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Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives



Executive Summary

Alternative policy approaches to RR: regularisation and other recognised statuses

Case Study: **Germany**

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This document provides a concise summary of the key findings from the WP2 National Report Germany. For detailed analysis, evidence, and comprehensive insights, please refer to the full report. The information in this summary should not be considered complete or fully representative of the entire study.

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1. Legal and Policy Responses to Statuses of Irregularity

In Germany, nearly 250,000 persons are living without a residence permit as of December 2nd, 2024. Heated media debates often call for harsher deportation measures as solution at hand. By contrast, civil society actors have been raising numerous demands to grant legal stay instead; indeed, several regulations have been implemented during the last 30 years that offer certain pathways from irregular stay into legal residency. The following summary touches on the main irregular status that exists within the German legal landscape today and outlines both the legal prospects and socio-economic hurdles of obtaining a residence permit instead. This paper thus presents the key findings of the national report on legal and policy responses to status of irregularity and promising practices in Germany.

1.1 Relevant National Legal and Policy Statuses

The German legal landscape knows a special (non-)status called 'Duldung' (toleration of stay). It is applied to a range of persons without legal status, when deportation measures are for various reasons temporarily placed on hold and certain other conditions are met. Even though 'Duldung' is defined within the Residence Act (Aufenthaltsgesetz, AufenthG), it is not a residence permit, due to the fact that the so-called 'obligation to leave the country' (Ausreisepflicht) legally remains in effect. The (non-)status of 'Duldung' offers a minimum of protection and living standards in Germany. Out of 242,642 persons living in situations of irregularity, 193,978 were registered as holding this toleration-of-stay status. This sub-group is granted access to the Asylum Seekers' Benefits Act (Asylbewerberleistungsgesetz, AsylbLG), which includes housing in the highly controlled German camp system and access to (merely) basic medical treatment. Since 2019 the 'Duldung' status has been further differentiated by creating the 'Duldung for persons with unclear identity', often referred to as 'Duldung light'. Individuals, who are accused of not cooperating with the authorities as well as subsequently preventing their own deportation fall under this



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category. ‘Duldung light’ entails even further lessened socio-economic rights and legal opportunities. Overall, ‘Duldung’ is discussed as a status which leads to exclusion and escalates social and psychosocial downward spirals.

The reality of living in irregularity outside of this (non-)status is a neglected topic in Germany: No more than a few counselling bodies target this population in particular with their advocacy and support.

1.2 Institutionalised Pathways from ‘Duldung’ towards the Right-to-Stay

Sparked by the ongoing political struggles over the right to stay in Germany, several regulations have been implemented over time in order to introduce legal pathways from ‘Duldung’ to a residence permit. This sub-chapter elaborates on these pathways, which either rely on integration paradigms or on humanitarian considerations. Regularisation in the situation of irregularity without ‘Duldung’ poses different challenges and is not the subject at hand. In brief, detecting possibilities to transition into the ‘Duldung’ would be the crucial first step in that scenario.

There currently are two forms of humanitarian pathways into the right-to-stay: For one, there is the national ban on deportation. Review and approval if a deportation was to threaten one’s life or expose one to circumstances in violation of the European Convention on Human Rights (ECHR), is tied to the Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees, BAMF). The other humanitarian pathway is based on the Residence Act (§ 25 (5) AufenthG) and is granted if one can prove that one is de facto not deportable. These humanitarian pathways are for many people difficult to achieve, particularly due to the high bars regarding the provision of evidence.

☒ At present, there is also a pathway into legal stay based on integration efforts, which is defined in the residence act under the paragraphs § 25a (for young people) and § 25b AufenthG. In response to the lacking success of this pathway, a new ‘Law on Residence Opportunities’ came into effect in 2021, which introduced a probationary residence permit for 18 months. By the end of this time span the conditions of § 25a

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or § 25b AufenthG have to be fulfilled in order to be eligible for a subsequent resident permit. However, this law is an exceptional regulation based on a key date, hence restricting the range of eligibility for this pathway.

2. Access to Residence Status and Socio-Economic Rights: Barriers and Promising Practices

☒ The previous sub-chapter laid out the legal framework to transform the specific legal irregularity of the ‘Duldung’ into residency statuses that provide more promising and stable perspectives. However, successfully accessing those pathways is an entirely different matter. The following chapter will dive deeper into the access barriers at play in this field.

2.1 Access Barriers

Our research identified hurdles based on hard factors grounded in law, that are amplified by soft-filtering mechanisms. The main hard factors obstructing access to residency are fixed pre-tolerance periods requiring individuals to have lived a certain number of years under the ‘Duldung’ status in order to be eligible for regularisation per § 104c (five years of ‘Duldung’ on 31 October 2021), § 25a (three years of ‘Duldung’) and § 25b AufenthG (six years of ‘Duldung’ or four years of ‘Duldung’ if living together with children). Lengths of holding the afore mentioned sub-category of ‘Duldung for persons with unclear identity’ do not count towards these required time periods. Failing to successfully complete or oblige with identity clarification procedures leads to the second hard factor. Determining an individual’s identity is regarded as absolute bureaucratic requirement. However, the individual responsibility to procure identity papers is often disproportionate to the risks, difficulties and at times impossibility involved in doing so. Nonetheless, this hard requirement can develop into an insurmountable hurdle in the way of regularisation. Soft filters on the other hand reach from the real-life consequences of (long-term) exclusion from society to widespread individual difficulties to understand bureaucratic rules and access barriers are often exacerbated by overlapping factors such as:

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- Difficulties in accessing the labour market and finding a qualified job to secure one's own livelihood due to several reasons. For one, many employers lack knowledge about the 'Duldung' status and avoid hiring employees in precarious living conditions. Under the 'Duldung light', one does not receive a work permit altogether.
- Challenges to fulfil the language requirements, reinforced by the widespread limited availability of language classes as well as the lack of childcare services, which leads to a de facto exclusion of most mothers from said language courses.
- Extensive exclusion of individuals who committed petty and poverty-related offences; the exclusionary mechanism is reinforced by the common practice of stricter penalties imposed on poor people for relatively minor offences.
- No recognition of the great difficulty or impossibility of obtaining a passport.
- Mutual distrust between clerks at the immigration authorities and their clients. For the most part the former does not consider it its responsibility to inform about potential regularisation pathways, which contributes to the latter's widespread lack of legal knowledge.

These evident limitations point to the weight that is being placed on individual socio-economic performance as pre-condition for eligibility: Prove of sufficient employment, German language skills, no criminal record – these criteria reveal the deeply ingrained integration paradigm that is at the heart of most regularising pathways, while failing to appropriately acknowledge the highly challenging life circumstances coming with 'Duldung' status. In the end the existing legal and policy responses amount to a filter: Consequently, only select few manage to successfully surmount the many structural barriers, which lie before them in the pursuit of permanent residency.

2.2 Promising Practices

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The afore-mentioned Law on Residence Opportunities, implemented in 2022 qualifies to a degree as a promising practice, due to its aim to give applicants more time to meet the stipulations of the existing right-to-stay regulations of §25a and b. It hence attempts to reduce soft-filtering mechanisms such as the mutual distrust, stress and difficulties to get employed under the ‘Duldung’. However, estimates are that only few of those eligible will in fact achieve to consolidate their stay.

Further promising practices can be found in few pioneering projects which aim at dialogue and exchange between counselling services and immigration authorities. One relevant project in this regard is ‘Wege ins Bleiberecht’ (WiB, Pathways to the Right-to-Stay) in the German federal state of Lower Saxony, founded in 2019 by its Ministry for Social Affairs, Labour, Health and Equality. Essentially it initiates cooperation between the Refugee Council of Lower Saxony (Flüchtlingsrat Niedersachsen) with municipal immigration authorities and counselling services. The aim is to strengthen the implementation of existing right-to-stay rules by spreading knowledge and information proactively to eligible individuals as well as by individual-case reviews.

Despite recurring legal advances and isolated projects such as the one described above, the hurdles for regularisation remain high. Our case study for Germany demonstrates clearly that the entanglement between the soft-filtering and hard-filtering mechanisms place individuals at odds with achieving the high-level performance required for residency rights. If this remains the assessment basis for the latter, it will systematically filter out many if not most, who will then remain in irregularity indefinitely. Envisioning more substantial change, would call for a fundamental decoupling of the right-to-stay from individual behaviour.

3. Further Reading

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4. List of Abbreviations

ABH

Ausländerbehörde – Immigration authorities

AsylbLG

Asylbewerberleistungsgesetz – Asylum Seekers' Benefits Act

AsylG

Asylgesetz – Asylum Act

AufenthG

Aufenthaltsgesetz – Residence Act

BAMF

Bundesamt für Migration und Flüchtlinge – Federal Office for Migration and Refugees

BMI

Bundesministerium des Inneren und für Heimat – Federal Ministry of the Interior and Community

ECHR

European Convention on Human Rights

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