

The purpose of this factsheet is to explain what it means when you make an asylum claim and the legal definition of a refugee.



What does it mean to claim asylum?

Claiming Asylum

When you claim asylum:

- You are asking for protection
- You are saying that it is not safe in your home country, so you cannot return there
- You are asking to be given the right to stay in the country in which you're claiming asylum, because it is not safe for you to return to your home country

Who is a refugee according to refugee law?

Who is a Refugee? The legal definition

People leave their countries for many reasons. However, only some reasons fit within who the law defines as a refugee.



The law is the **Refugee Convention 1951**, sometimes called the Geneva Convention



This is the law that countries use when they are trying to decide if someone is a refugee



146 countries in the world signed up to this law, so that means the definition of who is a refugee is the same in all these countries - whether you claim asylum in Canada, Greece, UK, France, Germany and so on

The asylum procedure - including your interviews with the authorities - is designed to understand if your story fits within the legal definition of a refugee

According to the law, you are a refugee and should be granted refugee status, if:

1

You have a well-founded fear of persecution

2

That fear of persecution is because of your race, religion, nationality, political opinion, particular social group ("Convention reasons")

3

The authorities in your own country can't or won't protect you

4

You cannot be safe anywhere in your own country - there is no safe part you can move to

Each of these points will be explained in more detail below.

DISCLAIMER - this is to provide general information and does not constitute legal advice. Other laws and procedures may apply to you and individualised advice should always be sought.

1

A well-founded fear of persecution

“well-founded fear”

This means that you are really afraid and you are afraid of something that could really happen - it is not an irrational fear or unjustified fear.

“persecution”

This means that your fundamental human rights will be denied or significantly breached if you return home. Persecution is not necessarily someone trying to kill you, it is not even something necessarily physical, however it should be something serious. This will depend on the person and their health or vulnerability - for e.g., what is persecution for a child might not be the same as for a healthy adult.

Discrimination or hardship in your home country is not usually enough. Although in some cases it can amount to persecution if it is very serious.

1

A well-founded fear of persecution

What is important is whether you could be persecuted in the future:

- People often think that to be a refugee they must show that they have already been persecuted in their country. This is not required by law.
- It is possible to receive a positive decision and be recognised as a refugee even if you left your home country before anything bad happened to you.
- If you were already persecuted in your home country, it is important to mention this, because it can indicate that the same thing could happen again in future
- However, just because the authorities believe that you have already been persecuted does not mean that you will receive a positive decision and be recognised as a refugee.

The question is whether you could be persecuted in the future, if you return to your country.

You must explain why you would still be at risk, if you returned to your home country. If you were at risk or you suffered in the past, that is not enough. If you will not be at risk in future, you will not receive a positive decision.

1

A well-founded fear of persecution

Who do you fear will persecute you?

- It may be that you are afraid of the authorities in your home country - those in power, the government, police, army, etc.
- You may also be afraid of people who have nothing to do with the authorities - for example different/rival ethnic, religious or political groups, family members or your community.

Fear of persecution can arrive after leaving your home country

- It may be that when you left your country you did not fear persecution, however since leaving the situation has changed and it would be dangerous for you to return.
- This could be because the situation in your country has changed.
- It could also be because you have done things since leaving your country that put you at risk.

2

Reasons you fear persecution ("Convention reasons")

To be granted refugee status, your fear of persecution should be because of one (or more) of these reasons. They are known as "Convention reasons" because they are listed in the law, the Refugee Convention:

- 1 Your **race** - includes ethnicity, tribe, skin colour.
- 2 Your **religion** - this includes having no religion (atheism); losing your past religion (apostasy); or changing religion (conversion).
- 3 Your **nationality** - citizenship, or your language/cultural identity even if it is not legally recognised. If you have no nationality this is also significant, this is called statelessness.
- 4 Your **political opinion** - not necessary to be in a formal political group or party, but against the authorities.
- 5 Your membership of a **particular social group** - this means you are or would be treated differently in your country because there is something about you or your identity that you cannot change (for example, sexuality).

- To be granted refugee status, the reason you fear persecution should be related to one of the above reasons.
- Perhaps you are at risk because one of the above things is assumed of you - for example people think you are gay, but you are not, or the government thinks you're against them, but you're not. This still counts, the important thing is that you are at risk because of one of the above reasons.
- Sometimes more than one of the above reasons can apply at the same time.

If you fear persecution for reasons other than the 5 listed above, it is not necessarily the responsibility of the country in which you're claiming asylum to protect you.

Subsidiary protection

If you claim asylum in Europe but the harm you fear is not related to these 5 “Convention reasons”, you could still be granted another status called subsidiary protection.

- Both refugee status and subsidiary protection are called “protection status”. If granted, you have the right to stay in the country you claimed asylum because it is understood it’s not safe for you to return to your country.
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- While claiming asylum, you can explain why you are at risk in your home country but you cannot choose between refugee status and subsidiary protection.
- Whether to give someone subsidiary protection, is considered according to a different law (Directive 2011/95/EU), but no separate application is required, you will be considered for both statuses automatically.
- In most of the countries, the benefits of getting subsidiary protection are lesser than those related to refugee status.
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To be granted subsidiary protection there must be a real risk that you will suffer serious harm. Examples of serious harm include: the death penalty/execution, torture, violence in armed conflict that is so bad it affects civilians

3

The authorities in your own country cannot protect you

To be granted refugee status, you must show that the authorities in your home country cannot protect you.

If you fear the authorities in your home country, then it may seem obvious they cannot protect you. However, you must still explain this. If you fear harm from someone else, then during the asylum interview you may be asked why you couldn't receive protection from the authorities in your home country, such as the police. If it's not possible or unrealistic for you to ask the authorities in your home country to protect you, then you must explain why.

The logic is - why leave your country and come here to claim asylum, if you could have received protection at home, from your own country's authorities?

4

You cannot go anywhere else in your home country

To be granted refugee status, you must show that nowhere in your home country is safe for you. During the asylum interview, you may be asked to explain why you couldn't go to a different part of your own country, in order to escape your fear of persecution.

If you fear the authorities and those authorities are in power all over your home country, then it may seem clear that you cannot be safe anywhere. However, you must still explain this.

If you could move to another area of your home country, but you would face serious risks or problems there too, you should explain this as well. Whether it is reasonable to ask you to start a new life outside of your home area will depend on your individual circumstances.

For example, if you are a well-educated, single, healthy man with a strong family network in your country - perhaps it could be suggested you go and start a new life elsewhere in the country. If you are a single mother with serious health problems, no education or family support, it might not be reasonable to suggest you go and start a new life in an unknown part of your home country.

The logic is - why leave your country and come here to claim asylum, if you could be safe and survive somewhere else within your own country?

Decisions on your claim for asylum

Negative decision

If your claim for asylum is rejected, you should have the right to appeal. There will be a deadline, so it is important to obtain legal advice as soon as possible.

Positive decision

If you are granted refugee status, that means you have a positive decision on your claim for asylum and you should be allowed to stay in the country in which you are claiming asylum and receive a residence permit - usually for a limited number of years and with the possibility to renew.

Every country is different so it is important to get individualised legal advice if possible.

We wish you good luck !