



## “The Challenges of Migration, Integration and Exclusion”

Research Initiative on Migration of the Max Planck Society



Tim Rohmann, Constantin Hruschka

### WiMi Project - Legal Terms and Definitions (April 2019)

This paper provides an overview of the different legal statuses of migrants in Germany as well as of common definitions in order to facilitate a consistent use of legal terms within the research initiative’s framework and its affiliated projects.

#### General

##### **EU citizen (“Unionsbürger”)**

Every person holding the nationality of an EU member state shall be a citizen of the Union.<sup>1</sup> EU citizens and their dependants entitled to freedom of movement shall have the right to enter and reside in the federal territory.<sup>2</sup> Residence of more than 3 months is submitted to various conditions aimed to ensure that the EU citizen does not become an unreasonable burden on the social assistance system of the host Member State.

##### **Foreigner (“Ausländer”)**

Anyone who is not German within the meaning of Article 116 para. 1 German Basic Law (“Grundgesetz” - GG), *i.e.* a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.<sup>3</sup>

##### **Third-country national (“Drittstaatsangehöriger”)**

Any person who is not a citizen of the Union, within the meaning of Article 20 AEUV.<sup>4</sup>

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<sup>1</sup> Article 20 of the Treaty on the Functioning of the European Union (“Vertrag über die Arbeitsweise der Europäischen Union – AEUV), Section 1 Freedom of Movement Act/EU (“Freizügigkeitsgesetz/EU” – FreizügG/EU).

<sup>2</sup> Article 21 AEUV, Article 6, 7 of the Free Movement Directive 2004/38/EC, Section 2 FreizügG/EU.

<sup>3</sup> Section 2 para. 1 German Residence Act (“Aufenthaltsgesetz” – AufenthG).

<sup>4</sup> Section 3 no. 1 Returns Directive 2008/115/EC.



## Terms regarding Asylum<sup>5</sup>

### Statutes

#### Right to asylum ("Asylrecht")

Persons persecuted on political grounds shall have the right to asylum.<sup>6</sup> This right, however, may not be invoked by a person who enters the federal territory from a member state of the European Union or from another third state in which application of the Convention Relating to the Status of Refugees ("Genfer Flüchtlingskonvention" – 1951 Refugee Convention) and of the Convention for the Protection of Human Rights and Fundamental Freedoms ("Europäische Menschenrechtskonvention" – ECHR) is assured.<sup>7</sup> Persons granted asylum enjoy the same legal status as refugees pursuant to the 1951 Refugee Convention.<sup>8</sup>

#### International protection ("Internationaler Schutz")

International protection comprises the *refugee status*, i.e. the recognition by a member state of a third-country national or a stateless person as a refugee, and *subsidiary protection*, i.e. recognition by a member state of a third-country national or a stateless person as a person eligible for subsidiary protection status.<sup>9</sup>

#### Refugee ("Flüchtling")

Foreigners are refugees as defined in the 1951 Refugee Convention if they, owing to well-founded fear of being persecuted in their country of origin on account of his race, religion, nationality, political opinion or membership of a particular social group are outside the country whose nationality they possess and the protection of which they cannot, or, owing to such fear does not want to avail himself of, or where they used to have their habitual residence as a stateless person and where they cannot, or, owing to said fear, does not want to return.<sup>10</sup>

#### Beneficiaries of subsidiary protection ("Subsidiär Schutzberechtigte")

Foreigners shall be eligible for subsidiary protection if they have shown substantial grounds for believing that they would face a real risk of suffering serious harm in their country of origin. Serious harm consists of death penalty or execution, torture or inhuman or degrading treatment or punishment, or serious and individual threat to a civilian's life or person by reason of indiscriminate

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<sup>5</sup> Please note: As the German Asylum Act ("Asylgesetz" - AsylG) only regulates the asylum procedure, foreigners still need a residence title to legally reside in Germany after their case has been decided by the Federal Office for Migration and Refugees ("Bundesamt für Migration und Flüchtlinge" - BAMF). For example, if an asylum applicant is recognized as a refugee by the BAMF, the local immigration authority will issue a temporary residence permit, Section 7 Residence Act, in accordance with Section 25 para. 2, first alternative Residence Act.

<sup>6</sup> Article 16a para. 1 Basic Law ("Grundgesetz" – GG).

<sup>7</sup> Article 16a para. 2 Basic Law.

<sup>8</sup> Section 2 para. 1 Asylum Act.

<sup>9</sup> Article 2 a) of the European Qualification Directive 2011/95/EU ("Qualifikationsrichtlinie"), Section 2 para. 13 Residence Act, Section 1 para. 1 no. 2 Asylum Act.

<sup>10</sup> Article 1 Geneva Convention, Article 2 d) Qualification Directive 2011/95/EU, Section 3 Asylum Act.



violence in situations of international or internal armed conflict.<sup>11</sup> Individual threats exist when the degree of indiscriminate violence reaches such a high level that the individual risks to suffer from serious harm solely on account of their presence.<sup>12</sup>

**Prohibition of deportation  
("Verbot der Abschiebung")**

A foreigner may not be deported if deportation is inadmissible under the terms of the ECHR.<sup>13</sup> Furthermore, a foreigner should not be deported to another state in which this foreigner faces a substantial concrete danger to his or her life and limb or liberty.<sup>14</sup> The BAMF is responsible for assessing whether there is a prohibition of deportation in the country of destination.

**Asylum seeker  
("Asylbewerber")**

A foreigner who has made an application for the right to asylum or international protection<sup>15</sup> in respect of which a final decision has not yet been taken.<sup>16</sup> A decision becomes final when it is no longer subject to a remedy.<sup>17</sup>

*Related Terms*

**Non-refoulement  
("Nichtzurückweisung")**

The principle of non-refoulement prescribes that no refugee should be returned to any country where he or she is likely to face persecution, torture or other serious human rights violations.<sup>18</sup> Article 33 para. 1 of the 1951 Refugee Convention is one expression of the principle of non-refoulement. It states that no contracting state shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his or her life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion. The principle of non-refoulement can nowadays be found in many other international conventions and agreements, such as Article 3 ECHR.<sup>19</sup>

**Safe country of origin  
("Sicheres Herkunftsland")**

Countries 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. Those countries are defined by the German legislator in a statute.<sup>20</sup> When the asylum seeker originates from a safe country, a default presumption

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<sup>11</sup> Article 2 f) Qualification Directive 2011/95/EU, Section 4 Asylum Act.

<sup>12</sup> CJEU, Case C-465/07 *Elgafaji* (2009) ECR I-921.

<sup>13</sup> Section 60 para. 5 Residence Act.

<sup>14</sup> Section 60 para. 7 Residence Act.

<sup>15</sup> Section 13 para. 2 Asylum Act.

<sup>16</sup> Article 2 i) Qualification Directive 2011/95/EU, Article 2 c) Asylum Procedures Directive 2013/32/EU, Article 2 c) Dublin Regulation (EU) No. 604/2013, Article 2 b) Reception Conditions Directive 2013/33/EU.

<sup>17</sup> Article 2 (e) Asylum Procedures Directive 2013/32/EU.

<sup>18</sup> See Goodwin-Gill/McAdam, *The Refugee in International Law*, p. 201 et seqq.

<sup>19</sup> *Ibid.*, p.208.

<sup>20</sup> Article 16a para. 3 Basic Law, see also Article 36, 37 Asylum Procedures Directive 2013/32/EU.



applies in the asylum procedure that there is no risk of being persecuted. In consequence, applications for asylum and international protection may be rejected as manifestly unfounded.<sup>21</sup> The following countries are currently determined as safe countries of origin: member states of the EU, Albania, Bosnia and Herzegovina, Ghana, Kosovo, Macedonia, former Yugoslav Republic of Montenegro, Senegal, Serbia.

**Safe third country  
("Sicherer Drittstaat")**

A third country can only be considered as a safe third country where the application of the 1951 Refugee Convention and the ECHR is assured.<sup>22</sup> Regarding international protection, Article 38 Asylum Procedures Directive 2013/32/EU stipulates additional requirements for the application of the safe third country concept, especially a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country.<sup>23</sup>

Any foreigner who has entered the German territory from a safe third country cannot invoke the right to asylum and applications for international protection may be rejected as inadmissible.<sup>24</sup> This presumption may however be rebutted would the asylum seeker establish that the third country is not safe in his or her particular situation. An individual analysis is required. All member states of the EU as well as Norway and Switzerland are currently considered as safe third countries by the German legislator.

*Certificates*

**Referral certificate  
("Anlaufbescheinigung")**

This (non-standard) certificate is being issued by the first authority, *e.g.* the police, which is in contact with foreigners who request asylum. It contains both personal data as well as the address of the reception facility that is responsible for them and where they will receive their arrival certificate.<sup>25</sup>

**Arrival certificate  
("Ankunftsnachweis")**

A foreigner who has requested asylum and who has been photographed and fingerprinted but who has *not* yet filed an official application for asylum at the BAMF will be issued with a registration certificate for asylum seekers without delay (arrival certificate). Before its codification in Section 63a Residence Act the certificate was called "Bescheinigung über die Meldung als Asylsuchender – BüMA". The reception facility ("Aufnahmeeinrichtung") to which the foreigner has been assigned is responsible for issuing, changing the address or extending the certificate, unless the branch office of the BAMF assigned to this reception facility takes the picture and fingerprints of the foreigner or processes his or her personal data.

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<sup>21</sup> Section 29a para. 1 Asylum Act.

<sup>22</sup> Article 16a para. 2 Basic Law.

<sup>23</sup> Article 38 no. 2 a) Asylum Procedures Directive 2013/32/EU.

<sup>24</sup> Section 29 para. 1 no. 3 Asylum Act.

<sup>25</sup> <http://www.bamf.de/EN/Fluechtlingschutz/AblaufAsylv/AnkunftUndRegistrierung/ankunft-und-registrierung-node.html>.



**Permission to remain pending the asylum decision  
("Aufenthaltsgestattung")**

The BAMF grants permission to asylum applicants ("Asylbewerber") to remain in the federal territory while the asylum procedure is pending.<sup>26</sup> This entitles them to live in Germany until the asylum proceedings have been completed, *i.e.* until a decision has been taken on the asylum application. The permission expires if the decision of the BAMF has become final.<sup>27</sup> Within three working days of filing an asylum application, the asylum seeker shall be issued a certificate confirming the permission to remain pending the asylum decision containing his or her photograph and personal information ("Bescheinigung über die Aufenthaltsgestattung").<sup>28</sup>

## Residence Titles

**Visa  
("Visum")**

A foreigner may be issued the following visas in accordance with the Visa Code (Regulation (EC) No. 810/2009): a visa for the purpose of transit through the territory of the Schengen states or for planned stays in this territory of up to 90 days within a 180-day period (Schengen visa) or an airport transit visa for the purpose of passing through the international transit area at airports.<sup>29</sup> A visa for the German territory (national visa) shall be required for stays of longer duration.<sup>30</sup> Issuance of national visas shall be based on the regulations applying to the other residence titles.<sup>31</sup> Please note that under German law there is no visa for an asylum application. Nevertheless, entry visas may be granted by the Ministry of the Interior or the supreme authorities of a Federal State on a discretionary basis for reasons of international law or humanitarian law.<sup>32</sup>

**Temporary residence permit  
("Aufenthaltserlaubnis")**

Residence title which is limited in time and shall be issued for the purposes stated in the Residence Act, e.g. education, economic activity, humanitarian or political grounds (*i.e.* persons entitled to asylum, refugees, beneficiaries of subsidiary protection and persons whose deportation is prohibited), family reunification and special rights of residence.<sup>33</sup>

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<sup>26</sup> Section 55 Asylum Act.

<sup>27</sup> Section 67 para. 1 sentence 1 no. 6.

<sup>28</sup> Section 63 Asylum Act.

<sup>29</sup> Section 6 para. 1 Residence Act.

<sup>30</sup> Section 6 para. 3 Residence Act.

<sup>31</sup> Section 6 para. 3 sentence 2 Residence Act.

<sup>32</sup> Section 22 et seqq. Residence Act.

<sup>33</sup> Section 7 para. 1 Residence Act.



**EU Blue Card  
("Blaue Karte EU")**

A foreigner shall be issued with an EU Blue Card pursuant to Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment to work in line with his or her qualifications.<sup>34</sup>

**Settlement permit  
("Niederlassungserlaubnis")**

The permanent settlement permit is a residence title which is not limited in time.<sup>35</sup> Nonetheless, it terminates in case of revocation, because of a prior fraudulent acquisition, or if the foreigner is expelled.<sup>36</sup>

**EU long-term residence permit  
("Daueraufenthaltsrecht EU")**

The EU long-term residence permit is a permanent residence title in addition to the settlement permit. It entitles the holder to freedom of movement within the European Union insofar as they have stable and regular resources.<sup>37</sup>

## Termination of Residence

**Requirement to leave the federal territory  
("Ausreisepflicht")**

A foreigner shall be obliged to leave the federal territory if he or she does not possess or no longer possesses the necessary residence title and a right of residence does not exist or no longer exists under the resolution of the Association Council EEC/Turkey on the development of the Association dated 19th September 1980 (RB 1/80) – ARB.<sup>38</sup>

**Deportation  
("Abschiebung")**

Deportation means the enforcement of the obligation to leave the federal territory, namely the forced return.<sup>39</sup> A foreigner shall be deported if the requirement to leave the federal territory is enforceable, no period has been allowed for voluntary departure or the granted period has expired, and voluntary fulfilment of the obligation to leave is not assured or supervision of departure appears necessary on grounds of public security and law and order.<sup>40</sup>

**Deportation warning  
("Abschiebungsandrohung")**

Deportation warning is a notice of intention to deport a foreigner. It shall be served specifying a reasonable period of between seven and 30 days for voluntary departure. By way of exception, a shorter period may be set or the granting of such a period may be waived altogether if, in individual cases, it is vital to safeguard overriding public interests, in particular where a well-founded suspicion exists that the foreigner intends to evade deportation or

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<sup>34</sup> Section 19a Residence Act.

<sup>35</sup> Section 9 Residence Act.

<sup>36</sup> Section 51 para. 1 no. 3, 5 Residence Act.

<sup>37</sup> Section 9a Residence Act.

<sup>38</sup> Section 50 para 1 Residence Act.

<sup>39</sup> Section 3 no. 5 Returns Directive 2008/115/EC.

<sup>40</sup> Section 58 para. 1 Residence Act.



**Expulsion  
("Ausweisung")**

poses a serious danger to public safety or law and order.<sup>41</sup>

Administrative decision prohibiting entry into and stay on the federal territory for a specified period.<sup>42</sup> A foreigner whose stay endangers public safety and law and order, the free democratic basic order or other significant interests of the Federal Republic of Germany shall be expelled if the balancing of the interests in the foreigner's departure with the foreigner's individual interests in remaining in the federal territory which is to be conducted taking account of all the circumstances of the particular case results in the public interest overriding the foreigners interest to stay.<sup>43</sup>

## Miscellaneous

**Entitlement for Turkish nationals<sup>44</sup>  
("Assoziationsberechtigte")**

Turkish workers are granted an automatic right of residence pursuant to Secs. 6, 7 ARB.

**Temporary suspension of deportation  
("Duldung")**

Foreigners who are required to leave the country,<sup>45</sup> but cannot be deported at present, receive from the immigration authority a "certificate of suspension of deportation", the so-called "Duldung".<sup>46</sup>

**Provisional residence document  
("Fiktionsbescheinigung")**

If a foreigner who is legally resident on the federal territory and does not possess a residence title applies for a residence title, his or her residence shall be deemed to be permitted up to the time of the decision by the immigration authority.<sup>47</sup> If a foreigner applies for an extension of his or her residence title or for a different residence title before his or her current residence title expires, the current residence title shall be deemed to remain in force from the time of its expiry until the time of the decision by the immigration authority.<sup>48</sup> The foreigner shall be issued a certificate confirming the effect of his or her application.<sup>49</sup>

**Certificate of border crossing  
("Grenzübertrittsbescheinigung")**

If a foreigner, who is required to leave the country,<sup>50</sup> has received a notice of intention to deport him or her specifying a reasonable period of between seven and 30

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<sup>41</sup> Section 59 para. 1 Residence Act.

<sup>42</sup> Section 3 no. 6 Returns Directive 2008/115/EC.

<sup>43</sup> Section 53 para. 1 Residence Act.

<sup>44</sup> Nonetheless, Turkish workers are obliged to furnish evidence of the existence of the right of residence through the possession of a temporary residence permit, Section 4 para. 5 Residence Act.

<sup>45</sup> Section 50 Residence Act.

<sup>46</sup> Section 60a para. 4 Residence Act.

<sup>47</sup> Section 81 para. 3 Residence Act.

<sup>48</sup> Section 81 para. 4 Residence Act.

<sup>49</sup> Section 81 para. 5 Residence Act.

<sup>50</sup> Section 50 Residence Act.



days for voluntary departure,<sup>51</sup> the immigration authority can issue a certificate of border crossing that reflects the granted period for departure.

**Illegal stay  
("illegaler Aufenthalt")**

Presence on the territory of a Member State, of a third-country national who does not fulfil, or no longer fulfils the conditions of entry as set out in Article 5 of the Schengen Borders Code or other conditions for entry, stay or residence in that Member State.<sup>52</sup>

In addition it is suggested to use the following terms for German legislative acts:

<b>German</b>	<b>English</b>
Asylbewerberleistungsgesetz	Asylum Seekers Benefits Act
Asylgesetz	<a href="#">Asylum Act</a>
Aufenthaltsgesetz	<a href="#">Residence Act</a>
Aufenthaltsverordnung	Regulation on Residence
Beschäftigungsverordnung	Employment Regulation
Freizügigkeitsgesetz/EU	<a href="#">Freedom of Movement Act/EU</a>
Grundgesetz	<a href="#">Basic Law</a>
Integrationskursverordnung	Integration Course Regulation
Sozialgesetzbuch	Social Security Code (Book...)
Staatsangehörigkeitsgesetz	<a href="#">Nationality Act</a>

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<sup>51</sup> Section 59 Residence Act.

<sup>52</sup> Section 3 no. 2 Returns Directive 2008/115/EC.