

The Legal Position of Foreigners – An attorney's view

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Foreigner?



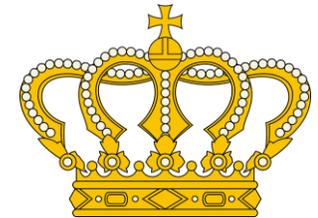
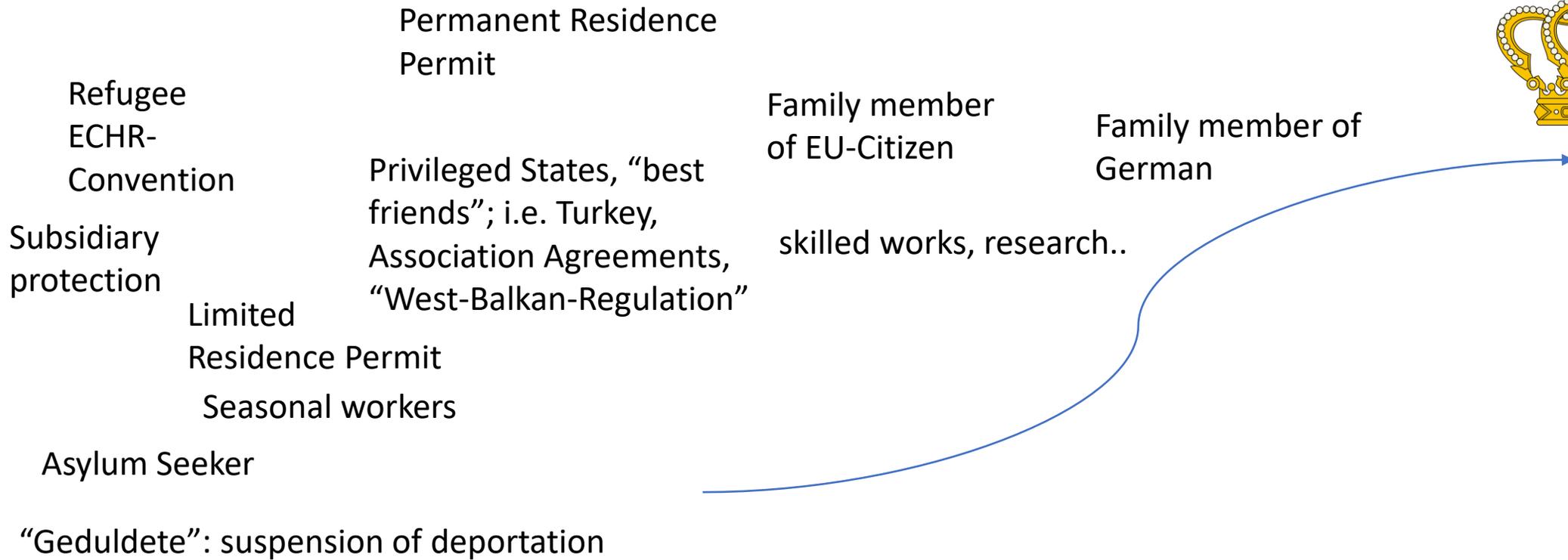
Legal situation depends on status



“Union citizen”



German

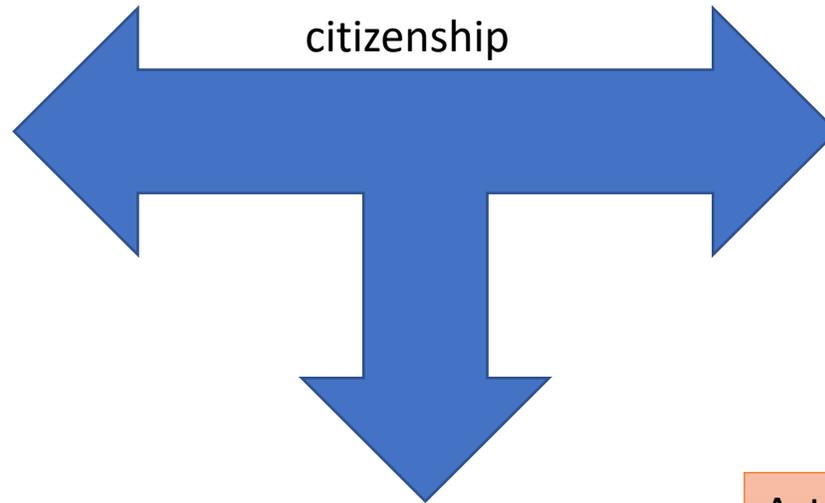


Alien



(German) citizenship

symbol of belonging



full protection and help by the state

all political rights: - voting

Art. 20 II [Basic Law for the Federal Republic of Germany](#):
“Volk” – interpreted as holder of the German citizenship
resident population: “denizenship”
Problem: -democratic deficit
-may hinder integration

Ius sanguinis – but also ius soli

Ethnic-cultural conception
of national identity

Open Society
“Einwanderungsland”



Ius-Soli – since 1. Jan. 2000 - [Section 4 \(3\) Nationality Act](#):

A child of foreign parents acquires German citizenship by **birth** in Germany if one parent

- has been legally ordinarily resident in Germany for **eight years** and
- has a **permanent right of residence** or as a national of Switzerland or as a family member of a national of Switzerland has a residence permit on the basis of the Agreement of 21 June 1999 between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (Federal Law Gazette 2001 II, p. 810).

“Denizenship”

A set of rights for long-term resident foreign nationals that includes at least the following:

- Long-term residence permit
 - Access to employment
 - Enhanced protection from deportation / expulsion
 - and provisions for family reunification in the country of residence
- (EUDO Glossary on Citizenship and Nationality)

Citizenship of the European Union

Below the federal constitutional level

- local government elections (treaty of Maastricht 1992)



Art. 28 I S. 2 a. 3. German constitution

In **county and municipal elections**, persons who possess the citizenship of any member state of the European Community are also eligible to vote and to be elected in accordance with European Community law.

In municipalities a local assembly may take the place of an elected body.

Since 1970 – Ausländerbeiräte (advisory council of foreigners)

4 million EU-citizens eligible voters in Germany

Estimation of eligible voters according to age and gender (including eligible voters from UK and Northern Ireland) in millions

Schätzung der Wahlberechtigten in Deutschland nach Altersgruppen und Geschlecht (einschließlich Wahlberechtigte mit Staatsangehörigkeit des Vereinigten Königreichs Großbritannien und Nordirland) in Mill. ¹

Alter von ... bis ... Jahren	Deutsche			EU-Staatsangehörige			Insgesamt		
	Frau- en	Män- ner	zusam- men	Frau- en	Män- ner	zusam- men	Frau- en	Män- ner	zusam- men
18 - 20	1,1	1,1	2,2	0,1	0,1	0,1	1,1	1,2	2,3
21 - 44	9,6	9,9	19,5	1,0	1,2	2,2	10,6	11,1	21,7
45 - 59	8,4	8,4	16,9	0,5	0,6	1,0	8,9	9,0	17,9
60 und mehr	12,3	10,0	22,3	0,3	0,3	0,6	12,6	10,3	22,9
Insgesamt	31,4	29,4	60,8	1,8	2,1	3,9	33,2	31,6	64,8

6,5 % in relation
to German voters

https://www.bundeswahlleiter.de/info/presse/mitteilungen/europawah-2019/03_19_wahlberechtigte-deutschland.html

Discrimination of Germans “Inländerdiskriminierung”

EU-citizens may have more rights than German nationals:

- no need for proof of A1 German language skills for spouse
- Family reunification till 21 years (not just until 18).
- descendant or ancestor or else descendant or ancestor of a spouse of an EU citizen, who is due to meeting his basic needs **dependent** on nutrition or on other necessary care provided by this EU citizen or his spouse, or was dependent on this nutrition or care immediately prior to entering the territory, in a state of which the person concerned is a citizen or in a state in which the person concerned has permitted stay.

[DIRECTIVE 2004/38/EC of 29 April 2004](#)

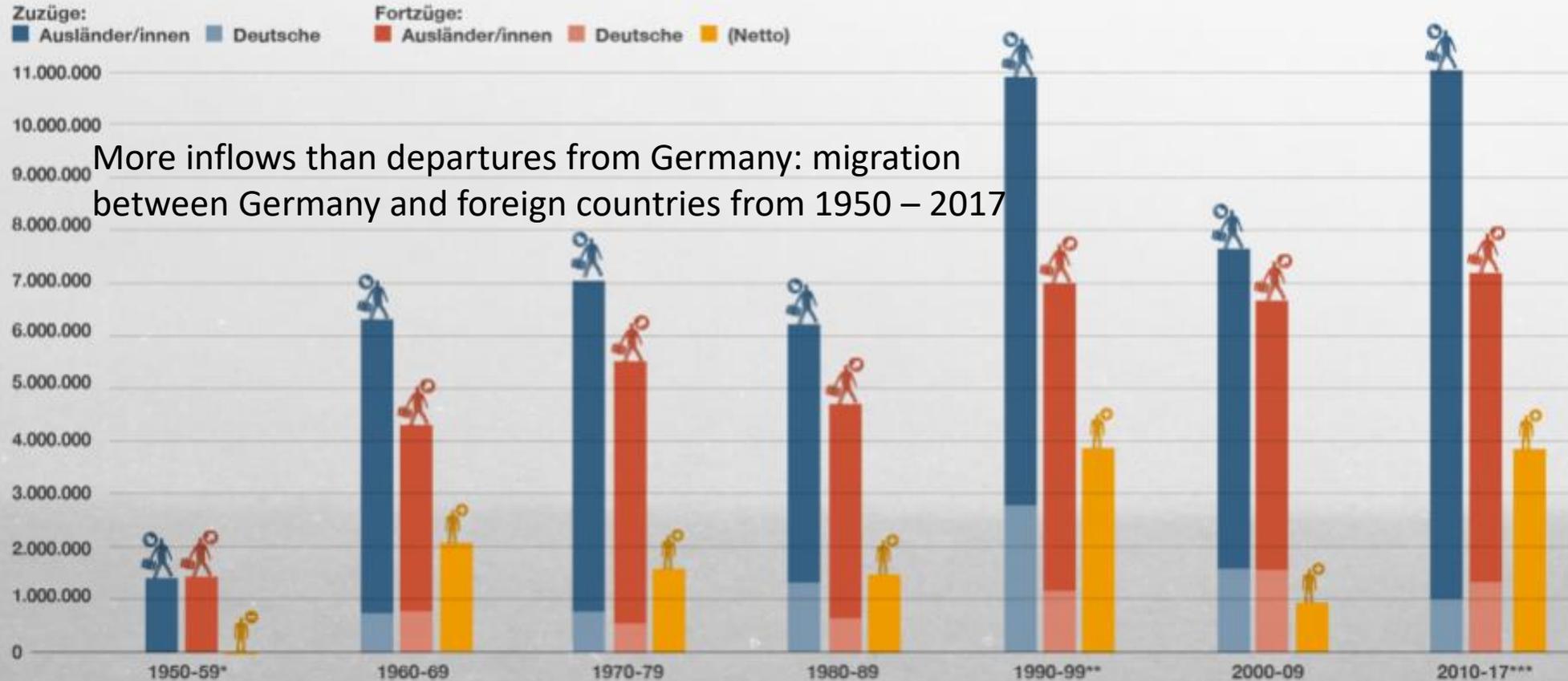
ECJ regarding the “static” EU-citizens, [K.A. and Others v Belgium \(C-82/16\)](#):

Article 20 TFEU precludes national measures, such as decisions refusing a right of residence to family members of Union citizens, which have the effect of depriving the latter of the genuine enjoyment of the substance of the rights conferred by virtue of their status.



Mehr Zuzüge als Fortzüge: Wanderungen zwischen Deutschland und dem Ausland 1950-2017

In den 1950/60er Jahren kamen vor allem Arbeitsmigranten aus Südeuropa und der Türkei nach Deutschland. In den 1970/80er Jahren zogen zunehmend deren Familien nach. In den 1990ern zogen viele deutschstämmige (Spät-)Aussiedler sowie Bürgerkriegsflüchtlinge aus dem ehem. Jugoslawien zu. Auch die 2010er Jahre sind geprägt durch hohe Zuwanderung – schon ab 2012 infolge der Europäischen Schuldenkrise, 2014 und vor allem 2015 dann durch den Zuzug von Schutzsuchenden.

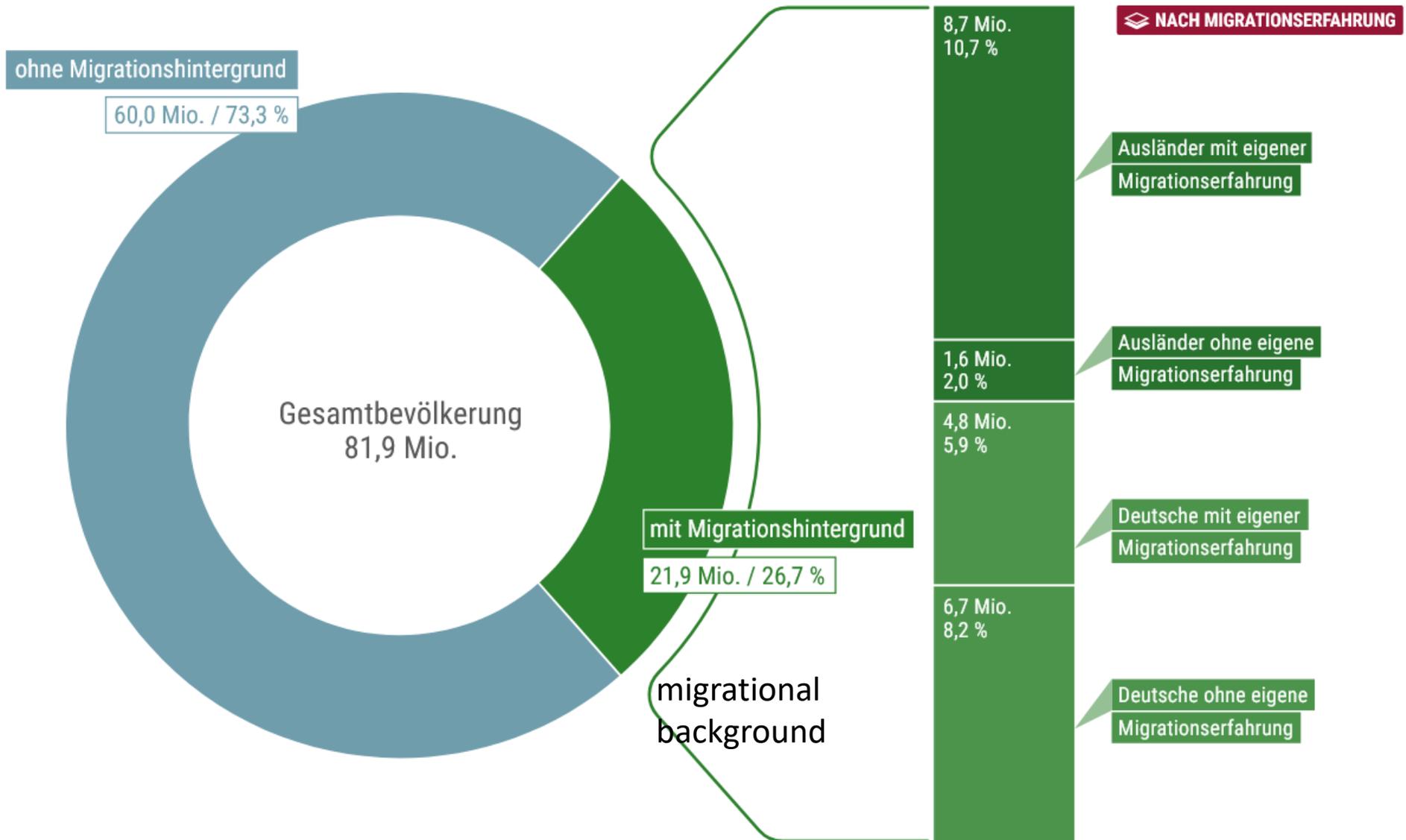


More inflows than departures from Germany: migration between Germany and foreign countries from 1950 – 2017

*) 1950 bis 1953 wurden Ausländer und Deutsche nicht getrennt erfasst. 1950 bis 1957 ohne Saarland
 **) Bis einschließlich 1990: früheres Bundesgebiet
 ***) Ergebnisse ab 2016 nur bedingt mit Vorjahreswerten vergleichbar (methodische und technische Änderungen), 2017: Vorläufiges Ergebnis

In absoluten Zahlen, Anteile an der Gesamtbevölkerung in Prozent, 2020

In absolute numbers, percentage of population as a whole



**Ausländische Bevölkerung in Deutschland nach Staatsangehörigkeit zum Stichtag
31.12.2020**

Rang	Land der Staatsangehörigkeit	Bevölkerungszahl	Anteil in %
1	Türkei	1 316 395	12,4
2	Syrien	787 094	7,4
3	Polen	773 680	7,3
4	Rumänien	753 663	7,1
5	Italien	587 167	5,5
6	Kroatien	399 168	3,8
7	Bulgarien	368 396	3,5
8	Griechenland	328 275	3,1
9	Russische Föderation	235 469	2,2
10	Afghanistan	233 114	2,2
11	Irak	225 183	2,1
12	Bosnien und Herzegowina	204 189	1,9
13	Ungarn	191 852	1,8
14	Serbien	190 045	1,8
15	Österreich	166 515	1,6
16	Kosovo	166 056	1,6
17	Spanien	161 165	1,5
18	Indien	144 223	1,4
19	Ukraine	134 989	1,3
20	China	133 820	1,3
	Bevölkerung ausländischer Staatsangehörigkeit insgesamt	10 585 053	100,0

Around 10.6 million foreigners were living in Germany at the end of 2020.

The [Federal Statistical Office \(Destatis\) reports](#) that as of 31.12.2020, a good one in ten people living in Germany did not have German citizenship (12.7%).

Citizenship – Naturalisation – permit residence

2021 Coalition agreement:

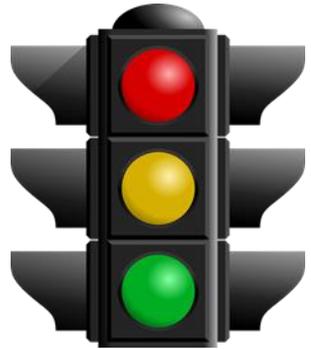
Immigrants are able to apply for citizenship after **five** years (currently 8 years) and allowed **dual citizenship**, a potential big change for thousands of ethnic Turks, many of whom remain foreign nationals after decades in Germany.

Required level of necessary German skills shall be reduced for “Gastarbeiter”

General hardship clause for German skills.

Permit residence possible after 3 years.

https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf (p.118)



Freedom of assembly

“All **Germans** shall have the right to assemble peacefully and unarmed without prior notification or permission.”, Art. 8 (I) German Constitution

However simple law - § 1 VersG
“**Everybody**” (Jedermann)

As well as Art. 11 ECHR



Freedom of association

All **Germans** shall have the right to form societies and other associations, Art. 9 German Constitution

However simple law:

„Die Bildung von Vereinen ist frei (Vereinsfreiheit)“, § 1 VereinsG.

As well as Art. 11 ECHR

Freedom of Movement

All **Germans** shall have the right to move freely throughout the federal territory, Art. 11 German Constitution.

[Act on the Residence](#), Economic Activity and Integration of Foreigners in the Federal Territory (Aufenthaltsgesetz)

Section 12 (1) The residence title is issued for **the federal territory**.

(2) The visa and the temporary residence permit may be issued and extended subject to conditions. Conditions, in particular **geographic restrictions**, may also be imposed subsequently on visas and temporary residence permits. In particular, geographic restrictions may be imposed on temporary residence permits in cases where there is public interest in expelling the foreigner pursuant to section 54 (1) nos. 1 or 1a and where restrictions are necessary to remove the foreigner from an environment in which he or she is more likely to commit serious crimes.

Freedom of Movement

- Residence rule – Section 12a

“In order to promote their lasting integration into the way of life in the Federal Republic of Germany, foreigners who have been granted **asylum status, refugee status** [...] are required to take up their habitual residence (place of residence) in that Land [German Federal State) to which they have been allocated [...]for a period of three years his or her residence [...].”

Freedom of Movement

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms ..

ARTICLE 2

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

[...]

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society

Occupational Freedom

All **Germans** shall have the right freely to choose their occupation or profession, their place of work and their place of training, Art. 12
German Constitution

[EU Charter of Fundamental Rights](#)

Article 15 - Freedom to choose an occupation and right to engage in work

1. **Everyone** has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

New Regulations for skilled workers

The requirements for skilled works have been declining in the last years.

Especially concerning “Mangelberufe”, where the salary may be lower and a special approval of the Agency for work (Agentur für Arbeit) is not required.

Special regulations also for works in the care sector.

Special programs in the health / care sector
Philippines..

Due to demographics: more elderly population

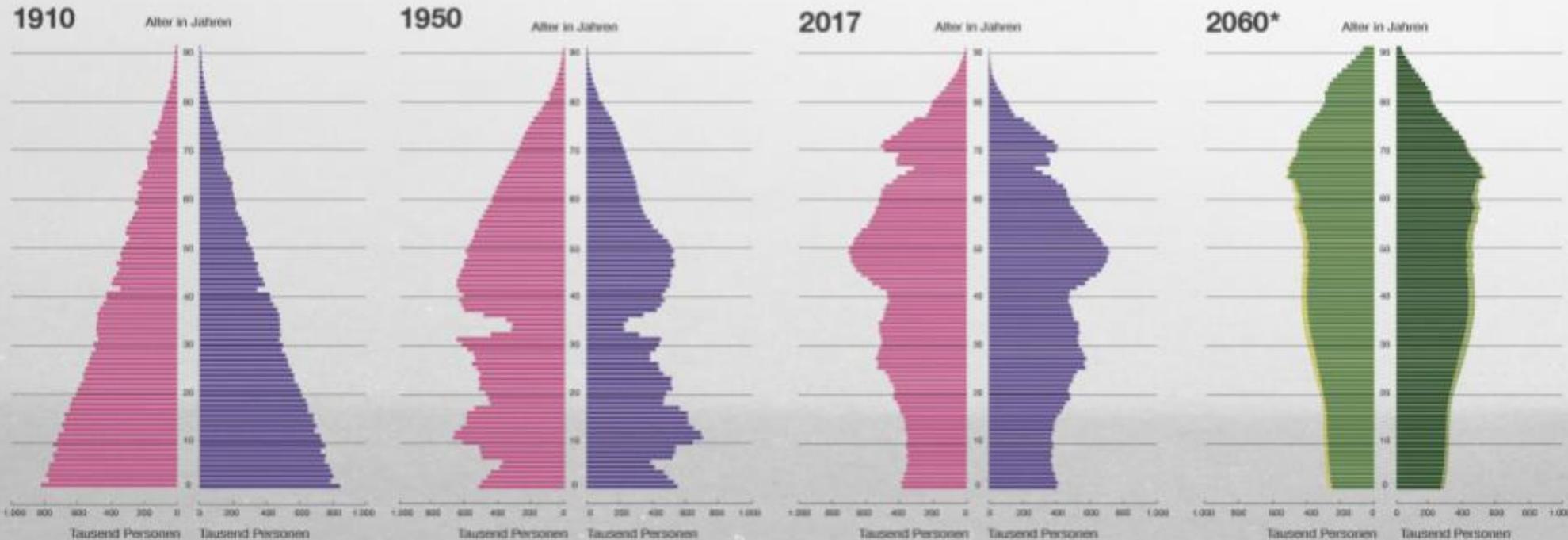


Altersstruktur im Wandel: Bevölkerung in Deutschland 1910, 1950, 2017; Vorausberechnung 2060

Der Altersaufbau der Bevölkerung verändert sich. 1910 gab es viele junge Menschen, zugleich war die Lebenserwartung geringer als heute. In den vergangenen Jahren ist die Lebenserwartung gestiegen, zugleich werden weniger Kinder geboren. Eine ideale Altersstruktur ist kaum erreichbar.

Changes in the age distribution: population in Germany ... forecast 2060

The age distribution of the total population is changing. 1910 there were lots of young people, at the same time life expectancy was lower than today. In the last years life expectancy has grown, at the same time fewer children were bore. The ideal age structure cannot be achieved.



*)Varianten 1 und 2 sind Modellrechnungen. Für beide gilt die Annahme einer Geburtenrate von 1,4 Kindern je Frau; Lebenserwartung bei Geburt 2060 für Jungen 84,8 und Mädchen 88,8 Jahre. Variante 1 geht von einem Wanderungssaldo von 100.000 Menschen pro Jahr ab 2021 aus; Variante 2 von 200.000 Menschen.

■ Variante 1 bei schwächerer Zuwanderung
■ Variante 2 bei stärkerer Zuwanderung

Citizenship – Extradition

Article 16 of the German Constitution:

(1) No **German** may be deprived of his citizenship. Loss of citizenship may occur only pursuant to a law and, if it occurs against the will of the person affected, only if he does not become stateless as a result.

(2) No **German** may be extradited to a foreign country. The law may provide otherwise for extraditions to a member state of the European Union or to an international court, provided that the rule of law is observed.

Citizenship – Extradition

Article 19 EU Charter of Fundamental Rights

- Protection in the event of removal, expulsion or extradition
 - 1. Collective expulsions are prohibited.
 - 2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Extradition

Article 8 (right to respect for private and family life) ECHR

Very serious reasons are required to justify the expulsion of a **settled migrant** who has lawfully spent all or the major part of his or her childhood and youth in a host country (Maslov v. Austria [GC], § 75).

In the very specific case of a foreigner, who had arrived in the host country as a child with a tourist visa, which expired shortly after his arrival, and who had not known about his unlawful stay until he was 17 years old, the Court did not consider the applicant a “settled migrant” because his residence in the host country had not been lawful.

In such a case, it could neither be said that the refusal of a residence permit would require very serious reasons to be justified under Article 8 nor that it would violate that provision only in very exceptional circumstances.

https://www.echr.coe.int/documents/guide_art_8_eng.pdf

Taxes

Foreigners are subject to the same domestic tax rules as all other citizens who pay tax in Germany; in most circumstances, if you live in Germany continuously for more than 6 months.



German **inheritance** tax-free exemptions range from EUR 20,000 to EUR 500,000, depending on the relationship between the decedent and the beneficiary and the value of the net inheritance.

Does a foreigner get the full tax-free exemption?

Yes, If the total estate is subject to German inheritance tax.

If only the German “situs assets” are taxed (limited inheritance tax obligation), the tax-free exemption will only be granted proportionally;

Former (discriminatory) only a tax-free exemption of 2.000 €, amended 25.06.2017.

Report of the Federal Anti-Discrimination Agency General Act on Equal Treatment (AGG) - 2006

discrimination experiences

Racist discrimination plays the biggest role in the area 'housing market'
- 55 per cent of all counselling requests
+ discrimination when looking for a flat

Access to:
restaurants; (fitness) clubs; banking transactions, school and university,
in contact with the police (racial profiling...)

The experience of discrimination can connect different
“markers” such as name, appearance, language skills, but also
residence status or nationality.



Discrimination – law enforcement

Individuals concerned oftentimes refrain from an individual enforcement of rights in the form of lawsuits.

Reasons for that being

- limited knowledge on anti-discrimination law
- relatively high hurdles of the burden of proof,
- **tight deadlines**
- long duration of proceedings.
- “incalculable” costs
- and very small amounts of compensation.

2 months to claim (§ 21 Abs. 5 AGG)

Prob. against [EC-law](#)

- association action
- (individual) legal assistance
- Amicus Curiae Briefes
- Ombudsman

Securing Effectiveness of Rights in Practice

European Court of Human Rights

- Problem: Exhaustion of domestic remedies (subsidiarity): time consuming!
alternative pathways

Proposal for reform: to ensure effectiveness:

- limiting domestic remedy to one instance
- opening for representative action (organizations);
- class action (not just the victim)

Right of asylum – amended 1993

Article 16a of the German Constitution

(1) Persons persecuted on **political** grounds shall have the right of asylum.

(2) Paragraph (1) of this Article may not be invoked by a person who enters the federal territory from a member state of the European Communities or from another third state in which 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. The states outside the European Communities to which the conditions referred to in the first sentence of this paragraph apply shall be specified by a law requiring the consent of the Bundesrat. In the cases specified in the first sentence of this paragraph, measures to terminate an applicant's stay may be implemented without regard to any legal challenge that may have been instituted against them.

(3) By a law requiring the consent of the Bundesrat, states may be specified in which, on the basis of their laws, enforcement practices and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists. **It shall be presumed that a foreigner from such a state is not persecuted, unless he presents evidence justifying the conclusion that, contrary to this presumption, he is persecuted on political grounds.**

(4) In the cases specified by paragraph (3) of this Article and in other cases that are plainly unfounded or **considered to be plainly unfounded**, the implementation of measures to terminate an applicant's stay may be suspended by a court only if **serious doubts exist as to their legality**; the scope of review may be limited, and tardy objections may be disregarded. Details shall be determined by a law.

(5) Paragraphs (1) to (4) of this Article shall not preclude the conclusion of international agreements of member states of the European Communities with each other or with those third states which, with due regard for the obligations arising from the Convention Relating to the Status of Refugees and the Convention for the Protection of Human Rights and Fundamental Freedoms, whose enforcement must be assured in the contracting states, adopt rules conferring jurisdiction to decide on applications for asylum, including the reciprocal recognition of asylum decisions.

Manifestly unfounded application –
(Offensichtlich unbegründet) -

Problematic i.e. Roma, Sinti –groups that are discriminated on a low but consistent level.

with strong legal consequences:

- work and entry ban
- compulsory living (Wohnpflicht)

1992 – “Asylkompromiss”

The new Art. 16 a (II) of the German Constitution changed the German concept of Asylum, formerly granting the right to “everybody”.

- Currently it does not grant more than international ruling for refugees according to the Geneva Convention.
- Dublin-regime; [Convention implementing the Schengen Agreement of 14 June 1985](#) (SDÜ).

Europeanization of the right of asylum



Which country is competent to decide the application for asylum?

- 1990: Dublin I common asylum policy: notion of manifestly unfounded application, control upon entry, a failed asylum seeker generally not being unable, to apply for asylum in another country of the Union (“asylum shopping”, «one chance only» - to avoid multiple asylum applications or "refugees in orbit")
 - Discrepancies' in the EU-member states respective the granting of refugee-status – in respect of the citizenship of the refugees, ie. , Tamils had more chances in France than in Germany, Algerians in Portugal than in France
- 2003 Dublin II: "one stop, one shop" principle: one must apply for asylum in the first country of entry; return to the first European country where the applicant has set foot (share burden)
 - Problematic: language, **family**, networks in other country
- 2013: Dublin III (minor children, family)

Asylum seekers in the European Union (2014)

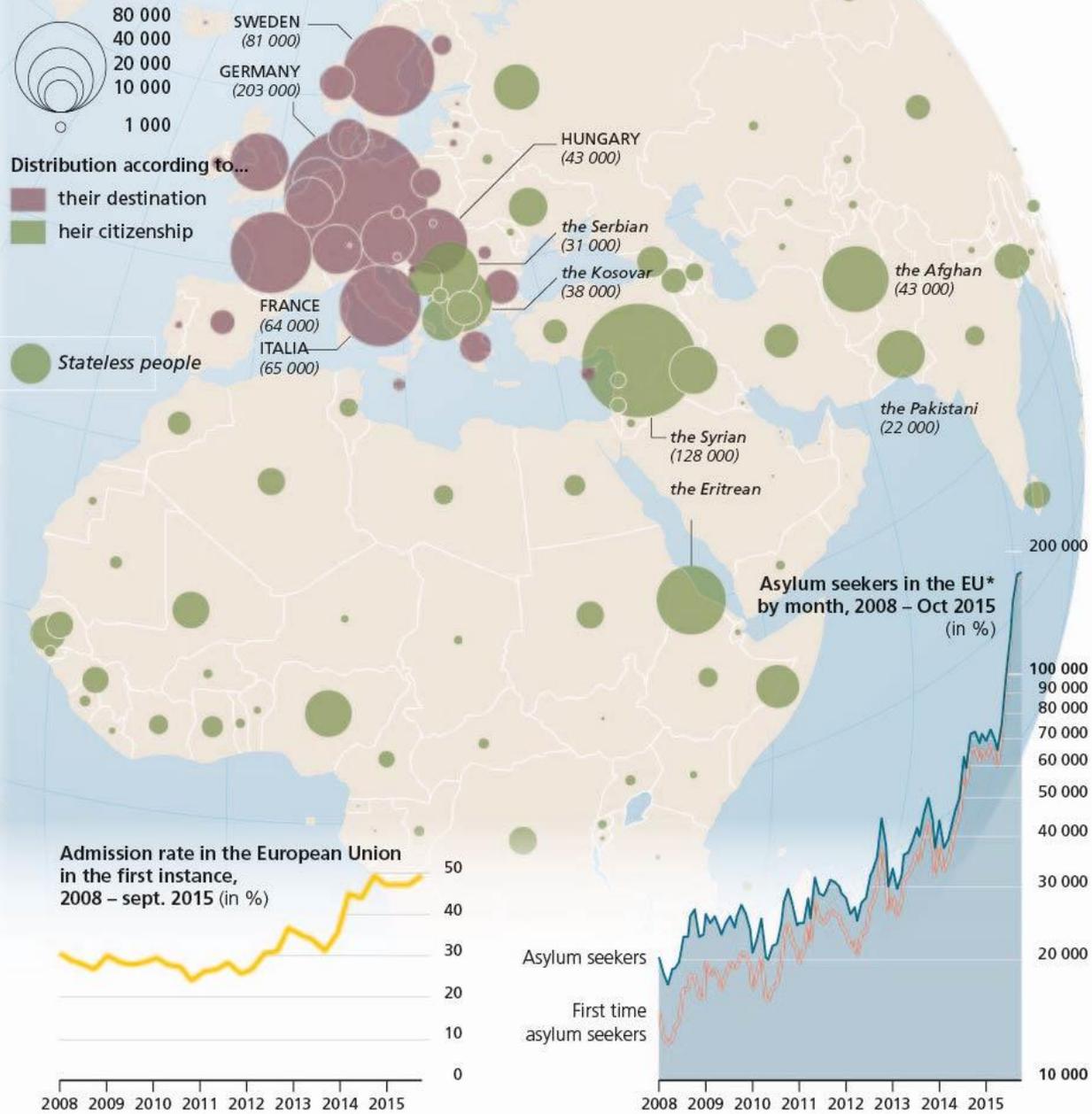
Number of asylum seekers in 2014



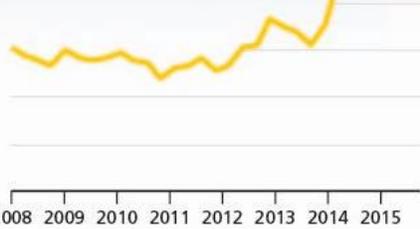
Distribution according to...

■ their destination
■ their citizenship

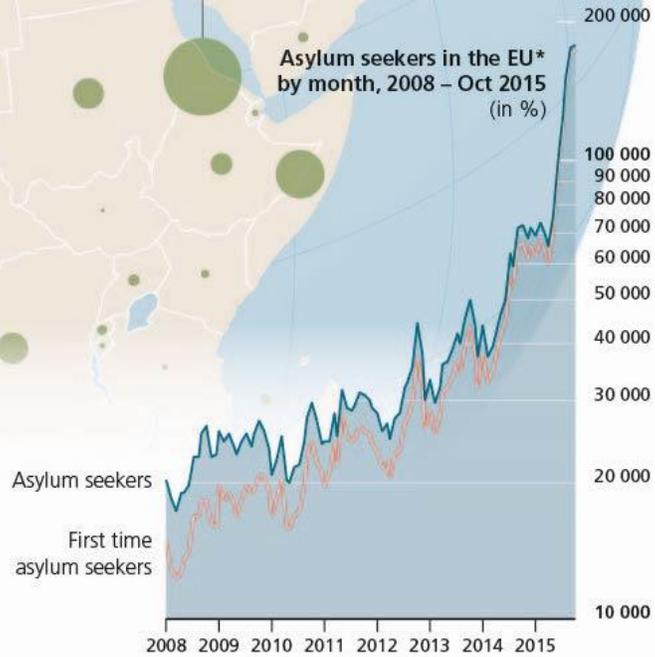
Stateless people



Admission rate in the European Union in the first instance, 2008 – sept. 2015 (in %)



Asylum seekers in the EU* by month, 2008 – Oct 2015 (in %)



Réalisation : Sciences Po - Atelier de cartographie. © Dila, Paris, 2016

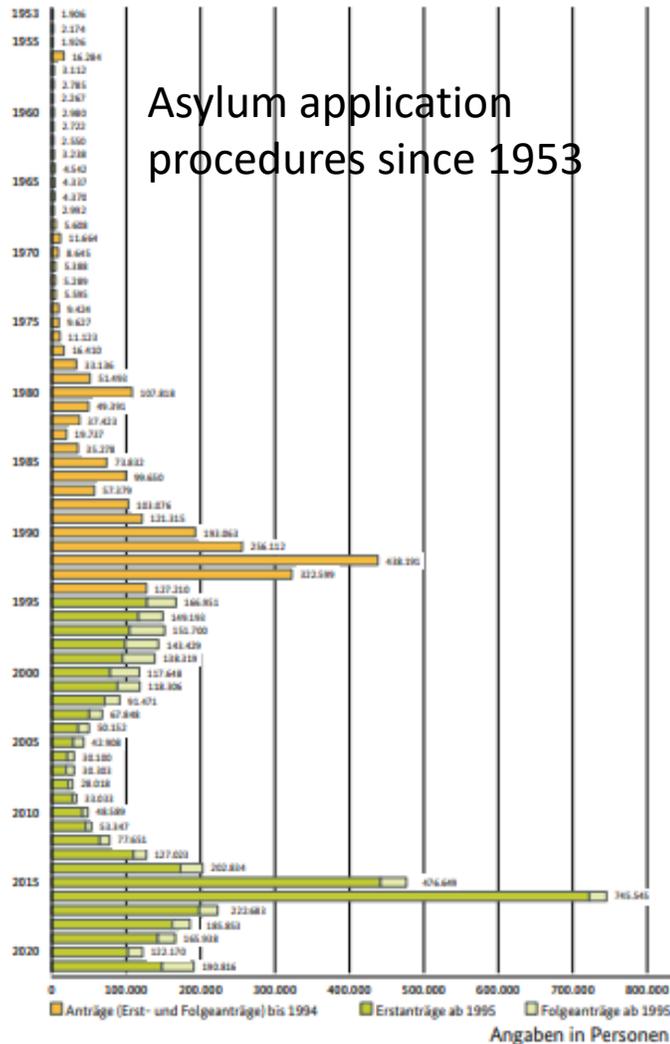
Source: Eurostat, <http://ec.europa.eu/eurostat>.

* EU 28, Iceland, Norway and Switzerland.

Restrictive measures:

- carrier sanctions
- retention camps
- internal asylum (protection areas in countries in crisis)

Entwicklung der Asylverfahren seit 1953



Seit 1953 stellten rd. 6,2 Millionen Menschen in Deutschland einen Asylantrag, davon 5,3 Millionen seit 1990. Im Jahr 2021 wurden Asylanträge von insgesamt 190.816 Personen in Deutschland verzeichnet. Im Vergleich zum Jahr 2020 mit 122.170 Asylanträgen ergibt sich ein Anstieg um 56,2 %.

Im Jahr 2021 wurden 164.924 Asylsuchende registriert.

Die zehn zugangsstärksten Staatsangehörigkeiten von 2018 bis 2021 (Erstanträge)

Staatsangehörigkeit	2018	2019	2020	2021
Afghanistan	6	9.942	4	9.522
Eritrea	7	5.571	9	3.520
Georgien		10	3.329	10
Irak	2	16.333	2	13.742
Iran, Islam. Republik	3	10.857	6	8.407
Nigeria	4	10.168	5	9.070
Russische Föderation	10	3.938		
Somalia	8	5.073	8	3.572
Syrien, Arab. Republik	1	44.167	1	39.270
Türkei	5	10.160	3	10.784
Ungeklärt	9	4.220	7	3.727
Summe		120.429	104.943	79.497
Asylanträge insgesamt		161.931	142.509	102.581
Prozent-Anteil *		74,4 %	73,6 %	77,5 %

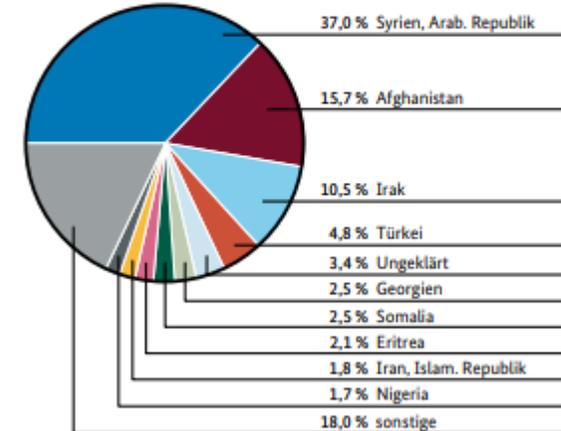
* 10 häufigste Staatsangehörigkeiten in Relation zu allen Asylanträgen
 Die Rangziffer ist den absoluten Zahlen jeweils vorangestellt.

Applications from the 10 most frequent nationalities

https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/Schluesselzahlen/Asyl/flyer-schluesselzahlen-asyl-2021.pdf?__blob=publicationFile&v=3

Asylerstanträge 2021

Gesamtzahl: 148.233 Personen



Decisions and ratios for eligibility for asylum

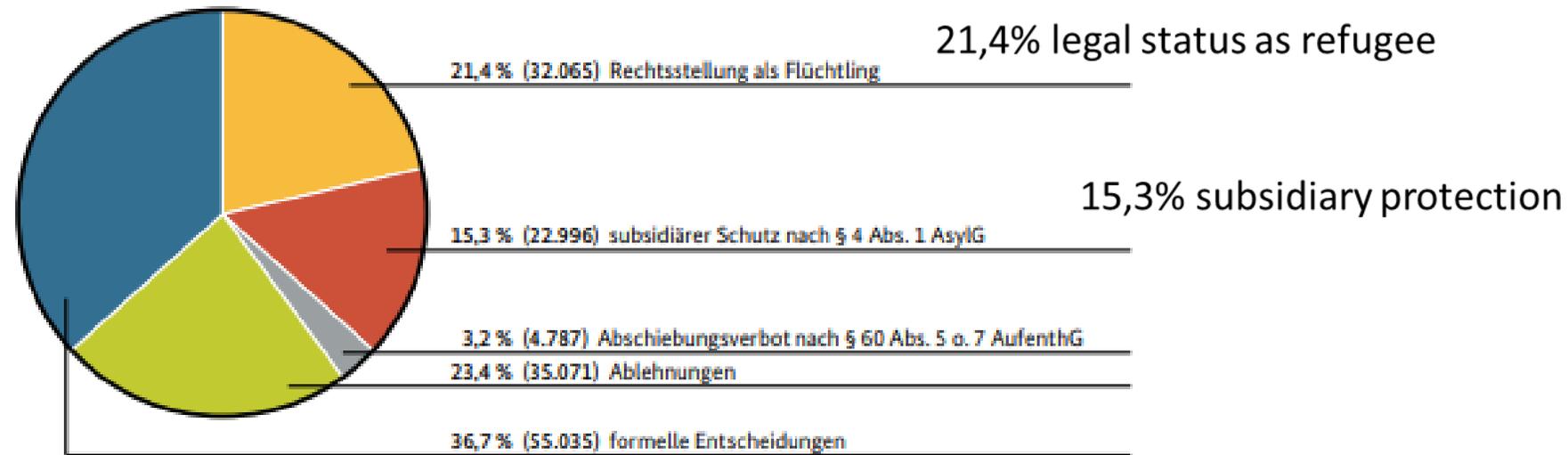
Entscheidungen und Entscheidungsquoten seit 2012 in Jahreszeiträumen (Erst- und Folgeanträge)

Jahr	Entscheidungen												
	insgesamt	Sachentscheidungen								Formelle Entscheidungen			
		davon Rechtsstellung als Flüchtling (§ 3 Abs. 1 AsylG, Art. 16 a GG)		davon Gewährung von subsidiärem Schutz gem. § 4 Abs. 1 AsylG		davon Feststellung eines Abschiebungs- verbotes gem. § 60 Abs. 5 o. 7 AufenthG		davon Ablehnungen (unbegründet / offensichtlich unbegründet)					
2012	61.826	8.764	14,2 %	740	1,2 %	6.974	11,3 %	1.402	2,3 %	30.700	49,7 %	13.986	22,6 %
2013	80.978	10.915	13,5 %	919	1,1 %	7.005	8,7 %	2.208	2,7 %	31.145	38,5 %	29.705	36,7 %
2014	128.911	33.310	25,8 %	2.285	1,8 %	5.174	4,0 %	2.079	1,6 %	43.018	33,4 %	45.330	35,2 %
2015	282.726	137.136	48,5 %	2.029	0,7 %	1.707	0,6 %	2.072	0,7 %	91.514	32,4 %	50.297	17,8 %
2016	695.733	256.136	36,8 %	2.120	0,3 %	153.700	22,1 %	24.084	3,5 %	173.846	25,0 %	87.967	12,6 %
2017	603.428	123.909	20,5 %	4.359	0,7 %	98.074	16,3 %	39.659	6,6 %	232.307	38,5 %	109.479	18,1 %
2018	216.873	41.368	19,1 %	2.841	1,3 %	25.055	11,6 %	9.548	4,4 %	75.395	34,8 %	65.507	30,2 %
2019	183.954	45.053	24,5 %	2.192	1,2 %	19.419	10,6 %	5.857	3,2 %	54.034	29,4 %	59.591	32,4 %
2020	145.071	37.818	26,1 %	1.693	1,2 %	18.950	13,1 %	5.702	3,9 %	46.586	32,1 %	36.015	24,8 %
2021	149.954	32.065	21,4 %	1.226	0,8 %	22.996	15,3 %	4.787	3,2 %	35.071	23,4 %	55.035	36,7 %

Rechtsgrundlage für Entscheidungen zu Flüchtlingsschutz, subsidiärem Schutz und Abschiebungsverboten, die bis zum 30.11.2013 getroffen wurden, war § 60 Abs. 1, § 60 Abs. 2, 3 oder 7 S. 2 bzw. § 60 Abs. 5 oder 7 S. 1 AufenthG. Entsprechende Entscheidungen, die seit dem 01.12.2013 getroffen werden, gründen auf § 3 Abs. 1 AsylG, § 4 Abs. 1 AsylG (bis 23.10.2015 AsylVfG) bzw. § 60 Abs. 5 oder 7 AufenthG.

Decision on Refugee Status in Germany 2021

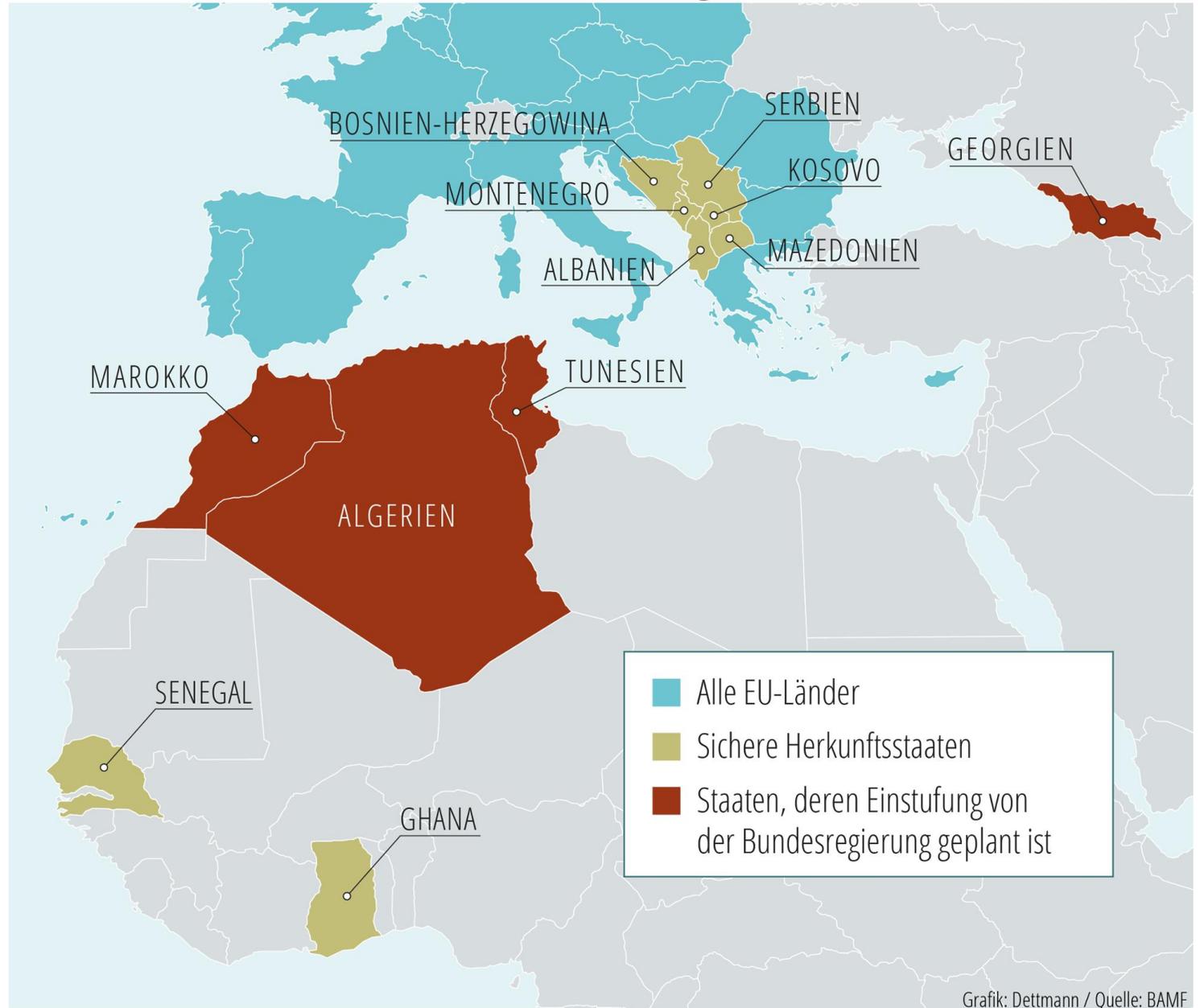
Quoten der einzelnen Entscheidungsarten im Jahr 2021 (Gesamtzahl: 149.954 Personen)



Wo sichere Herkunftsländer von Flüchtlingen sind

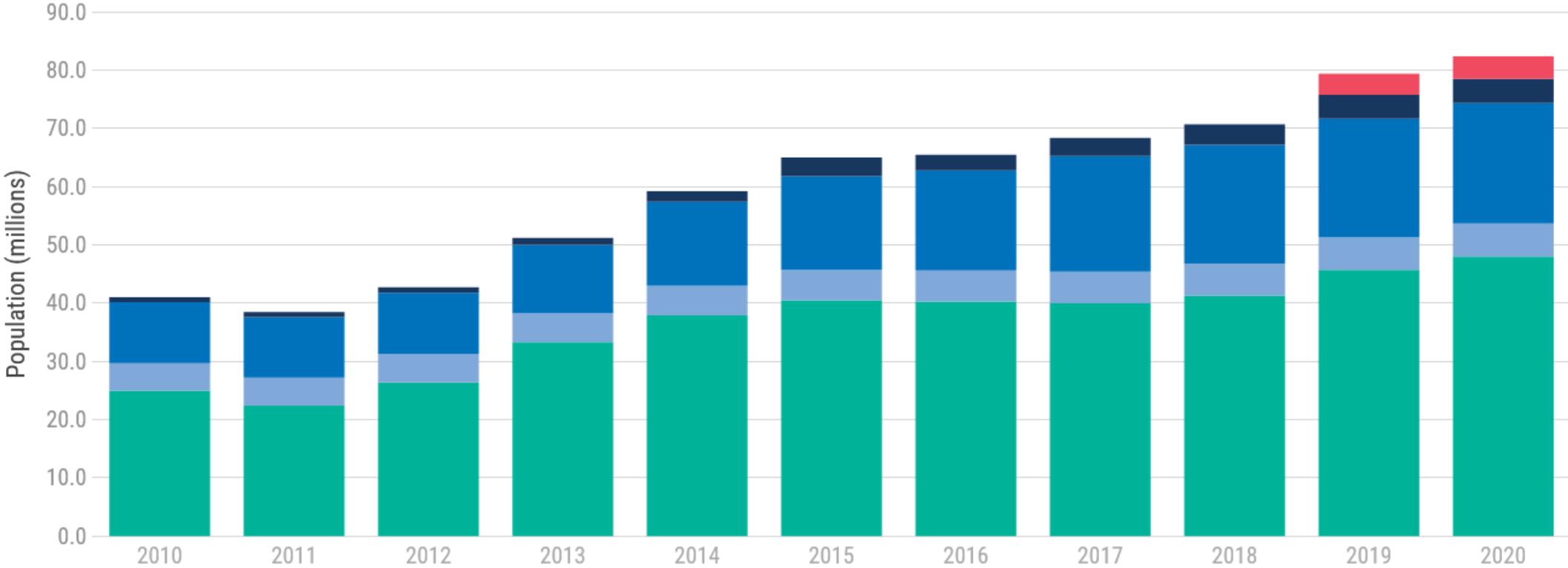
Safe Countries of Origin

- EU-Member States
- Albania,
- Bosnia
- Herzegovina
- Ghana
- Kosovo
- Macedonia
- former Yugoslav Republic
- Montenegro
- Senegal
- Serbia



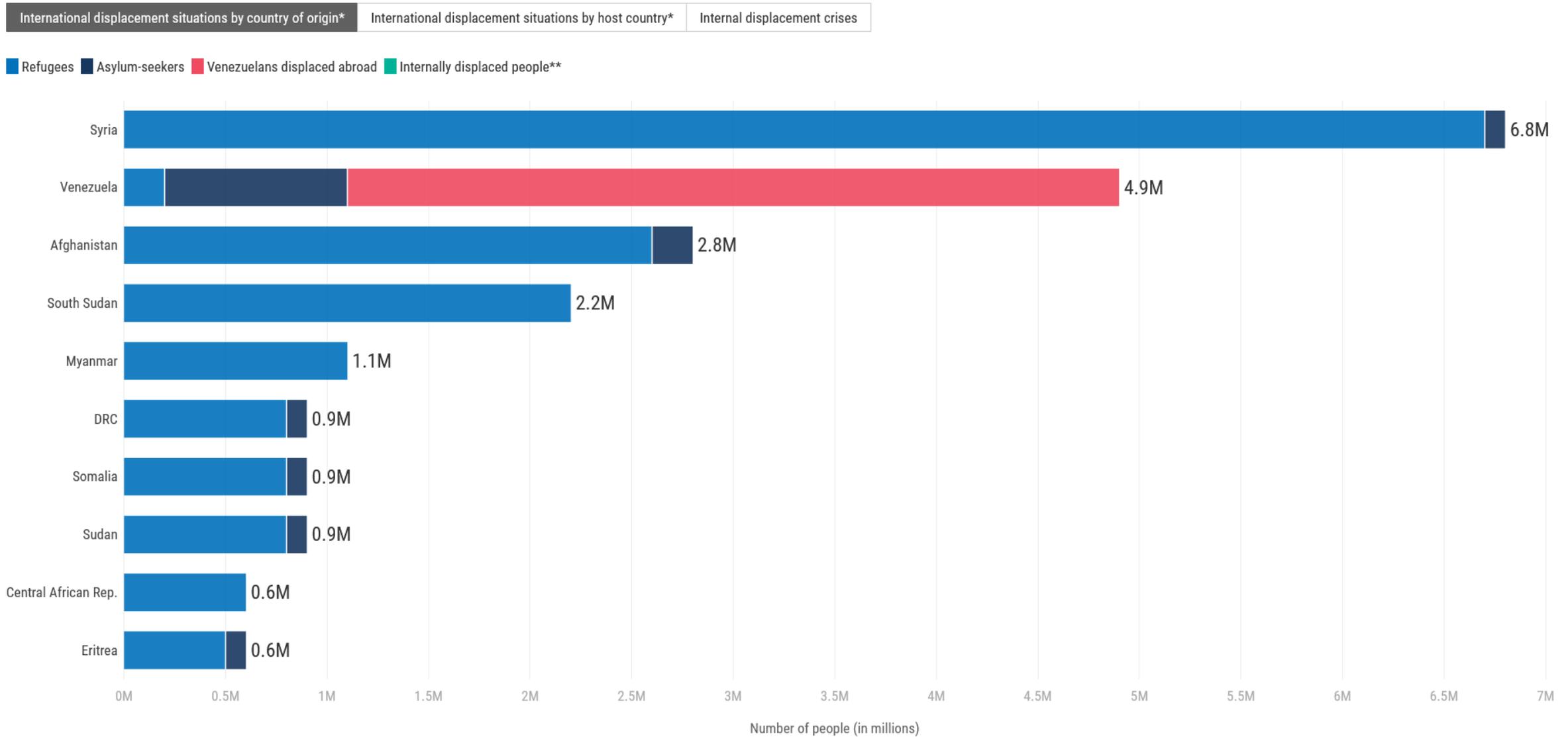
Global forced displacement (at end-year)

Internally displaced people UNRWA refugees UNHCR refugees Asylum-seekers Venezuelans displaced abroad



Source: UNHCR Refugee Data Finder

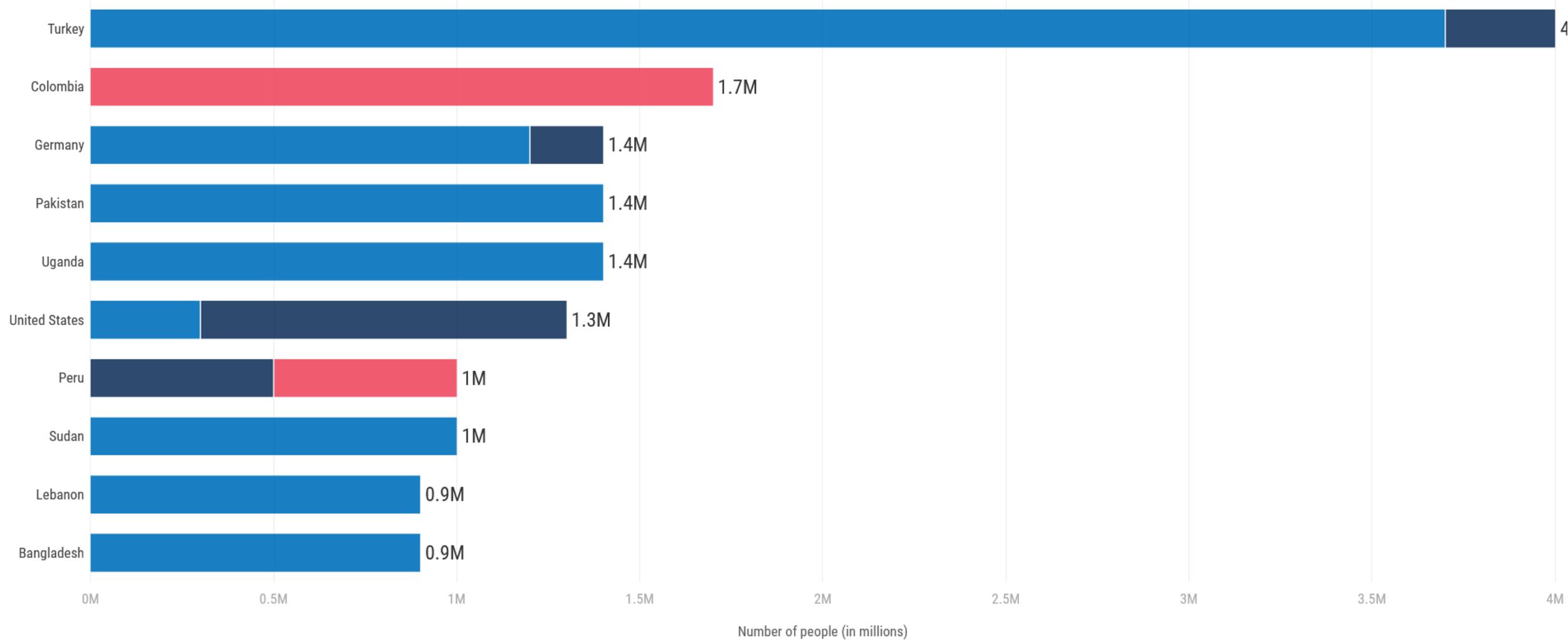
Forced displacement situations



Forced displacement situations

International displacement situations by country of origin* International displacement situations by host country* Internal displacement crises

Refugees Asylum-seekers Venezuelans displaced abroad Internally displaced people**



Deportation (Abschiebung)

The number of deportations in 2020 declined compared to previous years. While between 2015 and 2019 annually between 20 000 and 25,000 people were deported from Germany in their countries of origin or others EU countries, the number of deportations in 2020 was 10 800.

In 2021, a total of 11,982 deportations were carried out, mostly Georgia Albania, Serbia, Moldova, Pakistan (countries).

<https://dserver.bundestag.de/btd/20/008/2000875.pdf>

Non-refoulement

Section 60, Deportation bans

(1) In application of the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II, p. 559), foreigners **may not be deported to a state in which their life or liberty is threatened** on account of their race, religion, nationality, membership of a certain social group or political convictions. This also applies to persons who are entitled to asylum and to foreigners who have been incontestably granted refugee status or who have the legal status of foreign refugees on other grounds in the federal territory or who have been granted foreign refugee status outside of the federal territory in accordance with the Convention relating to the Status of Refugees [...]

"neither, nor". Neither the situation of these persons can be regularized as refugees, nor can they be sent back home.
"subsidiärer Schutz" – lots of people from Syria.

Deportation (Abschiebung)

ECJ and German Constitutional Court demanded the weighing of interests, which is resembled in Sec. 53 (1):

Foreigners whose stay endangers public safety and order, the free democratic basic order or other significant interests of the Federal Republic of Germany will be expelled if, after **weighing the interest in their departure against their individual interest in remaining in the federal territory**, taking into account all the circumstances of the particular case, there is an overriding public interest in the foreigners' departure.

Deportation (Abschiebung)

Germany enacted new laws in order to enable the deportation (2019)

(3a) A foreigner who is recognised as a person entitled to asylum, who has the legal status of a refugee in the federal territory or possesses a travel document issued by an authority of the Federal Republic of Germany under the Convention of 28 July 1951 relating to the Status of Refugees (Federal Law Gazette 1953 II, p. 559), may be expelled only if there are serious grounds for regarding the foreigner as a threat to the security of the Federal Republic of Germany, as a terrorist threat or as a **threat to the general public** because he or she has been incontestably sentenced to a prison term for a serious crime.

(3b) A foreigner who has the legal status of a person entitled to subsidiary protection as defined in section 4 (1) of the Asylum Act may be expelled only if he or she has committed a serious crime or represents a **threat to the general public** or to the security of the Federal Republic of Germany.

General prevention –
independent of the personal
situation

If the weighing under this
legal body is done fairly, is
doubtful.

Custody Pending Deportation

ECJ: Decision of 10th of March 2022 [C-519/20](#) eine weitere [EU-Richtlinie 2008/115](#)

Detainees awaiting deportation may not be accommodated in facilities **similar to prisons.**

Pakistani - 2015 in Germany,

Asylum manifestly unfounded Mai 2017

Detained August 2020

Referred for a preliminary ruling to the ECJ
by the local court (Amtsgericht Hannover)



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Reasons for Rejection (Zurückweisung)

A: without a valid travel document, especially Syria and Afghanistan

B: in possession of a false, counterfeit or falsified travel document

C: without a valid visa or without a valid residence permit

D: in possession of a false, forged or falsified visa or residence permit

E: does not have the necessary documents to prove the purpose and conditions of stay

F: has already been in the territory of the Member States of the EU for three months out of a six-month period

G: does not have sufficient means of subsistence in relation to the length and circumstances of the stay or to return to the country of origin or transit

H: is posted for entry refusal

I: represents a threat to public order, internal security, public health or international relations of one or more of the Member States of the European Union

J: Rejection according to FreizügG/EU

K: Rejection according to the Asylum Act (AsylG)



Reason of rejection – 2021

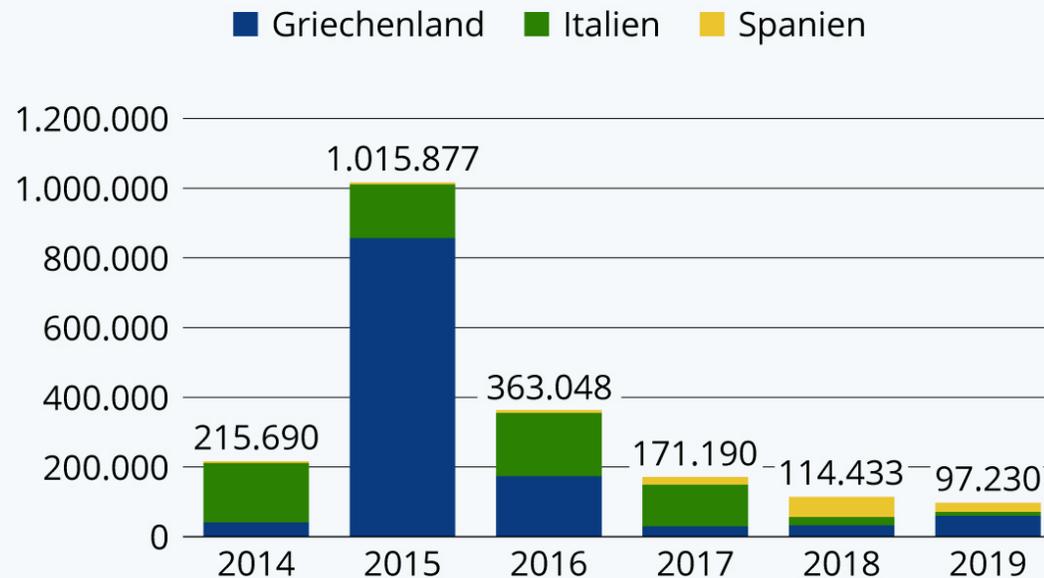


Staatsangehörigkeit	Anzahl der Personen	A	B	C	D	E	F	G	H	I	J	K
Gesamt	13.183	4.471	118	3.007	51	896	430	610	830	2.537	147	86
Syrien	1.968	1.443	9	324	3	41	2	57	60	22		7
Albanien	1.593	53	8	476		163	147	105	212	429		
Afghanistan	1.381	1.132	9	127	1	28	1	23	39	20		1
Ukraine	624	10	4	130	3	53	35	32	43	313		1
Serbien	581	20	4	184	1	42	59	26	41	204		
Türkei	548	190	4	126	4	18	4	12	23	163	1	3
Nordmazedonien	493	11	1	142		30	53	35	54	167		
Bosnien-Herzegowina	448	7	4	189		36	25	22	17	148		
Irak	415	268	4	58		12	2	25	28	15		3
Russland	306	52	1	75	2	9	2	2	20	129		14

<https://dserver.bundestag.de/btd/20/008/2000875.pdf>

15% weniger Geflüchtete im Jahr 2019

Anzahl der über das Mittelmeer ankommenden Bootsflüchtlinge



Quelle: UNHCR



Number of refugees arriving at Greece, Italy and Spain over the Mediterranean Sea

Died or Disappeared in the Mediterranean Sea

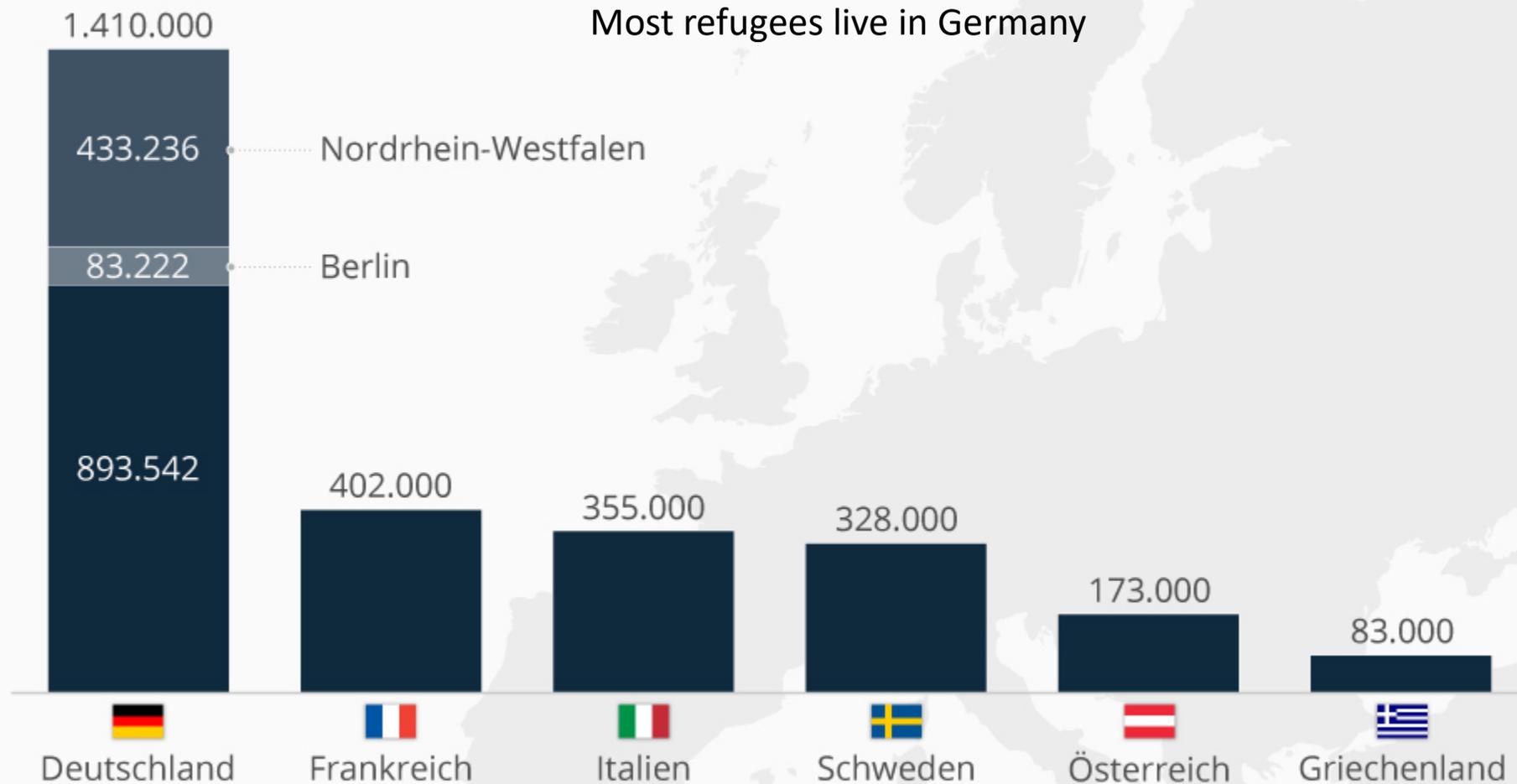
- 2016: over 5,000
- 2017: 3,100
- 2018: 2,200
- 2019: 1,335
- 2020: 1,401
- 2021: 1,589



[According to the United Nations High Commissioner for Refugees \(UNHCR\),](#)

Die meisten Flüchtlinge leben in Deutschland

Anzahl der Schutzberechtigten und der Asylbewerber in ausgewählten Ländern Europas*



Environmentally-displaced persons



Deforestation, fires, hurricanes, tornadoes, earthquakes, and volcanic eruptions, flooding

About 42 million – projected: 150 and 200 million to the end of the century

No climate refugees, because no individual persecution

Nansen Initiative 2011 - resolution for different regional statuses for environmentally-displaced persons instead of giving them a global status.

Enabling Refugees to exercise their rights.

For refugees it very hard to exercise their right, because they cannot make it to Germany (Fortress Europe)

The exercise of the right for Asylum is made difficult by the notion of “secure states” and by continuously adopting measures to fortify the “Schengen-Borders” – FRONTEX (2004).

Currently there is no possibility for refugees to apply for an “Asylum-visa” at a German or other EU-embassy.



Death of Syrian boy Alan Kurdi 2015

Wir werden **humanitäre Visa** für gefährdete Personen ermöglichen und dazu digitale Vergabeverfahren einführen, Coalition Agreement 2021



human trafficker (Schlepper) ↔ escape agent (Fluchthelfer)

Revocation Procedure (Widerrufsverfahren)

The Federal Office (BAMF) is legally obliged to revoke the recognition of the entitlement to asylum and the granting of refugee status if the requirements for this are no longer met. This is the case, for example, if the **persecution situation has changed permanently** or no longer exists and the person concerned is no longer in danger if they return.

In addition, the possibility of withdrawal must be examined if there are reasons for exclusion.

2021 Coalition agreement: revocation check shall be made on a case-by-case basis in the future – and not as currently in general



Revocation Procedure in Germany

Am 28. Februar 2022 waren 99.836 Widerrufsprüfverfahren anhängig.

Entwicklung der Widerrufsprüfverfahren

JAHR	ANGELEGTE WIDERRUFS-PRÜF-VERFAHREN	ENTSCHEIDUNGEN in WIDERRUFSPRÜFVERFAHREN							ANHÄNGIGE WIDERRUFS-PRÜF-VERFAHREN
		ins-gesamt	davon Widerruf/Rücknahme Art. 16 a GG	davon Widerruf/Rücknahme Flüchtlings-eigenschaft	davon Widerruf/Rücknahme subsidiärer Schutz	davon Widerruf/Rücknahme Abschie-bungsverbot	Widerrufs-quote in %	davon kein Widerruf/keine Rücknahme	
2018	192.664	85.052	42	535	184	221	1,2%	84.070	182.332
2019	205.285	170.406	119	3.370	939	1.182	3,3%	164.796	215.618
2020	187.565	252.940	155	6.339	1.027	1.189	3,4%	244.230	148.873
2021	117.093	169.323	157	3.776	1.531	1.166	3,9%	162.693	95.960
Jan-Feb 2022	15.627	11.660	29	350	173	124	5,8%	10.984	99.836

Family reunification to beneficiaries of subsidiary protection

Subsequent immigration to join persons granted subsidiary protection status, sec. 36a (1. August 2018) – (Kontingentregelung)

Every month, 1,000 national visas may be granted for temporary residence permits [...].

On 18th of March 2016 the family reunion was temporarily denied for two years. Political reaction to the strong immigration in 2015.

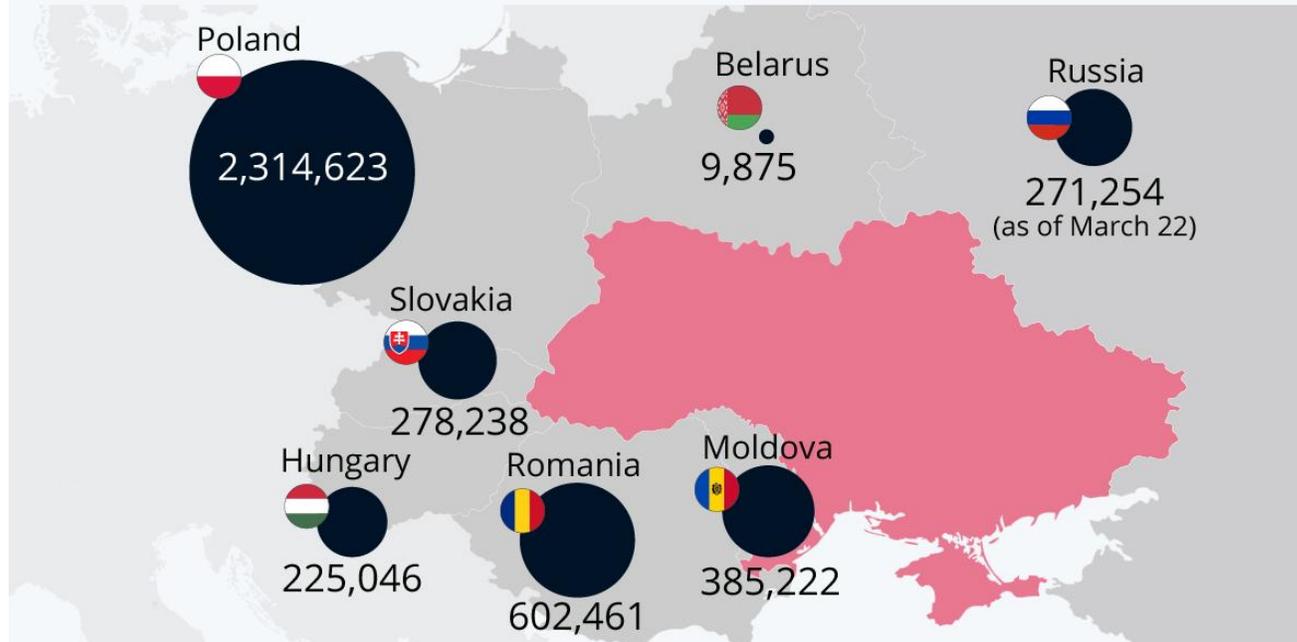
Probably not conform with Art. 6 German Constitution, Art. 8 ECHR, Art. 4 (I) EC 2003/86.

We will equate family reunification for people with subsidiary protection with refugees under the Geneva Convention.



Almost Four Million Seeking Refuge from Russian Invasion

Number of Ukrainian war refugees crossing into neighboring countries*



* Data extracted on March 29, 12 PM CET. Country tallies higher than total refugee number due to inclusion of people crossing between Romania and Moldova

Source: UNHCR



Ukraine – temporary protection

Council [Implementing Decision \(EU\) 2022/382 of 4 March 2022](#) establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of [Directive 2001/55/EC](#), and having the effect of introducing **temporary protection**.

Immediate grant of protection and rights:

This includes residency rights

Access to:

- labour market,
- housing,
- social care,
- medical or other assistance and means of subsistence.

For unaccompanied children and young people, temporary protection establishes the right to legal guardianship and access to education.

Perspective for the right to stay “Bleiberechtperspektive”

A sense of hope for a secure residence permit is vital for health and motivation of humans.

In the last years there has been made little progress in this regard (Spurenwechsel)

Many persons (many of the without paper, illegal entry with “Duldungen” who have stayed for many years (“Kettenduldung”)) continue to be randomized in society – with their legal status.



Concept Change of track „Spurenwechsel“

Possibility to change from an unsecure permit to a residence permit, especially after an unsuccessful asylum procedure.

Temporary suspension of deportation for the purpose of training (Ausbildungsduldung) Sec. 60c; “Engpassberufe”.

Temporary suspension of deportation for the purpose of employment (Beschäftigungsduldung), Sec. 60d

Sec. 19d: Temporary residence permit for the purpose of employment for qualified foreigners whose deportation has been suspended

Conditions for the legalisation are for the respective groups are hard to achieve in practice

exclusions:

- Identity
- citizens of secure countries of origin, Sec. 29a AsylG
- “criminals”

[DIRECTIVE 2008/115/EC of 16 December 2008](#)

on common standards and procedures for returning **illegally** staying third-country nationals

Art. 6 (4): Member States may at any moment decide to grant an autonomous residence permit or other authorisation offering a right to stay for compassionate, humanitarian or other reasons to a third-country national staying illegally on their territory.

In that event **no return decision** shall be issued.

Where a return decision has already been issued, it shall be withdrawn or suspended for the duration of validity of the residence permit or other authorisation offering a right to stay.

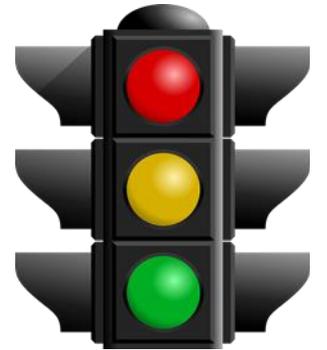
<https://www.bundestag.de/resource/blob/645296/d1dbb4c966cf2d99585fa4ee376b48dc/A-Drs-19-4-287-E-data.pdf> - Prof. Dr. Daniel Thym – to the conformity with European law

2021 Coalition Agreement

The coalition wants anyone who has been living in Germany for **five** years by January 1, 2022,

- who has not committed any criminal offenses and
- who is committed to abide by the free democratic order of the country

to be able to obtain a **one-year residence permit on a probationary basis** and to meet in this period the requirements for a **right to stay** (in particular securing a living and proof of **identity** according to §§ 25 a and b AufenthG), p. 138.

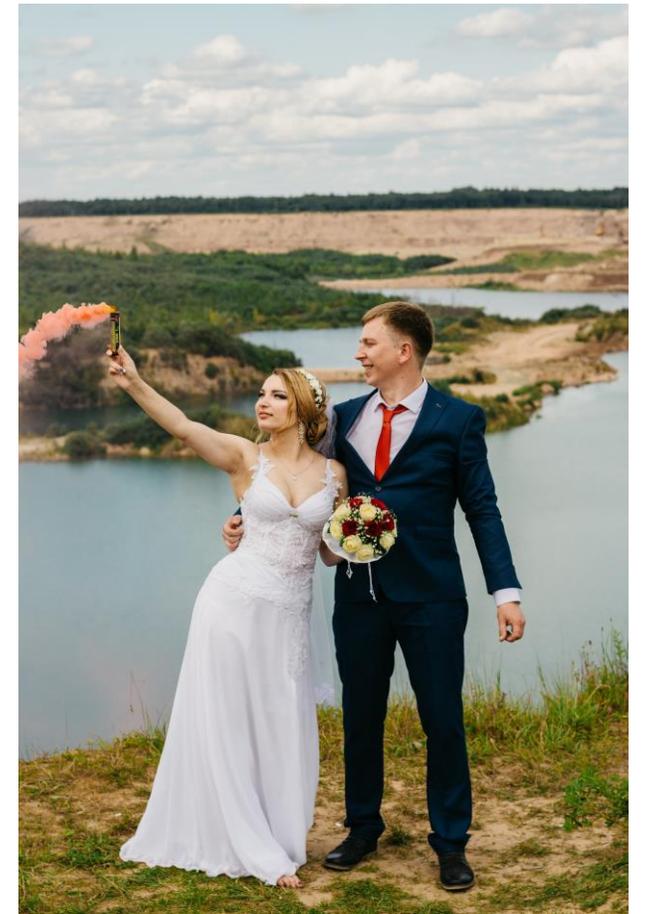


Family reunification - spouses

Marriage, worthy of protection (“schutzwürdige Ehe”)

“Scheinehe” may be assumed when:

- communication problems (spouses do not speak a common language)
- high age difference
- internet acquaintance
- addiction of the German spouse
- cohabitation of a spouse with a third party
- lack of knowledge of spouse's personal information
- previous fictitious marriages of a spouse



Burden of proof is on the spouses.

Family reunification - spouses

A1 – proof of German language is generally needed since August 2007 for family reunion **before** entering Germany.

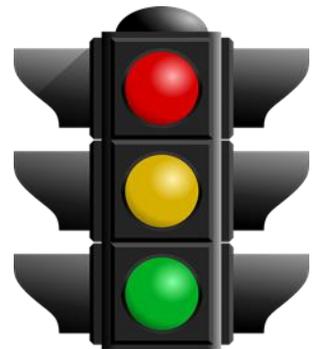
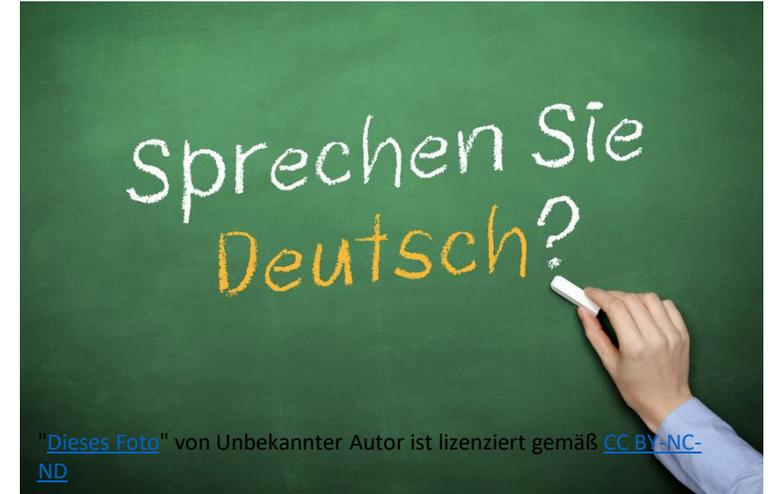
In many cases this condition is a mayor obstacle, due to

- proof by test at the German Goethe Institute
- missing financial and intellectual capabilities to learn German

The recognition of hardship for not being able to obtain the German skills has a high burden of proof.

Frequently, this delays (more than a year) or even hinders the granting of a visa.

The spouse may also provide the required language certificate immediately after their arrival, coalition agreement 2021, p. 140.



Visa-procedure with German Embassy's

Reservation of an appointment at the Embassy is necessary to apply for a visa.

Waiting times (in weeks W) - are very long, especially in cases where embassies are closed (Afghanistan, Syria).

The personal meeting is regarded as necessary.

Auslandsvertretung	Wartezeit in Wochen (W)
Algier	31
Amman	6-7
Athen	30 (Familiennachzug zu Drittstaatsangehörigen)
Bangalore	10
Beirut (syrische Staatsangehörige)	24 (Familiennachzug allgemein) über 1 Jahr (Familiennachzug zu sonstigen Familienangehörigen)
Beirut (libanesische Staatsangehörige)	14 (Familiennachzug zum deutschen Kind) 20 (Sonstiger Familiennachzug)
Chennai	4
Belgrad	über 1 Jahr
Dhaka	13
Duschanbe	3

Visa zum Familiennachzug an
Auslandsvertretungen – April 2021
[Drucksache 19/30793 - DIP - Bundestag](#)

Auslandsvertretung	Wartezeit in Wochen (W)
Islamabad (pakistanische und afghanische Staatsangehörige)	über 1 Jahr
Izmir	16
Istanbul (türkische Staatsangehörige)	9
Istanbul (Drittstaatsangehörige)	6–7
Jaunde	4
Kairo	15
Kiew	2
Lagos	51
Manila	2
Mexiko-City	10
Neu Delhi (afghanische Staatsangehörige)	über 1 Jahr
Neu Delhi (indische Staatsangehörige)	28
Pristina	11
Rabat	über 1 Jahr
Sarajewo	30–34
Skopje	30
Teheran	20
Tirana	über 1 Jahr
Tunis	32

Visa-procedure with German Embassy's

The long waiting times are known for years.

Until now the German government is unwilling and /or unable to bring a change.

Possible measures could be

- Online identification
- Increase staff of Embassy's / local staff
- Cooperation with international – national agencies
- Authorising the local foreign authorities to issue visas

“Lap of Honour“ (Ehrenrunde)

Spouse in Germany – frequent is wedding in Denmark – or entry of the spouse with a Schengen visa.

The authority require generally a formal visa procedure with exit, to impeded the bypassing the visa process.

unnecessary formality with more work and costs for all involved

Can the administrative courts help?



Legal remedies before German courts are tedious:

- action for failure to act (Untätigkeitsklage) - administrative court in Berlin – before a court hearing is set up – a year.
- Burden of proof for marriage, worthy of protection as well a hardship (German language skills) is high.

Conclusions

- Foreigners with permanent residence enjoy in essence equal rights as Germans.
- Obtaining the German citizenship is possible for many.
- Family reunification is restricted for people with special status.
- Denying the possibility of legal entrance for refugees (except Ukrainians) to Europe the right of refugees cannot be effectively exercised.
- In practice the rights of family reunion are often precluded or at least delayed, especially for the less privileged.

§ 62a Abs. 1 des Gesetzes über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet vom 30. Juli 2004 (BGBl. 2008 I S. 162) lautete in seiner vom 29. Juli 2017 bis zum 20. August 2019 anwendbaren Fassung (im Folgenden: AufenthaltsgG):

„Die Abschiebungshaft wird grundsätzlich in speziellen Hafteinrichtungen vollzogen. Sind spezielle Hafteinrichtungen im Bundesgebiet nicht vorhanden oder geht von dem Ausländer eine erhebliche Gefahr für Leib und Leben Dritter oder bedeutende Rechtsgüter der inneren Sicherheit aus, kann sie in sonstigen Haftanstalten vollzogen werden; die Abschiebungsgefangenen sind in diesem Fall getrennt von Strafgefangenen unterzubringen.“

9 Art. 1 Nr. 22 des Zweiten Gesetzes zur besseren Durchsetzung der Ausreisepflicht vom 15. August 2019 (BGBl. 2019 I S. 1294, im Folgenden: Gesetz vom 15. August 2019) sieht vor:

„§ 62a Absatz 1 [AufenthaltsG] wird wie folgt gefasst:

„Abschiebungsgefangene sind getrennt von Strafgefangenen unterzubringen. Werden mehrere Angehörige einer Familie inhaftiert, so sind diese getrennt von den übrigen Abschiebungsgefangenen unterzubringen. Ihnen ist ein angemessenes Maß an Privatsphäre zu gewährleisten.“

10 Art. 6 dieses Gesetzes bestimmt:

„Weitere Änderung des Aufenthaltsgesetzes zum 1. Juli 2022

§62a Absatz 1 des Aufenthaltsgesetzes ... wird wie folgt gefasst:

„Die Abschiebungshaft wird grundsätzlich in speziellen Hafteinrichtungen vollzogen. Sind spezielle Hafteinrichtungen im Bundesgebiet nicht vorhanden oder geht von dem Ausländer eine erhebliche Gefahr für Leib und Leben Dritter oder bedeutende Rechtsgüter der inneren Sicherheit aus, kann sie in sonstigen Haftanstalten vollzogen werden; die Abschiebungsgefangenen sind in diesem Fall getrennt von Strafgefangenen unterzubringen. Werden mehrere Angehörige einer Familie inhaftiert, so sind diese getrennt von den übrigen Abschiebungsgefangenen unterzubringen. Ihnen ist ein angemessenes Maß an Privatsphäre zu gewährleisten.“

In accordance with Paragraphs 83 and 84 of the Grundgesetz für die Bundesrepublik Deutschland (Basic Law of the Federal Republic of Germany), the Bundesländer (German Federal States) are responsible for carrying out detentions ordered for the purpose of the removal of illegally staying third-country nationals.

Paragraph 62a(1) of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, economic activity and integration of foreign nationals in the federal territory) (7) of 30 July 2004, in the version in force from 29 July 2017 to 20 August 2019, designed to transpose Article 16(1) of Directive 2008/115 into German law, was worded as follows:

‘Detention for the purpose of removal shall take place in principle in specialised detention facilities. If there is no specialised detention facility in the federal territory or if the foreign national poses a serious threat to the life and limb of others or to significant internal security interests, detention may take place in other prison accommodation; in those circumstances, the persons detained for the purpose of removal shall be accommodated separately from ordinary prisoners.’

That provision was amended following the entry into force of the Zweiten Gesetz zur besseren Durchsetzung der Ausreisepflicht (Second law to improve the implementation of the obligation to leave the territory) (8) of 15 August 2019.

Paragraph 1, point 22 of that law provides:

‘Paragraph 62a(1) [of the AufenthG] is replaced by the following:

“(1)
Individuals detained for the purpose of removal shall be kept separate from ordinary prisoners. Where several members of a family are detained, they shall be accommodated separately from other individuals detained for the purpose of removal. They shall be guaranteed adequate privacy.”