



I-CLAIM

Improving the Living
and Labour Conditions
of Irregularised Migrant
Households in Europe

Country report

The Legal and Policy Infrastructure of Irregularity

Germany

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Executive summary (English)

The purpose of this report is to review the evolution of Germany's migration policies, their legal framework, and their impact on irregularised migrants in Germany over the last 20 years. It emphasizes the non-essential yet impactful nature of irregularity as produced by a complex network of legal, social and economic conditions and practices, i.e., the irregularity assemblage. Following a brief historical contextualisation of migration policies in Germany through the 20th century, key terms pertaining to the discourse about irregularity – and associated precarious situations – within the German legal framework are discussed, including irregular migration, residency, toleration, asylum, refugee, voluntary return, subsidiary protection, temporary protection, and freedom of movement. The following policy analysis focuses on the last 20 years (2004–2023), examining general trends, legal frameworks, and the intersection of migration with employment, social reproduction, and welfare regimes, drawing from academic literature, policy documents, interviews with key stakeholders as well as a first stakeholder group meeting in January 2024.

Although no official figures are available as to the number of irregular migrants in Germany, the report discusses recent estimates ranging between 180,00 and 520,000 as well as official statistics on groups that are at risk of becoming irregularised, such as tolerated individuals. Regarding key policy developments over the last decades, the report emphasises that many policy changes were precipitated by campaigns initiated by civil society organisations or NGOs, the expert Immigration Commission of 2001, and a number of church-affiliated initiatives such as the Malteser Medicine for Migrants. At the same time, international policies such as the EU's General Plan to Combat Illegal Immigration and Trafficking in Human Beings and the UN's Global Compact on Safe, Orderly and Regular Migration are impacting the national legal and policy framework in Germany, their implementation being beset by difficulties.

Competing narratives and goals have continued to generate tension and conflict – for instance between the human rights perspective and Germany's long-standing approach to migration as a police matter, i.e., as something that needs policing, as well as an unchanged administrative and societal conviction that migration is meant to fuel the Germany economy. This is evident, for example, in the clash between Germany's official enshrining of irregular migrants' access to healthcare or the right of irregular migrant children's access to education and the legal obligation of administrative authorities (until recently also healthcare professionals and schools) to report irregular migrants.

The report highlights that national politics, especially anti-immigration and xenophobic political movements such as PEGIDA and Alternative für Deutschland, have been fuelled by recent crisis – most prominently the so-called “refugee crisis” of 2015 – and have sought to instrumentalise racist sentiments for political gain. Narratives propagated by these movements depict migrants, especially irregular migrants, as potential terrorists and criminals. Their campaigns have also brought to the fore narratives about “deserving” and “underserving” migrants or refugees, including the notion of the ‘genuine refugee’ as opposed to the ‘economic refugee’ who merely seeks to take advantage of the German state and/or economy. Recent crises have also fuelled political debates on Germany's role within Europe and the EU regarding migration and security. Several narratives revolve around Germany's moral leadership and responsibility, interconnecting with narratives about German, European or Christian values and the securitisation of migration.

The Covid-19 pandemic affected irregular migrants disproportionately hard, with scandals erupting around the living and working conditions of migrant workers in the agri-food sector (with a substantial portion being irregular). The German government's responses were swift but focused on satisfying the German economy's

and consumers' demands rather than safeguarding irregular migrants' rights and well-being. Following the EU Temporary Protection Directive, Germany has granted individuals who have fled Ukraine since 24 February 2022 a special status and path to residency, gaining labour market access and social benefits.

It is only very recently that the German coalition government has made an attempt to reform policies regarding existing routes in and out of irregularity to reduce the vulnerability of irregular migrants as well as to facilitate 'lane changes' between different legal titles of residency. Overall, this will arguably improve the situation of migrants in or threatened by irregularity, while on the other hand the government has also intensified the so-called 'fight' against 'illegal entry' at Germany's borders. An additional policy change has made it easier for 'skilled workers' to gain residency in Germany, very much in line with Germany's economisation of migration. The report covers the most common pathways into and out of irregularity, specifically regarding family reunification, as well as deportation and criminalisation. Irregularity exacerbates the precariousness and vulnerability of migrants, e.g. in relation to the protection of their fundamental rights in the areas of healthcare, education, gender equality and exploitation. It is clear that legal reforms alone are often not enough to improve the day-to-day reality of irregular migrants' lives. They also need to be implemented in practice and monitored.

Executive Summary (*Deutsch*)

Ziel dieses Berichts ist es, die Entwicklung der deutschen Migrationspolitik, ihren rechtlichen Rahmen und ihre Auswirkungen auf irreguläre Migranten in Deutschland in den letzten 20 Jahren darzustellen. Er betont den nicht-essentiellen, aber dennoch einflussreichen Charakter der Irregularität, der durch ein komplexes Netzwerk von rechtlichen, sozialen und wirtschaftlichen Bedingungen und Praktiken entsteht. Nach einer kurzen historischen Kontextualisierung der Migrationspolitik in Deutschland im 20. Jahrhundert werden Schlüsselbegriffe im Diskurs über Irregularität - und der damit verbundenen prekären Situationen - innerhalb des rechtlichen Rahmens diskutiert, darunter irreguläre Migration, Aufenthalt, Duldung, Asyl, Flüchtling, freiwillige Rückkehr, subsidiärer Schutz, vorübergehender Schutz und Freizügigkeit. Die anschließende Policy-Analyse konzentriert sich auf die letzten 20 Jahre (2004-2023) und untersucht allgemeine Trends, Rahmenbedingungen und die Überschneidung von Migration mit Beschäftigung, sozialer Reproduktion und Wohlfahrtssystemen. Dabei stützt sie sich auf wissenschaftliche Literatur, politische Dokumente, Interviews mit Stakeholdern sowie ein erstes Treffen der Stakeholder-Gruppe im Januar 2024.

Obwohl keine offiziellen Zahlen über die Zahl der irregulären Migranten in Deutschland vorliegen, werden in dem Bericht Schätzungen zwischen 180.000 und 520.000 Personen sowie offizielle Statistiken über Gruppen, die Gefahr laufen, irregulär zu werden, wie z. B. geduldete Personen, berücksichtigt. In Bezug auf die wichtigsten politischen Entwicklungen der letzten Jahrzehnte betont der Bericht, dass viele politische Veränderungen durch Kampagnen von zivilgesellschaftlichen Organisationen oder Nichtregierungsorganisationen, der Sachverständigenkommission für Zuwanderung von 2001 und einer Reihe von kirchlichen Initiativen angestoßen wurden. Gleichzeitig wirken sich internationale Abkommen zur Bekämpfung der illegalen Einwanderung und des Menschenhandels und der Globale Pakt der Vereinten Nationen für eine sichere, geordnete und reguläre Migration auf den nationalen rechtlichen und politischen Rahmen in Deutschland aus, deren Umsetzung jedoch mit Schwierigkeiten verbunden ist.

Konkurrierende Narrative und Ziele führen weiterhin zu Spannungen und Konflikten - zum Beispiel zwischen der Menschenrechtsperspektive und Deutschlands langjährigem Ansatz, Migration als eine Angelegenheit der inneren Sicherheit zu betrachten, d.h. als etwas, das polizeilicher Kontrolle bedarf, sowie einer unveränderten administrativen und gesellschaftlichen Überzeugung, dass Migration die deutsche Wirtschaft anzukurbeln hat. Dies zeigt sich z.B. im Widerspruch zwischen der offiziellen Verankerung des Rechts auf Gesundheitsversorgung für irreguläre Migranten oder des Rechts auf Bildung für Kinder irregulärer Migranten einerseits und der (inzwischen im Bildungsbereich eingeschränkten) gesetzlichen Verpflichtung, irreguläre Migrant:innen zu melden.

Der Bericht hebt hervor, dass die nationale Politik, insbesondere einwanderungsfeindliche und fremdenfeindliche politische Bewegungen wie PEGIDA und die Alternative für Deutschland, durch die jüngsten Krisen – allen voran die sogenannte "Flüchtlingskrise" von 2015 – beeinflusst wurden und versucht haben, rassistische Einstellungen für politische Zwecke zu instrumentalisieren. Die von diesen Bewegungen verbreiteten Narrative stellen Migrant:innen, insbesondere irreguläre Migrant:innen, als potenzielle Terrorist:innen und Kriminelle dar. Ihre Kampagnen haben auch Narrative über ‚gute‘ und ‚schlechte‘ Migrant:innen oder Flüchtlinge in den Vordergrund gerückt, einschließlich der Vorstellung vom ‚echten Flüchtling‘ im Gegensatz zum ‚Wirtschaftsflüchtling‘, der lediglich versucht, den deutschen Staat und/oder die deutsche Wirtschaft auszunutzen. Die jüngsten Krisen haben auch die politischen Debatten über die Rolle Deutschlands in Europa und der EU in Bezug auf Migration und Sicherheit angeheizt. Mehrere

Narrative drehen sich um Deutschlands moralische Führungsrolle und historische Verantwortung, die ihrerseits mit Narrativen über deutsche, europäische oder christliche Werte und die Versicherheitlichung von Migration verbunden sind.

Die Covid-19-Pandemie traf irreguläre Migrant:innen unverhältnismäßig hart, und es kam zu Skandalen um die Lebens- und Arbeitsbedingungen von Wanderarbeiter:innen in der Agrar- und Ernährungswirtschaft (von denen vermutlich ein erheblicher Teil irregulär ist). Die deutsche Regierung reagierte schnell, konzentrierte sich aber eher darauf, die Anforderungen der deutschen Wirtschaft und der Verbraucher:innen zu erfüllen, als die Rechte und das Wohlergehen der irregulären Migrant:innen zu schützen. Gemäß der EU-Richtlinie über vorübergehenden Schutz wurde Deutschland Personen, die seit dem 24. Februar 2022 aus der Ukraine geflohen sind, ein besonderer Status und ein Weg zum Aufenthalt gewährt, der ihnen Zugang zum Arbeitsmarkt und zu Sozialleistungen verschafft.

Erst in jüngster Zeit hat die aktuelle Koalitionsregierung einen ernsthaften Versuch unternommen, die Politik in Bezug auf die bestehenden Wege in die und aus der Illegalität zu reformieren, um die Gefährdung irregulärer Migrant:innen zu verringern und den sogenannten ‚Spurwechsel‘ zwischen verschiedenen legalen Aufenthaltstiteln zu erleichtern. Insgesamt wird dies wohl die Situation mancher Migrant:innen, die sich in der aufenthaltsrechtlichen Illegalität befinden oder davon bedroht sind, verbessern, während die Regierung andererseits auch den so genannten ‚Kampf‘ gegen die ‚illegale Einreise‘ an den deutschen Grenzen intensiviert hat. Eine weitere Änderung hat es ‚Fachkräften‘ leichter gemacht, sich in Deutschland niederzulassen, ganz im Sinne der Ökonomisierung der Migration. Der Bericht befasst sich in diesem Zusammenhang auch mit den häufigsten Wegen in die und aus der aufenthaltsrechtlichen Illegalität, insbesondere in Bezug auf Familienzusammenführung sowie Abschiebung und Kriminalisierung. Irregularität verschärft die Prekarität und Verwundbarkeit von Migrant:innen, z. B. in Bezug auf den Schutz ihrer Grundrechte in den Bereichen Gesundheitsversorgung, Bildung, Geschlechtergleichstellung und Ausbeutung. Es zeigt sich, dass rechtliche Reformen allein oft nicht ausreichen, um die alltägliche Lebensrealität irregulärer Migrant:innen zu verbessern. Es bedarf auch deren praktischer Umsetzung und der Überwachung derselben.

Abstract

The report discusses the evolution of migration policies and their impact on irregularised migrants in Germany, emphasizing the non-essential yet impactful nature of irregularity as produced by a complex network of legal, social and economic conditions and practices. It provides a historical overview of migration patterns in Germany, highlighting the shift from guest-worker recruitment to industrial labour migration and the associated challenges of integration. The following analysis focuses on the last 20 years (2004-2023), examining general trends, legal frameworks, and the intersection of migration with employment, social reproduction, and welfare regimes, drawing from academic literature, policy documents, interviews with key stakeholders as well as a first stakeholder group meeting in January 2024. Section 3 of the report provides an overview of general trends and features of migrant irregularity as well as available statistical information on irregularised migrants in Germany. Section 4 details the national legal and policy framework, especially recent changes in the light of 'crises' and national politics, existing routes in and out of irregularity as well as 'lane changes' between different legal titles of residency, and the situation regarding deportation and the criminalisation of irregularised migrants. Section 5 then addresses the entanglement of irregularity with employment, labour markets, migrant households (including gender and generational dimensions) as well as race and ethnicity.

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1. Introduction

Migration has long been a salient issue in public opinion, media, political debate and policy-making in Germany; nonetheless the policies that have produced irregularity and thus severely impacted the living conditions of irregularised migrants and their families have changed significantly over the years. I-CLAIM conceptualises irregularity not as a stable and essential characteristic of people but as produced at the nexus of nested legal systems, political and public discourses on irregularity. This temporary configuration of elements is what we refer to as ‘assemblage’. This report first outlines the historical national context of Germany before presenting a policy analysis focused on the last 20 years (2004-2023).

As Germany long saw itself as a non-immigration country¹, no comprehensive national migration policy was formulated up until the 2000s, when Germany explicitly positioned itself as an immigration country. In reality, throughout its history since the Prussian era, Germany has been a typical immigration country, especially actively recruiting foreign nationals for labour purposes. Indeed, the history of migration in Germany is dominated by a continuing system of foreign labour employment, which has been producing irregularities in specific ways.

The following section provides an overview of migration in Germany since the mid-20th century. The remainder of this report focuses on (ir)regularisation over the last 20 years, Section 2 covering the general trends and features of migrant irregularity, including available statistics; Section 3 reviewing the national legal and policy framework, including routes into and out of irregularity as well as migration law enforcement (deportation, criminalisation); and Section 4 discussing entanglements with employment, production, social reproduction and welfare regimes. The report is based on an in-depth review of academic literature, policy documents, government reports and official statistics as well as NGO reporting on irregularity, complemented by information gathered through interviews with stakeholders and experts.

¹ “Deutschland ist kein Einwanderungsland” was premise of German migration policy and remained the explicit stance of German government into the 1990s (see, for instance, the coalition agreement between CDU/CSU and FDP of 1982).

2. Historical context

In the mid-20th century, the focus of foreign labour employment shifted from agriculture to the industrial sector. A large share of the labour force demand was met by returning German prisoners of war, refugees of German descent from Central Europe, and by persons emigrating from the German Democratic Republic (Bade 1987: 60). In 1950, these migrants amounted to 16.7 per cent of the West German population, increasing to 23.9 per cent in 1960 (Herbert 1990: 196). Alongside these migrant groups, regularised by corresponding policies and legal provisions, irregular migration was largely ignored politically and remained undocumented administratively.

In the 1950s, Germany's booming economy initially relied on ethnic German migrants to meet labour demands. However, specific sectors faced shortages, prompting the employment of workers from Italy, Spain, Greece, Turkey, Morocco, Portugal, Tunisia, and Yugoslavia as 'guest workers'. This term dominated the discourse, framing migration as temporary, despite its actual long-term impact. A policy in 1955 integrated these migrants into the social security system as 'guests', but many others, who didn't fit this label, also contributed to the workforce during this period (Steinert 1995; Alexopoulou 2020; Höhne et al. 2014).

As a consequence of the world economic crises of the 1970s, West-Germany imposed a general halt on recruitment of such 'guest workers'. But in contrast to the prevailing narratives in political and public discourse, there was no enforcement of this 'regulation' – what in practice were bilateral agreements. Instead, the halt on recruitment was repeatedly punctuated by short-term exceptions in subsequent years, but this did not lead to a change in the hegemonic 'guest worker' narrative about 'good migration'.

Throughout the 1980s, the ambiguous policy to stop new recruitment, to promote voluntary return, and to integrate those who were unlikely to return was covered up by narratives about 'guest workers' and 'protecting the German labour market' (Heckmann 1994: 161; Hüttmann 2017). These developments were accompanied by a prevailing ethnonationalist narrative about Germany, the German people and migration. German reunification saw intra-national labour migration and the rise of new xenophobic movements, especially in the former GDR (Joppke 1999: 62-99; Kolb 2015), which had lasting consequences for the irregularisation of some migrant groups.²

The 1990s and 2000s saw several significant waves of migration and changes in the (ir)regularisation assemblage. Firstly, naturalization was eased for long-time residents (lowering the requirement from 15 to 8 years), a 1999 reform changing from *ius sanguinis* to *ius domicilii* (Joppke 1999: 200-202). These amendments introduced elements of the citizenship regulations of 'classical' countries of immigration. Naturalization was understood by the government as a 'final step of a successful integration process', a narrative maintained by the conservative mainstream until today. This followed a wider European trend to curtail state discretion in citizenship acquisition (in Germany, naturalisation until then was granted only in the case of 'public interest') and adopt a test- or merit-based administrative regime (Joppke 2010: 46). This trend has been linked to a more "porous" and less "discriminatory" understanding of citizenship (Joppke 2010: vii), thus impacting the

² The prevalence and political utility of the 'guest worker' narrative in the framing of continuing migration into Germany has been linked to the specific nation re-building (Green 2001) and of the dynamics of ethnonationalism that make migration the primary source of 'disturbance' for the congruencies of an ethnically understood nation state (Brubaker 2010: 68-70). Here, Germany's constitutionally embedded historical responsibility mitigated irregularisation in asylum policies.

irregularity assemblage. Secondly, the general stop to labour-market migration through recruitment was weakened by major exceptions – allowing contract labourers and seasonal workers within annual quotas. This policy and narratives of its economic necessity as ‘demand-driven immigration’ were contested by German labour unions. Such major exceptions and seasonal quotas created new irregularities for workers either outside the quota system or ‘overstaying’ where labour demand was regionally strong.

Beyond labour migrants, the 1990s in Germany were dominated by heated political/public debates over asylum and alleged asylum abuse (Bosswick 1997: 67). Fears of social unrest and crime were mounting, stoked not least by right-wing political factions, alleging wide-spread abuse of the asylum system and the ‘unworthiness’ of such ‘illegal’ or ‘bogus’ migrants. Facing increasing political pressure from local communities that were responsible for providing for incoming asylum seekers, and to comply with the ‘London regulations’ of 1992 regarding ‘host third countries’, the Social Democratic Party (SPD) in 1992 agreed to a landmark policy change, an amendment of Article 16a of the German Basic Law. The so-called Asylum Compromise – a compromise between the coalition government parties, which held ideologically opposed views – restricted the right to asylum by adding the ‘safe third country’ rule³ (Bosswick 1997: 67). Prior to this change, since its inception in 1949, Germany’s Basic Law had extended the right to asylum to all politically persecuted persons, irrespective of place of entry or origin – an exceptionally open asylum policy informed by the experiences of German refugees during and after World War 2. Since legal access to the German asylum procedure was now possible only via an airport – as they would otherwise be arriving from a ‘safe third country’ (all of Germany’s neighbouring states being deemed ‘safe’) and would thus fall under the respective rule –, the vast majority of migrants seeking asylum between 1993 and 1999 became irregularised, entering ‘illegally’ and hiding their entry path. This rendered the safe third country rule of the amendment ineffective, as illegal entry followed by an immediate asylum application was not persecuted, which provided a path to temporary regularisation for many. This ineffective policy fuelled the narratives of bogus asylum seekers and asylum abuse.

³ The ‘host third country’ or ‘safe third country’ principles state that if an asylum seeker arrives from a third country (neither their country of origin nor the country they apply for asylum in) in which they are not threatened as by Article 33 of the Geneva Convention, their application may not be examined and they may be sent back to that third country.

3. Migrant irregularity: general trends and features

3.1. Terminology on irregularity

This section covers official and non-official terminology on irregularity, legal definitions of residence titles/permits relevant in Germany today and their potential connection to irregularity.

People who are in Germany without legal residence status are referred to as ‘irregular migrants’, ‘undocumented migrants’ or ‘sans-papiers’, sometimes also as ‘illegal migrants’. As they are not registered, there is relatively little reliable information about them. Studies show: Irregular migrants are often de facto unable to assert the rights to which everyone is entitled in Germany, regardless of their residence status.

There are different terms for people who live in Germany without legal residence status: The term ‘irregular migrants’ is commonly used by authorities, as these people do not have ‘regular’ residence status in Germany. The French term ‘sans-papiers’ is also often used outside legal contexts. This term can be misleading, as the people usually have other documents – such as a foreign passport – but not a residence permit that is valid in Germany. The term ‘illegal migrants’ is often used, but has been criticised for being stigmatising and portraying irregular migrants as criminals. In legal terms, the phrase used is ‘people who are illegal residents’.

Irregular or illegal migration: The Federal Ministry of Interior discusses ‘irregular migration into Germany’ as resulting from ‘unpermitted’ and ‘illegal entry’ (*unerlaubte Einreise, illegale Einreise*) and closely connected to the ‘promise’ of ‘illegal employment’ (BMI 2023). An arguably increasing role is played by GASIM, a joint centre that bears the label illegal migration in its name and states its aims as analysing and fighting ‘illegal migration’, ‘illegal employment’, ‘human trafficking’ and ‘abuse of the welfare system’. There is a strong focus here on illegality and crime (drug trade, human trafficking, illegal employment) (BMI 2023).

These do not necessarily reflect the terminology or definitions used in the I-CLAIM project, as we approach these terms and their definitions as part of our object of research (the ‘object language’) rather than adopting them as our own (the ‘meta-language’).

The term ‘illegal migration’ signifies an explicit break of the national law in question by non-nationals according to a person’s present migratory legal status, whereas the term ‘irregular migration’ may refer to more complex processes than can be deemed ‘illegal’, depending on judicial interpretation. ‘Regular’ and ‘irregular migration’ is not to be understood only in regard to a legal, fixed status of a non-national at a point in time, but instead refers to a more complex condition that may change or persist over an unspecified time span. ‘Irregular migration’ or ‘being irregular’ thus points to the changing modalities or the legal hybridity of actions or processes, as well as to the possibility of changing status of migratory legality, sometimes resulting from – and sometimes regardless of – individual’s identities or attributes. Within this complex process, the present status of migratory legality may change over time, but it is legitimate to claim that the migratory process may be irregular at times and regular at other times. Pathways in and out of ‘irregularity’ are manifold and may change the status of migratory regularity from one day to the other. The concept’s nature of fluidity and hybridism becomes evident when looking at the various combinations of how a status of irregularity may be produced.

The phenomenon of ‘irregular migration’ can take place in manifold and non-exhaustive variations. Determinants of these variations are duration, purpose, political implications, geographical background,

background of decision-making (whether the decision was taken voluntarily or was a forced decision), as well as the type of actor (migrant) with reference to gender, age, and skills. Most research confirms that there is no typical irregular migrant (e.g., Alt 1999, 2003; Jordan and Düvell 2003; McKay 2009). Vollmer (2008a) and others have called for more research in this field, with Bloch, Boswell, Ruhs and Anderson (2003) adding important insights.

Thus, this report does not focus on a distinct group of people but a continuum of legal, economic and social states or conditions that may affect the same individuals at different times. We therefore do not refer to ‘refugees’ or ‘illegal migrants’ as a distinct and stable set of individuals. Regardless of these considerations, the following paragraphs summarise how German law and, sometimes deviating, German authorities use related terminology.

3.1.1. *Legal residency titles and their link to irregularity*

Residency rights are granted under the Residency Law (*Aufenthaltsgesetz*, abbr. *AufenthG*) under a range of stipulations. For foreigners who are not EU citizens, residency can be obtained in the form of a residency permit (*Aufenthaltserlaubnis*), the EU Blue Card, ICT Card, Mobile-ICT Card, settling permit or permit for permanent residency in the EU. Except for the latter, residency is granted temporarily.

Toleration (*Duldung*) is defined as the temporary suspension of deportation (*vorübergehende Aussetzung der Abschiebung*). Toleration does not give an individual legal residency status in Germany and upholds that individual’s obligation to leave Germany (*Ausreisepflicht*); it merely declares the state’s temporary refraining from deportation to enforce this obligation, usually because the individual has been found to be unable to leave the country factual, legal, personal or humanitarian reasons. Toleration also entails that the individual has been registered by the Immigration Authority (*Ausländerbehörde*), which voids the criminality of illegal presence in Germany. Legally, toleration can be bestowed for days or months, usually not exceeding 6 months at a time. In practice, individuals may remain tolerated – without a legal resolution of this precarious status – for many years; a recent estimate by the German government put the number of people living in this condition for more than 8 years at several thousands (Mediendienst Integration 2024). Should the recognised reasons for toleration cease, the authority can either revoke the toleration immediately or let it expire, in either case the previously tolerated individual immediately comes under threat of deportation. Should a tolerated individual leave Germany while toleration is in effect, it becomes invalid and does not provide for a legal means of re-entry. Toleration is subject to host of conditions and exceptions, illustrated below, that tend to generate irregularity and severely impact living conditions of migrants.

Toleration must be granted if residency is not granted but factual or legal reasons currently prevent deportation. Such reasons include: the individual’s presence at a criminal trial is required, because their absence would hinder the proceedings; urgent humanitarian needs; significant public interest in their continued but temporary presence in Germany. Urgent personal reasons are recognised as warranting toleration, if the individual has begun training in a state-recognised qualified profession, the conditions for an employment prohibition are not met, and concrete measures of deportation are not immanent. These reasons for toleration are voided if the individual has already been found guilty of a crime and received a sentence of more than 50 days. Toleration is also voided in case of such a sentence or termination of the vocational training.

According to section 60a(5b) of the Residence Act, which has come into force as of end of February 2024, a migrant with a “toleration” shall be allowed to work in absence of certain facts of exclusion if the *Bundesanstalt für Arbeit* has given their consent. Moreover, section 32(1) of the Ordinance on the Employment of Foreigners (*Beschäftigungsverordnung*) stipulates that the consent of the *Bundesanstalt für Arbeit* is not needed if the person in question has already lived in Germany with a residence permit, with a permission to remain pending the asylum decision or with a “toleration” for more than three months.

Tolerated individuals are banned from working if they entered Germany in order to gain access to welfare services (rather than escaping persecution), if they act to prevent deportation, e.g., by giving ‘false information’ on their identities, etc.

Tolerated individuals for the first three months may only live/reside in one German state, or even leave that state temporarily, unless their residency has been further restricted (*Residenzpflicht*). Personal needs such as education may warrant exceptions to this limitation. The restriction can be extended after 3 months if a criminal sentence, a concrete suspicion of a drug-related crime, or concrete measures for deportation are present.

Tolerated individuals have access to welfare services as per the Asylum Seekers Benefits Law (*Asylbewerberleistungsgesetz*, abbr. *AsylbLG*), which is meant to cover personal needs in food, lodgings, heating, clothes, basic healthcare and necessary household items. Medical emergencies and needs are covered as well. This access can be reduced if the individual is found to have come to Germany to gain access to welfare or is responsible for preventing deportation. After 36 months of tolerated residency without significant interruption or ‘abusive’ efforts to extend their stay, individuals have access to welfare according to social care (*Sozialhilfe*).

The so-called Opportunity Residency (*Chancenaufenthaltsrecht*, in *AufenthaltsG*) introduced in December 2022 grants a limited, 18-month residency to tolerated individuals who have continuously resided in Germany with tolerated, permitted or residency status for five years, if they commit to the liberal democratic constitution of Germany and have not been found guilty of a serious crime, if they have not repeatedly made false statements to prevent their deportation. Under specific conditions, this extends to married spouses, partners and underage children. This is meant to allow them to meet the requirements for gaining residency, especially earning a livelihood, language competency and proof of identity. This pertains to an estimated 40,000 individuals with tolerated status in Germany (i.e., without residency title); during the approx. 1 year since its introduction, the Opportunity Residency has been applied for by approx. 12,000 people.

Permission to stay (*Aufenthaltsgestattung*) is a status granted to individuals who have applied for asylum and are awaiting a decision on their application. The recognition process involves assessing whether the individual meets the criteria for refugee status or subsidiary protection under German and international law. According to German law and international conventions ratified by Germany, a person may be recognized as a refugee if they have a well-founded fear of persecution in their home country based on race, religion, nationality, sexual orientation, membership in a particular social group, or political opinion. Residency is granted to recognised refugees for three years, and is subject to revision/extension at the end of this period. Subsidiary protection may be granted if there is a real risk of serious harm in the home country, such as death penalty, torture, or inhuman or degrading treatment.

The process of recognition involves submitting an asylum application, attending interviews to provide information about the reasons for seeking asylum, and providing supporting evidence. The decision is made by the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, abbr. BAMF). It is important to note that the asylum process can be complex, and each case is evaluated individually based on its merits. Additionally, asylum seekers are entitled to certain rights and protections during the application process, regardless of the final decision on their asylum claim.

Asylum, refugee, recognised refugee (*anerkannter Flüchtling*): The legal recognition as an asylum seeker allows the individual to temporarily remain in Germany while their asylum application is being processed. During this period, they are entitled to specific rights and protections, including accommodation, healthcare, and the right to work under certain conditions.

The basic right to **asylum** (*Asyl*) is regulated in Article 16a of the German Basic Law (*Grundgesetz*). It is granted to politically persecuted persons who are persecuted by state or state-like actors. State-like actors can be, for example, the parties in a civil war. The basic right to asylum was severely restricted in 1993. Since then, anyone who has travelled from a safe third country can no longer invoke Article 16a of the Basic Law. Safe third countries include all EU member states. As there are only very limited opportunities for politically persecuted persons to enter Germany legally - for example with a work visa - the majority enter Germany illegally, i.e. without a valid entry permit, via dangerous land routes. If German can provide evidence that they are a Dublin case, i.e., have come through a safe third country, they are returned to that same country. As all persons entitled to asylum are also recognised as refugees (but not vice versa), they have the same rights as recognised refugees.

Recognition as a **refugee** (*Flüchtling*) in Germany is based on the Geneva Refugee Convention. However, compared to the right to asylum under the Basic Law, it has fewer restrictions. For example, entry through a safe third country does not lead to exclusion from refugee status from the outset under current law. Furthermore, persecution can also come from non-state actors if the country of origin is unable or unwilling to offer effective protection. This takes account of the fact that non-state actors such as terrorist groups or clans can pose just as great a threat to the individual as the state.

In order to be recognised as a refugee, the persecution must be linked to a reason for persecution as defined in the Geneva Refugee Convention, i.e. 'race', religion, nationality, political opinion or membership of a particular social group. This must be an innate characteristic (e.g. skin colour or gender) or a characteristic trait (e.g. religious conviction or sexual orientation) that is so essential to identity or conscience that the person concerned should not be forced to renounce it. This is also referred to as inalienable characteristics.

Refugee recognition is excluded if there are safe regions in the country of origin where the applicant can find internal protection. However, it must also be reasonable to expect that the person can live and earn a living there. A place where the person could not secure their minimum economic subsistence level is not considered a relevant internal flight alternative.

Anyone who is recognised as a refugee not only receives a residence permit for three years, which can then be converted into a permanent residence permit (settlement permit), but also a blue travel document for refugees. This is recognised as an identity document by all countries that have signed the Geneva Refugee Convention. Recognised refugees can attend an integration course. They are also free to choose their place of residence within Germany and can travel within the Schengen area without a visa for a period of three

months. Family reunification is possible under simplified conditions: If family reunification is applied for within three months of asylum being recognised, the family's livelihood does not have to be secured in order to be allowed to bring family members to Germany. In addition, the spouse joining the family does not have to provide proof of German language skills.

Voluntary return (*freiwillige Rückkehr*) is one of three 'durable solutions' to refugee status. Voluntary return is available to recognised refugees and denied asylum seekers as organised or spontaneous return. The term is thus also applied to individuals who have no choice but to return spontaneously and without assistance – among these, there are those that prefer to enter irregularly.

Subsidiary protection is a legal status granted to individuals who do not qualify as refugees but still face a real risk of serious harm if returned to their home country. In Germany, as in many other European countries, subsidiary protection is a form of international protection provided under the European Union (EU) Qualification Directive.

To be eligible for subsidiary protection in Germany, an individual must demonstrate that they face a real risk of suffering serious harm in their home country, such as: death penalty or execution; torture or inhuman or degrading treatment; serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of armed conflict.

Subsidiary protection is typically granted when an applicant does not meet the criteria for refugee status but still requires protection due to the risk of serious harm in their home country. The decision to grant subsidiary protection is made by the Federal Office for Migration and Refugees (BAMF) based on an individual assessment of the asylum application.

Individuals granted subsidiary protection in Germany are entitled to certain rights and benefits, including residence permits, access to the labour market, and social welfare provisions. However, subsidiary protection is considered a temporary status, and individuals are expected to return to their home country once the situation that led to their protection status has improved. In contrast to asylum, subsidiary protection entails residency for one year, with the possibility of extension by two additional years, if the threat is found to persist during a re-evaluation following an application for extension; this extension can be granted multiple times.

This temporary protection is granted to individuals who have fled Ukraine since 24 February 2022 – specifically Ukrainian nationals and their close family members, non-Ukrainian nationals, stateless persons and their close family members who are recognised as refugees in Ukraine or possess international protection status, non-Ukrainian nationals who cannot return safely to their country of origin –, as per the EU Temporary Protection Directive and its implementation in §24 of the German Residence Act (AufenthG), allowing them to obtain residence permits without applying for asylum or refugee status. Additionally, at the time of this writing, Ukrainians entering Germany for the first time before 4 March 2024 and staying for up to 90 days, are temporarily exempt from the requirement to have a residence title. The last date on which it is possible for this specific group to be in Germany legally without a visa or residence permit is 2 June 2024. They are expected to apply for a residence permit within those 90 days, with the application itself leading to a provisional residence document (*Fiktionsbescheinigung*) that regularises their stay. Access to the labour market, social benefits and healthcare all depend on obtaining a residence permit.

The principle of **freedom of movement** grants EU citizens residency rights for 3 months. This form of residency is not formally requested and granted but follows implicitly from these conditions. The only legal requirement is for EU citizens to register their address at the *Meldebehörde*. Beyond 3 months, EU citizens enjoy continued freedom of movement if they are employed, self-employed, looking for work (requiring, after 6 months, evidence of work prospects), having the means to support oneself and have health insurance regardless of being unemployed, have stayed for 5 years continuously.

3.2. Figures and estimates about irregularised migrants (migrants with no or precarious legal status) in the country

There is no reliable data on how many people in Germany are ‘living illegally’ under residence law. As an approximation, a distinction can be made between the known and unknown number: In 2014, researcher Dita Vogel estimated that between 180,000 and 520,000 people in Germany were living “illegally under residence law”. This 10-year-old estimate was based on data from the police crime statistics (Vogel 2014). Due to the methodology applied in this estimate, no conclusions can be inferred as to the composition of this group regarding nationality, form of entry or loss of residency status. Upon consultation with our stakeholders, it is likely that substantial portions of this group are rejected asylum seekers who have lost residency and/or toleration; individuals whose toleration has expired; undocumented migrants; and individuals whose residency status was revoked for some reason or other.

A more recent estimate published by the Pew Research Center for Germany puts the figure at over one million irregular migrants. However, this estimate is based on an incorrect methodology, which is why it was explicitly rejected and refuted by the German Centre for Integration and Migration Research (DeZIM). For example, the Pew Research Center includes asylum seekers and people with tolerated status in the statistics of irregular migrants, although asylum seekers in Germany are granted a residence permit and are therefore not in the country irregularly (Hosner 2020).

As by the number of irregular migrants reported and registered in Germany, the minimum number of people known to be residing irregularly in Germany is currently around 56,000 (as of December 2022). These are documented persons obliged to leave the country. Those ‘required to leave’ include rejected asylum seekers or foreign students, workers and tourists whose visas have expired. As of 31 December 2022, 304,308 people in Germany were required to leave the country. However, around 82 per cent of those ‘required to leave’ have a tolerated stay (see *Duldung*). Tolerated persons therefore do not fall into the category of undocumented/irregular residents. The number of persons directly obliged to leave the country amounts to 56,163 (as of December 2022) (Bundestagdrucksache 20/5749).

The number of irregular migrants should not be confused with the number of ‘unauthorised entrants’, i.e., migrants entering Germany illegally. This is because all persons who enter Germany without a valid visa or residence permit are initially considered to have ‘entered the country without authorisation’. This applies, for example, to migrants seeking protection in Germany. However, they are only considered “illegal residents” as long as they have not yet applied for asylum. As soon as they submit an application for asylum, these people are no longer irregular, but receive a residence permit for the duration of the asylum procedure.

The number of tolerated individuals has been increasing steadily since 2015, accompanied by an unsteady but slight trend of increasing number of persons immediately obligated to leave.



Fig. 1: Persons without residency under obligation to leave (Mediendienst Integration 2023)

Voluntary return: The handling of statistical data on voluntary return differs depending on the context (Harild et al. 2015, p. 42). In Germany, figures on voluntary return include both recognised refugees who decide to leave Germany and those whose application has been rejected but who then decide to avoid deportation proceedings. Spontaneous return is not systematically recorded (Grote 2015, p. 19f).

4. Relevant national legal and policy framework on irregularity

4.1. Key policy documents and changes and entanglement with recent ‘crises’ (after 2000)

The beginning of a recognition of the precarity of irregularity lies with various church and non-church activists who campaigned for the issue in the late 1990s and early 2000s: Father Jörg Alt (Jesuits), Sister Cornelia Bührlé (Sacre Coeur) and Auxiliary Bishop Voss on the church side; there was a campaign ‘No human being is illegal’ and Pro Asyl also promoted the issue; church representatives were listened to more as a voice of reason by CDU/CSU Union politicians.⁴

It was around the turn of the century that Germany began to publicly rethink its stance on migration, eventually taking an official position as an immigration country. Several developments contributed to this, some international and others national – including German reunification and the Independent Commission on Immigration led by Rita Süßmuth. In line with a profound turn in German discourse from restriction towards a connotation of immigration as an important resource in global competition, the German government installed an independent commission on immigration for proposal development. The commission comprised politicians, representatives of important institutions and civil society (including churches, unions, industry associations) and scientific experts (Zuwanderungskommission 2001). On 4 July 2001, the Commission, which had been set up in September 2000, presented the Federal Minister of the Interior, Otto Schily (SPD), with the report “Immigration gestalten, Integration fördern” (Shaping immigration, supporting integration). This report presented recommendations for a future immigration policy – some of which have been implemented, while others have not to this day. These recommendations included considerations on how to determine the necessary demand for immigrants and how this immigration can be controlled and limited. The commission concluded that immigration had become a necessity for economic as well as demographic reasons, and recommended the introduction of a point system similar to the Canadian model. The commission’s recommendations were welcomed by the SPD (Social-Democrats), FDP (Liberals) and the Greens, as well as the UNHCR, churches, employers, unions, foreigners’ councils and representatives of migrant groups. The two main conservative parties, CDU and CSU, however, rejected the proposals, criticising them as extending rather than limiting immigration. This marks the emergence of, or at least increase of, a significant split, in the political discourse about the role of migration in Germany – on the one hand, narratives about migration as an economic or demographic necessity that would benefit Germany and its people; on the other hand, narratives about migration as an economic burden and threat to social stability and cultural or ethnic congruence (Heckmann 2005).

The report also suggested how asylum procedures could be made more fair, more effective and shorter, and how abuse can be counteracted, while respecting Germany’s humanitarian obligations. The Commission also developed a concept for the integration of immigrants and made proposals for the organisational, institutional and legal implementation of its concept. The report had a paragraph about “Illegals” stating that they need to leave the country, but they should be entitled to help if in need and those who help them should not be criminalised. Children should be able to attend the school in spite of the fact that schools need to report their irregular stay (Süßmuth 2001, 11).

⁴ Documentation from the early days can be found at www.joerg-alt.de

The report established that Germany needs immigrants and therefore needed an overall concept to organise immigration, setting out clear objectives: meeting humanitarian responsibilities, contributing to securing prosperity, improving the coexistence of Germans and immigrants, and promoting integration. Specifically, it argued that the organisation of labour market-related immigration must meet the following challenges:

(1) to ensure Germany's competitiveness – being embedded in an increasingly interconnected global economy in which people's qualifications and knowledge are decisive growth factors –, Germany will be even more dependent than before on the international exchange of knowledge. It must develop new solutions to problems and new ways of thinking and working together with immigrants.

(2) Since Germany's population is ageing and will decline significantly in the 21st century, this will not only impact the labour market, but will also impair the innovative strength of the economy and society if there is no appropriate response.

It further argued that reforms were needed urgently, especially in education and training policy, family policy, science and technology policy as well as labour market and social policy. In addition, it called for new paths for immigration that are in the interests of society as a whole, without compromising the labour market opportunities of local workers (in no way diminishing Germany's obligation to protect politically persecuted persons).

The paradigm shift in immigration policy that the Immigration Report called for only occurred to a limited extent (Siefken 2007). Some of the recommendations have been realised in the course of an arduous political compromise (Davy 2002, 171; Duchrow 2004). Indeed, fundamental immigration issues still need to be clarified and regulated, particularly with regard to admission to the labour market and improving the integration of children and young people in particular.

In 2001, the same year the *Zuwanderungskommission* published its ground-breaking report, the German Bishops' Conference published 'Life in illegality in Germany' (*Leben in der Illegalität in Deutschland*), a humanitarian and pastoral challenge (DBK 2001). Also in 2001, at the request of Georg Cardinal Sterzinsky, the first Malteser Medicine for Migrants (now Malteser Medicine for People without Health Insurance) was opened in Berlin. Its aim is to provide healthcare services for people without residence status.

In 2002, the Proposal for a General Plan to Combat Illegal Immigration and Trafficking in Human Beings in the European Union was adopted (Abl 2002 C 142). It declared the aim of preventing and combating illegal immigration to be essential elements of the common asylum and immigration policy of the European Union. Negotiations, conferences, programmes, measures, decisions and laws completed the process of the new European border regime, for which 'illegal migration' is a unifying element. After all, 'illegal migration' was construed and posited – alongside international terrorism and organised cross-border crime – as one of the three central threats to Europe, the area of freedom, security and justice (Wilcke 2017, 58).

In 2003, the city of Munich published a ground-breaking study it had commissioned under the title "So you do not forget us..." People in illegality in Munich" (Anderson 2003). The study brought to the public eye and into the political debate the realities of people living in 'illegality', being irregularised in one way or another, and also paved the way for a more nuanced and active research interest in the lived reality of this group.

A proposed immigration law, which only included some of the commission's suggestions to begin with, failed due to a political stalemate during negotiations. It was not until 2004 that a compromise was reached. This was the last major reform of immigration before the Integration Law of 2016. The 2004 reform focused on labour and the economy: For instance, the law offers the option of permanent residency for immigrating highly qualified persons if they invest at least €1 million and create at least ten jobs. The ban on the recruitment of unqualified labour and persons with low qualifications was maintained, with the exemption of individual cases with 'public interest' in their employment. The 2004 Undeclared Labour Act (*Schwarzarbeitsgesetz*) also impacted irregular migrants working illegally in Germany. It was in the same year, 2004, that the Catholic Forum Leben in der Illegalität (Life/Living in illegality) was founded by the DBK (German Bishops' Conference), the German Caritas Association, Malteser International and the Jesuit Refugee Service. Father Jörg Alt was its first managing director (Forum Illegalität 2004).

In 2005, the review mandate (*Prüfauftrag*) was implemented as part of the coalition agreement of 2005, applying also to the area of 'illegality' and the issue of municipal voting rights for foreigners who are not EU citizens. This mandate required an evaluation whether the legal situation was in practice addressing all 'problems' in a 'satisfactory' way. The Federal Ministry of the Interior, in a report titled 'Illegally resident migrants in Germany', stated that medical assistance rendered to illegal immigrants is not covered by the offence of § 96 Para. 1 No. 2 of the Residence Act (aiding and abetting to unauthorised residence), meaning doctors and other medical personnel who provide medical assistance are not liable to prosecution.

The General Administrative Regulation of the Federal Government on the Residence Act of 18 September 2009 (BR-Drs. 669/09) clarified this: Actions by persons who are acting within the scope of their profession or their socially recognised honorary office (in particular pharmacists, doctors midwives, members of the nursing professions, psychiatrists, counsellors, teachers, social workers, judges or lawyers), will not regularly fall under this stipulation insofar as the actions objectively relate to the fulfilment of their legally defined or recognised professional/voluntary duties.

The Residence Act of 2005 (*AufenthG*) furthermore introduced 'hardship commissions' (*Härtefallkommissionen*). These are adjudicative bodies that can help foreigners who are obliged to leave the country and who are not entitled to a right of residence under current law to obtain a right to stay (*Bleiberecht*) because enforcing the obligation to leave would be humanely or morally intolerable. The preamble to the Lower Saxony regulation, for example, states that the Hardship Commission makes a decisive humanitarian contribution to solutions in which the application of immigration law provisions leads to results that the legislator clearly did not intend.

With regard to asylum, since 2000, the humanitarian aspect was foregrounded next to political persecution; the new legal situation complies with the EU asylum directive regarding non-state persecution and gender-specific persecution. Regarding integration, a system of 'integration' courses was implemented, granting all migrants access to such courses but making it mandatory for some, such as long-term residents receiving welfare payments, or migrants classified by the authorities as 'in special need of integration' – this classification is categorical for entire groups (e.g. refugees) rather than judgement of individuals. This indicates a response to the hegemonic narrative of 'integration refusers' or migrants 'unwilling to integrate' as well as 'exploiting' the German welfare state and the possibility to penalize those failing to integrate (e.g. reducing welfare payments) (Steinert 2014).

The so-called “refugee crisis” of 2015 led to the emergence and intensification of several narratives related to asylum seekers and refugees in public and political discourse. German Chancellor Angela Merkel was largely successful in making the humanitarian/solidarity-based narrative of helping refugees by allowing entry the prevalent, hegemonic narrative – a return, one might argue, to a view of the universal right to asylum as it had existed in the German Basic Law until the early 1990s, de facto voiding the ‘safe third country’ rule while Germany kept its borders open to migrants. In the sphere of mainstream media, this humanitarian shift has held true until today. In the political sphere, there has been more backlash, with the emergence of first the PEGIDA protest movement⁵ and then the AfD (*Alternative für Deutschland*) as a political party. While the party has not been able to maintain the level of electoral success it had initially, especially in some parts of Germany, AfD became and remains a political force that is strongly anti-migration (and, specifically, anti-refugee or anti-asylum) – current election polls predict that AfD will be elected into the state parliaments of Saxony, Thüringen and Brandenburg in 2024. Inasmuch as the far-right populist party AfD owes its founding and electoral success to its anti-migration narratives, the latter have evidently had a significant and lasting impact on the entire political landscape of Germany, including the national and federal states’ respective party systems.

Narratives propagated by these counter-movements depict migrants as potential terrorists and criminals, linking them to criminal trafficking and smuggling rings. Political discourse on the so-called refugee crisis also brought to the fore narratives about “deserving” and “underserving” migrants/refugees. This included the notion of the ‘genuine refugee’ as opposed to the ‘economic refugee’ (*Wirtschaftsflüchtling*), the latter replacing other notions of ‘bogus’ or ‘fake’ refugees (*Scheinasylant*) that had come before to describe those who, allegedly, applied for protection upon arrival in the country and try to take advantage of liberal asylum policies.

Finally, the so-called refugee crisis sparked political debate on Germany’s role within Europe/the EU. Several narratives revolve around Germany’s moral leadership and responsibility, interconnecting with narratives about German/European/Christian values (Reiners/Tekin 2020) and the securitisation of migration/demonisation of irregular migrants (Vollmer 2017). The German political context of migration policy was substantially changed by the 2015 migration movements and subsequent events. The continuing absence of clear EU/European migration and asylum policy has slowly led to the questioning of Merkel’s doctrine of humanitarian solidarity and open borders, coupled with the positive attitude epitomised in her “*Wir schaffen das*” (We can do this). Debates have come to focus, on the one hand, on Germany’s role in Europe (leadership, shouldering a burden) and values; on the other hand, economic and labour market considerations remain a strong undercurrent in political discourse and policy making regarding non-refugee immigration and integration. These debates are currently (2023-2024) leading to first significant shifts in Germany’s policies, i.e., a stricter stance and tightening of regulations including the Asylum Seekers Benefits Law (*AsylbewG*) and Return Improvement Act (*Rückführverbesserungsgesetz*) that concern access to welfare and deportation, respectively.

⁵ The acronym PEGIDA stands for Patriotic Europeans Against the Islamization of the West (in German ‘*Patriotische Europäer gegen die Islamisierung des Abendlandes*’). It is a right-wing populist, anti-Islam, and anti-immigration movement that originated in Dresden, Germany, in 2014. PEGIDA initially gained attention for its weekly street demonstrations, which focused on protesting against what its supporters perceived as the ‘islamization of Europe’ and the failure of mainstream political parties to address their concerns about immigration and cultural change. PEGIDA’s rhetoric is xenophobic, Islamophobic, and divisive. Despite its initial prominence, PEGIDA has faced internal divisions and declining support over time. However, its ideas and rhetoric have influenced broader debates and political parties, most prominently AfD.

The 2018 Global Compact on Safe, Orderly and Regular Migration (UN 2018) recognises the obligation of signatories to uphold migrants' human rights regardless of their status or lack thereof (§11). "By implementing the Global Compact, we ensure that the human rights of all migrants, regardless of their migration status, are effectively respected, protected and guaranteed throughout the migration cycle. We also reaffirm the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance, against migrants and their families" (§15f). Signatories further commit (§23f) to adopting comprehensive policies and developing partnerships that provide necessary support to migrants in vulnerable situations, regardless of their migration status, at all stages of migration, by identifying and assisting them and protecting their human rights, in particular in cases related to vulnerable women, children, especially unaccompanied and separated children, members of ethnic and religious minorities, victims of violence, including sexual and gender-based violence, older persons, persons with disabilities, persons discriminated against for any reason, members of indigenous peoples, workers subjected to exploitation and abuse, domestic workers, victims of human trafficking and migrants subjected to exploitation and abuse in the context of migrant smuggling. Further aims relate to protection against exploitation and recourse to legal protections (§26e) as well as access to basic services regardless of migration status (§26e). These aims have not been fully implemented by Germany (EESC 2019) and, to date, remain in tension not just with the letter of the law but its underlying mindset of policing.

In 2019, the powers of the Customs Authority (financial control of illegal employment) were extended, also impacting irregularised migrants who work in illegal conditions – including individuals without residency status and migrants with temporary residency but no work permit. This government agency monitors whether employment is registered or not, the latter being synonymous with the terms 'undeclared work' or 'illegal work'. While the discovery of such undeclared employment harbours risks for irregularised migrants, their undeclared employment as such does not criminalise them but their employers. The Customs Authority now carries much of the responsibility for the EU's Employer Sanctions Directive 2009/52, specifically sanctions against employers who employ irregular migrants.

The 2021 coalition agreement includes migration-related aims that have yet to be implemented, specifically regarding irregular migrants' exploitation – providing seasonal workers with full health insurance cover from day one; strengthening 'fair mobility' and making employees more aware of their rights; ratifying Convention No. 184 of the International Labour Organization (ILO) on Occupational Safety and Health in Agriculture; preventing structural and systematic violations of labour law and occupational health and safety by enforcing the law more effectively – and revising the obligation to report undocumented migrants in healthcare contexts (*Übermittlungspflicht*). In spite of a broad civil society campaigning⁶ to abolish reporting obligations, these remain largely in place.⁷

4.2. Routes into and out of irregularity (historically, legally)

There are several routes into and out of irregularity: People enter the country with a valid residence permit - for example a visa - but do not leave after the residence permit expires ('overstayers'). Another way is 'illegal entry': people who enter Germany without a residence permit - such as a tourist visa, an EU Blue Card or a

⁶ <https://gleichbehandeln.de/>

⁷ See also the Federal Working Group on Health/Illegality and its campaign: https://forum-illegalitaet.de/wordpress_01/wp-content/uploads/2017/05/BAG-Gesundheit_Illegalit%C3%A4t-Arbeitspapier-2017-final.pdf

protection status - and do not apply for asylum after entering the country are illegal residents. This also effectively also applies to victims of human trafficking. It should be noted that almost all asylum seekers who come to Germany are initially considered to have 'entered illegally'. However, as soon as they apply for asylum, they receive a temporary residence permit and are therefore regular residents while their asylum application is under review.

If an asylum seeker's application for asylum is rejected - i.e. neither refugee status nor subsidiary protection or a ban on deportation apply - they are obliged to leave the country. If they miss their departure date and evade deportation, they reside in Germany illegally under residency law. A limited number of specific reasons that prevent deportation will allow the individual in question to obtain tolerated status (see *Duldung*).

An exception to the requirement of a residency permit is tolerated stay: Although toleration is not a residence permit, it is a temporary legal option to stay. People who have a tolerated stay permit are therefore not illegal under residence law. Only if people do not extend their tolerated stay permit and do not have any other residence title do they become illegal under residency law. Applying for an extension of the tolerated status is considered the responsibility of the individual concerned; such extension is granted only if the original reasons for its granting persist, new reasons for tolerance exist, and if at the same time no reasons for revoking tolerated status (such as a criminal sentence) exist.

For many individuals affected at one time or other by irregularity, the limited options of changing between one form of residency and another are crucial. This so-called 'lane change' or '*Spurwechsel*' can be fraught with risk, if transition is not guaranteed and losing or giving up one residency title means risking irregularity and deportation. In addition, the basic possibility of a change of title is in most cases a discretionary decision by the immigration authority rather than a legal entitlement. However, the Immigration Authority is obliged to make a reasoned discretionary decision, taking into account both the personal interest of the applicant and the public interest in securing the skilled labour base.

A change from a residence permit and most other residence titles to another residency permit or residency title without prior departure is not categorically denied. This results from § 39 of the Residence Ordinance (*AufenthV*). However, this always requires that the conditions that are required for the desired residence title must always be fulfilled. There are currently four different legalisation options for a change of residence:

- The humanitarian right of residence for well-integrated foreigners (§ 25b AufenthG).
- The humanitarian right of residence for young people and adolescents in training (§ 25a AufenthG).
- The right of residence for employment purposes after completing qualified vocational training (§ 19d AufenthG), which is to become more efficient through the inclusion of the so-called educational toleration, i.e., *Ausbildungsduldung* (§ 60c AufenthG).
- The humanitarian right of residence for persons who cannot be deported in the long term (§ 25 AufenthG).

However, some residence titles include restrictions on which other residence titles can be changed. This applies in particular to residency permits for training or study: Before completing a course of study, for example, a change from a residency permit can only be granted to those residency permits that are expressly provided for in § 16b AufenthG.

4.3. Migration law enforcement: deportation, criminalisation

Access to welfare, including education and healthcare services, despite being enshrined in fundamental rights, is tied to factual barriers and existential risks for irregularised migrants and/or for those who provide them. This arguably results from the overriding securitisation of migration in the sense that German law has traditionally treated migration as a matter of policing and maintaining security. A series of attempts and small steps have been taken over the past 20 years to remedy this situation.

A specific challenge for irregularised migrants, and those who provide basic services for them, is the legal obligation to report ‘undocumented migrants’ to the authorities. In 2006, the Bündnis 90/Die Grünen parliamentary group submitted a draft bill which, among other things, envisaged exempting social authorities, hospitals, schools and kindergartens and labour courts from the obligation to provide information in order to give undocumented migrants access to healthcare, education and legal action before labour courts. The draft was rejected by the Bundestag (Diakonie 2023).

The obligation to transmit data was limited to police and regulatory authorities as well as public authorities (exempting, e.g., healthcare professionals) was implemented in the Residency Act of 18 September 2009, nominally ensuring that medical confidentiality is maintained at all times, including in public offices. According to this, public authorities may not, in principle, pass on patient data that they have received from a person subject to the duty of confidentiality, e.g. the administrative staff of hospitals, to the immigration authorities. Exceptions are stated as threats endangering public health or the consumption of hard drugs.

Since 2011, schools and educational institutions have been expressly exempted from the legal obligation of public authorities to report knowledge of illegal residence to the immigration authorities. This is intended to enforce the human right to education for all children and young people living in Germany, regardless of their residence status. However, a 2015 study points out that it is practically impossible to enrol undocumented children at many schools because school staff continue to assume that undocumented children have de facto no rights. (Funck, Karakaşoğlu, Vogel 2015)

2012 saw two important steps. The first of these was a landmark court ruling, in which the Federal Constitutional Court concluded that human dignity must not be relativised in terms of migration policy (Bundesverfassungsgericht 2012). Second, the Advisory Board of the Commissioner for Integration adopted key recommendations for action with the aim of enabling children without residence status in Germany in particular to enjoy an existence that better guarantees the exercise of human rights (access to health, identity, youth welfare services) (Bundesregierung 2015).

Despite such efforts, the situation for irregularised migrants regarding access to welfare remains precarious. The concluding observations on the sixth periodic report of the Economic and Social Council (2018) on Germany note concern “that section 87 (2) of the Residence Act (*Aufenthaltsgesetz*) obliges public authorities to report undocumented migrants to immigration authorities, which can deter irregular migrant workers [sic] from seeking services, such as health care, that are essential for the enjoyment of their rights and from

reporting crimes, including domestic violence and sexual and gender-based violence (arts. 2 (2) and 12).” The committee also recommended that the state “establish a clear separation (‘firewall’) between public service providers and immigration enforcement authorities, including through repealing section 87 (2) of the Residence Act, to ensure that irregular migrant workers can access basic services without fear.”

Regarding deportation, the so-called ‘hardship commissions’ have played a limited role in preventing grossly inhumane deportations, becoming a source of residency rights. All 16 German states have implemented hardship commissions (see above). The law that initially introduced these commissions had a timeframe until 2009, which however was removed due their successful work (Bundestag 2008), making them a permanent part of the residency granting apparatus. Statistics on their work are somewhat difficult to obtain, but a recent estimate puts the number of rejected asylum applicants granted the right to stay by these commissions at more than 10,000, indeed the majority of the cases they accept (focus 2022). Deportations from Germany were declining between 2007 and 2013, and saw a sharp increase in 2015 to 2019, sharply dropping in 2020, and have been steadily rising since then (see Figure 2).

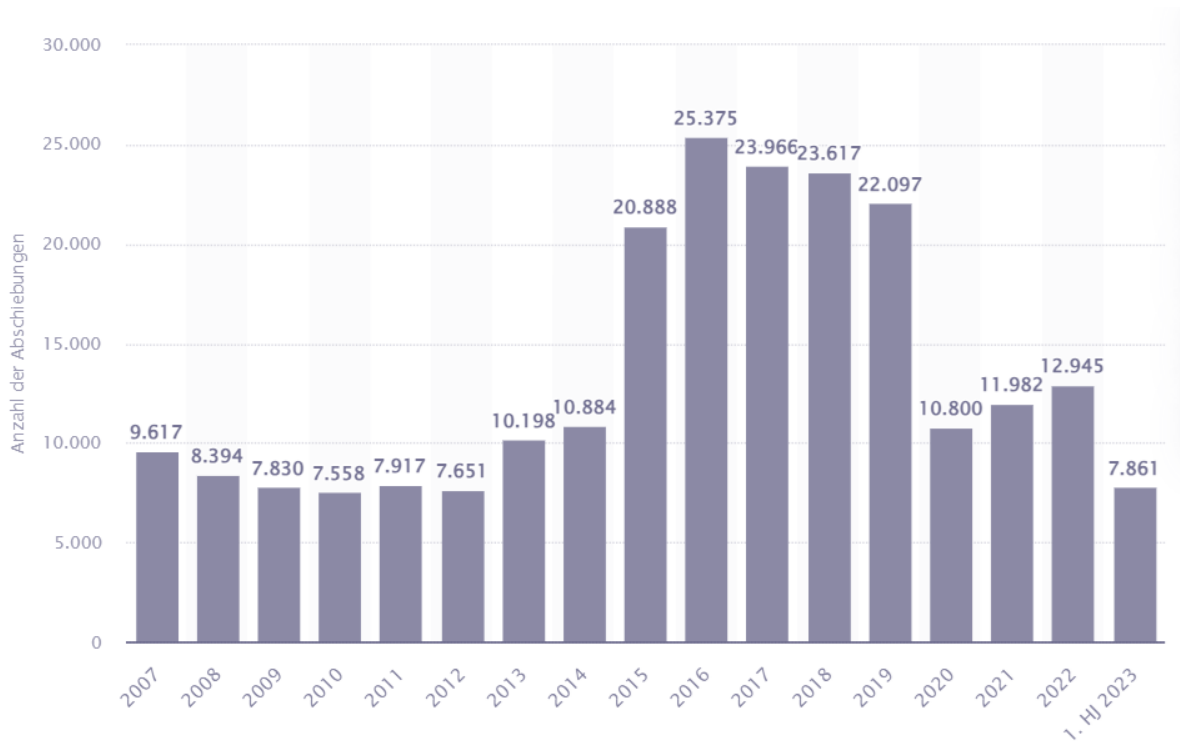


Figure 2: Deportations (Statista 2023)

5. Entanglements with employment, production, social reproduction and welfare regimes

5.1. Labour markets and employment regimes

While no reliable statistics exist on the illegal employment of irregular migrants and their exploitation, this is estimated to be a widespread practice in specific segments of the labour market. Specifically, irregularised migrants who enter into undeclared and therefore illegal employment strongly depend on their employers, making them highly vulnerable to exploitation. Without anonymous access to general welfare services, with only emergency medical services and childbirth being protected against reporting, irregularised migrants depend on paid illegal work to earn their livelihood and, in many cases, provide for family members. Despite existing legal frameworks to fight such exploitation (and illegal or undeclared employment in general), irregular migrants continue to fall victim to exploitative employment practices.

Since 2009, Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 requires member states to provide for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

Since 2011, German law expressly stipulates that undocumented migrants are entitled to payment of agreed remuneration, even from undeclared employment, and can sue for it before a German labour court. However, there remains the risk of being reported as undocumented migrant to the Immigration Authority. Under the umbrella of the trade unions, some legal advice centres offer irregular migrants targeted advice and support in the event of labour exploitation or wage fraud (see also Vogel and Cyrus 2018). However, a study with Bulgarian and Albanian speakers in Berlin has shown that they are not aware of the protective provisions and entitlements under labour law and doubt their enforceability (Kovacheva and Vogel 2012).

In 2017, the German Federal Office for Migration and Refugees (BAMF) published a study focusing on the illegal employment of third-country nationals as part of illegal employment and the informal economy in general. It addressed the extent, existing preventive measures, the authorities responsible for controlling, their legal framework as the consequences for employers and employees in case of illegal employment of third-country nationals. The study asserts that illegal employment, specifically of third-country nationals, has also come under greater public scrutiny due to the increase in the immigration of people seeking protection. The debate was characterised by the concern that the high number of those seeking protection and their often precarious living situation, combined with the (at least temporary) restriction of work permits, would increase the occurrence of illegal employment. There were also fears that this could have a negative impact on the labour market and drive down wages for established workers. The various actors largely agreed that the swift integration of new immigrants into the labour market would be the best way to prevent illegal employment (Tangermann and Grote 2017).

The curtailing of illegal employment in general is substantially governed in Germany by the Act to Combat Clandestine Employment, which establishes the authority of the responsible unit of the Customs Agencies, prescribes the manner and scope of co-operation between various government authorities, and defines the regulations on regulatory fines and punishments for violations. The Act to combat Clandestine Employment, the Act on Temporary Employment Businesses and the Posted Workers Act all contain regulations on regulatory fines and punishments for illegal employment, and, in conjunction with the corresponding

regulations in the Residence Act, provide the legal framework for prosecuting and punishing employers of third-country nationals and employees alike.

The Customs Authorities are primarily responsible for uncovering and investigating illegal employment. Furthermore, various actors are involved in curtailing the informal economy in Germany. The responsibility for combating criminal activity in the informal economy lies chiefly with the police (especially organised and white-collar crime) and state tax authorities (especially tax evasion).

Conclusive scientific studies, estimates or assessments on the extent of illegal employment of third-country nationals are lacking so far, making it impossible to determine third-country nationals as a percentage of all illegally employed persons in Germany. The clandestine nature of the informal economy makes it impossible to quantify its exact extent. However, there are various approaches to approximating its extent that are based on estimates and extrapolations, but occasionally produce radically different results. (Tangermann and Grote 2017)

Illegal employment can be found in almost all sectors of the economy, but especially in labour-intensive branches which are defined in Section 2a of the Act to Combat Clandestine Employment: building industry; hotel and restaurant services; passenger transport; freight, transport, and related logistics; fairground entertainment industry; forestry businesses; industrial cleaning businesses; businesses involved in the building and dismantling of fairs and exhibitions; meat industry. (Tangermann and Grote 2017)

Various measures have been taken in an attempt to prevent illegal employment, although these, too, are general in nature, with only a few directed specifically at third-country nationals. These measures are primarily campaigns aimed at informing employers of the penalties and risks of illegal employment, as well as offers of legal advice to illegally employed third-country nationals.

Cases of illegal employment of third-country nationals that are discovered are forwarded to the public prosecutor's office and the local Immigration Authority, which initiate regulatory fine/criminal proceedings and/or take steps regarding the residence status of such third-country nationals where necessary. (Tangermann and Grote 2017)

Both employers and employees working without the proper residence title or without an entitlement to pursue an economic activity can face criminal and regulatory charges. Employers who hire illegal third-country nationals may be fined up to € 500,000. Various violations in relation to the illegal employment of third-country nationals, especially when the offence is particularly severe, are also punishable by imprisonment or disqualification from public contracts and subsidies. Social security carriers will also demand any unpaid social security contributions. (Tangermann and Grote 2017)

The recent changes of the Immigration Act for Skilled Workers (*Fachkräfteeinwanderungsgesetz*) in 2023 have somewhat reduced the barriers for immigration for those considered 'skilled workers'. Specifically, this allows individuals with certified qualifications (even if not recognised in Germany) and at least two years of relevant work experience to obtain a residency title and thus legally enter and work in Germany. The criteria used, making this a 'merit-based immigration regime', include not only qualification and work experience but also language skills (German and English), relationship with Germany, age and spouses that would co-migrate. Importantly, migrants who have obtained residency on this basis are not limited to work related to

their qualifications and work experience. Applicants are now legally entitled to a residency permit if these criteria are met.

According to the German Employment Ordinance, as revised by the Seasonal Workers Directive 2014/36/EU, the employment of third-country nationals as seasonal workers requires bilateral agreements. Nonetheless, in practice, the agri-food sector remained vulnerable to undeclared work and exploitative employment structures.⁸ During the Covid-19 pandemic, mass infections occurred among (often irregular) migrant workers in the agricultural sector. While scandals in meat factories led to rapid policy change in Germany to improve working conditions for labour migrants (e.g. inclusion in the in the domestic social security system), seasonal workers – and thus the harvesting sector – did not receive similar attention. Thus, the underlying issue remained: largely uncontrollable employment conditions on the farms outside the social security obligation in a quasi-servant and highly dependent and vulnerable labour status for (often irregular) migrant workers. Labour shortages on the one hand and consumer demand on the other prevented far-reaching reforms to improve conditions for seasonal workers. German recruitment policy as well as occupational safety and health administration focus on the interests of farm owners, retailers and consumers rather than worker' rights. (Schneider & Götte 2022)

For holders of an EU Blue Card, salary thresholds in regular occupations and so-called bottleneck professions (with great labour market need) have been significantly lowered. The possibility of obtaining an EU Blue Card has been opened to a wider group of people. For example, foreign people who have graduated from university within the last three years can obtain an EU Blue Card if their job in Germany earns them more than the threshold.

5.2. Household dimension: Gender and Generation

Given the precarious status of irregularised migrants in virtually all aspects of life, their legal status often directly impacts other family members. Legally, this concerns mainly spouses (married or not) and children/dependents, while economically it may affect anyone belonging to a given household.

The right to family can affect deportation in the sense that existing family ties (marriage, parenthood) to persons residing in Germany may intercede deportation/the obligation to leave. If deportation/departure is legally impossible for family reasons, persons may also be granted a residence permit in accordance with § 25 of Residency Law. If it is not possible to issue a residence permit, in many cases at least a tolerated stay will have to be issued because deportation is impossible for legal reasons. Marriage can intercede deportation only if the wedding is immanent and investigations do not find indications of 'fake marriage'.

Even without marriage, the right to family can lead to a right of residence under certain circumstances. This applies in particular to fathers of illegitimate children who are entitled to reside in Germany, who have recognised their paternity and actually look after their child. Mothers can also be granted a right of residence, for example if their child has a German father or if the father has a residence permit. However, a right of

⁸ As a case in point, an agreement with Georgia for the recruitment of workers was signed in 2021, but the scheme must be considered a failure in practice. The dire and exploitative living and working conditions on some farms became a hot domestic media topic in the spring of 2021. (Schneider & Götte 2022)

residence is not always granted on the basis of a marriage or a child: The authorities often argue that the protection of marriage and family is also guaranteed in the spouses' country of origin.

According to the Act on Better Enforcement of the Obligation to Leave the Country, which came into force on 29 July 2017, 'fraudulent acknowledgement of paternity' is to be prevented. According to this law, an acknowledgement of paternity is 'fraudulent' if its purpose is to create the legal conditions for the permitted entry or residence of the child, the acknowledging party, or the mother. An acknowledgement of paternity cannot be fraudulent if the acknowledging party is the biological father of the child. If there are concrete indications of a fraudulent recognition of paternity, the authority (youth welfare office or registry office) or the notary who is to notarise the acknowledgement of paternity must inform the immigration authority, the recognising party and the mother, and suspend the notarisation. Evidence may exist, in particular, if the recognising person or the mother or the child are required to leave the country or the recognising person or the mother or the child has applied for asylum and is a national of a so-called safe country of origin in accordance with § 29a AsylG or there is no personal relationship between the recognising party and the mother and child. As long as the notarisation is suspended, the recognition cannot be effectively notarised by another authority or notary.

During the investigation by the immigration authority, the recognising party, the mother and the child must be granted toleration. If an appeal is lodged against the decision in which the immigration authority has determined that recognition was abusive, this does not have a suspensive effect. This means that deportation is possible. An urgent application must therefore be made to the administrative court.

In principle, irregularised 'school-age' children have access to school in Germany.⁹ However, this right was until 2011 practically voided by the obligation for schools to report such children as undocumented, entailing severe consequences. Since 2011, schools and educational institutions have been expressly exempted from the obligation of public authorities to report knowledge of illegal residence to the immigration authorities. This is intended to enforce the human right to education for all children and young people living in Germany, regardless of their residence status. However, a recent study points out that it is practically impossible to enrol undocumented children at many schools because school staff continue to assume that undocumented children have no de facto rights. (Funck, Karakaşoğlu, Vogel 2015)

In practice, many school administrations continue to ask for a registration certificate (*Meldebescheinigung*) – a document that requires residency status and cannot legally be obtained by irregularised migrants – when children are registered to a new school. Legal efforts to remove the obligation have therefore changed little in the lived reality of undocumented and irregularised migrant children (GEW 2017, 2018).

Women may be affected in specific health-care related ways by irregularisation. On the one hand, pregnancy is considered an acute health-care need and will thus not lead to reporting by medical professionals; on the other hand, pregnant women during pregnancy may obtain a temporary toleration (*Duldung*) that expires 6 months after birth. Thus, unless the father [sic] of the child holds German citizenship, the mother will be

⁹ While this typically means until the age of 14/15, the right to school education is not limited by age but refers to nine years of school education. Consequently, the actual age of children that fall within this category may vary.

obliged to leave Germany with the child. Consequently, the rights of the mother and child in this situation, including access to a birth certificate, are quite precarious (Deutsches Institut für Menschenrechte 2024).

Family reunification (i.e. obtaining residency for family members) is generally accessible only for the “core family”, i.e., married spouses and underage children; only in exceptional harsh cases may other family members be included. Only individuals with a residency status in Germany (significantly, this excludes toleration) and are earning a stable livelihood for themselves and the family are eligible. The above requirements do not apply if the applicant holds citizenship, is a recognised refugee or has obtained asylum. In the case of married spouses, proof of basic German competencies is required additionally. Children older than 16 need to prove they have very good German competencies. The language requirements are waived in case of EU Blue card holders, family members who are highly qualified, researchers or self-employed, if the family member is likely to integrate easily (examples listed include holding a university degree), if the family members is migrating from Australia, Israel, Japan, Canada, South Korea, New Zealand or the USA, and if it is impossible for the family member to learn German before entry. All of the above requirements are also waived if the applicant is a recognised refugee.

Should the marriage or family household be dissolved (e.g. divorce, death), the family members who do not hold an independent residency title may apply for one. Children are eligible for an independent residency status if, at the age of 16, they have held residency for at least 5 years. At age 18 and above, they also need to prove very good language competencies and an adequate livelihood.

The 2023 Skilled Immigration Act simplified family reunification for EU Blue Card holders: EU Blue Card holders who have already lived in another EU Member State with their family will be entitled to privileged family reunification. If these family members require a visa due to their nationality, they will be entitled to enter and reside in Germany as family members of an EU Blue Card holder with the residence permit issued in the previous Member State without having to undergo a visa procedure beforehand. When a residence permit is issued in Germany, the requirements of sufficient living space and the requirement to secure one’s livelihood (both *AufenthG*) no longer apply.

5.3. Race, ethnicity and the racialisation of immigration regimes

No statistical information or even estimates could be found regarding race and ethnicity of irregularised migrants in Germany. However, a range of studies including Falge (2021) and Bhimji (2020) indicates that the immigration regime in Germany (as that of the EU) is heavily racialised and that this administrative racialisation is compounded by a far-reaching racialisation of everyday life in Germany. Furthermore, expert interviews indicate that race and ethnicity play a crucial role in irregularised migrants’ efforts to pass unnoticed/blend in. This deeply affects (irregular) employment opportunities for irregular migrants and impacts their precarity and vulnerability to exploitation.

More specifically, there are strong indications – supported by our expert interviews – that the regional preponderance of certain migrant groups and their legal and illegal employment / exploitation in specific jobs is racialised as well and can be seen as a historical ‘tradition’ (NGO1, EXP2). There certainly is a history (see labour migration ban exceptions during the ‘guest worker’ era) of a racialised immigration regime intersecting with (perceived) labour market needs in Germany. This intersectionality also has a gender dimension related to gendered labour markets (e.g. the care sector).

For legal employment (of regularised migrants), official statistics (BA 2020; Destatis 2020) suggest the racialisation of specific labour market sectors – in 2019, 172,000 foreign care workers were employed in Germany (health care and care for the elderly); of these 9,200 came from the Philippines, Bosnia and Herzegovina (2,300), and Albania (1,300). Arguably, this link is likely more pronounced in unregistered employment. Racialisation of labour market sectors in this sense entails heightened vulnerability in terms of both economic exploitation specifically and racist practices in general.

6. Concluding remarks

When the 'traffic light' coalition government between Social-Democrats (SPD), Liberals (FDP) and Greens came into office in 2021, it publicly announced a change in Germany's self-understanding as an immigration country. The coalition paper/agreement, accordingly, promised several significant changes in the legal framework that would affect migrants in general and irregularised migrants specifically. The years since then, and especially the end of 2023 and beginning of 2024, have brought several such legal changes that have, as of this writing, not taken full effect yet. By and large, these legal reforms have been presented, even advertised, by legislators and political parties in government as significantly reducing the barriers for labour migrants and tolerated individuals seeking residency and a simplification of previously daunting bureaucratic processes. Some of the criticism directed at these legal changes has pointed out that economic interests rather than human rights seem to be the driving force behind them. While the Opportunity Residency (*Chancenaufenthaltsrecht*, in *AufenthaltsG*) introduced in 2022 has received a strong positive response, and the limited 'lane change' for tolerated individuals has been welcomed by NGOs, these most recent changes will have to be measured in terms of their practical implementation and their impact on the lived realities of irregularised migrants. As evidenced by the discrepancy between the abolished requirement of reporting children in irregularity and school administrations' continuing practices, simply removing a legally mandated risk does not necessarily reduce the precarity of irregularised migrants. To date, the reporting obligation remains a key barrier for irregularised migrants to enjoy their basic rights; additionally, the continuing lack of regularisation schemes or paths to regularisation means that many individuals remain 'in illegality' with all the detrimental consequences for them as well as Germany.

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8. Appendices

8.1. List of analysed policy texts

Richtlinie 2009/52/EG des Europäischen Parlaments und des Rates vom 18. Juni 2009 über Mindeststandards für Sanktionen und Maßnahmen gegen Arbeitgeber, die Drittstaatsangehörige ohne rechtmäßigen Aufenthalt beschäftigen.

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Unabhängige Kommission Zuwanderung (2001). Zuwanderung gestalten, Integration fördern.

https://www.jugendsozialarbeit.de/media/raw/Zuwanderungsbericht_pdf.pdf

Annex 1: Timeline: Key laws and policy documents ¹⁰

YEAR	NAME OF THE POLICY DOCUMENT
2015	Asylum Process Acceleration Act (Asylverfahrensbeschleunigungsgesetz)
2019	Skilled Labour Immigration Act (Fachkräfteeinwanderungsgesetz)
2019	“Migration Package” (Migrationspaket) including Orderly Return Act (Geordnete Rückkehr), changes to asylum process, expansion of list of safe countries, stricter rules for family reunification
2024 (last change)	Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz)
2024 (last change)	Residency Law (Aufenthaltsgesetz)
2024 (last change)	Skilled Labour Immigration Act 2024 (Fachkräfteeinwanderungsgesetz)

¹⁰ German laws are often updated without a separately titled Act or changes to the name of the policy document. Moreover, several relevant laws came into effect not in the year they were passed but the following year; some of them came into effect in a staggered process extending across two years. The date given here is always the date the policy was passed.

Annex 2: List of Interviews/Stakeholders consulted

SECTOR	POSITION	ORGANISATION	DATE	CODE
NGO	Legal Advisor	Clearing office for people without health insurance – Berliner Stadtmission/Church	02.11.2023	NGO1
NGO	-	Malteser Medizin für Menschen ohne KV – Berlin	25.01.2024	NGO2
NGO	-	BAG Gesundheit/Illegalität – Diakonie	11.01.2024	NGO3
NGO	-	Caritas for the Archdiocese of Berlin - Migrationsberatung	20.10.2023	NGO4
NGO	-	Damigra	11.01.2024	NGO5
Government	Head of Department	BMAS Referat VIb4	11.01.2024	GVT1
Trade Unions	-	Gewerkschaft Erziehung und Wissenschaft (GEW)	17.01.2024	TU1
Trade Unions	Federal Board Member (Bundesvorstand)	Deutscher Gewerkschaftsbund (DGB)	18.01.2024	TU2
Expert	-	Church	11.01.2024	EXP1
Expert	-	Academia	16.10.2023	EXP2
Expert	-	Academia	11.01.2024	EXP3
Expert	-	Academia	10.12.2023	EXP4

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