety.<sup>15</sup>

17. In spite of this ruling, there has been increasing pressure to restrict the exercise of freedom of expression and assembly around abortion facilities. The commitments of Germany's new governing coalition included a promise to "adopt effective legal measures to counter so-called 'sidewalk harassment' by opponents of abortion."<sup>16</sup> In September 2022, the Minister of Family Affairs expressed her intention to propose legislation criminalizing so-called 'sidewalk harassment'.<sup>17</sup> This term is highly vague and employed prejudicially, particularly in light of the fact that legally relevant forms of harassment are already prohibited by existing law. This is implied inter alia by the Basic Law Article 8's phrasing of a "right to assemble *peacefully*", as well as the criminalization of coercion under Article 240 of the Germany Criminal Code.<sup>18</sup>

#### *Freedom of expression and assembly in international law*

18. Article 19 of the ICCPR enshrines the right to freedom of expression, which includes the "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."<sup>19</sup> Article 19(3) allows restrictions on freedom of expression only where necessary "for the respect of the rights and reputations of others" or "for the protection of national security, public order or public health or morals."<sup>20</sup>
19. As clarified inter alia by the Human Rights Committee in its General Comment No. 34, restrictions on free expression must be provided by law, must be imposed on one of the permissible grounds provided, and "must conform to the strict tests of necessity and proportionality."<sup>21</sup>
20. The Committee further defines the principle of proportionality as follows: "[the restrictions] must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected."<sup>22</sup> It also requires "a direct and immediate connection between the expression and the threat."<sup>23</sup>
21. Article 21 ICCPR recognizes the right to freedom of assembly. In addition to meeting the same requirements as with freedom of expression, restrictions on free assembly

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<sup>15</sup> Administrative Court Baden-Württemberg, no. 1 S 3575/21 (25 August 2022) [http://lrbw.juris.de/cgi-bin/laender\\_rechtsprechung/document.py?Gericht=bw&GerichtAuswahl=VGH+Baden-W%FCrttemberg&Art=en&Datum=2022-8&nr=38106&pos=1&anz=11](http://lrbw.juris.de/cgi-bin/laender_rechtsprechung/document.py?Gericht=bw&GerichtAuswahl=VGH+Baden-W%FCrttemberg&Art=en&Datum=2022-8&nr=38106&pos=1&anz=11), §3. As of March 2023, an application for leave to appeal filed by the city of Pforzheim is pending with the German Federal Administrative Court.

<sup>16</sup> SPD, FDP, Greens 'Koalitionsvertrag 2021-2025' (7 December 2021)

[https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag\\_2021-2025.pdf](https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf), pg. 92.

<sup>17</sup> BR24 "'Gehsteig-Belästigung" - Abtreibungsgegnern drohen Strafen' 28 September 2022

<https://www.br.de/nachrichten/deutschland-welt/abtreibungsgegner-sollen-belaengt-werden-gehsteig-belaestigung.TljoIWp>.

<sup>18</sup> Criminal Code (last amended November 2021), sect. 240.

<sup>19</sup> International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 19.

<sup>20</sup> Id.

<sup>21</sup> UN Human Rights Committee, General Comment No. 34 (2011), CCPR/C/GC/34, 22.

<sup>22</sup> Id., 34.

<sup>23</sup> Id., 35.

must also be “necessary in a democratic society.”<sup>24</sup> According to the Human Rights Committee’s General Comment No. 37, “Restrictions must therefore be necessary and proportionate in the context of a society based on democracy, the rule of law, political pluralism and human rights, as opposed to being merely reasonable or expedient.”<sup>25</sup>

22. The imposition of so-called ‘protection zones’ around abortion centres would effectively restrict freedom of expression and assembly beyond what is permissible under international human rights law. As correctly observed by the Administrative Court of Baden-Württemberg concerning the abovementioned case in Pforzheim, claims that these measures are necessary to protect the personal rights of women are unmerited, as the holding of vigils and the peaceful expression of moral and religious views neither prevent access to the facilities, nor coerce or threaten potential visitors. Individuals cannot be censored simply because their message is not welcome to certain groups or even perceived as offensive or insensitive. Censorship and restrictions on free assembly must remain the exception, not the rule. The persistent nature of the ‘protection zones’ reverses this critical dynamic by employing censorship as a given principle, rather than in legitimate response to immediate, verified threats.
23. Even insofar as restrictions are justified as necessary for the protection of public order, the introduction of blanket censorship zones fails the principle of proportionality, as it drastically exceeds the requirement to employ the “least intrusive instrument amongst those which might achieve their protective function.”<sup>26</sup> Instead, existing national laws can be relied on to prevent, halt, and where necessary, prosecute specific conduct amounting to a genuine threat of violence or harassment to the affected women or staff.
24. The freedom to pray for, provide information to, or persuade women by non-coercive means to change their mind about abortion is protected under international human rights law and must therefore remain protected under domestic law.

### **(c) Recommendations**

25. In light of the aforementioned, ADF International suggests the following recommendations be made to Germany:
  - a. Respect the principle of non-refoulement by taking effective measures to protect the rights of asylum seekers to change or leave their religion, and to seek safety from persecution in their countries of origin;
  - b. Protect persons facing persecution due to their religious beliefs and refrain from deporting asylum-seekers to countries where they would face torture, imprisonment, or death on account of their faith;
  - c. Ensure that credibility assessments for asylum applications based on religious conversion are conducted in an objective, individual, impartial, and consistent manner;

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<sup>24</sup> International Convention on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art. 21.

<sup>25</sup> UN Human Rights Committee, General Comment No. 37 (2020), CCPR/C/GC/37, 40.

<sup>26</sup> *Id.*, 34.

- d. Ensure full respect for freedom of expression, freedom of religion, and freedom of assembly in all public spaces, including by repealing or amending laws authorizing so-called 'protection zones' around abortion facilities;
- e. Ensure that any limitations imposed on the exercise of the freedoms of expression and assembly comply with relevant international human rights obligations, particularly under the International Covenant on Civil and Political Rights.





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