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



Executive Summary

Development of the Return and Readmissions policy across Europe: multilevel analysis

Case Study: **Germany**

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With support of Peer Yousif Diercks

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Disclaimer:

This document provides a concise summary of the key findings from the national report on Germany from January 2024 by Svenja Schurade and Sabine Hess, with support of Peer Yousif Diercks. 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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Return & Readmission Policy in Germany

Returns and readmissions (R&R) policies have continuously been highly contested and politicized in Germany, as well as extensively discussed in public. Our multilevel analysis on the development of the return and readmission policy in Germany set out to reveal its main rationales. The following summary of our extensive national report hence sketches our key findings of the analysis of 78 policy documents published between 1990 and 2023.

To put it in a nutshell, a vast expansion of the deportation regime is of note alongside selective openings towards legal stay. At first glance a seeming contraction, it boils down to the simultaneous development of creating so-called “prospects of staying” for some, while harsher measures with the sole focus on return and readmission are tirelessly promoted for others. The following summary report highlights the rationalities, narratives and policy measures, which shape the German R&R policies.

1.1 Expansion in the Name of An Enforcement Gap

The driving force for tighter legislation and stricter R&R measures has been the proclamation of an enforcement gap. It derives from contrasting the number of deportations conducted in a given time period with the number of individuals who are legally speaking “under the obligation to leave the country” (279,098, 30.06.2023.) This creates the seemingly insurmountable fact that deportation enforcement fails to hit their presumed target numbers by large. However, whether inadvertently or deliberately, this calculation fails to take into account that the deportation orders of the vast majority of the ones technically “obligated to leave the country” are for various reasons legally placed on hold¹ because of various reasons such as health, deportation bans, bureaucratic and diplomatic reasons and other destination state-related issues. Thus, the inclusion of this whole group in constructing a so-called enforcement gap is blatantly misleading and must be understood as narrative to call for harsher deportation measures.

¹ 224 768 of those 279 098 persons were handed out a “Duldung” (toleration of stay), which is no legal status but the temporary suspension of a deportation.



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In as early as 1993 the federal ministry of the interior set up a special working group in order to address the alleged enforcement gap, which hence is far from being a new trope. Since, various policy papers and recommendations have emerged from this political sphere, with the 2011 report by the ‘AG Rück’ (working group on returns)² emphasizing implementation deficits in particular. In the last decade the ‘enforcement gap’-trope gained considerable traction yet again (see also AG Rück 2015; McKinsey 2016; Masterplan Migration 2018) and was at times additionally driven by a well-orchestrated media campaign. This type of state driven policy analyses demonstrates that state-actors such as the Federal Ministry of the Interior (‘BMI’) and the Federal Office for Migration and Refugees (‘BAMF’) are engaged in their own knowledge production, in the aim to offer policy measures to increase the number of deportations.

Seeking to close the so-called enforcement gap, a vast bundle of R&R policies has been introduced since 2016 and expanded upon ranging from measures targeting the asylum process, removing obstacles to deportations, processes of prioritization, readmission agreements as well as so-called assisted voluntary return programs.

Pre-sorting Procedures during the Asylum Process

In 2015 asylum procedures were accelerated in order to make asylum processes more efficient (McKinsey 2016). Ever since the consideration of an individual’s asylum case follows diverging procedures and procedural rights according to the category the person in question is ascribed to. If the “prospects of staying” are deemed low, generally based on overall decision rates or the classification of a country of origin as “safe”, accelerated procedures and the obligation to remain in reception centres is the norm. The ensuing consequences are lowered procedural standards (Hänsel et. al 2020). Whereas the modifications of the asylum procedures were driven by the rational of efficiency (BAMF 2021)³; the general aim of the various deportation measures were to enhance their effectiveness⁴. However, the impact those measures had in the end on deportation enforcement were rather inefficient, but effective in terms of increasing the deportability of refugees in particular.

² This working group was the first of its kind on national level and it allowed the federal government to gather more competences regarding the matter, since deportations generally fall under the competence of the federal states (*Bundesländer*).

³ Time saving

⁴ Success of the measure

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Controversial obstacles

Furthermore, deportations have as a practice always been accompanied by an active debate on valid obstacles to deportations. Growing knowledge on trauma since the mid-1990s, including the emergence of post-traumatic stress disorder (PTSD) as diagnosis, contributed to medical grounds becoming a valid obstacle to deportations. The latter often allowed for being granted the afore-mentioned “toleration of stay”. However, these days medical grounds have increasingly come under scrutiny and attack. Since 2016, deportations can be carried out despite health concerns, if so-called “domestic health alternatives” in the country of origin are deemed sufficient by authorities. Overall, the burden of proof is being placed on the shoulders of sick and struggling individuals themselves, while often facing (false) accusations of simulating sickness. As a result, existing protection standards are under threat to be rendered meaningless (BafF 2021; Bundesärztekammer 2016; Suerhoff & Engelmann 2020).

Policy measures to fight “concealment of identity” and “unknown whereabouts”

Two more factors are declared as main reasons for the alleged enforcement deficit (AG Rück 2011, 2015; McKinsey 2016; Masterplan Migration 2018). Firstly, deportation attempts fail because the whereabouts of individuals set to be deported are unknown, which happens for example, when individuals aren’t encountered at their mandated accommodation. Secondly, individuals are accused of purposefully concealing their identity, when they are not willing or able to present or procure official identity papers. Many new regulations in the last ten years have attempted to respond to accusations of “concealment of identity” and “unknown whereabouts”, like longer stays in highly controlled accommodations centres, exclusion from work, reductions in benefits, exclusion from right to stay regulations or detention.

Prioritization of ‘Criminals’

Yet another avenue of concern in the R&R policy, consists in singling out so-called “criminals” and “offenders” as the ones whose deportations are deemed the most important and assigned the highest political priority, as can be seen in the coalition agreements of recent governments and similar declarations (CDU/CSU & SPD 2018; Greens 2023; SPD & Greens & FDP 2021). The trope of the criminal offender whose deportation needs to be executed by all means meanwhile became one of the central discursive strategies to argue for a tougher stance on R&R policies.

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Readmission Agreements

Furthermore, formal and informal readmission agreements have become an established part of national and supranational R&R policies. A lack of cooperation on the part of countries of origin had previously been repeatedly cited as a core problem for return politics (AG Rück 2011, 2015; McKinsey 2016). For this reason, high expectations are being placed upon international diplomacy in order to facilitate readmission guarantees. At the time of submitting this country report in January 2024, Germany had finalized bilateral readmission agreements with 39 countries worldwide (BMI 2023) and was involved in the negotiations of further multilateral and EU readmission agreements. However, reliable data remains sparse due to the fact it is not generally being made publicly accessible.

Assisted Voluntary Return

Assisted Voluntary Return (AVR) Programs are another vital part of Germany's R&R policies and have been so for decades. Officially AVR is portrayed as supposedly more humane form of repatriation and therefore seen as preferable to deportations. In stark contrast, critical migration scholars describe AVR as "soft deportation" (Altrogge 2023; Kalir 2017) pointing to the amount of force that AVR still entails: its true 'voluntariness' is called into question by the fact that most returnees are being pushed down this avenue due to extreme lack of viable perspectives, inhumane living conditions and the terrifying threat of deportation.

Despite not necessarily having led to the intended considerable increases in actual deportations, all these introduced policy changes and developments have been having a far-reaching impact nonetheless. It has resulted in ever deeper intrusions into people's private spheres and everyday lives, which is no mere coincidence: the everyday practices of migrants seeking to evade deportation have been identified as prime obstacle and are hence targeted on purpose. The political strategy at the heart of the return and readmissions policy appears to consist in exerting more control on every migrant and refugee, who will most likely be deemed deportable along the way.

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1.2 Selective Openings

Alongside the depicted waves of multifaceted and broad expansion efforts in R&R policy, phases of introducing pathways to residency have in the last two decades simultaneously ebbed and flowed. The few policies embracing regularisation instead of return are all connected to the afore-mentioned particular German in-between status of “Duldung” (*toleration of stay*). Not to be equated with a (temporary) residence permit, most individuals holding ‘Duldung’ face complicated restrictions as well as multilayered (structural) discrimination in areas such as health care, work, housing and education. This (non)status is nonetheless embedded within the complex legal system of residence law. Thus, it fundamentally differs from living in irregularity off the radar of authorities. Regularising one’s stay from complete irregularity would entail attempting to receive the so-to-speak ‘official irregular status’ of ‘Duldung’ as a first step.

As mentioned above, the legal limbo of Duldung can last years and applies to more than two hundred thousand people. As a result, political and humanitarian concern to create an exit out of the black hole of “tolerated stay” has ostensibly grown in the last three decades. On multiple occasions the right to stay was granted as an extraordinary measure for clearly defined target groups, often in connection with limiting criteria such as specific dates of entry. Almost under the public radar, additional legal avenues to residency have opened up in recent years that are no longer tied to key dates. However, these new “prospects for staying”, e.g. under §25 a and b in the residence law, may only appear more widely applicable on the outset. Eligibility is determined by a clean criminal record and so-called ‘integration efforts’, judged according to German language proficiency and economic viability. These criteria set a high bar, none withstanding that years of precarity and fundamental exclusion under ‘Duldung’, including work bans at times, present a giant hurdle from successfully learning German as well as gaining access to employment to the degree of supporting one’s family and oneself fully on their own. For this reason, the degree of successfully scoring a resident permit via this pathway is ultimately limited, despite these so-called “lane changes” from an (unsuccessful) asylum process to employment-tied residencies technically having become a new possibility. (*See WP2 (summary) report for further reading on the matter*)

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2. Conclusion

In order to understand the entangled policy closures and openings, one needs to turn to the wider purposes and roles which R&R policy holds in the political and public discourse. The narratives at the heart of the latter are that R&R policy is required not only to demonstrate but also to uphold state power as well as public order and safety. On this basis a variety of further arguments sustain strong R&R policies such as that the state and societal capacities for integration are deemed inherently limited and that failed deportations presumably undermine the rule of law. Terrorism and crimes committed by refugees and migrants are continuously instrumentalised to evoke extreme threats to public safety that are supposedly solely solved by deportations. Deportations of so-called criminals rarely spark public outcries and are more accepted by the general population. The numerous references within R&R policies to lacking integration efforts as well as criminals' lay the groundwork to mitigate public resistance to R&R policies overall, but additionally serve as justificatory basis for the few select openings. An allegedly simple and clear differentiation into 'good' and 'bad' in terms of deserving either residency rights or deportation, garners public and political acceptability for both the iron hand of the overarching R&R policy, as well as limited and filtered opportunities for select few quite effectively.

However, an examination of the figures clearly demonstrates that the vast majority of those at risk of deportation cannot be deported in practice, are already granted basic protection rights and have fundamentally become part of German society. Instead of perpetuating number games to construct the alleged "enforcement gap" and propagating the idea of limits to the capacity for inclusion, it is high time to reverse the point of reference and object of scrutiny here. A paradigm shift would enable the perspective that the numbers of those living in Germany with irregular statuses could easily be lowered by creating genuine and widely applicable "prospects of staying". The broad spectrum of well-organised and supportive civil society initiatives already committed to countering the exclusionary mechanisms inscribed in state policies could serve as political inspiration to sustain and support an open and inclusionary post-migrant society tied together by solidarity. Such an approach would indeed effectively tackle and counteract the massive gaining of strength and foothold of the far-right both in society and the political arena – instead of falling into the political trap of ascribing this potential onto tough R&R policies.

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5. Excerpt from Policy Mapping Table

AG Rück 2011

https://www.einwanderer.net/fileadmin/downloads/Berichte/2011-04_Bericht_AG_Rueck-1.pdf

AG Rück 2015

https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/2016/bund-laender-bericht-hindernisse-abschiebungen.pdf%3F__blob%3DpublicationFile%26v%3D1

BaF 2021

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<https://www.baff-zentren.org/themen/flucht-trauma/positionspapier-lebensgefahrdurch-abschiebungen-schwerkranke-gefluechtete-muessen-besser-geschuetzt-werden/>

BAMF 2021

https://www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Forschungsberichte/fb37-evaluation-anker-fg-einrichtungen.pdf?__blob=publicationFile&v=16

BMI 2023

https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/migration/rueckkehrfluechtlinge.pdf?__blob=publicationFile&v=3

Bundesärztekammer 2016

https://www.bundesaerztekammer.de/fileadmin/user_upload/_old-files/downloads/Faltblatt_Patienten-ohne-Aufenthaltsstatus_30112013.pdf

CDU/CSU & SPD 2018

https://archiv.cdu.de/system/tdf/media/dokumente/koalitionsvertrag_2018.pdf?file=1

Greens 2023

https://cms.gruene.de/uploads/assets/Beschluss_Humanita%CC%88t_und_Ordnung_fu%CC%88r_eine_anpackende_pragmatische_und_menschenrechtsbasierte_Asyl_und_Migrat.pdf

Masterplan Migration 2018

https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/migration/masterplan-migration.pdf?__blob=publicationFile&v=5

McKinsey 2016

<https://fragdenstaat.de/dokumente/76/>

SPD & Greens & FDP 2021

<https://www.bundesregierung.de/resource/blob/974430/1990812/1f422c60505b6a88f8f3b3b5b8720bd4/2021-12-10-koav2021-data.pdf?download=1>

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6. List of Abbreviations

AG Rück - Arbeitsgruppe Rück – Working Group on Returns

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

BMZ - Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung – Federal Ministry for Economic Cooperation and Development

ECHR - European Convention on Human Rights

GIZ - Gesellschaft für Internationale Zusammenarbeit – Association for International Cooperation

REAG/GARP - Reintegration and Emigration Programme for Asylum-Seekers in Germany / Government Assisted Repatriation Programme

ZUR - Zentrum zur Unterstützung der Rückkehr – Return Support Centre

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