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Country context (optional)

Please use this field to provide any relevant contextual or background information about the country's law, policy, and practice, or the stateless population, to help contextualise the information in the survey (optional question).

International and Regional Instruments

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|-----------------|---|---|---|---|
| IOB.1.a | 1954 Convention | Is your country party to the 1954 Statelessness Convention? | UN Convention Relating to the Status of Stateless Persons, 1954 | Yes | United Nations Treaty Collection: https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mt_dsg_no=V-3&chapter=5&Temp=mt_dsg2&clang=en |
| IOB.1.b | | If yes, when was ratification/accession? | | 12/04/76 | Gesetz zu dem Übereinkommen vom 28. September 1954 über die Rechtsstellung der Staatenlosen [Law on the Convention of 28 September 1954 on the Status of Stateless Persons], Bundesgesetzblatt (BGBl) [Federal Law Gazette] 1976 II, 473-476: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl276s0473.pdf%27%5D_1522067556006 (German (DE)) |
| IOB.1.c | | Are there reservations in place? Please list them. | Best practice is no reservations. If there are, they should have little or no impact on the rights of stateless people. | Yes. · Article 23 will be applied without restriction only to stateless persons who are also refugees within the meaning of the Convention of 28 July 1951 relating to the Status of Refugees and the Protocol of 31 January 1967 relating to the Status of Refugees, but otherwise only to the extent provided for under national legislation; · Article 27 will not be applied. | United Nations Treaty Collection, Convention relating to the Status of Stateless Persons: https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mt_dsg_no=V-3&chapter=5&Temp=mt_dsg2&clang=en#4 BGBl 1976 II, 473-476: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl276s0473.pdf%27%5D_1522067556006 |
| IOB.1.d | | Does the Convention have direct effect? | Best practice is that the Convention has direct effect, though this may depend on the legal regime. | Yes | |
| IOB.2.a | 1961 Convention | Is your country party to the 1961 Statelessness Convention? | UN Convention on the Reduction of Statelessness, 1961 | Yes | |
| IOB.2.b | | If yes, when was ratification/accession? | | 29/06/77 | Ausführungsgesetz zu dem Übereinkommen vom 30. August 1961 zur Verminderung der Staatenlosigkeit und zu dem Übereinkommen vom 13. September 1973 zur Verringerung der Fälle von Staatenlosigkeit (Gesetz zur Verminderung der Staatenlosigkeit) [Implementing Law to the Convention of 30 August 1961 on the Reduction of Statelessness and to the Convention of 13 September 1973 on the Reduction of Cases of Statelessness (Law on the Reduction of Statelessness)], BGBl 1977 I, 1 101-1102: https://www.gesetze-im-internet.de/staatenl_mind_bkag/StaatenlMind%C3%9CbkAG.pdf (DE) |
| IOB.2.c | | Are there reservations in place? Please list them. | As above | Yes. However, Germany pledged to review the initially made reservations. | United Nations Treaty Collection, Convention on the Reduction of Statelessness: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mt_dsg_no=V-4&chapter=5&clang=en#EndDec BGBl 1977 I, 1101-1102: https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F*%5B%40attr_id%3D%27bgbl177s1101.pdf%27%5D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl177s1101.pdf%27%5D_1524232861588 (DE) Results of the High-Level Segment on Statelessness, October 2019: https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/ |
| IOB.2.d | | Does the Convention have direct effect? | As above | No. The implementing law applies. The Convention provides guiding principles. | |

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| IOB.3.a | Other conventions | State party to European Convention on Nationality 1997? Please list any reservations. | European Convention on Nationality, 1997 | <p>Yes.</p> <ul style="list-style-type: none"> · Art 7 ‘[The] loss of German nationality ex lege may, on the basis of the “option provision” under Section 29 of the Nationality Act [Staatsangehörigkeitsgesetz-StAG] (opting either for German or a foreign nationality upon coming of age), be effected in the case of a person having acquired German nationality by virtue of having been born within Germany (jus soli) in addition to a foreign nationality.’ · Art 7 (1) (f) ‘[The] loss of nationality may also occur if, upon a person’s coming of age, it is established that the requirements governing acquisition of German nationality were not met.’ · Art 7 (1) (DE) ‘[The] loss of German nationality can also occur in the case of an adult being adopted.’ · Art 8 ‘[T]he following persons, irrespective of their place of residence, are not subject to loss of nationality as a result of release from nationality: public officials, judges, military personnel (soldiers) of the Bundeswehr [Federal Armed Forces], and other persons employed in a professional or official capacity under public law for as long as their contractual relationship is not terminated, with the exception of persons holding honorary positions; 2. 2. persons liable for military service (conscripts) – as long as the Federal Ministry of Defence or an agency designated by it does not declare that there are no objections to such release (i.e. does not issue a certificate of non-objection, cf. infra). If the persons listed under sub-paragraphs 1 and 2 above are holders of multiple nationality, permission required for renunciation of German nationality effected by means of a declaration to this effect will be granted only if such persons have had their habitual residence abroad for at least ten years. In addition, persons liable for military service (conscripts) will also be granted such permission if they did their military service in one of the States of which they are a national, or if they produce a certificate of non-objection by the Federal Ministry of Defense or by the agency designated by it.’ · Art 22 ‘[T]his provision, with the exception of sub-paragraph (a), is not applied in respect of persons who have fulfilled civil service as an alternative or have been exempted from military obligations on account of having fulfilled a service equivalent to military or civil service.’ | <p>Council of Europe, Reservations and Declarations for Treaty No.166 – European Convention on Nationality, Nature of declaration: Reservations: http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/declarations?p_auth=FM1u4xE9&coconventions_WAR_coeconventionsportlet_enVigueur=false&coconventions_WAR_coeconventionsportlet_searchBy=state&coconventions_WAR_coeconventionsportlet_codePays=GER&coconventions_WAR_coeconventionsportlet_codeNature=2</p> <p>Bekanntmachung ueber das Inkrafttreten des Europäischen Übereinkommens vom 6. November 1997 über die Staatsangehörigkeit, BGBl 2006 II, 1353-1360: https://www.bgbl.de/xaver/bgbl/start.xav?start=//*/%5B@attr_id=%27bgbl206s1401a.pdf%27%5D#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl206s1351.pdf%27%5D_1524233923603 (DE)</p> |
| IOB.3.b | | State Party to European Convention on Human Rights 1950? Please list any relevant reservations. | European Convention on Human Rights, 1950 | Yes. There are no reservations in place. | <p>Council of Europe, Chart of signatures and ratifications of Treaty 005: http://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/005/signatures?p_auth=QxAb5VEK</p> <p>Gesetz ueber die Konvention zum Schutze der Menschenrechte und Grundfreiheiten, Bundesgesetzblatt, BGBl II 1952, 685: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F*%5B%40attr_id%3D%27bgbl252s0685.pdf%27%5D_1524234798978 (DE)</p> |
| IOB.3.c | | State Party to Council of Europe Convention on the avoidance of statelessness in relation to State succession 2006? Please list any reservations. | Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006 | Signed | <p>Council of Europe, Chart of signatures and ratifications of Treaty 200: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/200/signatures?p_auth=OiFVeKIQ</p> <p>Gesetz zu dem Übereinkommen vom 6. November 1997 über die Staatsangehörigkeit, Bundesgesetzblatt, BGBl 2004 II, 578-593:</p> |

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| | | | | | https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl204s0578.pdf%27%5D_1524236261184 (DE) |
| IOB.3.d | Bound by Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive)? Please list any relevant reservations. | Directive 2008/115/EC of the European Parliament and of the Council (EU Return Directive) | Yes. There are no reservations in place. | | Gesetz zur Umsetzung aufenthaltsrechtlicher Richtlinien der Europäischen Union und zur Anpassung nationaler Rechtsvorschriften an den EU-Visakodex, Bundesgesetzblatt, BGBl 2011 II, 2258-2271: https://www.bgbl.de/xaver/bgbl/start.xav?start=//%5B%40attr_id%3D%27bgbl111s2258.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl111s2258.pdf%27%5D_1524236739956 |
| IOB.3.e | State Party to Convention on the Rights of the Child 1989? Please list any relevant reservations. | Convention on the Rights of the Child, 1989 | Yes. There are no reservations in place. | | United Nations Treaty Collection, Convention on the Rights of the Child: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV11&chapter=4&lang=en#EndDec Bekanntmachung zum Uebereinkommen ueber die Rechte des Kindes, Bundesgesetzblatt, BGBl 1992 II, 122: https://www.bgbl.de/xaver/bgbl/start.xav?start=//%5B%40attr_id%3D%27bgbl214s0178.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl214s0178.pdf%27%5D_1524237081048 (DE) |
| IOB.3.f | State Party to International Covenant on Civil and Political Rights 1966? Please list any relevant reservations. | International Covenant on Civil and Political Rights, 1966 | Yes. Yes, there are reservations: · Articles 19, 21 and 22 in conjunction with Article 2 (1) of the Covenant shall be applied within the scope of Article 16 of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms. · Article 14 (3) (d) of the Covenant shall be applied in such manner that it is for the court to decide whether an accused person held in custody has to appear in person at the hearing before the court of review (Revisionsgericht). · Article 14 (5) of the Covenant shall be applied in such manner that: (a) A further appeal does not have to be instituted in all cases solely on the grounds the accused person having been acquitted by the lower court-was convicted for the first time in the proceedings concerned by the appellate court. (b) In the case of criminal offences of minor gravity the re- view by a higher tribunal of a decision not imposing imprisonment does not have to be admitted in all cases. · Article 15 (1) of the Covenant shall be applied in such manner that when provision is made by law for the imposition of a lighter penalty the hitherto applicable law may for certain exceptional categories of cases remain applicable to criminal offences committed before the law was amended. | | United Nations Treaty Collection, International Covenant on Civil and Political Rights: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&clang=en#EndDec Gesetz zu dem Internationalen Pakt vom 19. Dezember 1966 ueber buergerliche und politische Rechte, Bundesgesetzblatt, BGBl 1973 II, 1534: https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl273s1533.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl273s1533.pdf%27%5D_1524238865125 (DE) |
| IOB.3.g | State Party to International Covenant on Economic, Social and Cultural Rights 1966? Please list any relevant reservations. | International Covenant on Economic, Social and Cultural Rights, 1966 | Yes. No, there are no reservations. | | United Nations Treaty Collection: International Covenant on Economic, Social and Cultural Rights: https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtmsg_no=iv-3&src=treaty Gesetz zu dem Internationalen Pakt vom 19. Dezember 1966 ueber wirtschaftliche, soziale und kulturelle Rechte, Bundesgesetzblatt, BGBl 1973 II, 1569: https://www.bgbl.de/xaver/bgbl/start.xav?start=//%5B%40attr_id%3D%27bgbl273i1569.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl273i1569.pdf%27%5D_1524239117259 (DE) |

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| | | | | | Bekanntmachung über das Inkrafttreten des Internationalen Pakts über wirtschaftliche, soziale und kulturelle Rechte, Bundesgesetzblatt, BGBl 1976 II, 428-430: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl276s0428.pdf%27%5D_1524239322677 (DE) |
| IOB.3.h | State Party to Convention on the Elimination of all Forms of Discrimination Against Women 1979? Please list any relevant reservations. | Convention on the Elimination of all Forms of Discrimination Against Women, 1979 CEDAW, Gen. Rec. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness | Yes. There are no reservations. | United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination against Women: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtmsg_no=iv-8&chapter=4&lang=en Gesetz zu dem Übereinkommen vom 18. Dezember 1979 zur Beseitigung jeder Form von Diskriminierung der Frau, Bundesgesetzblatt, BGBl 1985 II, 647: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl285s0647.pdf%27%5D_1524239585211 (DE) | |
| IOB.3.i | State Party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984? Please list any relevant reservations. | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 | Yes. There are no reservations. | United Nations Treaty Collection, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-9&chapter=4&lang=en Gesetz zu dem VN-Uebereinkommen vom 10. Dezember 1984 gegen Folter und andere grausame, unmenschliche oder erniedrigende Behandlung oder Strafe, Bundesgesetzblatt, BGBl 1990 II, 246: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl290s0246.pdf%27%5D_1524239838178 (DE) | |
| IOB.3.j | State Party to International Convention on the Elimination of All Forms of Racial Discrimination 1966? Please list any relevant reservations. | International Convention on the Elimination of All Forms of Racial Discrimination, 1965 | Yes. There are no reservations. | United Nations Treaty Collection, International Convention on the Elimination of All Forms of Racial Discrimination: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV2&chapter=4&lang=en Gesetz zu dem Internationalen Übereinkommen vom 7. März 1966 zur Beseitigung jeder Form von Rassendiskriminierung, Bundesgesetzblatt, BGBl 1969 II, 961: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl269s0961b.pdf%27%5D_1524240158924 (DE) | |
| IOB.3.k | State Party to the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990? Please list any relevant reservations. | International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, 1990 | No. | United Nations Treaty Collection, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families: https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&lang=en&mtmsg_no=IV-13&src=IND | |
| IOB.3.l | State Party to the Convention on the Rights of Persons with Disabilities 2006? Please list any relevant reservations. | Convention on the Rights of Persons with Disabilities, 2006 | Yes. There are no reservations. | Gesetz zu dem Übereinkommen der Vereinten Nationen vom 13. Dezember 2006 über die Rechte von Menschen mit Behinderungen sowie zu dem Fakultativprotokoll vom 13. Dezember 2006 zum Übereinkommen der Vereinten Nationen über die Rechte von Menschen mit Behinderungen, BGBl 2008 II, 1419: https://dejure.org/ext/a9e881365ceb187312a31954936af81e (DE) United Nations Treaty Collection, Convention on the Rights of Persons with Disabilities: | |

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| | | | | | https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtid=IV-15&chapter=4&clang=en |
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Stateless Population Data

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
|---------|--------------------------|--|---|--|--|
| POP.1.a | Availability and sources | Does the State have a 'stateless' category in its data collection systems (e.g. census)? Please list available figures for the total stateless population on the territory and describe how data is disaggregated (e.g. by sex, age, residence). | <p>CEDAW, Gen. Rec. 32 (2014): States parties should gather, analyse and make available sex-disaggregated statistical data and trends.</p> <p>Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations.</p> <p>ISI, The World's Stateless (2014): States should strengthen measures to count stateless persons on their territory.</p> | <p>Yes. The Government counts stateless people in its data collection systems.</p> <p>National census: In 2011, the first national census after Germany's reunification counted 11,298 stateless people in the country. In addition, the census counted 130 people with 'unclear nationality' and 35,548 'without indications'. A new national census was launched in May 2022 and is expected to be published at the end of 2023.</p> <p>Population data: The population of stateless people in Germany is listed in the GENESIS-Online Datenbank. As of 31 December 2022, data disaggregated by residence status of stateless people present the following numbers:</p> <ul style="list-style-type: none"> i) 29,455 stateless people (17,025 male; 12,430 female) ii) 97,150 people with 'unclear' (<i>ungeklärt</i>) nationality/persons 'without indication' (<i>ohne Angabe</i>) <p>As of 31 December 2021, data on stateless people present the following numbers: 27,935 stateless people (16,075 male; 11,855 - by family status or 11,860 by age - female). With respect to people with 'unclear' nationality/persons 'without indication' figures: present the following numbers: 94,945 (55,625 male; 39,320 female)</p> <p>Naturalisation data: The number of stateless people who naturalised each year is available in the GENESIS-Online Datenbank (Code: 12511). As of 31 December 2021, 1,355 stateless people (Code: ST997) were naturalised (840 male; 515 female). German nationality was also acquired by 5 stateless people (all male). Moreover, nationality was granted to 750 people with 'unclear nationality' /'without indication' (Code: STAAT900) (475 male; 275 female). Nationality by adoption was given to 5 individuals with 'unclear' nationality /'without indication' (all female) (Code: 12511-0009) . Data is also available on the legal basis for naturalisation and is disaggregated by federal state and district, age, sex, length of stay, and marital status.</p> <p>Asylum data: The Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge - BAMF) publishes monthly statistics and biannual statistical reports (Das Bundesamt in Zahlen, Asylgeschäftsstatistik, Asylgeschäftsbericht, Aktuelle Zahlen zu Asyl). The statistics of 2022 shows a total of 4,973 asylum applications by people with 'unclear' nationality (4,672 first applications; 301 follow-up applications); 357 'stateless' people (309 first applications; 48 follow-up applications); 640 'persons from Palestinian territories (not recognised as State)' (624 first applications; 16 follow-up applications); 3 'without indication' (3 first applications).</p> <p>In 2021, 11,982 people were deported (among them: 14 stateless people; 41 with 'unclear' nationality).</p> | <p>Statistische Ämter des Bundes und der Länder, 'Bevölkerung nach Staat der Staatsangehörigkeit und Geschlecht für Gemeinden. Ergebnisse des Zensus am 9. Mai 2011' (10 April 2014): https://www.destatis.de/DE/Methoden/Zensus/_Downloads/1B_EinwohnerzahlNationalitaet.html (DE)</p> <p>GENESIS-Online Datenbank (GENESIS is the main database of the Statistische Bundesamt. Its data relies on the Central Register of Foreigners (Ausländerzentralregister - AZR): https://www-genesis.destatis.de/genesis/online?operation=abruftabelleBearbeiten&levelindex=1&levelid=1640620736070&auswahloperation=abruftabelleAuspraegungAuswaehlen&auswahlverzeichnis=ordnungsstruktur&auswahlziel=werteabruf&code=12411-0009&auswahltext=&werteabruf=Werteabruf#abreadcrumb (DE)</p> <p>Statistisches Bundesamt, Press release Nr. 091, 9 March 2023: https://www.destatis.de/EN/Press/2023/03/PE23_091_125.html</p> <p>Deutscher Bundestag, Dokumentations- und Informationszentrum (Documentation and Information System for Parliamentary Processes) (see: 'Ausländerpolitik, Zuwanderung'): https://dipbt.bundestag.de/dip21.web/bt</p> <p>Bundesamt für Migration und Flüchtlinge, 'Statistiken': https://www.bamf.de/DE/Themen/Statistik/statistik-node.html (DE)</p> <p>Asylzahlen: https://www.bamf.de/DE/Themen/Statistik/Asylzahlen/asylzahlen-node.html (DE)</p> <p>Asylgeschäftsstatistik (01-12/22) 2022 https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/Asylgeschaeftsstatistik/hkl-antrags-entscheidungs-bestandsstatistik-kumuliert-2022.html?nn=284746 (DE)</p> <p>Bundesamt für Migration und Flüchtlinge, 'Antrags-, Entscheidungs- und Bestandsstatistik (01.01.2021 - 30.11.2021)' (2021) : https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/Asylgeschaeftsstatistik/hkl-antrags-entscheidungs-bestandsstatistik-kumuliert-2021.pdf?__blob=publicationFile&v=21 (DE)</p> <p>BT-Drucksache 19/21406 (3.08.2020) https://dserver.bundestag.de/btd/19/214/1921406.pdf (DE)</p> <p>Statistische Bundesamt, GENESIS-Online Datenbank, 'Lebendgeborene: Deutschland, Jahre, Staatsangehörigkeit' (Code 12612-0003) ['Liveborns: Germany, Years, Nationality']: https://www-genesis.destatis.de/genesis/online?operation=abruftabelleBearbeiten</p> |

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| | | | <p>There are also figures for stateless mothers and fathers: Stateless mothers, mothers with an unknown or unclear nationality and without indication at the time of birth: 1600 (2010); 1595 (2011); 1606 (2012); 1917 (2013); 1960 (2014); 2874 (2015); 5245 (2016); 4873 (2017); 3967 (2018); 4011 (2019); 3663 (2020); 3030 (2021)</p> <p>Stateless fathers, fathers with an unknown or unclear nationality and without indication at the time of birth: 49,708 (2010); 47,451 (2011); 48,702 (2012); 48,407 (2013); 50,187 (2014); 50,659 (2015); 58,217 (2016); 53,896 (2017); 52,584 (2018); 49,870 (2019); 55,755 (2020); 49,892 (2021)</p> | <p>ten&levelindex=1&levelid=1641203063061&auswahloperation=abrufabelleAuspraegungAuswaehlen&auswahlverzeichnis=ordnungsstruktur&auswahlziel=werteabruf&code=12612-0003&auswahltext=&nummer=5&variable=5&name=STAVT2#astucture (DE)</p> |
| POP.1.b | Do public authorities define data categories that may overlap (e.g. unknown nationality) or where stateless people might be more highly represented (e.g. Palestinian)? Please explain and provide any available figures. | As above | <p>Yes (see above for figures). In its asylum statistics, BAMF uses the categories 'unclear' and 'without indication', as well as 'stateless'. The GENESIS-Online Datenbank uses 'Unknown/ Not specified' nationality (Code STAAT900) in its data on naturalisation and the foreign population. Indirect data on stateless people can be found in the GENESIS-Online Datenbank statistics on residence permits held by foreigners (Theme > Code 12: Population > Code 125: Naturalisations, Foreigners > Code 12521: Statistics on foreigners > Code 12521-0008 Foreigners: Germany, reference date, sex, residence permit > Code RECGL3: Residence permit).</p> <p>Under this strand, stateless individuals can be indirectly listed under the following permits, among others (figures as of 31 December 2019):</p> <ul style="list-style-type: none"> - Code RECF-60A-ALT: S.60a, RA, old version, suspension of deportation (Duldung) (820people; 455 male and 360 female) - Code RECF-60A-2-1: S.60a(2),1.s.,RA, suspension of deportation (Duldung) (265 people; 170 male and 95 female) - Code RECF-60A-2-1-1: S.60a(2),1.s.,RA, susp. deport., missing travel doc (Duldung) (83,725 people; 63,170 male and 20,555 female) <p>Further indirect data on statelessness can be found under: Code 12521-0041: Foreigners: Administrative districts, reference date, sex, selected types of residence permits, citizenship > LDRDG1 Citizenship. This provides numbers for 'stateless' (ST997) and 'unknown nationality' (STAAT900), as well as other nationalities where stateless people might be included e.g.: Code ST224: Eritrea; Code ST459: Palestinian Territories; Code ST273: Somalia; Code ST276: Sudan (until 8 July 2011); Code ST277: Sudan (without South Sudan) (since 9 July 2011); Code ST278: South Sudan (since 9 July 2011); Code ST475: Syria. Data is disaggregated by age, migrant generation, marital status and length of stay.</p> <p>As of 31 December 2021, 840 stateless people (615 male; 225 female) were granted 'Duldung' (Toleration). Another 1040 stateless people (660 male; 380 female) were on German territory without any residence title, toleration or permit. 7980 people (5455 male; 2525 female) with unclear nationality/ without indication held Toleration. 15,585 (9035 male; 6550 female) with unclear nationality/ without indication stayed on German territory without any residence title, toleration or permit.</p> <p>Eurostat provides information on different lengths of residence permits issued for the first time to stateless people between 2008 and 2019. In 2021 a total of 649 first residence permits were</p> | <p>Bundesamt für Migration und Flüchtlinge, 'Statistiken': https://www.bamf.de/DE/Themen/Statistik/statistik-node.html (DE)</p> <p>Bundesamt für Migration und Flüchtlinge, 'Asylzahlen' https://www.bamf.de/DE/Themen/Statistik/Asylzahlen/asylzahlen-node.html (DE)</p> <p>See the following areas on the website above (DE):</p> <ul style="list-style-type: none"> - Aktuelle Zahlen - Asylgeschäftsstatistik - Das Bundesamt in Zahlen <p>Statistisches Bundesamt: https://www.destatis.de/DE/Startseite.html (DE)</p> <p>GENESIS-Online Datenbank: https://www-genesis.destatis.de/genesis/online/data;jsessionid=694C6C3D90C8317B845292C2E65020E3.tomcat_GO_2_3?operation=statistikenVerzeichnisNextStep&levelindex=0&levelid=1495566815428&index=3&structurelevel=2 (DE)</p> <p>Statistisches Bundesamt: https://www.destatis.de/DE/Startseite.html (DE)</p> <p>GENESIS-Online Datenbank: https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Bevoelkerung/Bevoelkerung.html (DE)</p> <p>Zahlen in der Bundesrepublik Deutschland lebender Flüchtlinge zum Stand 30. Juni 2016. BT-Drucksache 18/9556 (9 September 2016) 22 (DE)</p> <p>Deutscher Bundestag, Stenografischer Bericht, Plenarprotokoll 19/67 (28. November 2018) Frage 82, 7687 http://dipbt.bundestag.de/doc/btp/19/19067.pdf (DE)</p> <p>Eurostat, First permits by reason, length of validity and citizenship: http://ec.europa.eu/eurostat/product?code=migr_resfirst&language=en&mode=view</p> |

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| | | | | issued to stateless people in Germany. Out of them, 177 were granted due to family reasons, 18 due to educational reasons, 11 on the basis of remunerated activities reasons, and 443 due to other reasons. | |
| POP.1.c | | What is UNHCR's estimate for the stateless/at risk of statelessness population and what is the source for this estimate? | As above | UNHCR indicates that there were 28,941 stateless people in Germany in 2022 (26,980 in 2021; 26,675 in 2020; 14,947 in 2019; 14,779 in 2018; 13,458 in 2017, 12,017 in 2016; 12,569 in 2015; 11,917 in 2014). They do not publish any data on people at risk of statelessness in Germany. UNHCR relies on data provided by BAMF and the Central Register of Foreigners (<i>Ausländerzentralregister</i> - AZR). UNHCR's Refugee Data Finder reports figures for the stateless refugee and asylum-seeker population in Germany – it indicates that as of mid-2022, there were 13,106 stateless refugees, and 639 stateless asylum seekers. | UNHCR, 'Population Statistics. Persons of concern': https://www.unhcr.org/refugee-statistics-uaat/download/?url=4j5qvU UNHCR, Refugee Statistics [accessed 28 Feb 2022]: https://www.unhcr.org/refugee-statistics/download/?url=JuOt3P https://www.unhcr.org/refugee-statistics/download/?url=9tUr8R |
| POP.1.d | | Have there been any surveys or mapping studies to estimate the stateless population in the country? | As above | No. | |
| POP.1.e | | Are there any other sources of estimates for the stateless population not covered by the above? Please list sources and figures. | As above | An ad-hoc query requested by the European Migration Network (EMN) in 2015 provided some data on travel documents issued to stateless people under the 1954 Convention. Eurostat provides data on First permits by reason, length of validity and nationality, for people whose country of nationality is recorded as 'Stateless' (see also POP.1.b). | EMN, Ad-Hoc Query on recognition of stateless persons. Requested by LU EMN NCP on 26 th February 2015, Compilation of 4 th May 2015, 16-17: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/ad-hoc-queries-2015.675_lu_recognition_of_stateless_persons_wider_diss.pdf Eurostat, First permits by reason, length of validity and citizenship: http://ec.europa.eu/eurostat/product?code=migr_resfirst&language=en&mode=view |
| POP.1.f | | Are there issues with the reliability of data or indications that the stateless population may be over/under reported? If yes, please describe. | As above | Data in the GENESIS-Online Database and UNHCR is based on the Central Register of Foreigners (<i>Ausländerzentralregister</i> – AZR). The AZR has been criticised in the media and in parliament for holding incorrect personal data and addresses, leading to people not receiving official correspondence from the authorities and missing official appointments/subpoenas as a result. There have been brief and in-depth parliamentary enquiries (<i>Kleine oder Große Anfrage</i>) on stateless refugees and BAMF data on refugees recorded as stateless is now publicly available, but this may also be affected by problems with the AZR and without a statelessness determination procedure in place, the authorities may mis-record asylum seekers who arrive without documentation as 'stateless' or having 'unclear nationality'. Due to the high number of people with unclear nationality, people on toleration, as well as unlisted irregular migrants, the actual number of stateless people in Germany could be underreported. | Thomas Öchsner, 'Große Lücken im Ausländer-Register' (Süddeutsche Zeitung, 4 August 2017): http://www.sueddeutsche.de/politik/asylpolitik-grosse-luecken-im-auslaender-register-1.3615716 (DE) A brief inquiry (Kleine Anfrage), Unklare Daten des Ausländerzentralregisters zu Ausreisepflichtigen [Unclear data of the Central Register of Foreigners on persons obligated to leave] BT-Drucksache 18/12725 (14 June 2017) (DE) Flemming Krause, 'Warum im Kreis Olpe seit 2015 rund 2000 mehr Ausländer leben' (Westfalenpost, 1 August 2017): https://www.wp.de/staedte/kreis-olpe/seit-2015-rund-2000-mehr-auslaender-im-kreis-olpe-id211438017.html (DE) Statistisches Bundesamt, 'Ausländerstatistik. Ergebnisse des Ausländerzentralregisters' (2020) https://www.destatis.de/DE/Methoden/Qualitaet/Qualitaetsberichte/Bevoelkerung/auslaenderstatistik.pdf?blob=publicationFile (DE) |
| POP.1.g | | Please provide any available figures for stateless refugees and/or asylum-seekers and clarify if the State also counts these groups in figures for the stateless population (i.e. to avoid under/over-reporting). | As above. EASO/EUAA, Practical guide on registration (2021) : States should collect information from applicants for international protection about their nationality(ies) and potential lack of nationality. When registering | The population data in the GENESIS-Online Datenbank on refugees in Germany can be desegregated by protection status and nationality (12531-0008) . As of 31 December 2021, the statistics on stateless refugees present the following numbers: i) 14,055 stateless people (8,575 male; 5,480 female), | Bundesamt für Migration und Flüchtlinge, 'Statistiken': https://www.bamf.de/DE/Themen/Statistik/statistik-node.html (DE) Bundesamt für Migration und Flüchtlinge, 'Asylzahlen' |

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| | | | <p>families, it is important to collect this data for each family member.</p> | <p>ii) 37,015 people with 'unclear' (<i>ungeklärt</i>) nationality (22,165 male; 14,850 female); iii) 2,170 persons 'without indication' (<i>ohne Angabe</i>) on nationality (1,395 male; 775 female).</p> <p>Statistics on persons without protection status present the following numbers: i) 770 stateless people (545 male; 225 female) ii) 6,395 people with 'unclear' (<i>ungeklärt</i>) nationality (4,435 male; 1,960 female) iii) 585 persons 'without indication' (<i>ohne Angabe</i>) on nationality (430 male; 155 female).</p> <p>The GENESIS-Online Datenbank does not provide information on asylum-seekers.</p> <p>The Federal Office for Migration and Refugees (BAMF) provides monthly data on asylum applications in Germany. Stateless people appear in the data since 2016, but the number is low compared to people with 'unclear' or 'unknown' nationality. In 2020, 'unclear nationality' was one of the largest reported country of origin categories among people claiming asylum in Germany. Additional information on stateless refugees and asylum seekers has also been published by the Bundestag in response to parliamentary inquiries (<i>Kleine Anfrage, Große Anfrage</i>) since 2014. See also POP1c for UNHCR's figures.</p> | <p>https://www.bamf.de/DE/Themen/Statistik/Asylzahlen/asylzahlen-node.html (DE) See the following areas on the website above (DE): - <i>Aktuelle Zahlen</i> - <i>Asylgeschäftsstatistik</i> - <i>Das Bundesamt in Zahlen</i></p> <p>Bundesamt für Migration und Flüchtlinge, 'Das Bundesamt in Zahlen 2020' https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/BundesamtinZahlen/bundesamt-in-zahlen-2020.pdf?__blob=publicationFile&v=5</p> <p>Deutscher Bundestag, Dokumentations- und Informationszentrum, 'Ausländerpolitik, Zuwanderung': https://dipbt.bundestag.de/dip21.web/search/find_without_search_list.do;jsessionid=4E540CA9B4D324D310399D6D61557790.dip21?subjectId=19 (DE)</p> |
| <p>POP.2.a</p> | <p>Stateless in detention data</p> | <p>Does the State record and publish figures on stateless people held in immigration detention? If yes, please provide.</p> | <p>UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Improve quantitative and qualitative data on stateless populations. CEDAW, Gen. Rec. 32 (2014): State parties should gather, analyse and make available sex-disaggregated statistical data and trends. ISI, The World's Stateless (2014): States should strengthen measures to count stateless persons on their territory. Equal Rights Trust, Guidelines (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights. Council of the European Union, Conclusions on Statelessness (2015): Recognise the importance of exchanging good practices among Member States concerning the collection of reliable data on stateless persons as well as the procedures for determining statelessness.</p> | <p>Official data on stateless people in detention is unclear. Data is available only for the total number of people in detention pending deportation e.g. in June 2022 (139), December 2021 (109), in June 2021 (60), in December 2020 (65), in November 2020 (63), October 2020 (67), April 2020 (8), March 2020 (19), February 2020 (109), January 2020 (129), December 2019 (122), November 2019 (131), April 2019 (134), March 2018 (82) and August 2018 (112).</p> | <p>Statistisches Bundesamt, Rechtspflege. Bestand der Gefangenen und Verwahrten in den deutschen Justizvollzugsanstalten nach ihrer Unterbringung auf Haftplätzen des geschlossenen und offenen Vollzugs, 14. September 2022: https://www.destatis.de/DE/Themen/Staat/Justiz-Rechtspflege/Publikationen/Downloads-Strafverfolgung-Strafvollzug/bestand-gefangene-verwahrte-xlsx-5243201.html (DE)</p> <p>Statistische Bibliothek, Rechtspflege / Bestand der Gefangenen und Verwahrten in den deutschen Justizvollzugsanstalten nach ihrer Unterbringung auf Haftplätzen des geschlossenen und offenen Vollzugs: https://www.statistischebibliothek.de/mir/receive/DESerie_mods_00002496 (DE)</p> <p>Deutscher Bundestag, Dokumentations- und Informationszentrum, 'Ausländerpolitik, Zuwanderung': https://dipbt.bundestag.de/dip21.web/search/find_without_search_list.do;jsessionid=4E540CA9B4D324D310399D6D61557790.dip21?subjectId=19 (DE)</p> <p>'Die Praxis der Abschiebungshaft und Fragen zum Haftvollzug' [The practice of detention pending deportation and questions concerning detention], BT-Drucksache 18/7196 (6 January 2016) (DE)</p> |

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| POP.2.b | | Does the State record and publish figures on people released from immigration detention due to un-removability? If yes, please provide. | As above | No, each Federal State (<i>Land</i>) is responsible for detention pending deportation (<i>Abschiebehaft</i>). This data is not collected on national level. | Reply of the Federal Government to the big inquiry of Ulla Jelpke, Dr André Hahn, Gökay Akbulut, other MPs and the Left, 'The practice of detention since 2015', BT-Drucksache 19/5817 (16 November 2018) |
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Statelessness Determination and Status

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| SDS.1.a | Definition of a stateless person | Is there a definition of a stateless person in national law? Do the definition and exclusion provisions align with the 1954 Convention? Please provide details. | 1954 Convention : Articles 1(1) & 1(2). | Yes. German law follows the definition and exclusion provisions of the 1954 Convention. | Gesetz zu dem Übereinkommen vom 28. September 1954 über die Rechtsstellung der Staatenlosen [Law on the Convention of 28 September 1954 on the Status of Stateless Persons], Bundesgesetzblatt (BGBl) [Federal Law Gazette] 1976 II, 473-476: https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl276s0473.pdf%27%5D_1522067556006 (German (DE)) |
| SDS.2.a | Training | Is there training to inform different public authorities about statelessness? If yes, please provide details (e.g. who provides training to whom/how often?) | UNHCR Executive Committee, Conclusion No. 106 (LVII) (2006) : Requests UNHCR to actively disseminate information and, where appropriate, train government counterparts on appropriate mechanisms for identifying, recording, and granting a status to stateless persons. | No information was found on any training provided to government bodies about statelessness. | |
| SDS.2.b | | Is there training for judges and lawyers on statelessness? If yes, please provide details (e.g. provider, frequency). | UNHCR, Good Practices Papers – Action 6 (2020) : Officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels. UNHCR, Geneva Conclusions (2010) : It is recommended that States provide specialised training on nationality laws and practices, international standards and statelessness to officials responsible for making statelessness determinations. | There is no information available on specific training on statelessness. However, statelessness may indirectly form part of trainings or conferences e.g. during discussions on toleration or the obligation to present a passport or travel document. Parts of university courses may therefore deal with statelessness in different contexts. | Brot für die Welt, 'Staatenlose. Die Würde des Menschen gilt auch ohne Pass' (n.d.): https://www.brot-fuer-die-welt.de/themen/staatenlose/ (DE) Conference presentation by the President of Brot für die Welt (Germany): Dr. H. C. Cornelia Füllkrug-Weitzel, 'Statelessness: A Human rights Issue at the Heart of Churches' Calling' (Regional Conference on Statelessness in the European Context: Prevention, Reduction and Protection, 6-7 September 2017, Berlin): https://www.brot-fuer-die-welt.de/fileadmin/mediapool/2_Downloads/Fachinformationen/sonstiges/Statelessness_WCC_Conference.pdf Sophia Wirsching (Referentin Migration und Entwicklung Brot für die Welt), 'Staatenlosigkeit & die weitreichenden Folgen am Beispiel des Syrienkonflikts' (Ringvorlesung "Konflikte in Gegenwart und Zukunft", Universität Marburg, 1 Februar 2017): https://www.online.uni-marburg.de/isem/WS15_16/docs/staatenlosigkeit.pdf (DE) Universität Hamburg, 'Vortragsreihe der Refugee Law Clinic: Ursachen und Folgen von Staatenlosigkeit', https://www.jura.uni-hamburg.de/media/ueber-die-fakultaet/aktuelles/2017-06-23-plakat-vortrag-rlc.pdf (DE) Holger Hoffmann, 'Staatenlose - Rechte und rechtliche Folgen' (11. Fachtagung Ausländerrecht 2016): https://www.kbw.de/tagungen/fachtagung-auslaenderrecht/2016 (DE) |

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| <p>SDS.3.a</p> | <p>Existence of a dedicated SDP</p> | <p>Which of the following best describes the situation in your country? Choose only one and then proceed to question indicated.</p> <p>1. There is a dedicated statelessness determination procedure (SDP) established in law, administrative guidance, or judicial procedure, leading to a dedicated statelessness status (answer Question SDS.3.b. and proceed to Question 4a).</p> <p>2. There is no dedicated SDP leading to a dedicated statelessness status, but there are other procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications, refugee status determination, ad hoc procedures, etc.), or other routes through which stateless people could regularise their stay and/or access their rights (answer Question SDS.3.b. and proceed to Question 10a).</p> <p>3. There is a dedicated statelessness status but no formal procedure for determining this (answer Question SDS.3.b. and proceed to Question 15a).</p> | <p>UNHCR, Handbook on Protection (2014): It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments.</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): Establishing a statelessness determination procedure is the most efficient means for States Parties to identify beneficiaries of the Convention.</p> | <p>Group 2: There is no dedicated SDP, but statelessness may be identified through other administrative procedures</p> | |
| <p>SDS.3.b</p> | <p>Temporary protection for people fleeing war</p> | <p>Does the State offer a temporary form of protection to stateless people and people at risk of statelessness from Ukraine? Please describe any barriers for stateless people or people at risk of statelessness in accessing the territory or receiving protection (e.g. for people who cannot fulfil eligibility requirements in line with the EU Temporary Protection Directive, if applicable).</p> | <p>EU Temporary Protection Directive (2001) EU Council Implementing Decision (2022) establishing the existence of a mass influx of displaced persons from Ukraine & European Commission, Operational guidelines ENS, Briefings on access to protection for stateless people fleeing Ukraine: Everyone fleeing the war in Ukraine should be guaranteed access to the territory. European countries must extend temporary forms of protection to all stateless people and those with undetermined nationality who cannot meet current eligibility requirements, due to their statelessness or documentation status. Lack of documentation should not prevent access to international protection or other forms of protection.</p> | <p>Outside the scope of the EU Temporary Protection Directive, there is no specific protection, other than the protection offered to asylum-seekers, for stateless people or people at risk of statelessness fleeing from Ukraine.</p> <p>Germany grants protection under the EU Temporary Protection Directive to stateless people who enjoyed international protection as refugees or an equivalent level of national protection before 24 February 2022. Travel documents for refugees and travel documents for persons granted complementary protection prove that persons are entitled to protection. Germany also grants temporary protection to stateless persons who held permanent residence status in Ukraine before 24 February 2022 and who are unable to return safely and permanently to their country or region of origin. Stateless persons who only hold temporary residence status in Ukraine are not entitled to protection and are advised about alternative residence status possibilities, in particular the right to asylum.</p> | <p>German Ministry of the Interior decision on the implementation of the Council implementing decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, 14 March 2022 [Bundesministerium des Innern und für Heimat, Umsetzung des Durchführungsbeschlusses des Rates zur Feststellung des Bestehens eines Massenzustroms im Sinne des Artikels 5 der Richtlinie 2001/55/EG und zur Einführung eines vorübergehenden Schutzes, Berlin, 14. März 2022]: https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/ukraine/beschluss-4-maerz-2022-ukraine.pdf;jsessionid=216332A70963CD16092E5548421C8938.1_cid287?_blob=publicationFile&v=6</p> |
| <p>SDS.10.a</p> | <p>Procedures in which statelessness can be identified and other routes to regularisation (Group 2)</p> | <p>If there is no dedicated SDP leading to a statelessness status, are there any procedures in which statelessness can be identified (e.g. partial SDPs with no status/rights attached, residence permit or naturalisation applications,</p> | <p>ENS (2013): For SDPs to be effective, the determination must be a specific objective of the mechanism in question, though not necessarily the only one. ECtHR, Hoti v. Croatia (2018): [the State has a] positive obligation to provide an effective and accessible procedure or a combination of</p> | <p>Yes, these include:</p> <ul style="list-style-type: none"> · Application for a travel document under Art. 28 1954 Convention · Application/extension of residence · Application for asylum · Toleration (<i>Duldung</i>) | <p>Holger Hoffmann, ‘Staatenlosigkeit – Rechte und rechtliche Folgen’ (2017) 9 Asylmagazin 325: http://www.asyl.net/fileadmin/user_upload/beitraege_asylmagazin/Beitraege_AM_2017/AM17_9_beitrag_hoffmann.pdf (DE)</p> <p>Hamburgisches Obergerverwaltungsgericht, OVG Hamburg, Beschluss v 11. März 2005 - 4 Bf 64/02, recital 10</p> |

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| | | refugee status determination, ad hoc procedures, etc.)? | procedures enabling the applicant to have the issues of [their] further stay and status determined. | Statelessness does not constitute a determinable legal relationship (<i>feststellungsfähiges Rechtsverhältnis</i>), but it can be clarified if it is raised during another legal procedure relating to foreigners. | See also EC and EMN, 'AD HOC QUERY 2019.37 IE and LU AHQ on nexus between recognition of statelessness status and the right of residence. Requested by EMN NCP Ireland and EMN NCP Luxembourg on 18 March 2019' (2019) 14: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/201937_ie_and_lu_ahq_on_nexus_between_recognition_of_stateless_status.pdf |
| SDS.10.b | | Are there any other routes through which stateless people could regularise their stay and/or access their rights without their statelessness being identified or determined? | 1954 Convention UNHCR, Handbook on Protection (2014) : It is implicit in the 1954 Convention that States must identify stateless persons to provide them appropriate treatment to comply with their Convention commitments. | Yes. The Supreme Federal State authorities may order a residence permit on humanitarian grounds to be issued on the basis of international law. A person under the obligation to leave Germany will be issued a residence permit if a request is made by the Commission for Cases of Hardship. A residence permit can also be issued if expulsion would be in breach of the European Convention on Human Rights. However, it will not be issued if departure is possible and can reasonably be expected. If the expulsion is not enforceable, a temporary residence permit can be issued if urgent humanitarian or personal grounds or substantial public interests require it. Toleration for people with unclear identity can be issued if expulsion is enforceable and the obstacle to leaving the country is the responsibility of the individual concerned. If the obligation to leave the territory is enforceable, a residence permit may be issued if departure is legally or factually impossible and it can't be expected these grounds will cease in the foreseeable future. A residence permit will also be issued if the expulsion is suspended for 18 months and the impossibility to depart from Germany is not the individual's fault. Toleration entitles the holder to assistance under the Asylum Seeker Benefits Act (AsylbLG) and access to social security after 18 months. A new law adopted in December 2022 provides a right to stay for those with 'Duldung' status who have been living in the country for more than five years since 1 January 2022. This then entitles them to apply for longer-term residence permits, and eventually, a route to settlement. Subsequently, partners, minor children and adult children who came to Germany as minors, are also entitled to a residence permit. The residence permit is for 1 year and is not renewable, but the applicant can then apply for a different residence permit. Article 25b of the Residence Act indicates that persons with tolerated status, permission, or a residency permit who have continuously lived in Germany for at least six years, or if they live in a household community with a minor child, for at least four years, shall be granted a renewable two-year residency permit if further conditions can be fulfilled. Persons under the age of 27 with tolerated status, permission, or residence permit can apply for a residence permit, if they have continuously lived in Germany and have attended school for at least 3 years in Germany. | Arts 5, 23, 23a, 25, 48, 49, 60, 60a, 60b, 82 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act] https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE) Arts 48.3, 49.3, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz vom 26. Oktober 2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE) |
| SDS.11.a | Access to procedures (Group 2) | Please provide details on how statelessness may be identified in other procedures, which authority is competent to examine and/or identify statelessness and evaluate appropriateness to the national context. | UNHCR, Handbook on Protection (2014) : States may choose between a centralised procedure or one that is conducted by local authorities. Centralised procedures are preferable as they are more likely to develop the necessary expertise. UNHCR, Good Practices Papers – Action 6 (2020) : It is important that examiners develop expertise while ensuring that the procedures are accessible. Efficient | The determination of statelessness may be initiated via different administrative procedures with the local foreigners' authority in which a person's identity must be clarified (e.g. travel document, asylum application, status toleration). Statelessness may also be identified during an administrative instrument to suspend deportation named 'toleration' (<i>Duldung</i>). Toleration can be granted when deportation is suspended, 'for as | Arts 5, 25, 48, 49, 60a, 60b, 82 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act] https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE) |

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| | | | <p>referral mechanisms should be established, while officials who may be in contact with stateless persons need to be trained to identify potential applicants for statelessness status and refer them to appropriate channels.</p> | <p>long as deportation is impossible in fact or in law and no temporary residence permit is granted.’ Toleration is not a residence permit but documents an irregular stay and the obligation to leave the country remains (see SDS 14a & b for further details).</p> <p>The identification of statelessness can also be initiated during an application for a stateless person’s travel document under the 1954 Convention. In all cases, the individual has an obligation to cooperate and take all reasonable measures to obtain documents.</p> <p>Statelessness can also be determined in asylum procedures. However, in practice this seems not to be regarded as relevant to the procedure.</p> <p>The examination takes place at a local level. For applications under the Residence Act, the local foreigners’ office competent for the place of residence of the applicant conducts the examination.</p> <p>When a residence permit is requested, the competent authority is either the embassy or consulate, in case the request is made before entry to Germany, or the local foreigners’ office (Ausländerbehörde). The Federal Agency of Migrants and Refugees is also competent to examine and/or identify statelessness when a request for international protection is lodged.</p> | <p>Arts 1, 3, 4, 5, Verordnung zur Durchführung des Zuwanderungsgesetzes vom 25. November 2004 (BGBl 2004 I, 2945), zuletzt geändert durch Artikel 1 der Verordnung vom 1. August 2017 (BGBl 2017 I, 3066) [Residence Regulation]: https://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgbl104s2945.pdf%27%5D#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl104s2945.pdf%27%5D_1524254199877 (DE)</p> <p>Arts 48.3, 49.3, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz vom 26. Oktober 2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>Holger Hoffmann, ‘Staatenlosigkeit – Rechte und rechtliche Folgen’ (2017) 9 Asylmagazin 327-329: http://www.asyl.net/fileadmin/user_upload/beitraege_asylmagazin/Beitraege_AM_2017/AM17_9_beitrag_hoffmann.pdf (DE)</p> <p>Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt geändert durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> |
| SDS.11.b | Are there obligations in law on authorities to consider a claim of statelessness? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Access to the procedure must be guaranteed.</p> <p>EASO/EUAA, Practical guide on registration (2021): Determining if applicants are stateless is essential when assessing the need for international protection. At registration, it is vital to collect information and detect possible cases of statelessness, but it is not appropriate to determine a person’s statelessness at the registration stage. Statelessness determination should be carried out only by a competent decision-making authority at an appropriate point in time following the final assessment of an asylum claim.</p> | No. | | |
| SDS.11.c | Are there clear, accessible instructions for stateless people on how to claim their rights under the 1954 Convention and/or be identified as stateless? | <p>1954 Convention</p> <p>UNHCR, Handbook on Protection (2014): For procedures to be fair and efficient, access must be ensured (dissemination of info, targeted info campaigns, counselling on the procedures, etc.).</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): Information on the procedure and counselling services must be available to potential applicants in a language they understand.</p> | <p>There does not seem to be any accessible information on the specific steps to take for stateless people. Information provided mainly relates to asylum. Information is available on how to apply for a travel document under the 1954 Convention at district/municipality level.</p> <p>In 2020, the local TV channel WDR interviewed German lawyer, Jens Dieckmann, on the naturalisation of stateless people. Another short clip explains legal aid (<i>Prozesskostenhilfe</i>). However, this is mainly related to asylum procedures. It further talks about the selection of a lawyer and the procedure to obtain legal aid, including after the rejection of the claim. Both clips are in German and Arabic.</p> | <p>Düsseldorf, ‘Reiseausweis für Flüchtlinge oder Staatenlose’: https://www.duesseldorf.de/buergerservice/dienstleistungen/dienstleistung/show/reiseausweis-fuer-fluechtlinge-oder-staatenlose.html (DE)</p> <p>Berlin.de, Service-Portal Berlin, ‘Reiseausweis – Neuausstellung’ : https://service.berlin.de/dienstleistung/325471/standort/121885/ (DE)</p> <p>Einbürgerung von Staatenlosen [Naturalization of stateless people] https://www.youtube.com/watch?v=Gxh0Z0WL3hE&feature=youtu.be (20 January 2020) (DE & ARABIC)</p> <p>Wie bekommt man Prozesskostenhilfe? [How do I get legal aid?] https://www.youtube.com/watch?v=rhZarc0q4wl&feature=youtu.be (19 January 2020) (DE & ARABIC)</p> | |

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| SDS.11.d | | Is there cooperation between agencies that may have contact with stateless people? | <p>UNHCR, Good Practices Papers – Action 6 (2020): Cooperation between actors working on statelessness and the various government agencies involved in determining statelessness is good practice.</p> | There is no evidence of cooperation between agencies. | |
| SDS.12.a | Assessment (Group 2) | Who has the burden of proof when determining or identifying statelessness (in law and practice)? | <p>UNHCR, Handbook on Protection (2014): The burden of proof is in principle shared (both applicant and examiner must cooperate to obtain evidence and establish the facts).</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): SDPs must take into consideration the difficulties inherent in proving statelessness.</p> <p>UNHCR, Geneva Conclusions (2010): In statelessness determination procedures, the burden of proof should therefore be shared between the applicant and the authorities responsible for making the determination. Individuals must cooperate to establish relevant facts. The burden should shift to the State if an individual can demonstrate they are not a national, on the basis of reasonably available evidence.</p> <p>ECtHR, Hoti v. Croatia (2018): State has responsibility to at least share the burden of proof with the applicant when establishing the fact of statelessness.</p> | The burden of proof initially lies on the applicant, but is shared in certain circumstances. The applicant must fulfil the duty of cooperation and initiative, while the authority has the obligation to inform the applicant about the proof required and the specific duties and responsibilities of the applicant. The obligations of both parties are mutually interrelated and have mainly been shaped by jurisprudence. The burden is on the applicant to present any possible certificate, document, medical certificate, voluntary DNA test, etc. to clarify their situation. The authorities are not obliged to gather information on relevant facts concerning the individual abroad. A failure to cooperate can lead to fines. Reasonable steps are considered to be any that can be made by the applicant personally - e.g. repeated presentation at an embassy is unreasonable if it is clear that this would be unsuccessful, after repeated failed attempts. The Federal Administrative Court has stated the individual should present, e.g.: information on the previous residence and place of birth; own name and family members' names in direct line to great-grandparents, when these are known; evidence of an attempt to naturalise in the state of origin, unless this is unreasonable due to discrimination or danger to life and limb; proof of identity through relatives or registries, and proof that s/he lived as a stateless person in the state of origin, as far as this is reasonable. When some facts, such as impossibility to leave, may be difficult to establish, or some documents difficult to obtain, the burden of proof is shared between the applicant and the government. | <p>Arts 3, 48, 49, 82, 82, 98 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt geändert durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Art 56 Aufenthaltsverordnung (AufenthV) vom 25. November 2004 (BGBl 2004 I, 2945), zuletzt geändert durch Artikel 2 der Verordnung vom 18. Dezember 2020 (BGBl 2020 I, 3046) [Residence Regulation] http://www.gesetze-im-internet.de/aufenthv/inhalts_bersicht.html (DE)</p> <p>Arts 25.5.4, 48.3, 49.3, 82 – 82.1.2, 82.3 – 82.4.2.3 Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>Boris Franßen-de la Cerda, 'Die Verpflichtung des Ausländers zur Mitwirkung (§ 82 AufenthG)' (2010) 3 ZAR: http://www.zar.nomos.de/?id=1443 (DE)</p> <p>On the obligation to cooperate, see also: BVerwG, Beschluss v 30.12.1997 - 1 B 223/97 - juris Rn 6f: https://www.jurion.de/urteile/bverwg/1997-12-30/bverwg-1-b-22397/</p> <p>OVG BB, Beschluss v 10.7.2013 - OVG 3 N 144.12 - juris Rn 5f mit Verweis auf BVerwG, Urteil v 17.3.2004 - 1 C 1/03 - juris Rn 30ff.; VGH BW, Urteil v 17.12.2003 - 13 S 2113/01 - juris Rn 35 f: https://openjur.de/u/381299.html (DE)</p> <p>Rechtslupe, 'Identitätsfeststellung – und die Aufforderung zur Vorsprache bei der Botschaft' (2014): https://www.rechtslupe.de/verwaltungsrecht/identitaetsfeststellung-und-die-aufforderung-zur-vorsprache-bei-der-botschaft-379549 (DE)</p> <p>BVerwG, Urteil v 17.03.2004 - 1 C 1.03. VG Saarland v 18.07.2008 – 6 K 0106/06. BVerG v 15.06.2006 – 1 B 54.06, Buchholz 402.242, §25 AufenthG, Nr 4: http://www.asyl.net/fileadmin/user_upload/dokumente/13727.pdf (DE)</p> <p>Dr. Friedrich Schoch in Schoch, Schneider, Bier, Verwaltungsgerichtsordnung. VwGO (32. EL, CH Beck 2016) § 123 recital 97 VGH München, Urteil v 9.07.2012 - 20 B 12.30003; BVerwG, Urteil v 16.04.1985 - 9 C 109/84: https://www.jurion.de/urteile/bverwg/1985-04-16/bverwg-9-c-109_84/</p> |

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| SDS.12.b | | What is the standard of proof to evidence statelessness? | <p>UNHCR, Handbook on Protection (2014): States are advised to adopt the same standard of proof as in refugee status determination ('reasonable degree').</p> <p>UNHCR, Good practices in nationality laws (2018): The standard of proof should be in keeping with the humanitarian objectives of statelessness status determination and the inherent difficulties of proving statelessness in the likely absence of documentary evidence.</p> <p>ECtHR, Hoti v. Croatia (2018): If statelessness is a relevant factor in the context of access to human rights, the standard of proof when determining the status of statelessness cannot be too high.</p> | In theory, only one standard of proof is in place: beyond reasonable doubt. However, in practice judges apply a less rigid approach in asylum and statelessness cases and accept a lower standard. | <p>Art. 48, 49, 82 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt geändert durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855)</p> <p>[Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Art 15, Asylgesetz in der Fassung der Bekanntmachung vom 2. September 2008 (BGBl 2008 I, 1798), zuletzt geändert durch Artikel 3 Absatz 1 des Gesetzes vom 9. Oktober 2020 (BGBl 2020 I, 2075)) [Asylum Act]: https://www.gesetze-im-internet.de/asylvfg_1992/AsylG.pdf (DE)</p> <p>Juliane Kokott, The Burden of Proof in Comparative and International Human Rights Law (Springer 1998) 22-24</p> <p>Case law: VG Schleswig-Holstein, Urteil vom 13.06.2007 - 4 A 34/07 (DE)</p> |
| SDS.12.c | | Is there clear guidance for decision makers on how to identify or determine statelessness (including e.g. sources of evidence and procedures for evidence gathering, etc.)? | ENS (2013) : Determining authorities can benefit from concrete guidance that sets clear benchmarks and pathways for the establishment of material facts and circumstances. | There is no clear or binding guidance on how to determine statelessness. The Federal States (Länder) follow their own rules based upon the General Administrative Regulations for the Nationality Act, which briefly mention stateless people in relation to acquisition of nationality, prevention of statelessness, vulnerable groups and renunciation of nationality. The General Administrative Regulation for the Residence Act give some (vague) instructions on e.g. the procedures for collecting evidence (what are reasonable/unreasonable steps). | <p>Arts 3, 4.2, 4.4.1, 8.1.3.1, 18</p> <p>Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht (StAR-VwV) vom 8. Juli 2013 - Az. 2-1010.1/1 (Stand: 23. November 2015)</p> <p>[General Administrative Regulation for the Nationality Act]: https://im.baden-wuerttemberg.de/fileadmin/redaktion/m-im/intern/dateien/pdf/VwV_StAG_23112015.pdf (DE)</p> <p>See for example Art 25.5.4, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> |
| SDS.13.a | Procedural safeguards (Group 2) | Is free legal aid available to stateless people generally? | <p>UNHCR, Handbook on Protection (2014): Applicants should have access to legal counsel; where free legal assistance is available, it should be offered to applicants without financial means.</p> <p>ENS (2013): If state funded legal aid is available, it should be provided to stateless claimants. If there is no state funded legal aid but asylum claimants can access free legal aid free of charge, the same level of access should be provided to stateless people.</p> | Stateless people can obtain legal aid under the same conditions as any other foreigner, i.e. by demonstrating that they are financially in need of assistance, that their case has sufficient prospects of success and is not frivolous. They have to be registered in the local register, which can be challenging for irregular migrants (although they are not excluded from legal aid by law) as the evidence required may not be accessible to them (e.g. documents related to income, address, rental agreement) or they may not want to provide it because they fear deportation. The courts where the application for legal aid must be made can inform the immigration authorities of irregularly staying persons. Refugee Councils, NGOs (eg. ProAsyl), as well as Refugee Law Clinics and the church (eg. Caritas and Diakonie) provide legal assistance to foreigners, including stateless persons. | <p>Arts 2, 86-87 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt geändert durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855)</p> <p>[Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Art 1, Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen (Beratungshilfegesetz - BerHG) vom 18.06.1980 (BGBl I 1980, 689), zuletzt geändert durch Artikel 140 der Verordnung vom 31.08.2015 (BGBl I 2015, 1474) [Act on legal advice and representation for citizens with low incomes - Legal Advice Act]: https://www.gesetze-im-internet.de/berathig/BJNR006890980.html (DE)</p> <p>Art 114, Zivilprozessordnung (ZPO) vom 5. Dezember 2005 (BGBl 2005 I, 3202; 2006 I 431; 2007 I 1781), zuletzt geändert durch Artikel 8 des Gesetzes vom 22. Dezember 2020 (BGBl 2020, 3320) [Civil Procedure Code]: https://www.gesetze-im-internet.de/zpo/BJNR005330950.html (DE)</p> |

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| SDS.13.b | Is free interpreting available to stateless people? | UNHCR, Handbook on Protection (2014) : The right to assistance with interpretation/translation [is] essential. ENS (2013) : Assistance should be available for translation and interpretation. | The official language is German, and no interpreter is provided. The applicant may find and pay for their own interpreter. In practice, friends and family support the applicant. | Art 23(1) Verwaltungsverfahrensgesetz vom 23. Januar 2003 (BGBl I 2003, 102), zuletzt geändert durch Artikel 5 Absatz 25 des Gesetzes vom 21. Juni 2019 (BGBl 2019 I, 846) [Administrative Procedures Act]: https://www.gesetze-im-internet.de/vwvfg/BJNR012530976.html | |
| SDS.13.c | Are there other procedural safeguards in place in procedures through which stateless people may have their statelessness identified or determined, or regularise their stay (e.g., decisions given in writing with reasons, right to an interview, time limit, right of appeal, audits in decision-making, etc.)? | UNHCR, Handbook on Protection (2014) : States are encouraged to incorporate the safeguard that decisions are made in writing with reasons. It is undesirable for a first instance decision to be issued more than six months from submission of an application. In exceptional circumstances it may be appropriate to allow the proceedings to last up to 12 months. An effective right to appeal against a negative first instance decision is an essential safeguard in an SDP. | <p>An in-depth interview (<i>Befragung</i>) is carried out to gather reference points for further investigations (e.g. questioning of witnesses, inquiries to other authorities in Germany and abroad etc.). In practice, the foreigners' office carries out an oral hearing.</p> <p>Decisions relating to the denial of a residence permit and expulsion are made in writing and with reasons, whereas decisions suspending expulsion are made in writing without reasons.</p> <p>The time limit for challenging a decision denying the deliverance or renewal of residence permits or toleration status is one month beginning with the date the decision has been notified. Such challenges and appeals do not have suspensive effect.</p> <p>The right to be heard is guaranteed during such procedures. The foreigners' office, before reaching a decision on toleration or residence permit, can audit persons in writing by requesting that persons concerned fill out hearings' forms.</p> | <p>Art 48 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Art 49.3, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBl 2009, 878) [General Administrative Regulation for the Residence Act]> http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>Art 77.1, 84.1 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Art 28.1 Verwaltungsverfahrensgesetz (VwVfG) vom 23. Januar 2003 (BGBl. I S. 102), zuletzt durch Artikel 24 Absatz 3 des Gesetzes vom 25. Juni 2021 (BGBl. I S. 2154) geändert worden [Administrative Procedural Act]: https://www.gesetze-im-internet.de/vwvfg/BJNR012530976.html</p> <p>Art 74.1 Verwaltungsgerichtsordnung (VwGO) vom 19. März 1991 (BGBl. I S. 686), zuletzt durch Artikel 2 des Gesetzes vom 8.</p> | |

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| | | | | | <p>Oktober 2021 (BGBl. I S. 4650) geändert worden [Rules of the Administrative Court]: https://www.gesetze-im-internet.de/vwgo/BJNR000170960.html#BJNR000170960BJNG000101308</p> <p>Law for the Introduction of an Opportunity for Residency, (20/3717)[Gesetzesentwurf der Bundesregierung, Gesetz zur Einführung eines Chancen-Aufenthaltsrechts], 2 December 2022: https://dserver.bundestag.de/btd/20/037/2003717.pdf</p> |
| SDS.14.a | Protection (Group 2) | <p>Are there any rights granted to stateless people on the basis of their statelessness? If yes, please provide details.</p> | <p>UNHCR, Handbook on Protection (2014): The status granted to a stateless person in a State Party must reflect international standards. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty.</p> | <p>The determination of statelessness itself does not lead to a right to residence.</p> <p>In practice, it seems statelessness status is only granted after a long, challenging procedure. Most people are recorded as ‘nationality unclear’, which is not in line with case law. Positively, a residence permit on humanitarian grounds or a temporary permit for persons who cannot be removed can be granted even if the person does not have a passport or a travel document, as other forms of evidence of identity are accepted”.</p> <p>When deportation is impossible in fact or in law and the person does not hold a temporary residence permit, that person may be granted ‘toleration’ (<i>Duldung</i>) for as long as deportation is impossible. Toleration is not a residence permit but documents an irregular stay and the obligation to leave the country remains. During this time, individuals have to comply with their duty to cooperate in obtaining all relevant documents to establish their identity and (lack of) nationality. Factual grounds can also hinder the deportation of stateless people and persons with unclear nationality. They are entitled to toleration if there is no State willing to take them (<i>aufnahmebereiter Staat</i>). Toleration can also be granted if countries of origin have limited receiving capacities.</p> <p>In June 2019, the German Parliament approved a ‘migration package’ that introduced new and modified legal and policy measures on immigration and asylum under the Residence Act, the Asylum Seekers Benefits Act and the newly approved Orderly Return Act (<i>Geordnete-Rückkehr-Gesetz</i>). The ‘Orderly Return Act’ significantly tightened detention and deportation rules, and introduced a new category of tolerated stay for people with ‘unclear identity’ for those who cannot provide identity documents or do not cooperate with the authorities. This permit does not provide the right to work nor freedom of movement.</p> <p>People on toleration are initially entitled to less support than asylum seekers or refugees, but after 15 months of uninterrupted stay they can access similar rights. They may receive support under the Asylum Seekers’ Benefit Act if they don’t have their own means. This covers basic needs (clothes, food, accommodation, housekeeping products) and healthcare services in case of illness, pregnancy and birth. It further provides a specific amount of money for individual needs. A person who has been on toleration for 3 months is not allowed to work; between 4-15 months they have limited access to the labour market and need a work permit subject to a ‘priority check’. After 48 months on toleration, unrestricted access to the labour market is allowed but not self-employment. However, employment for the highly skilled, those in a family business, vocational training, and internships are allowed</p> | <p>Fachanwaltslehrgang Migrationsrecht des Deutschen Anwaltsinstitut e.V. Teil 2. Fortsetzung Allgemeines Aufenthaltsrecht: Durchsetzung der Ausreisepflicht, insbesondere Duldung, Abschiebung und Abschiebungshaft (062201) - in Bochum am 13. Mai 2016. Referent: Dr. Reinhard Marx’ (2016) 5</p> <p>Burkhard Peters, ‘Übersicht über die möglichen rechtlichen Aufenthaltsarten für Flüchtlinge in Deutschland’: https://www.frsh.de/fileadmin/pdf/Unterrichtsmaterial/UebersichtAufenthaltsarten2014.pdf (April 2014) 5 (DE)</p> <p>BVerwG, 12.02.1985, NVwZ 1985, 589; BVerwG, 15.10.1985, NVwZ 1986, 759; OVG Berlin, Urteil v 18.04.1991 - OVG 5 B 41.90: https://www.jurion.de/urteile/ovg-berlin/1991-04-18/5-b-41_90/; VG Berlin, Urteil v 12.06.1985 - 11 A 655.84; VG Berlin, 12.06.1985, InfAusR 1985, 237-238; VG Berlin, Urteil v 24.02.1988 - 23 A 341.87; VG Berlin, 24.02.1988, InfAusR 1988, 174, 176</p> <p>Arts 25-26, Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act] https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Benjamin Bahtke, ‘German policy package on migration: What will change for asylum seekers and migrants?’ (InfoMigrants, 7 June 2019) : https://www.infomigrants.net/en/post/17379/german-policy-package-on-migration-what-will-change-for-asylum-seekers-and-migrants (ENG)</p> <p>Bundesministerium des Inneren, für Bau und Heimat, ‘Fragen und Antworten zum Entwurf des Geordnete-Rückkehr-Gesetzes’ (2019): https://www.bmi.bund.de/SharedDocs/faqs/DE/themen/migration/rueckkehr/geordnete-rueckkehr-gesetz.html</p> <p>Arts 60a-60b, 56(1) Nr 1-3 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act] https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Allgemeine Anwendungshinweise des Bundesministeriums des Innern zur Duldungserteilung nach §60a Aufenthaltsgesetz (30. Mai 2017) 5</p> |

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| | | | | <p>without obtaining permission from the Federal Employment Agency. A temporary rule applicable until 31 December 2023 states that people on toleration can enter the labour market after 12 months.</p> <p>Under the Residence Act, a person becomes eligible for temporary residence (<i>befristete Aufenthaltserlaubnis</i>) when departure is impossible in fact or law, and obstacles to deportation are not likely to be removed in the foreseeable future, the applicant is not preventing departure and is actively seeking to obtain necessary documents.</p> | <p>https://www.nds-fluerat.org/wp-content/uploads/2017/09/ERLASS-AAH-BMI-Duldung-mit-Regelungen-NI.pdf</p> <p>Das Aufenthaltsgesetz nach dem Migrationspaket. Vergleichende Gegenüberstellung/ Synopse. Gesetzesmaterialien zum Aufenthaltsgesetz (Walhalla 2019) 224-228.</p> <p>Rolf Stahmann, '§9 Duldung und Abschiebung' in Thomas Oberhäuser, Migrationsrecht in der Beratungspraxis (Nomos 2019) 415, recital 118</p> <p>Paritätischer Gesamtverband, 'Stellungnahme zum Gesetzentwurf über Duldung bei Ausbildung und Beschäftigung (BT-Drs. 19/8286)' (May 2019) 1 https://fluechtlingsrat-berlin.de/wp-content/uploads/dpw_besch_duldung.pdf (DE)</p> <p>25.5.2 Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10. 2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>EMN, Ad-Hoc Query on recognition of stateless persons. Requested by LU EMN NCP on 26th February 2015, Compilation of 4th May 2015: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/ad-hoc-queries-2015.675_lu_recognition_of_stateless_persons_wider_diss.pdf</p> <p>Arts 1(1) Nr 4, 2-4 Asylbewerberleistungsgesetz vom 5. August 1997 (BGBl I 1997, 2022), zuletzt geändert durch Artikel 38 des Gesetzes vom 20. November 2019 (BGBl 2019 I, 1626) [Asylum Seekers' Benefits Act]: https://www.gesetze-im-internet.de/asylblg/BJNR107410993.html (DE)</p> <p>Zwölftes Buch Sozialgesetzbuch (SGB XII) - Sozialhilfe - Sozialhilfe – (Artikel 1 des Gesetzes vom 27. Dezember 2003 (BGBl 2003 I, 3022, 3023), zuletzt geändert durch Artikel 43 des Gesetzes vom 21. Dezember 2020 (BGBl 2020 I, 3096) [Social Code – Book XII – Social Assistance]: https://www.gesetze-im-internet.de/sgb_12/BJNR302300003.html (DE)</p> <p>Art 32 Beschäftigungsverordnung (BeschV) vom 6. Juni 2013 (BGBl I 2013, 1499), zuletzt geändert durch Artikel 1 der Verordnung vom 18. Dezember 2020 (BGBl 2020 I, 3046) [Regulation on Employment of Aliens – Employment Regulation]: https://www.gesetze-im-internet.de/beschv_2013/BJNR149910013.html (DE)</p> <p>Art 8(2a) BAföG 'Tolerated foreigners (Article 60a of the Residence Act) who are permanently resident in Germany will receive training grants if they have been lawfully in the federal territory, permitted or tolerated for at least 15 months continuously.'</p> |
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| | | | | | <p>Art 8(a2) Bundesausbildungsförderungsgesetz (BAföG) in der Fassung der Bekanntmachung vom 7.12.2010 (BGBl I 2010, 1952; I 2012, 197), zuletzt geändert durch Artikel 3 des Gesetzes vom 8. Juli 2019 (BGBl 2019 I, 1048) [Federal Education and Trainings Assistance Act] https://www.xn--bafg-7qa.de/de/bundesausbildungsforderungsgesetz---bafoeg-204.php</p> <p>Kay Hailbronner, Asyl- und Ausländerrecht (4th edn, W Kohlhammer 2017) recital 1261</p> <p>Federal Ministry of Labour and Social Affairs, 'The new Integration Act' (7 July 2016): https://www.bmas.de/EN/Our-Topics/Info-for-asylum-seekers/the-new-integration-act.html</p> <p>Bundesagentur für Arbeit, 'Positivliste. Zuwanderung in Ausbildungsberufe' (9 September 2016)</p> |
| SDS.14.b | <p>Are stateless people otherwise able to access their rights under the 1954 Convention? Please state whether stateless people can access:</p> <ul style="list-style-type: none"> - right to reside - travel document - work - healthcare - social security - education - housing - family reunification - right to vote. <p>[Section complete, proceed to DET]</p> | <p>1954 Convention UNHCR, Handbook on Protection (2014): The status granted to a stateless person in a State Party must reflect international standards. It is recommended that States grant recognised stateless people a residence permit valid for at least two years, although longer permits, such as five years, are preferable in the interests of stability. Permits should be renewable. States parties are encouraged to facilitate the reunification of those with recognised statelessness status with their spouses and dependents. The right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.</p> | <p>When deportation is impossible in fact or in law and the person does not hold a temporary residence permit, people are entitled to a toleration of three months. In case of hardship, it can be extended to six months. If the person complies with their duty to cooperate in obtaining all relevant documents to establish their identity and nationality (or lack of nationality), the immigration authorities can extend the status of toleration on a three-monthly basis. If the person does not cooperate with the immigration authorities, the period of toleration is reduced to one month and can only be renewed on a monthly basis.</p> <p>The new migration package introduced in 2019 enables people on toleration who entered the country before August 2018 to extend their stay for up to 30 months. However, they must have had a job for at least one and half years on a 35 hours per week basis, and meet a certain level of language skills. However, meeting these conditions can be difficult for many people with 'tolerated status', including stateless people.</p> <p>A residence permit should be granted if deportation has been suspended for 18 months. This residence permit can be issued and renewed for up to 3 years. If the person has stayed regularly for less than 18 months, a residence permit can only be granted and renewed for 6 months. In practice, administrations do not always give a permit after a period of 18 months on toleration.</p> <p>Stateless people are not granted specific rights as a result of their recognition as stateless. They are subject to the same provisions as those applicable to other foreigners staying in the country and access to education, healthcare, housing and work will depend on their residence permit or tolerated status (see SDS.14.a).</p> <p>If a person is determined as stateless in Germany they will be issued a travel document according to the 1954 Convention. People on toleration cannot obtain a travel document due to the lack of relevant documents to establish their identity and nationality or statelessness.</p> <p>Stateless people can apply for family reunification if the hosting person meets the following conditions:</p> <ul style="list-style-type: none"> - a residence permit (there are some exceptions for refugees) - sufficient living space | <p>Fachanwaltslehrgang Migrationsrecht des Deutschen Anwaltsinstitut e.V. Teil 2. Fortsetzung Allgemeines Aufenthaltsrecht: Durchsetzung der Ausreisepflicht, insbesondere Duldung, Abschiebung und Abschiebungshaft (062201) - in Bochum am 13. Mai 2016. Referent: Dr. Reinhard Marx' (2016) 5</p> <p>Burkhard Peters, 'Übersicht über die möglichen rechtlichen Aufenthaltsarten für Flüchtlinge in Deutschland': https://www.frsh.de/fileadmin/pdf/Unterrichtsmaterial/UebersichtAufenthaltsarten2014.pdf (April 2014) 5 (DE)</p> <p>Benjamin Bahtke, 'German policy package on migration: What will change for asylum seekers and migrants?' (InfoMigrants, 7 June 2019) : https://www.infomigrants.net/en/post/17379/german-policy-package-on-migration-what-will-change-for-asylum-seekers-and-migrants (EN)</p> <p>Bundesministerium des Inneren, für Bau und Heimat, 'Fragen und Antworten zum Entwurf des Geordnete-Rückkehr-Gesetzes' (2019): https://www.bmi.bund.de/SharedDocs/faqs/DE/themen/migration/rueckkehr/geordnete-rueckkehr-gesetz.html</p> <p>BVerwG, 12.02.1985, NVwZ 1985, 589; BVerwG, 15.10.1985, NVwZ 1986, 759; OVG Berlin, Urteil v 18.04.1991 - OVG 5 B 41.90: https://www.jurion.de/urteile/ovg-berlin/1991-04-18/5-b-41_90/; VG Berlin, Urteil v 12.06.1985 - 11 A 655.84; VG Berlin, 12.06.1985, InfAusIR 1985, 237-238; VG Berlin, Urteil v 24.02.1988 - 23 A 341.87; VG Berlin, 24.02.1988, InfAusIR 1988, 174, 176</p> <p>Arts 25(5)-26(1) Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>25.5.2 Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10. 2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> | |

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| | | | | <p>- sufficient health insurance coverage - evidence that they will be able to secure their livelihoods and those of family members entering Germany. Family members, in turn, need to provide proof of German language skills to acquire a visa or pass a language and orientation course as part of the integration procedure after entering the country. Moreover, spouses or partners must be at least 18 years old.</p> <p>Stateless people are treated like other foreigners and therefore do not have the right to vote in any elections in Germany.</p> | <p>EMN, Ad-Hoc Query on recognition of stateless persons. Requested by LU EMN NCP on 26th February 2015, Compilation of 4th May 2015: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/ad-hoc-queries-2015.675_lu_recognition_of_stateless_persons_wider_diss.pdf</p> <p>Art 2(1) Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>EMN, 'Ad-Hoc Query on recognition of stateless persons. Requested by LU EMN NCP on 26th February 2015, Compilation of 4th May 2015' (2015) 16: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/ad-hoc-queries-2015.675_lu_recognition_of_stateless_persons_wider_diss.pdf</p> <p>(Art 12 Bundeswahlgesetz vom 23. Juli 1993 (BGBl 1288 I, 1594), zuletzt geändert durch Artikel 1 des Gesetzes vom 14. November 2020 (BGBl 2020 I, 2395) [Federal Election Law]: https://www.gesetze-im-internet.de/bwahlg/BJNR003830956.html (DE)</p> <p>Janne Grote, 'Familiennachzug von Drittstaatsangehörigen nach Deutschland. Fokusstudie der deutschen nationalen Kontaktstelle für das Europäische Migrationsnetzwerk (EMN)' (Working Paper 73; Bundesamt für Migration und Flüchtlinge 2017) 6 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/11b_germany_family_reunification_de_final.pdf (DE)</p> |
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Detention

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| DET.1.a | Immigration detention | <p>Please provide a brief overview of whether immigration detention powers are provided for in law and applied in practice, and whether alternatives to detention are considered.</p> <p>Please provide the legal source(s) and, if available, refer to other publications and sources of information about the law, policy, and practice on immigration detention.</p> | <p>ICCPR: Article 9 ECHR: Article 5 EU Return Directive: Article 15 UNHCR, Handbook on Protection (2014): Detention is a measure of last resort and can only be justified where other less invasive or coercive measures have been considered and found insufficient. UN General Assembly (2009): Calls upon all States to adopt alternative measures to detention. HRC, Report of the Special Rapporteur (2012): The obligation to always consider alternatives before resorting to detention should be established by law. International Detention Coalition (2015): Immigration detention should be used only as a last resort in exceptional cases after all other options have been shown to be inadequate in the individual case.</p> | <p>The order for detention pending deportation is regulated federally (<i>bundeseinheitlich</i>). Implementation is a matter for the federal state (<i>Bundesland</i>) and may vary. German law provides for the right to life and physical integrity and states that the freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law. Authorities must act as quickly as possible and limit the duration of detention to the shortest possible time. Liberty of the person may only be restricted pursuant to law and prescribed procedures.</p> <p>Only a judge may rule on the permissibility or continuation of any deprivation of liberty. If such a deprivation is not based on a judicial order, a judicial decision shall be obtained without delay. The Residence Act sets out the types and procedures for detention in relation to deportation, expulsion, removal, the conditions to detain and the duration of (maximum) detention periods. The Residence Act and General Administrative Regulation for the Residence Act set the legal framework for possible alternatives to detention at national level and there are guidelines and resolutions on federal state level. Alternatives include: a) reporting requirements; b) geographic restrictions within a federal state or domicile restrictions; c) attendance at special counselling for returnees; d) bail. The decision to apply alternatives is usually made by the foreigners’ office in the federal states or detention centre staff. There are no statutory time limits at national level. The authorities must check regularly whether the conditions for alternatives to detention pending deportation are upheld, or whether the obligation to leave the country may have to be ceased due to e.g. impossibility to leave the country.</p> <p>The immigration authorities can detain a person without prior judicial order and notice based on several grounds, including to secure the person’s deportation or if there is a suspicion that the person may evade.</p> <p>It is reported that immigration detention is used in practice prior to all alternatives being considered. Diakonie has stated that ‘the order for deportation is often too hasty, and the courts do not always take due diligence to examine the applications for detention. Between 30-50% of the people supported by the [Diakonie] legal aid fund were released from custody.’</p> | <p>Arts 2, 20, 83,84,104, Grundgesetz (GG) für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 1 u. 2 Satz 2 des Gesetzes vom 29. September 2020 (BGBl 2020 I, 2048) [Basic Law]: https://www.gesetze-im-internet.de/gg/BJNR000010949.html (DE)</p> <p>Umsetzung der Abschiebungsrichtlinie der Europäischen Union und die Praxis der Abschiebungshaft [Implementation of the return directive of the European Union and the practice of detention pending deportation] BT-Drucksache 17/10597: http://dip21.bundestag.de/dip21/btd/17/105/1710597.pdf (5 September 2012) (DE)</p> <p>For guidelines on federal state level, see for example the case of North Rhine – Westphalia: Richtlinien für die Abschiebungshaft im Land Nordrhein-Westfalen (Abschiebungshaft-richtlinien - AHaftRL). Runderlass des Ministeriums für Inneres und Kommunales - 121-39.21.01-2-AHaftRL - vom 8. Juni 2016: https://recht.nrw.de/lmi/owa/br_vbl_detail_text?anw_nr=7&vnd_id=15682&ver=8&val=15682&sg=2&menu=1&vnd_back=N (DE)</p> <p>Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act] https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>58.0.1, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>Gerichtsverfassungsgesetz (GVG) vom 9. Mai 1975 (BGBl 1975 I, 1077), zuletzt geändert durch Artikel 1 des Gesetzes vom 12. Dezember 2019 (BGBl 2019 I, 2633) [Courts Constitution Act]: https://www.gesetze-im-internet.de/gvg/BJNR005130950.html (DE)</p> <p>Reinhard Marx, Aufenthalts-, Asyl- und Flüchtlingsrecht. Handbuch (6th edn, Nomos 2017) 828-835</p> <p>46.1, 46.1.3, 46.1.4.1, 46.1.4.2, 46.1.4.3, 46.1.4.4 Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> |

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| | | | | | <p>Arts 46(1), 61(1), Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt geändert durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Für rules on federal state, see e.g. Rhineland-Palatinate: Anwendungshinweise des Ministeriums für Integration, Familie, Kinder, Jugend und Frauen zur Abschiebungshaft nach § 62 des Aufenthaltsgesetzes (AufenthG) vom 15. August 2013 (Az.: 19 344/725): https://www.migrationsrecht.net/nachrichten-gesetzgebung-auslaenderrecht/anwendungshinweise-des-ministeriums-fuer-integration-familie-kinder-jugend-und-frauen-zur-abschiebungshaft.html (DE)</p> <p>Janne Grote, 'The use of detention and alternatives to detention in Germany. Study by the German National Contact Point for the European Migration Network (EMN)' (Working Paper 59, Federal Office for Migration and Refugees 2014) 44.</p> <p>Richtlinien für die Abschiebungshaft im Land Nordrhein-Westfalen (Abschiebungshaftrichtlinien - AHaftrL) Runderlass des Ministeriums für Inneres und Kommunales - 121-39.21.01-2-AHaftrL - vom 8. Juni 2016 (Valid Decree as of 28 January 2020) https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=1&gld_nr=2&ugl_nr=2604&bes_id=34785&val=34785&ver=7&sg=0&aufgehoben=N&menu=1 (DE)</p> <p>Diakonie Hessen, 'Abschiebehaft': http://www.diakonie-hessen.de/ueber-uns/arbeitsfelder/flucht-interkulturelle-arbeit-migration/abschiebungshaft.html (DE)</p> <p>Diakonie Hessen, 'Abschiebungshaft in vielen Fällen rechtlich fragwürdig' (May 2017): http://www.diakonie-hessen.de/aktuell/nachrichten/details/article/abschiebungshaft-in-vielen-faellen-rechtlich-fragwuerdig.html (DE)</p> <p>'Die Praxis der Abschiebungshaft und Fragen zum Haftvollzug', BT-Drucksache 18/7196, (6 January 2016)</p> <p>Asylum Information Database (AIDA), <i>Country Report 2021 Update: Germany</i>, European Council on Refugees and Asylum (ECRE), 8 April 2022 [available here: https://ecre.org/aida-2021-update-germany/].</p> <p>Asylum Information Database (AIDA), Germany: Solidarity with Ukrainian Refugees, Berlin Under Pressure, Other Asylum Seekers Moved Along, Pro Asyl Slams Pre-Deportation Detention, European Council on Refugees and Asylum (ECRE), 18 March 2022, available here: https://ecre.org/germany-solidarity-with-ukrainian-refugees-berlin-under-pressure-other-asylum-seekers-moved-along-pro-asyl-slams-pre-deportation-detention/</p> <p>Asylum Information Database (AIDA), Germany: Government Urged to Speed Up Afghan Visas, Smugglers Exploit Dreams of</p> |
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| | | | | | <p>Germany, Tens of Thousands of “Onward Movement” Claims on Hold, European Council on Refugees and Asylum (ECRE), 18 February 2022, available here: https://ecre.org/germany-solidarity-with-ukrainian-refugees-berlin-under-pressure-other-asylum-seekers-moved-along-pro-asyl-slams-pre-deportation-detention/</p> <p>Asylum Information Database (AIDA), Boundaries of liberty Asylum and de facto detention in Europe, European Council on Refugees and Asylum (ECRE), 19 November 2020, [comparative report available here: https://asylumineurope.org/wp-content/uploads/2020/11/boundariesliberty.pdf].</p> <p>Asylum Information Database (AIDA), Airport procedures in Germany: Gaps in quality and compliance with guarantees, Fact-finding visit, European Council on Refugees and Asylum (ECRE), May 2019 [available here: https://asylumineurope.org/wp-content/uploads/2020/11/airportproceduresgermany.pdf].</p> <p>Asylum Information Database (AIDA), The Anker centres Implications for asylum procedures, reception and return, Fact-finding visit, European Council on Refugees and Asylum (ECRE), April 2019 [available here: https://asylumineurope.org/wp-content/uploads/2020/11/anker_centres_report.pdf].</p> <p>Global Detention Project, <i>Immigration Detention in Germany: From Open Arms to Public Backlash</i>, Country Report, August 2020 [available here: https://www.globaldetentionproject.org/wp-content/uploads/2020/09/GDP-Immigration-Detention-in-Germany-2020-Update-Online-Report.pdf].</p> <p>Global Detention Project, <i>Germany Immigration Detention Data Profile</i>, 2020 [available here: https://www.globaldetentionproject.org/wp-content/uploads/2020/11/Germany-Detention-Data-Profile-2020.pdf].</p> |
| DET.1.b | | <p>Does a proposed country of removal need to be identified before a person is detained for removal? Please describe the situation in law and in practice.</p> | <p>ICCPR: Repeated attempts to expel a person to a country that refuses to admit them could amount to inhuman or degrading treatment (Article 7). ECtHR, Auad v. Bulgaria (2011): In cases of detention with a view to deportation, lack of clarity as to the destination country could hamper effective control of the authorities’ diligence in handling the deportation. EU Return Directive: Any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence.</p> | <p>Yes. Under the Residence Act, the notice of intention to deport should specify the state to which the person is to be deported. Under the General Administrative Regulation for the Residence Act, the country of destination shall only be indicated in the case of a stateless person, if there exists the real possibility of deportation to a particular state and a deportation attempt can be made after consultation with the competent authorities. Under the Act on Proceedings in Family Matters of Non-Contentious Jurisdiction the application shall contain the grounds, including the obligation of the person concerned to leave the federal territory, the prerequisites and the feasibility of deportation, removal, and refusal of entry. In practice, however, the authorities do not strictly apply the law. Some states refuse to receive the individual, which may only come to light during detention.</p> | <p>Art 59(2) Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>59.2.2, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>Art 417(2), Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) vom 17. Dezember 2008 (BGBl 2008 I, 2586-2587), zuletzt geändert durch Artikel 4 des Gesetzes vom 19. März 2020 (BGBl 2020 I, 541) 9 des Gesetzes vom 12. Dezember 2019 (BGBl 2019 I, 2633) [Act on Proceedings in Family Matters and in Matters of</p> |

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| | | | | | <p>Non-contentious Jurisdiction]: https://www.gesetze-im-internet.de/famfg/ (DE)</p> <p>Caselaw on the information about the country that an individual is deported to: BGH, Beschluss v 21.03.2013 – V ZB 122/12; BGH, Beschluss v 19.06.2013 – V ZB 30/13; BGH, Beschluss v 04.07.2013 – V ZB 37/12; BGH, Beschluss v 12.09.2013 – V ZB 171/12, V ZB 85/12 (DE)</p> <p>Caselaw on the lack of an identified country: BGH, Beschluss v 6. 10. 2011 – V ZB 140/11; BGH, Beschluss v 16.6.2016 - V ZB 12/15 (DE)</p> <p>Caselaw on the situation with Lebanon, see: OVG Brandenburg, Urteil v 1.07.2004 – 4 A 747/03; VG Berlin, Urteil v 24.07.2007 – 27 A 180.06; VG Freiburg, Urteil v 24.04.2008 – 4 K 280/06; VG Berlin, Urteil v 25. August 2011 - 35 K 202.11 (DE)</p> <p>Caselaw on Palestinians: OVG Berlin-Brandenburg, Urteil v 25.11.2014 - 3 B 4.12 (DE)</p> |
| DET.1.c | | Is there a clear obligation on authorities to release a person when there is no reasonable prospect of removal? | <p>EU Return Directive: When it appears that a reasonable prospect of removal no longer exists, detention ceases to be justified and the person concerned shall be released immediately.</p> <p>UN Working Group on Arbitrary Detention (2018): When the obstacle for identifying or removal of persons in an irregular situation from the territory is not attributable to them, the detainee must be released to avoid potentially indefinite detention from occurring, which would be arbitrary.</p> <p>ECtHR, Auad v. Bulgaria (2011)</p> <p>ECtHR, Mikolenko v. Estonia (2009)</p> | Yes. Detention is prohibited when it is determined that the removal of persons is not possible in the next three months and if the obstacle is not attributable to them. | <p>Art 62.3 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> |
| DET.2.a | Identification of statelessness | Is statelessness juridically relevant in decisions to detain? Please describe how (risk of) statelessness is identified and whether referral to an SDP is possible from detention. | <p>ECtHR, Auad v. Bulgaria (2011)</p> <p>ECtHR, Mikolenko v. Estonia (2009): Detention may only be justified as long as deportation proceedings are being conducted with due diligence.</p> <p>UNHCR, Handbook on Protection (2014): Routine detention of individuals seeking protection on the grounds of statelessness is arbitrary.</p> <p>CMW, General comment No. 5 (2021): States should avoid detaining migrants who have specific needs, which includes stateless persons. States should also be aware that stateless persons find themselves in a vulnerable situation, given that consular assistance and protection are unavailable due to their status. Statelessness determination procedures are essential, given that the lack of a country of nationality to be returned to leaves stateless persons at higher risk of arbitrary and indefinite detention.</p> <p>Equal Rights Trust, Guidelines (2012): States must identify stateless persons within their territory or subject to their jurisdiction as a first step towards ensuring the protection of their human rights.</p> | <p>If deportation will not be carried out due to factual grounds (e.g. difficulties to obtain a passport, or unwillingness of the country of destination to receive the individual), detention to secure deportation cannot be ordered. If the country of destination categorically does not issue home travel documents (<i>Heimreisepapiere</i>) within 3 months, detention cannot be ordered. However, according to caselaw, even if the identity of the individual cannot be determined but the country of destination for deportation is willing to receive them, deportation can be carried out. A stateless individual can be deported to a country of former nationality (if the person has become stateless in the meantime), even if it is not clear that the country of destination is willing to receive the person. From the perspective of administrative (not legal) practice, it is only possible to establish a factual impossibility to deport after several unsuccessful attempts.</p> <p>It should be noted that the authorities tend to categorise statelessness as ‘unclear nationality’ until it is determined, so the person should cooperate to obtain the necessary documents to establish their statelessness. The ‘Orderly Return Act’ significantly tightened detention and deportation rules, which are particularly concerning for stateless people whose status cannot be determined due to ‘not self-caused reasons’ (for example,</p> | <p>Reinhard Marx, Aufenthalts-, Asyl- und Flüchtlingsrecht. Handbuch (6th edn, Nomos 2017) 832 recital 8</p> <p>59.2.2, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>OLG München, AuAS 2007, 42-43, in Reinhard Marx, Aufenthalts-, Asyl- und Flüchtlingsrecht. Handbuch (6th edn, Nomos 2017) 845, recital 26: VGH Bayern, InfAusIR 1994, in 30</p> <p>Holger Hoffmann, ‘Staatenlosigkeit – Rechte und rechtliche Folgen’ (2017) 9 Asylmagazin 334 (DE)</p> <p>Benjamin Bahtke, ‘German policy package on migration: What will change for asylum seekers and migrants?’ (InfoMigrants, 7 June 2019) https://www.infomigrants.net/en/post/17379/german-policy-package-on-migration-what-will-change-for-asylum-seekers-and-migrants (ENG)</p> |

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| | | | <p>ICJ, Migration and International Human Rights Law (2014): The detention of stateless persons can never be justified when there is no active or realistic progress towards transfer to another State.</p> | <p>impossibility of obtaining documents through embassies or gender discriminatory laws in country of origin or residence), but whose ‘duty to cooperate’ is questioned by the German immigration authority. The new Act further enables the authorities to put people into ‘participatory detention (<i>Mitwirkungshaft</i>)’ for maximum fourteen days if they have not complied with the required obligations to cooperate to clarify their identity. The law outlines that acquiring a passport is ultimately the responsibility of those without a passport and that this is not just a ‘duty to cooperate’ but an ‘obligation’ and violations of the passport obligation are considered an offence with fines of up to €5,000 (although positively the law does recognise that this is unreasonable in cases where people cannot approach the relevant embassy). These sanctions could negatively impact on stateless people who cannot provide documentation or subsequently acquire a passport from an embassy.</p> | <p>Zweites Gesetz zur besseren Durchsetzung der Ausreisepflicht [Draft of a Second Law to better enforce the obligation to leave the country] Bundesgesetzblatt Teil I Nr. 31 (15 August 2019) https://www.bgbl.de/xaver/bgbl/start.xav#_bgbl_%2F%2F%5B%40attr_id%3D%27bgbl119s1294.pdf%27%5D_1641224648029 (DE)</p> |
| DET.2.b | Is there a definition of vulnerability in law? If yes, does it explicitly include statelessness? If not, please note whether statelessness is considered to be a factor increasing vulnerability. | <p>PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): Statelessness should be explicitly included in the definition of vulnerability. Vulnerability should always be determined and assessed on an individual basis.</p> | <p>Although in the Residence Act reference is made to vulnerable persons, no definition is provided.</p> <p>Pursuant to the EU Directive 2013/33/EU, which is directly applicable and was not transposed into national law, the definition of vulnerability does not explicitly include statelessness.</p> | <p>Art. 62a(3) S 2, Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>EU Reception Directive: Chapter IV “Provisions for Vulnerable Persons” enumerates groups of vulnerable persons, this list is non exhaustive.</p> | |
| DET.2.c | Are individual vulnerability assessments carried out before a decision to detain (or soon after)? | <p>ENS, Protecting Stateless Persons From Arbitrary Detention (2015): Arbitrary and disproportionately lengthy detention can ensue when the particular vulnerabilities of stateless people are not addressed.</p> <p>EU Return Directive: Article 16(3)</p> <p>EU Return Handbook (2017): Attention should be paid to the specific situation of stateless persons.</p> <p>Council of the European Union, Guidelines to promote and protect the enjoyment of all human rights by LGBTI persons (2013): European entities should assess the situation of LGBTI persons in detention.</p> <p>PICUM, Preventing and Addressing Vulnerabilities in Immigration Enforcement Policies (2021): There should be a clear legal obligation to screen and assess individuals’ vulnerability before a decision to detain is taken and before individuals are placed into situations of deprivation or restriction of liberty.</p> | <p>Yes. The Federal States are responsible for the identification of vulnerability, but in practice the process lacks rigor. Statelessness is not considered a vulnerability factor within this assessment.</p> | <p>Art 62(1) S 3, Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>62.0.5, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>On the lack of examinations: Janne Grote, ‘The use of detention and alternatives to detention in Germany. Study by the German National Contact Point for the European Migration Network (EMN)’ (Working Paper 59, Federal Office for Migration and Refugees 2014) 30</p> <p>For rules on federal state level, for example Rhineland-Palatinate: Anwendungshinweise des Ministeriums für Integration, Familie, Kinder, Jugend und Frauen zur Abschiebungshaft nach § 62 des Aufenthaltsgesetzes (AufenthG) vom 15. August 2013 (Az.: 19 344/725) [Application notes of the Ministry of Integration, Family, Children, Youth and Women on detention pending deportation according to article 62 of the Residence Act of 15 August 2013]</p> <p>On minors, parents and children, pregnant women, sickness, marriage, see: Thomas Oberhäuser, ‘§ 11 Abschiebungshaft’ in Migrationsrecht in der Beratungspraxis (Nomos 2019) recitals 127-138 [DE]</p> | |

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| DET.2.d | | Are stateless people detained in practice? | As above. | Yes, see POP 2a and DET 1a. | |
| DET.3.a | Procedural safeguards | Are there adequate procedural safeguards in place for individuals in immigration detention (e.g. maximum period of detention, automatic release at the end, decisions in writing, regular periodic reviews, judicial oversight, legal aid, etc.)? | <p>ICCPR: Article 9(4) ECHR: Article 5(4) EU Return Directive: Articles 12, 13 and 15(5) HRC, Report of the Working Group on Arbitrary Detention (2010): A maximum period of detention must be established by law and upon expiry the detainee must be automatically released. CMW, General comment No. 5 (2021): States parties are obligated to adopt legislative and other measures, allocate adequate resources, and provide relevant training to comply with the CMW. There should be a maximum period for immigration detention established in legislation, with automatic release at the end of that period, and which precludes re-detention. States should also be aware that stateless persons find themselves in a vulnerable situation, given that consular assistance and protection are unavailable due to their status. UNHCR, Detention Guidelines (2012): To guard against arbitrariness, maximum periods of detention should be set in national law. UNHCR, Handbook on Protection (2014): Judicial oversight of detention is always necessary and detained individuals need to have access to legal representation, including free counselling for those without means. UNGA, Body of Principles (1988): Anyone who is arrested shall be informed at the time of the reason for his arrest. Equal Rights Trust, Guidelines (2012): Stateless detainees shall receive their order of detention in writing and in a language they understand. To avoid arbitrariness, detention should be subject to automatic, regular and periodic review throughout the period of detention, before a judicial body independent of the detaining authorities. Detention should always be for the shortest time possible. International Commission of Jurists, Migration and International Human Rights Law: A Practitioners' Guide (2014): The authorities shall ensure that sufficient information is available to detained persons in a language they understand on the nature of their detention and reasons for it. ECtHR, Kim v. Russia (2014): The purpose of Article 5(4) ECHR is to guarantee to persons who are detained the right to judicial supervision of the lawfulness of the measure.</p> | <p>Maximum time period of detention is 18 months.</p> <p>The Court must send a copy (translated if required) of the application for detention pending deportation to the individual, containing their name and reasons for detention. On Federal State level, e.g. in North Rhine-Westphalia, the individual must receive a copy of the detention order in good time, translated into their native language or a language they understand.</p> <p>The immigration authorities can detain a person without prior judicial order and notice based on several grounds, including to secure the person's deportation or if there is a suspicion that the person may evade.</p> <p>The authorities must examine ex officio at regular intervals whether the legal requirements for detention pending deportation are still in place. Detention must be suspended immediately if the reasons have lapsed and the person released.</p> <p>The individual can make a complaint to the:</p> <ol style="list-style-type: none"> Local Court (<i>Amtsgericht</i>) District Court (<i>Landgericht</i>) Federal Court (<i>Bundesgerichtshof</i>) <p>A further appeal is possible on the application for annulment of detention. However, several obstacles have been reported e.g. in Hamburg, where people missed court hearings, there was a lack of interpreters, the detention order was not translated, paperwork was missing, or there was a lack of legal aid.</p> <p>There is no specific regulation to receive free legal aid during the process – detention pending deportation is not a criminal custody so not eligible for free legal aid. Access to free legal aid and advice varies among the states (Länder). In some states, free legal advice is only provided by civil society, while in others, free legal advice and aid is provided by the state.</p> <p>After notification of the deportation order, the person concerned has to be granted the possibility to contact a legal counsel of their choice. An application for preliminary legal aid and protection, pursuant to the Administrative Procedure Code, has to be made seven days after the notification of the deportation order.</p> | <p>Art 58a(4) S 3, 62, 62 (4), 106(2), Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt geändert durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Arts 16, 23 (2), 34, 58, 59, 63, 64, 68, 70, 71, 72, 74, 76, 77, 416, 417(2), 424(1), 426, 426 (2) Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit (FamFG) vom 17. Dezember 2008 (BGBl 2008 I, 2586-2587), zuletzt geändert durch Artikel 4 des Gesetzes vom 19. März 2020 (BGBl 2020 I, 541) [Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction]: https://www.gesetze-im-internet.de/famfg/BJNR258700008.html (DE)</p> <p>Caselaw on the obligation to send a copy of the warrant: BGH, Beschluss v 27.09.2012 – V ZB 50/12; BGH, Beschluss v 30.10.2013 – V ZB 33/13; BGH, Beschluss v 05.12.2013 – V ZB 71/13; BGH, Beschluss v 19.12.2013 – V ZB 107/13 (DE)</p> <p>Caselaw on the obligation to send the copy of the order on time and the possible need for translation: BGH, Beschluss v 21. Juli 2011 - V ZB 141/11 (DE)</p> <p>Janne Grote, 'The use of detention and alternatives to detention in Germany. Study by the German National Contact Point for the European Migration Network (EMN)' (Working Paper 59, Federal Office for Migration and Refugees 2014) 29 On guidance on federal state level, North Rhine–Westphalia: 8, Richtlinien für die Abschiebungshaft im Land Nordrhein-Westfalen (Abschiebungshaft-richtlinien - AHaftRL) Runderlass des Ministeriums für Inneres und Kommunales - 121-39.21.01-2-AHaftRL - vom 8. Juni 2016: https://recht.nrw.de/lmi/owa/br_vbl_detail_text?anw_nr=7&vd_id=15682&ver=8&val=15682&sg=2&menu=1&vd_back=N (DE)</p> <p>Richtlinien für die Abschiebungshaft im Land Nordrhein-Westfalen (Abschiebungshaftrichtlinien - AHaftRL) Runderlass des Ministeriums für Inneres und Kommunales - 121-39.21.01-2-AHaftRL - vom 8. Juni 2016 (Valid Decree as of 28 January 2020) https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=1&gld_nr=2&ugl_nr=2604&bes_id=34785&val=34785&ver=7&sg=0&aufgehoben=N&menu=1 (DE)</p> <p>Art 104(2), Grundgesetz (GG) für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 1 u. 2 Satz 2 des Gesetzes vom 29. September 2020 (BGBl 2020 I, 2048) [Basic Law]: https://www.gesetze-im-internet.de/gg/BJNR00010949.html</p> |

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| | | | | | <p>(DE)</p> <p>62.3.0.1, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>For guidance on federal state level, see for example the case of Rhineland – Palatinate: 5, Anwendungshinweise des Ministeriums für Integration, Familie, Kinder, Jugend und Frauen zur Abschiebungshaft nach § 62 des Aufenthaltsgesetzes (AufenthG) vom 15. August 2013 (Az.: 19 344/725) [Application notes of the Ministry of Integration, Family, Children, Youth and Women on detention pending deportation according to article 62 of the Residence Act of 15 August 2013] (DE)</p> <p>BGH, Beschluss v 2.03.2017 – V ZB 122/15</p> <p>Reinhard Marx, Aufenthalts-, Asyl- und Flüchtlingsrecht. Handbuch (6th edn, Nomos 2017) 833, 874-876</p> <p>Kay Hailbronner, Asyl- und Ausländerrecht (4th edn, W Kohlhammer 2017) recital 1207-1208</p> <p>Art 23a, Gerichtsverfassungsgesetz in der Fassung der Bekanntmachung vom 9. Mai 1975 (BGBl 1975 I, 1077), zuletzt geändert durch Artikel 2 des Gesetzes vom 22. Dezember 2020 (BGBl 2020 I, 3256) [Courts Constitution Act] https://www.gesetze-im-internet.de/gvg/BJNR005130950.html (DE)]</p> <p>Janne Grote, ‘The use of detention and alternatives to detention in Germany. Study by the German National Contact Point for the European Migration Network (EMN)’ (Working Paper 59, Federal Office for Migration and Refugees 2014) 31</p> <p>On the transformation into a complaint: BGH, InfAuslR 2015, 439</p> <p>RA Claudius Brenneisen, RA Insa Graefe, RA Heiko Habbe, RA Markus Prottung, RA Inka Quirling, ‘Abschiebungshaft in der anwaltlichen Praxis’: https://www.frsh.de/fileadmin/pdf/Abschiebungshaft/Abschiebungshaft_in_der_anwaltlichen_Praxis.pdf (DE)</p> <p>Groß, Beratungshilfe, Prozesskostenhilfe, Verfahrenskostenhilfe (13th edn, CF Müller 2015) 701 recital 16</p> <p>BGH B v 12.09.2013 – V ZB 121, 12 juris</p> <p>Art 114, Zivilprozessordnung (ZPO) vom 5. Dezember 2005 (BGBl 2005 I, 3202; 2006 I 431; 2007 I 1781), zuletzt geändert durch Artikel 8 des Gesetzes vom 22. Dezember 2020 (BGBl 2020, 3320) [Civil Procedure Code]: https://www.gesetze-im-internet.de/zpo/BJNR005330950.html (DE)</p> |
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| | | | | | <p>Art 166, Verwaltungsgerichtsordnung (VwGO) vom 19. März 1991 (BGBl 1991 I, 686), zuletzt geändert durch Artikel 1 des Gesetzes vom 3. Dezember 2020 (BGBl 2020 I, 2694) [Administrative Procedure Code]: https://www.gesetze-im-internet.de/vwgo/VwGO.pdf (DE)</p> <p>Art 1, Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen (Beratungshilfegesetz - BerHG) vom 18.06.1980 (BGBl I 1980, 689), zuletzt geändert durch Artikel 140 der Verordnung vom 31.08.2015 (BGBl I 2015, 1474) [Act on legal advice and representation for citizens with low incomes - Legal Advice Act] : https://www.gesetze-im-internet.de/berathig/BJNR006890980.html (DE)</p> <p>On the situation in the federal states: Umsetzung der Abschiebungsrichtlinie der Europäischen Union und die Praxis der Abschiebungshaft [Implementation of the return directive of the European Union and the practice of detention pending deportation] BT-Drucksache 17/10597 (5 September 2012): https://ia801607.us.archive.org/28/items/ger-bt-drucksache-17-10597/1710597.pdf (DE)</p> |
| DET.3.b | | Are detainees provided with information on their rights, contact details of legal advice and support providers, and guidance on how to access an SDP? | Equal Rights Trust, Guidelines (2012) : Detaining authorities are urged to provide stateless detainees with a handbook in a language and terms they understand, containing information on all their rights and entitlements, contact details of organisations which are mandated to protect them, NGOs and visiting groups and advice on how to challenge the legality of their detention and their treatment as detainees. | Yes. The law provides for detainees to receive information about their rights and obligations including their right to contact a legal representative, family members, consular authorities, and support organisations. There is no SDP procedure in place, but statelessness can be determined when the identity of a person needs to be clarified for deportation. During detention, both the authorities and the individual have to make efforts to obtain travel documents. Legal representatives, NGOs, associations, churches can help the person in this process. | Reinhard Marx, Aufenthalts-, Asyl- und Flüchtlingsrecht. Handbuch (6 th edn, Nomos 2017) 860-862 On deportation despite missing clarity about the identity of the individual, see: OLG München, AuAS 2007, 42-43, in Reinhard Marx, Aufenthalts-, Asyl- und Flüchtlingsrecht. Handbuch (6 th edn, Nomos 2017) 845 recital 26 |
| DET.3.c | | Are there guidelines in place governing the process of re-documentation and ascertaining entitlement to nationality for the purpose of removal? | Equal Rights Trust, Guidelines (2012) : The inability of a stateless person to cooperate with removal proceedings should not be treated as non-cooperation. ENS, Protecting Stateless Persons From Arbitrary Detention (2015) : The detaining state should have rules in place that govern the process of re-documentation and/ or ascertaining entitlement to nationality. | Yes. It sets out the respective roles and tasks of the individual and authorities in the investigation of facts relevant to the determination of identity and nationality. The individual must fulfil the duty of cooperation and initiative, while the authority has the obligation to notify and to impose. The scope of these obligations has mainly been shaped by jurisprudence. The burden of proof lies on the individual who needs to present any possible certificate, document, medical certificate, voluntary DNA test, etc. to clarify their situation. The authority is not obliged to gather information on case relevant facts concerning the individual abroad. | Arts 25(5), 82, Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE) 25.5.4, 82 – 82.1.2, 82.3 – 82.4.2.3 Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE) Boris Franßen-de la Cerda, 'Die Verpflichtung des Ausländers zur Mitwirkung (§ 82 AufenthG)' (2010) 3 ZAR: http://www.zar.nomos.de/?id=1443 (DE) Rolf Stahmann, 'Staatsangehörigkeit. Staatenlosigkeit': http://stahmann-anwalt.de/migrationsrecht/staatsangehoerigkeit/ (DE) |
| DET.4.a | Protections on release | Are people released from detention issued with identification documents (including confirmation of their statelessness status) and protected from re-detention? | 1954 Convention : Article 27 UNHCR, Handbook on Protection (2014) : Being undocumented cannot be used as a general justification for detention. CMW, General comment No. 5 (2021) : There should be a maximum period for immigration detention established in legislation, with automatic release at | Most of the time, toleration (<i>Duldung</i>) is granted, which may indicate that the individual is stateless or has unclear nationality. However, the status of toleration maintains the obligation to leave the country and does not protect the individual from re-detention. A detention order can be issued during toleration, if deportation can be carried out within 3 months. If deportation is suspended for 18 months due to impossibility to leave the country, for | Art 60a Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE) |

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| | | | <p>the end of that period, and which precludes re-detention. Statelessness determination procedures are essential, given that the lack of a country of nationality to be returned to leaves stateless persons at higher risk of arbitrary and indefinite detention. Detaining stateless persons when there is no real prospect of removal would render the detention arbitrary, and the detained stateless person must therefore be immediately released.</p> <p>ENS, Protecting Stateless Persons From Arbitrary Detention (2015): State parties to the 1954 Convention have an obligation to provide stay rights to stateless people who have been released from detention.</p> <p>Equal Rights Trust, Guidelines (2012): Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.</p> | <p>example, the individual may be granted a residence permit. For stateless people on toleration it can be difficult to obtain travel documents from the authorities. See SDS.14.a and SDS.14.b for further details.</p> | <p>25.5.2, 60a.2.1.2, Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz (AufenthG-VwV) vom 26.10.2009 (GMBI 2009, 878) [General Administrative Regulation for the Residence Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_26102009_MI31284060.htm (DE)</p> <p>BVerwG, Urteil v 21.3.2000 - 1 C 23.99; OLG Frankfurt am Main, Beschluss v 30.06.2000 - 1 Ws 106/00; BVerfG, Beschluss v 06.03.2003 - 2 BvR 397/02 Rn 39 mwN; BVerwG, Beschluss v 29.06.1998 - 9 B 604/98; VGH Baden-Württemberg, 30.07.1997, InfAusIR 1998, 18; VGH Baden-Württemberg, v 3.11.1995, DVBl 1996, 2996; VG Hamburg, 31.08.1995, InfAusIR 1996, 65 (DE)</p> <p>Deutsches Rotes Kreuz, 'Familienzusammenführung. Rechtsgrundlagen für die Einreise und den Aufenthalt in Deutschland' (2dn, 2008) 9.</p> |
| DET.4.b | | <p>If the purpose of detention cannot be fulfilled and the person is released, what legal status and rights are provided to them in law?</p> | <p>CJEU, Kadzoev, C-357/09 PPU (2009): After the maximum period of detention has expired, the person must be released immediately. A lack of valid documentation or inability to support themselves should not be a deterrent to release.</p> <p>Equal Rights Trust, Guidelines (2012): Released stateless detainees should be provided with appropriate documentation and stay rights suitable to their situation.</p> | <p>The individual is entitled to receive a toleration certificate. The certificate is enough in case they are unable to present a passport (see also DET.4.a).</p> | <p>Art 60a(4) Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>BVerwGE 105, 232 (238), EZAR 045 Nr 7, NVwZ 1998, 297; HessVGH, 30.3.2006 – 3 T 556/06, EZAR NF 98 Nr 13; VG Saarbrücken, 29.10.2006 – 10 F 42/06;</p> |
| DET.5.a | Return and readmission agreements | <p>Is statelessness considered a juridically relevant fact in any bilateral readmission and/or return agreements?</p> | <p>UNHCR, Handbook on Protection (2014): Efforts to secure admission or readmission may be justified but these need to take place subsequent to a determination of statelessness.</p> <p>UNCRC, MKAH v Switzerland, no 95/2019 (2021): The State in which a stateless child applies for international protection has an obligation under Article 7 CRC to consider whether, if the child was returned to another country, their right to a nationality would be fulfilled (as well as other rights under the CRC).</p> | <p>Yes, statelessness is a juridically relevant fact, but NOT in every bilateral readmission agreement. Out of 32 bilateral return agreements, 4 do not address stateless people. The multilateral return agreement between Belgium, Germany, France, Italy, Luxemburg, Netherlands and Poland also considers statelessness. Some readmission agreements allow for stateless people to be removed to places of former residence, even when no nationality status has been determined.</p> | <p>'Abkommen zur Erleichterung der Rückkehr ausreisepflichtiger Ausländer' (as of June 2018): https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/migration/rueckkehrfluechtlinge.pdf?__blob=publicationFile&v=3</p> <p>See also: Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Frank Tempel, Wolfgang Gehrcke, weiterer Abgeordneter und der Fraktion DIE LINKE – Drucksache 18/7056 – 'Abkommen zur Erleichterung der Abschiebung Ausreisepflichtiger', BT-Drucksache 18/7198 (6 January 2016) 5-6: http://dip21.bundestag.de/dip21/btd/18/071/1807198.pdf (DE)</p> <p>29 Bilateral return agreements considering statelessness: Albania (BGBl 2003 II, No 7, 194) Armenia (BGBl 2006 II, No 33, 1405; BGBl 2008 II, No 12, 469) Benelux (BAnz 1966, No 131) Bulgaria (BGBl 2006 II, No 8, 259) Denmark (Banz 1954, No 120) Estonia (BGBl 2000 II, No 12, 570) France (BGBl 2006 II, No 4, 99) Georgia (BGBl 2007 II, No 40, 1962) Kazakhstan (BGBl 2010 II, No 3, 63) Croatia (BGBl 2012 II, No 35, 1340) Kosovo (BGBl 2010 II, No 9, 259) Latvia (BGBl 2000 II, No 12, 579) Lithuania (BGBl 2000 II, No 12, 588) Macedonia (BGBl 2002 II, No 38, 2526) Norway (Banz 1955, No 84)</p> |

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| | | | | | <p>Austria (BGBl 1998 II, No 3, 80) Poland (BGBl 1994 II, No 60, 3775) Romania (Return Agreement of Stateless [People]) (BGBl 1999 II, No 7, 172) Schweden (Banz 1954, No 120) Switzerland (BGBl 1996 II, No 26, 945) Serbia (BGBl 2002 II, No 41, 2762) Slovakia (BGBl 2003 II, No 12, 446) South Korea (BGBl 2005 II, No 6, 193) Syria (BGBl 2008 II, No 21, 811) Czech Republic (BGBl 1995 II, No 5, 133 and 141) Hungary (BGBl 1999 II, No 5, 90) 4 Bilateral return agreements NOT considering statelessness: Algeria (BGBl 2004, No 1, 16) Bosnia + Herzegovina (BGBl 1997 II, No 12, 742) Morocco (BGBl 1998 II, No 23, 1148) Vietnam (BGBl 1995 II, No 27, 743)</p> <p>Multilateral return agreement between Belgium, Germany, France, Italy, Luxemburg, Netherlands and Poland (BGBl 1993 II, No 23, 1099)</p> |
| DET.5.b | | Are you aware of stateless people being returned under such agreements? | | <p>Yes. There is some evidence that stateless people were deported to Romania, and stateless Roma to Kosovo, among others. However, official statistics from the government do not indicate the destination nor the ethnicity of deported stateless people. Therefore, information is based on limited evidence found in caselaw, parliamentary responses, NGO reports, and the media.</p> | <p>Deportation of stateless people to Romania: ECHR (III Section), 7 Oct. 2004, 33743/03, Dragan & Ors. v. Germany: https://www.echr.coe.int/Documents/CLIN_2004_10_68_ENG_815395.pdf (ENG); NVwZ 2005, 1043 (DE); ECHR (III Section), 16 Sept. 2004, 11103/03, Ghiban v. Germany: https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-66998%22] (FR); NVwZ 2005, 1046 (DE)</p> <p>Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Jan Korte, Petra Pau, weiterer Abgeordneter und der Fraktion DIE LINKE – Drucksache 17/5617 – Stand der Abschiebungen von Roma in den Kosovo zum 31. März 2011; BT-Drucksache 17/5724 (5 Mai 2011) : http://dipbt.bundestag.de/doc/btd/17/057/1705724.pdf (DE)</p> <p>Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. – Drucksache 19/3477 – Abschiebungen und Ausreisen im ersten Halbjahr 2018; BT-Drucksache 19/3702 (6 August 2018): http://dipbt.bundestag.de/dip21/btd/19/037/1903702.pdf (DE)</p> <p>Dr. Bernd Franke, Georg Dietlein, In den Kosovo abgeschoben – keine Arbeit, keine Perspektive, Caritas, 15 Nov. 2011 (DE)</p> <p>Abgeschobener staatenloser Rumäne begeht Selbstmord, Der Tagesspiegel, 17 Mar. 2017 (DE)</p> <p>Martin Fahlbusch, Dem staatenlosen Emrah Asimov droht erneut die Abschiebung, Westfälische Nachrichten, 19 Apr. 2016 (DE)</p> |

Prevention and Reduction

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| PRS.1.a | Naturalisation | In what timeframe do stateless people who are residing on the territory acquire the right to apply for naturalisation, and how does this compare to others with a foreign nationality? | <p>1954 Convention: Article 32</p> <p>UNHCR, Good Practices Papers – Action 6 (2020): It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons.</p> <p>CoE Committee of Ministers, Recommendation No. R (99) 18 (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory.</p> <p>ENS (2013): The main benchmark is if there is any preferential treatment for stateless people compared to the general rules applied to those with a foreign nationality.</p> | <p>The only facilitated access to nationality for stateless people is the possibility of applying for 'discretionary naturalisation' after 6 years' residence (Art 8 Residence Act). The person must have legal capacity, no criminal record, accommodation and be able to support themselves and any dependents. The law provides that these requirements can be waived 'on grounds of public interest or to avoid special hardship'. However, discretionary naturalisation is hardly used in practice. Stateless people can also apply for naturalisation after being 'legally ordinarily resident' for 8 years under the same rules applicable to foreigners (Art 10 Residence Act). Other requirements include that the person has legal capacity, commits to the constitution, has a permanent right of residence, can support themselves and any dependents without recourse to social security (except where this is beyond the person's control), renounces or loses their previous nationality, has no criminal record, sufficient command of German as well as knowledge of the legal system and society. The residence period required may be reduced to 7 or 6 years depending on criteria that assesses the person's integration. Art. 10 also allows for the derivative naturalisation of spouses and minor children, irrespective of whether they have been regularly resident in Germany for eight years.</p> <p>Currently, the government is expected to present a draft bill enabling faster naturalisation, after 5 instead of 8 years, and in special circumstances after 3 years of permanent residence. The minimum length of permanent stay is expected to be the same for children born in Germany and for adults.</p> | <p>For the difficult and long process to obtain German nationality, see: 'Saihs Kampf gegen das Verschwinden' (TAZ, 14 November 2014) https://taz.de/Staatenlos-in-Deutschland-taz-Serie-Teil-1/15028495/</p> <p>Naturalisation for stateless people: Art 8, 10, 12 Residence Act Discretionary naturalisation, naturalisation of spouses and children and with regard to multiple nationalities.</p> <p>Arts 8, 10, 12 Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE)</p> <p>Deutscher Bundestag, 'Der Aufenthalt und die Einbürgerung Staatenloser' (Sachstand: WD 3 - 3000 - 015/19) (6. März 2019) https://www.bundestag.de/resource/blob/643184/b656ee4dbe87e74ab39b83bf77c166a3/WD-3-015-19-pdf-data.pdf (DE)</p> <p>On the little application of Article 8, see: Thomas Oberhäuser, '8. Ermessenseinbürgerung, § 8 StAG' in '§ 27 Staatsangehörigkeitsrecht' in Migrationsrecht in der Beratungspraxis (Nomos 2019) 952 recital 89</p> <p>Fees: Art 38(2)-(3) Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE)</p> <p>'Große Anfrage der Abgeordneten Kazim Abaci, Ksenija Bekeris, Arno Münster, Anja Domres, Ulrike Hanneken-Deckert, Regina-Elisabeth Jäck, Annkathrin Kammeyer, Uwe Koßel, Dr. Melanie Leonhard, Uwe Lohmann, Doris Müller, Barbara Nittruch, Wolfgang Rose, Dr. Martin Schäfer, Brigitta Schulz, Jens-Peter Schwieger, Ali Simsek, Urs Tabbert, Juliane Timmermann, Ekkehard Wysocki (SPD) und Fraktion vom 14.08.13 und Antwort des Senats'. BT-Drucksache 20/8962 (10. September 2013) 6</p> <p>Antidiskriminierungsstelle des Bundes, Diskriminierung in Deutschland (2017) 126.</p> |
| PRS.1.b | | Are there requirements relating to 'good character' or previous criminal convictions that could prevent some | <p>CoE Committee of Ministers, Recommendation No. R (99) 18 (1999): States should ensure that offences, when relevant for the decision concerning the</p> | <p>Minor convictions do not prevent naturalisation. This includes: - educational measures or disciplinary proceedings under the Youth Courts Act</p> | <p>Die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, 'Die deutsche Staatsbürgerschaft</p> |

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| | | <p>stateless people from naturalising? If yes, please describe.</p> | <p>acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of a state.</p> | <ul style="list-style-type: none"> - fines of up to 90 daily rate - imprisonment of up to three months, if converted into parole or suspended at the end of the parole period. <p>Multiple convictions or cumulative fines may be a barrier to naturalisation. A person with multiple convictions may be naturalised based on an individual review of their case, but reasons must be provided.</p> | <p>Alles was Sie darüber wissen sollten.' (2018) 17 (DE) https://www.bundesregierung.de/resource/blob/992814/1543188/88d72e6ce4af2bbac9b565afb054fa5f/die-deutsche-staatsbuergerschaft-07-11-18-download-neu-ba-ib-data.pdf Jugendgerichtsgesetz (JGG) vom 11. Dezember 1974 (BGBl I 1974, 3427), zuletzt geändert durch Artikel 1 des Gesetzes vom 9. Dezember 2019 (BGBl I 2019, 2146) [Youth Courts Act] https://www.gesetze-im-internet.de/jgg/index.html (DE)</p> <p>Vorläufige Anwendungshinweise des Bundesministeriums des Innern zum Staatsangehörigkeitsgesetz (StAG) in der Fassung des Zweiten Gesetzes zur Änderung des Staatsangehörigkeitsgesetzes vom 13. November 2014 (BGBl. I S. 1714) - VAH-StAG -' (Anlage zu dem BMI-Rdschr. vom 2. Juni 2015 an die für Staatsangehörigkeits- und Einbürgerungsangelegenheiten zuständigen obersten Landesbehörden) (Stand: 1. June 2015) 8.2 https://www.dortmund.de/media/p/ordnungsamt/pdf_ordnungsamt/Allgemeine_Verwaltungsvorschrift_zum_Staatsangehoerigkeits_recht.pdf (DE)</p> |
| <p>PRS.1.c</p> | | <p>Are there exemptions for stateless people from any nationality or integration test, language, income or fee requirements for naturalisation? Please describe the requirements and cost of the procedure for stateless adults and children, and any direct or indirect barriers to naturalisation caused by discriminatory laws, policies, or practices.</p> | <p>1954 Convention: Article 32 UNHCR, Good Practices Papers – Action 6 (2020): It is recommended that States Parties facilitate, as far as possible, the naturalisation of stateless persons. CoE Committee of Ministers, Recommendation No. R (99) 18 (1999): Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory. UNHCR, Background Note on Discrimination in Nationality Laws and Statelessness (2021): States should remove or amend discriminatory legal provisions, rules, policies, or practices that directly or indirectly act as barriers to naturalisation.</p> | <p>There are no explicit exemptions for stateless people in the Residence Act. However, exemptions from integration and language tests apply when a school, high-school or university degree has been obtained, or after four years of enrolment into the German school system and being transferred to the next school year.</p> <p>The fee for naturalisation under the Nationality Act is 255 euros, which is reduced to 51 euros for a minor child under certain conditions. There are no specific fee waivers for stateless people, but the fee may be reduced or waived on grounds of equity or public interest or at the discretion of the local foreigners' office on a case by cases basis. The Nationality Act stipulates that the fee for the certificate of citizenship shall not exceed 51 Euros.</p> <p>Stateless people may face significant delays in the naturalisation process due to the complex procedure to establish their identity. The Interior Ministry advises applying for a travel document prior to applying for citizenship.</p> <p>There is some evidence of discriminatory treatment by the immigration authorities which complicates the naturalisation procedure for some individuals. In general, persons with unclear nationality face barriers when it comes to the determination of their nationality or statelessness. While it is not considered to be a legal status and should be resolved quickly, the general assumption is that the slow and lengthy processes are caused by lack of applicants' will to cooperate. Without guidance on the assessment of evidence and use of discretion, authorities are less likely to identify intersectional discriminations and to take intersections between statelessness and human trafficking, among others into account. However, there is no indication of one particular group of people being affected but a general observation that unequal treatment is mainly related to ethnic background.</p> | <p>Bundesamt für Migration und Flüchtlinge (BAMF), Einbürgerung in Deutschland, 18 May 2021 [Federal Agency for Migration and Refugees, Naturalisation in Germany] https://www.bamf.de/DE/Themen/Integration/ZugewanderteTeilnehmende/Einbuergierung/einbuergierung-node.html</p> <p>Minister of State for Migration, Refugees and Integration, naturalisation of stateless persons, [Einbürgerung von Staatenlosen] https://www.integrationsbeauftragte.de/ib-de/ich-moechte-mehr-wissen-ueber/einbuergierung/welche-anderen-moeglichkeiten-gibt-es-die-deutsche-staatsangehoerigkeit-zu-bekommen--1865122#:~:text=Sie%20k%C3%B6nnen%20das%20mit%20Ihrem,s tatt%20acht%20Jahren%20eingeb%C3%BCrgert%20werden.</p> |

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| PRS.2.a | Stateless born on territory | Is there a provision in law for stateless children born on the territory to acquire nationality? [If yes, continue to PRS2b. If no, proceed to PRS2i] | <p>1961 Convention: Article 1 ECN: Article 2 CRC: Article 7 Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC: States should strengthen measures to grant nationality to children born in their territory in situations where they would otherwise be stateless. HRC, CCPR General comment No. 17 (1989): States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. European Parliament resolution (2018): The EU and its MS should ensure that childhood statelessness is adequately addressed in national laws in full compliance with Article 7 CRC.</p> | <p>Yes. Stateless children born on German territory are entitled to naturalisation if they:</p> <ul style="list-style-type: none"> a) are stateless at birth b) born on German territory (including German ships and aircrafts) c) have lived lawfully and continuously in Germany for at least five years d) are under 21 years of age at the time of application e) do not have a custodial or juvenile sentence longer than five years. | <p>Art 2, Ausführungsgesetz zu dem Übereinkommen vom 30. August 1961 zur Verminderung der Staatenlosigkeit und zu dem Übereinkommen vom 13. September 1973 zur Verringerung der Fälle von Staatenlosigkeit Gesetz zur Verminderung der Staatenlosigkeit [Implementing Law to the Convention of 30 August 1961 on the Reduction of Statelessness and to the Convention of 13 September 1973 on the Reduction of Cases of Statelessness (Law on the Reduction of Statelessness)]: BGBl 1977 I, 1101-1102 (DE)</p> <p>3; 4.4.1, Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht (StAR-VwV) vom 13 Dezember 2000 [General Administrative Regulation for the Nationality Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwvbund_13122000_V612400513.htm (DE)</p> <p>For federal state administrative rules see e.g.: Vorläufige Anwendungshinweise des Bundesministeriums des Inneren (mit Änderungen und ergänzenden Hinweisen des Senators für Inneres und Sport) zum Staatsangehörigkeitsgesetz (StAG) in der Fassung des Zweiten Gesetzes zur Änderung des Staatsangehörigkeitsgesetzes vom 13 November 2014 (BGBl I, 1714): https://fragdenstaat.de/files/foi/64224/20150601_VAH-StAGergnzteFassung.pdf (DE)</p> |
| PRS.2.b | | Is the provision for otherwise stateless children to acquire nationality automatic or non-automatic (i.e. by application)? | <p>UNHCR, Guidelines on Statelessness No. 4 (2012): The 1961 Convention provides Contracting States with two alternatives for granting nationality to otherwise stateless children born in their territory: either automatic acquisition upon birth or upon application. ENS, No Child Should Be Stateless (2015): The 1961 Convention and the European Convention on Nationality oblige the conferral of nationality to otherwise stateless children born on the territory. The optimal method is to grant nationality automatically at birth.</p> | <p>Both automatic and non-automatic. Under the German Nationality Act 2000, a child born after 1 January 2000 on German territory who has not yet reached the age of 10, or if an application for naturalisation was not presented before 31 December 2000, gains German nationality automatically by ius soli. If the child was born before 1 January 2000 or if an application for naturalisation was not submitted by 31 December 2000, the child must meet certain criteria and apply for the acquisition of nationality (non-automatic).</p> | <p>Die Bundesregierung, 'Das Geburtsortsprinzip' [The birthplace principle]: https://www.bundesregierung.de/Content/DE/StatischeSeiten/Breg/IB2/Einbuengerung/gp-geburtsortsprinzip.html (DE)</p> <p>Art 4, Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE)</p> <p>Thomas Oberhäuser, 'StAG §4. Erwerb durch Geburt', in Rainer M Hofman, Ausländerrecht (2nd edn, CH Beck 2016), recital 12. Roman Fränkel, 'StAG §40b. Einbürgerung ausländischer Kinder', in Rainer M Hofman, Ausländerrecht (2nd edn, CH Beck 2016) recitals 1-4</p> |
| PRS.2.c | | Are parents provided with information about their child's nationality rights and relevant procedures, including where the child would otherwise be stateless or has undetermined nationality? | <p>UNHCR, Guidelines on Statelessness No. 4 (2012): Contracting States are obliged to provide detailed information to parents of children who would otherwise be stateless or of undetermined nationality about the possibility of acquiring the nationality, how to apply and about the conditions which must be fulfilled. If the child concerned can acquire the nationality of a parent immediately after birth, States that opt to not grant nationality to children in these circumstances must assist parents in initiating the relevant procedure with the authorities of their State or States of nationality.</p> | <p>The Federal Agency for Migration and Refugees has the task to establish and provide informative materials and opportunities regarding integration for foreigners.</p> <p>The task of the Minister of State with responsibility for migration, refugees and integration is to inform migrants about the legal possibilities for acquiring German citizenship. District authorities are competent to consult and provide information to everyone who wishes to apply for citizenship.</p> <p>In practice, information on the existence of a specific ground for naturalisation of stateless children born in Germany may not be transmitted to the child's parents or legal guardians. As the acquisition of nationality is not automatic, parents and legal guardians may not be aware of this safeguard upon the child's birth.</p> | <p>Art 75(3), 93(5) Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Deutsches Institut für Menschenrechte, Geburtenregistrierung von Kindern Geflüchteter, July 2016 [German Institute für Menschenrechte, How to register your newborn] https://www.institut-fuer-menschenrechte.de/themen/kinderrechte/gefluechtete-kinder/geburtenregistrierung-von-kindern-gefluechteter English version of the leaflet: https://www.berlin.de/ba-friedrichshain-kreuzberg/politik-und-verwaltung/aemter/amt-fuer-buergerdienste/staatsangehoerigkeitsbehoerde/</p> |

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| | | | | The German Institute for Human Rights' monitoring body has published the information leaflet "How to register your newborn", which is available in German, English, Arabic and Farsi. | See for example the competent authority for questions relating to naturalisation in Berlin: District authority of Berlin Friedrichshain-Kreuzberg https://www.berlin.de/ba-friedrichshain-kreuzberg/politik-und-verwaltung/aemter/amt-fuer-buergerdienste/staatsangehoerigkeitsbehoerde/ |
| PRS.2.d | | Is it a requirement that the parents are also stateless for the otherwise stateless child to acquire nationality? | UNHCR, Guidelines on Statelessness No. 4 (2012) : The test is not an inquiry into whether a child's parents are stateless. ENS, No Child Should Be Stateless (2015) : Only allowing access to nationality for stateless children whose parents are stateless fails to account for the circumstance where the parents hold a nationality but are unable to pass this on. | No. The individual must provide evidence of the factual circumstances. The child or their legal representative must demonstrate that they are not recognised as a national by another State. | Thomas Oberhäuser, 'StAG Anhang: Einbürgerung Staatenloser', in Rainer M Hofman, <i>Ausländerrecht</i> (2 nd edn, CH Beck 2016), recital 7 |
| PRS.2.e | | Are stateless children required to prove they cannot access another nationality to acquire the nationality of the country of birth? If yes, please describe how this is determined in practice. | UNHCR, Guidelines on Statelessness No. 4 (2012) : A Contracting State cannot avoid the obligations to grant its nationality to a person who would otherwise be stateless based on its own interpretation of another State's nationality laws. The burden of proof must be shared between the claimant and the authorities, but in the case of children the State assumes a greater share of the burden of proof. Decision-makers must consider Articles 3 & 7 CRC and adopt an appropriate standard of proof. Special procedural considerations to address the acute challenges faced by children in communicating basic facts about their nationality should be respected. | If the parents are stateless, or if they were treated as stateless at the time of the birth, the authority must check if the parents may be able to transmit a nationality. The child is considered a national of a country if it is determined that the child has a right to acquire the nationality of that country. If the child has the right to a nationality of another country, the parents are required to take steps for the child to acquire such nationality if they are a simple formality (e.g. registration, application, or making an option). The burden of proof lies with the authority to demonstrate with concrete evidence that the child may be able to acquire another nationality. However, there are no guidelines on how to assess statelessness or interpret foreign law. If no indication is obtained, including the possibility that a State may recognise the child as a national in the future, statelessness at birth is determined. If entitlement to another nationality is not clear, the child's nationality is considered 'unclear'. | Thomas Oberhäuser, 'StAG Anhang: Einbürgerung Staatenloser', in Rainer M Hofman, <i>Ausländerrecht</i> (2 nd edn, CH Beck 2016) recital 7 |
| PRS.2.f | | Is a stateless child born on the territory required to fulfil a period of residence to be granted nationality? If yes, please specify length and if this must be legal residence. | 1961 Convention : Article 1(2) UNHCR, Guidelines on Statelessness No. 4 (2012) : States may stipulate that an otherwise stateless individual born in its territory fulfils a period of 'habitual residence' (understood as stable, factual residence, not legal or formal residence) not exceeding five years preceding an application nor ten years in all. CRC : Articles 3 & 7 Committee on the Rights of the Child, Concluding observations on the Netherlands (2015) : Recommends the State party ensure that all stateless children born in its territory, irrespective of residency status, have access to nationality without any conditions. ECN : Article 6(2)(b) | Yes, in the case of non-automatic acquisition, five years of regular and continuous residence. | Art 2, Ausführungsgesetz zu dem Übereinkommen vom 30. August 1961 zur Verminderung der Staatenlosigkeit und zu dem Übereinkommen vom 13. September 1973 zur Verringerung der Fälle von Staatenlosigkeit Gesetz zur Verminderung der Staatenlosigkeit [Implementing Law to the Convention of 30 August 1961 on the Reduction of Statelessness and to the Convention of 13 September 1973 on the Reduction of Cases of Statelessness (Law on the Reduction of Statelessness)] BGBl 1977 I, 1101-1102 (DE) |
| PRS.2.g | | Are the parents of a stateless child required to fulfil a period of residence for the child to be granted nationality? If yes, please specify length and if this must be legal residence. | Committee on the Rights of the Child, Concluding observations on Czech Republic (2011) : The outcome of an application by the parents of a child born on the territory should not prejudice the right of the child to acquire the nationality of the State. ENS, No Child Should Be Stateless (2015) : Demanding that the child or their parents reside lawfully on the territory is prohibited by the 1961 Convention. | Yes. A child of foreign parents can acquire nationality at birth if one parent has been a legal resident for eight years and has been granted a permanent right of residence. | Art 2, Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE) Art, 4 Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten |

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| PRS.2.h | | What are the age limits and fees (if any) for making an application for nationality for a stateless person born on the territory? | <p>1961 Convention: Article 1(2) UNHCR, Guidelines on Statelessness No. 4 (2012): Contracting States need to accept applications lodged at a time beginning not later than the age of 18 and ending not earlier than the age of 21. Where Contracting States grant nationality to individuals who would otherwise be stateless upon application, they are encouraged to accept such applications free of charge. ENS, No Child Should Be Stateless (2015): Closing the window of opportunity to apply for a nationality has the effect of leaving it in the hands of parents to take the necessary steps to secure a nationality for their child.</p> | <p>In the case of non-automatic acquisition, the application must be submitted before the age of 21. The application costs 255 EUR.</p> <p>Authorities have discretion to decide to lower the fees on an individual basis, or to exempt an applicant from the payment of fees. However, this is not automatic and must be requested by the applicant.</p> | <p>Art 2, Ausführungsgesetz zu dem Übereinkommen vom 30. August 1961 zur Verminderung der Staatenlosigkeit und zu dem Übereinkommen vom 13. September 1973 zur Verringerung der Fälle von Staatenlosigkeit Gesetz zur Verminderung der Staatenlosigkeit: BGBl 1977 I, 1101-1102 (DE)</p> <p>https://verwaltung.bund.de/leistungsverzeichnis/DE/leistung/99099002067008/herausgeber/NW-41e145f08376a3dd964c88c1825558fe/region/05</p> |
| PRS.2.i | | Are there specific provisions to protect the right to a nationality of children born to refugees? | <p>UNHCR, Guidelines on Statelessness No. 4 (2012): Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities.</p> | No. | |
| PRS.3.a | Foundlings | Are foundlings granted nationality automatically by law? If not automatic, please describe the procedure. | <p>1961 Convention: Article 2 ECN: Article 6(1)(b)</p> | <p>Yes. German law states that a foundling shall be deemed the child of a male German. If only the mother is later identified, the law is interpreted so that the child is considered as descending from a male German until both parents are identified.</p> | <p>Art 4, Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE)</p> <p>Thomas Oberhäuser, 'StAG §4. Erwerb durch Geburt', in Rainer M Hofman, Ausländerrecht (2nd edn, CH Beck 2016) recital 5</p> |
| PRS.3.b | | Is there an age limit (e.g. 'new-born' or 'infant') in law or practice specifying when a foundling would qualify for nationality? | <p>UNHCR, Guidelines on Statelessness No. 4 (2012): At a minimum, the safeguard should apply to all young children who are not yet able to communicate information about the identity of their parents or their place of birth.</p> | <p>No. The child should be 'helpless', which is interpreted to mean that the child should not be able to provide any information about his/ her origin. This can apply to older, minor children as well, who may not be able to express themselves or understand complex procedures.</p> | <p>Thomas Oberhäuser, 'StAG §4. Erwerb durch Geburt', in Rainer M Hofman, Ausländerrecht (2nd edn, CH Beck 2016) recital 8</p> <p>4.2, Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht (StAR-VwV) vom 13. Dezember 2000 [General Administrative Regulation to the Nationality Act]:</p> |

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| | | | | | http://www.verwaltungsvorschriften-im-internet.de/bsvwbund_13122000_V612400513.htm (DE) |
| PRS.3.c | | Can nationality be withdrawn from foundlings if this leads to statelessness? | UNHCR, Guidelines on Statelessness No. 4 (2012) : Nationality acquired by foundlings may only be lost if it is proven that the child possesses another nationality. | No. | Art 16, Grundgesetz (GG) für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 1 u. 2 Satz 2 des Gesetzes vom 29. September 2020 (BGBl 2020 I, 2048) [Basic Law]: https://www.gesetze-im-internet.de/gg/BJNR000010949.html (DE) |
| PRS.4.a | Adoption | Where a child national is adopted by foreign parent(s), does the child lose their original nationality before the new nationality is acquired? | 1961 Convention : Article 5 ENS, No Child Should Be Stateless (2015) : Children may be exposed to a (temporary) risk of statelessness during the adoption process due to the nationality law of the child's country of origin. | No. | Arts 17, 27, Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE) |
| PRS.4.b | | Does a foreign child adopted by national parents acquire nationality? Please specify any age limits and/or risk of statelessness during the adoption process. | ECN : Article 6(4)(d) Committee on the Rights of the Child, Concluding Observations on Switzerland (2015) : Ensure that the child is not stateless or discriminated against during the waiting period between arrival and formal adoption. | Yes. A child who is under 18 at the time of application for adoption shall acquire nationality on valid adoption by a German under German law. The acquisition of nationality shall extend to the child's descendants. There is no risk of statelessness. | Arts 3(1), 6 Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE) Art 2, Gesetz über Wirkungen der Annahme als Kind nach ausländischem Recht vom 5. November 2001 (BGBl 2001 I, 2950, 2953), zuletzt geändert durch Artikel 5 des Gesetzes vom 19. März 2020 (BGBl 2020 I, 541) [Law on the Effects of Adoptions according to Foreign Law]: http://www.gesetze-im-internet.de/adwirkg/BJNR295300001.html 27.1, Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht (StAR-VwV) vom 13. Dezember 2000 [General Administrative Regulation for the Nationality Act]: http://www.verwaltungsvorschriften-im-internet.de/bsvwbund_13122000_V612400513.htm (DE) |
| PRS.5.a | <i>ius sanguinis</i> | Can children born to nationals abroad acquire nationality by descent (<i>ius sanguinis</i>) in general and/or if they would otherwise be stateless? | 1961 Convention : Article 4 UNHCR, Guidelines on Statelessness No. 4 (2012) : Where a child who would otherwise be stateless is born to parents of another Contracting State but does not acquire the nationality of the State of birth responsibility falls to the Contracting State of the parents to grant its nationality to the child. | Not in all cases. Under the Nationality Act, German nationality shall not be acquired in case of birth abroad if the German parent was born abroad after 31 December 1999 and is ordinarily resident abroad, unless the child would otherwise be stateless, or unless an application for certification of the birth is filed with the competent authorities within a year of the child's birth. However, even if the parent has not registered the child with the German authorities, the child of a German national has the right to enter and leave the country with their parent under the Residence Act and is entitled to privileged naturalisation. | Art 4, Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE) Thomas Oberhäuser, 'StAG §4. Erwerb durch Geburt', in Rainer M Hofman, Ausländerrecht (2 nd edn, CH Beck 2016) recital 31 |
| PRS.5.b | | Are there any discriminatory conditions in law and/or practice for the acquisition of nationality by descent (e.g. differential treatment of children born out of wedlock, rights of father/mother/same-sex parents to confer nationality, etc.)? | ECtHR, Genovese v. Malta (2011) : The state must ensure that the right to nationality is secured without discrimination. CEDAW, Gen. Rec. 32 (2014) : Requires States parties to ensure that women and men have equal rights to confer their nationality to their children and that any obstacles to practical implementation of such laws are removed. UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 4 | Not to our knowledge. | |

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| PRS.6.a | Birth registration | Does the law provide that all children are registered immediately upon birth regardless of the migration or residence status, sexual and/or gender identity of their parents? | <p>CRC: Article 7 ICCPR: Article 24(2) CoE, Recommendation CM/Rec(2009)13 (2009): Member states should register the birth of all children born on their territory even if they are born to a foreign parent with an irregular immigration status or the parents are unknown. UNHCR, Guidelines on Statelessness No. 4 (2012): Article 7 CRC applies irrespective of the nationality, statelessness or residence status of the parents. UNHCR, Global Action Plan to End Statelessness 2014-24 (2014): Action 7 UN Sustainable Development Goal 16.9 European Parliament, Resolution on LGBTIQ rights in the EU (2021): Calls on States to overcome discrimination against rainbow persons and families. UNHCR and UNICEF, Background Note on Sex Discrimination in Birth Registration (2021): All parents regardless of their sex should have equal rights to register the births of their children without discrimination. Laws or regulations that provide that only opposite sex parents may register the birth of children should be reformed.</p> | <p>Yes, according to the Civil Status Act, children must be registered immediately, including in detention centres. The birth must be communicated to the registry office in the jurisdiction where the child was born within one week, either by any parent entitled to custody, any person who was present at or who is informed about the birth, or the institution. Documents such as the birth certificates of the parents, marriage certificate or a certified copy of their marriage register, a recognised passport (replacement papers) of the parents must be submitted. A child can be registered even if the parents' stay in the country is irregular. If parents cannot present the documentation required, other evidence may be provided. If these are not easy to obtain, or if the actual facts of the persons concerned cannot be proved by public or other certificates, the civil registrar can take a declaration on oath as ultimo ratio. However, due to the federal system, it is the competent registry office in each federal state that needs to decide whether the conditions for a declaration on oath are met.</p> <p>Birth registration in Germany could also lead to statelessness of foreign children if the child is only registered with the mother due to a missing marriage certificate of the parents. While it is possible to formally recognise paternity even before birth, in general an ID or travel document as well as a birth certificate are required. If it is not possible to recognise the paternity, only the mother will be registered. There is a particular risk of statelessness in the case of countries that do not allow the mother to pass on her nationality to the child. In some cases, the child may face stigma if perceived as a child born out of wedlock.</p> <p>If the mother's identity and nationality/statelessness cannot be proved, an extract from the birth register which substitutes the birth certificate is issued (see PRS.6.b).</p> <p>The law permits the registration of birth of children of LGBTIQ+ parents (see also PRS.6.e).</p> | <p>Arts 9,18, 19, 20, 22, 4, 25, 26, 27, 54, 55, Personenstandsgesetz vom 19. Februar 2007 (BGBl 2007 I, 122), zuletzt geändert durch Artikel 88 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Civil Status Act]: https://www.gesetze-im-internet.de/pstg/BJNR012210007.html (DE)</p> <p>Arts 8, 33, 35, Personenstandsverordnung (PStV) vom 22. November 2008 (BGBl 2008 I, 2263), zuletzt geändert durch Artikel 3 des Gesetzes vom 3. Dezember 2020 (BGBl 2020 I, 2668) [Regulation on Civil Status]: https://www.gesetze-im-internet.de/pstv/BJNR226300008.html (DE)</p> <p>Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Volker Beck (Köln), Luise Amtsberg, Dr. Franziska Brantner, weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN, 'Geburtsurkunden von Flüchtlingskindern' BT-Drucksache 19/1688 (13 Juli 2016) [Reply of the Federal Government to the small inquiry of the MP Volker Beck (Cologne), Luise Amtsberg, Dr Franziska Brantner, other members of parliament and BÜNDNIS 90/DIE GRÜNEN, 'Birth certificates of refugee children']: http://dip21.bundestag.de/dip21/btd/18/091/1809163.pdf (DE)</p> <p>Antrag, 'Staatenlosigkeit weltweit abschaffen – Für das Recht, Rechte zu haben' [Application: Abolishing statelessness worldwide - For the right to have rights] BT-Drucksache 19/1688 (17 April 2018) 2: http://dip21.bundestag.de/dip21/btd/19/016/1901688.pdf (DE)</p> <p>Schwäbisch Hall, Standesamt, 'Information für Flüchtlinge zur Ausstellung einer Geburtsurkunde' (Dezember 2017) [Schwäbisch Hall, Registry Office, 'Information for refugees on the issue of birth certificate' (Dec.2017)]: https://www.freundeskreis-asyl-sha.de/wp-content/uploads/2018/01/16-01-2018-Hinweise_Standesamt-Geburtsurkunde_Deutsch.pdf (DE)</p> <p>Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Kinderrechtskonvention, 'Keine Papiere – keine Geburtsurkunde? Empfehlungen für die Registrierung von in Deutschland geborenen Kindern Geflüchteter' (Position Nr. 18, Dezember 2018) 3 [German Institute for Human Rights, National CRC Monitoring Mechanism, 'No papers – No birth certificate? Recommendations for the registration of children of refugees born in Germany' (Position No 18, Dec2018) 1]: https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/POSITION/Position_18_Keine_Papiere_keine_Geburtsurkunde.pdf (DE)</p> |
| PRS.6.b | | Are all children issued with birth certificates upon registration? If no, please describe legal status of documentation issued. | <p>HRC, Resolution A/HRC/RES/20/4 (2012): Underscores the importance of effective birth registration and provision of documentary proof of birth irrespective of immigration status and that of parents or family members. Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC: Take all necessary measures to ensure that all children are immediately registered at</p> | <p>If the required documents cannot be presented, parents do not receive a birth certificate (<i>Geburtsurkunde</i>) but an extract from the birth register (<i>Auszug aus dem Geburtenregister</i>), which also serves as an official document with equal legal status (Civil Status Act; BT-Drucksache 18/9163).</p> <p>If the identity of the parents cannot be proven, the extract of the registry will contain the additional note 'identity not established' (Regulation on the Civil Status Act) and the main entry and extract</p> | <p>Arts 9,18-20, 22, 24- 27, 54- 55, Personenstandsgesetz vom 19. Februar 2007 (BGBl 2007 I, 122), zuletzt geändert durch Artikel 88 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Civil Status Act]: https://www.gesetze-im-internet.de/pstg/BJNR012210007.html (DE)</p> <p>Geburtsurkunden von Flüchtlingskindern [Birth certificates of refugee children] BT-Drucksache 18/9163 (13 July 2016) (DE)</p> |

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| | | | birth and issued birth certificates, irrespective of their migration status or that of their parents. | will indicate 'Family surname not proven' (No 1199). Notes on the identity of the parents are emergency solutions and can cause problems in the future, e.g. for naturalisation. The extract contains information that does not appear in the birth certificate (e.g. place of birth with street name – if any, house number – if any, birth time). | Arts 8, 33, 35(1), Anlage 1 (zu Artikel 11) Personenstandsverordnung (PStV) vom 22. November 2008 (BGBl 2008 I, 2263), zuletzt geändert durch Artikel 3 des Gesetzes vom 3. Dezember 2020 (BGBl 2020 I, 2668) https://www.gesetze-im-internet.de/pstv/BJNR226300008.html (DE) |
| PRS.6.c | | Is the child's nationality determined or recorded upon birth registration? If yes, please describe how and by whom (e.g. if the mother/father's nationality is recorded and/or automatically attributed to the child, if there's a formal procedure, if information on both parents is recorded etc.) | CRC : Articles 3 & 7 | Upon receiving the notification of birth, the registry office asks parents to provide a number of documents to prove their identity. The birth register includes a reference to the nationality of the parents, their marriage, their birth certificates and the acquisition of German nationality by the child. The registry office should follow a procedure established by law to determine whether the child has acquired German nationality by birth. In theory, the authority must confirm that the child has not acquired nationality at birth and establish whether the identity and nationality status of the parents is clarified. In practice, it is unclear if authorities who register the birth determine the child's nationality or statelessness and to what extent. Authorities have very little knowledge of the legislation providing for naturalisation of stateless children born in Germany. | Arts 33, 34, Personenstandsverordnung (PStV) vom 22. November 2008 (BGBl 2008 I, 2263), zuletzt geändert durch Artikel 3 des Gesetzes vom 3. Dezember 2020 (BGBl 2020 I, 2668) [Regulation on Civil Status] (BGBl 2018 I, 2639): https://www.gesetze-im-internet.de/pstv/BJNR226300008.html (DE) Anlage 12 (zu § 34) [Appendix 12 (on Article 34)]: https://www.gesetze-im-internet.de/normengrafiken/bgbl1_2008/j2263_0110.pdf (DE) Art 21, Personenstandsgesetz vom 19. Februar 2007 (BGBl 2007 I, 122), zuletzt geändert durch Artikel 88 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Civil Status Act]: https://www.gesetze-im-internet.de/pstg/BJNR012210007.html (DE) See also: Berlin.de, Service Portal, 'Birth certificate - Initial certification - Notification': https://service.berlin.de/dienstleistung/318957/ (DE) |
| PRS.6.d | | If a child's nationality is not determined or recorded upon birth registration, is there a legal framework to determine the child's nationality later? If yes, please describe the procedure, including the legal grounds, deadlines, competent authority, and whether the child's best interests are taken into consideration. | CRC : Articles 3 & 7 1961 Convention : Articles 1 & 4 UNHCR, Guidelines on Statelessness No. 4 (2012) : States need to determine whether a child would otherwise be stateless as soon as possible so as not to prolong a child's status of undetermined nationality. Such a period should not exceed five years. HRC, CCPR General comment No. 17 (1989) : States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born. UNHCR, Best Interests Procedure Guidelines (2021) HRC, D.Z. v. Netherlands (2021) | It is likely that children are kept in limbo for more than five years. The relevant documents to obtain a birth certificate (instead of an extract) from the registrar that support the process to determine the identity and nationality can be submitted later. There is no time limit. | |
| PRS.6.e | | Are there credible reports to suggest that, in practice, children are prevented from registering their birth (or their birth certificate issued abroad is not recognised) because of parents' migration or residence status, sexual and/or gender identity, because they were born as a result of a surrogacy agreement, or other reasons (please specify)? | Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC : Urge States parties to take all necessary measures to ensure that all children are immediately registered at birth and issued birth certificates, irrespective of their migration status or that of their parents. Legal and practical obstacles to birth registration should be removed. Global Compact for Safe, Orderly and Regular Migration : States will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons to civil and birth registration. Global Compact on Refugees : States commit to fulfil the right of all individuals to a legal identity and | Yes, there are reports that refugees and undocumented migrants face problems certifying the birth of their children due to missing documents (marriage certificate, birth certificate), or fear of being deported, due to the obligation on the registry authorities to report irregular migrants. Undocumented migrants may not give birth in hospitals, so the child would not be automatically registered by the institution. According to a study on birth registration, the declaration on oath is hardly applied, and if so, not necessarily accepted as an equal valid document, for instance by public health insurances. Missing marriage certificates and differing names of the parents can create barriers for access to basic needs in practice despite such a legal declaration. Due to the federal system, there is no data on the number of declarations of oaths accepted by the registry offices. A similar problem appears with extracts from the birth registers: despite its legal equal status | Deutsches Institut für Menschenrechte, Die Politik muss dafür sorgen, dass Kinder von Geflüchteten Geburtsurkunden erhalten, Press release, 1 June 2016 (DE) Geburtsurkunden von Flüchtlingskindern [Birth certificates of refugee children] BT-Drucksache 18/9163 (13 July 2016) (DE) Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Germany*, 25 February 2014, UN Doc CRC/C/DEU/CO/3-4 Deutsches Institut für Menschenrechte, How to register your newborn: http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weiter_e_Publikationen/Info_How_to_Register_Your_Newborn.pdf |

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| | | | <p>ensure that migrants are issued documentation and civil registry documents.</p> <p>European Parliament Resolution (2018): Calls on Member States to take immediate corrective measures to stop discriminatory birth registration.</p> <p>European Parliament, Resolution on LGBTIQ rights in the EU (2021): Emphasises the importance of the recognition of birth certificates in all EU Member States regardless of the sex of the parents.</p> <p>UNHCR and UNICEF, Background Note on Sex Discrimination in Birth Registration (2021): All parents regardless of their sex should have equal rights to register the births of their children without discrimination. Laws or regulations that provide that only opposite sex parents may register the birth of children should be reformed.</p> <p>Court of Justice of the European Union, V.M.A. v Bulgaria, Case C-490/20 (2021): Domestic authorities of an EU Member State are required to issue a birth certificate and identity documents to a child who is a national of that state and was born in another EU Member State, including when the birth certificate contains two parents of the same sex.</p> | <p>to a birth certificate, they are often not recognised as suitable equivalent in practice, and consequently not accepted for access to basic services and benefits. In general, declarations on oath are limited to information which should be supported by certificates in accordance with the law and strictly concern facts, not legal conclusions. Further evidence shows that refugee children are not even issued an extract from the birth register (Auszug aus dem Geburtenregister), but only received a provisional certificate (<i>vorläufige Bescheinigung</i>) indicating that the birth of the child was communicated but not registered. Such a certificate does not have the same value as the extract nor the birth certificate (Social Court Munich) and prevents families e.g. from access to parental benefits, important preventive health check-ups and the issue of a national tax number which in turn prevents access to social security entitlements. To date though, there is no solid data collection on such cases by the Ministries of the Interior (<i>Landesinnen-ministerien</i>). Overall, administrative practice in the case of lack of proof of identity differs significantly between registry offices. The German Institute for Human Rights provides guidance on these issues.</p> <p>There are no credible reports of children being prevented from registering their birth because of parents' sexual orientation or gender identity. Furthermore, German law does not require any information on gender identity or sexual orientation, be it concerning the child or the parents. However, if the parents are married, the law requires them to indicate the gender of the married persons. As provided by the ministry of the Interior, 30 new-borns were registered as having "diverse" or "without specification" gender, and 1036 parents registered with such information in 2019.</p> | <p>Deutsches Institut für Menschenrechte, Monitoring-Stelle UN-Kinderrechtskonvention, 'Keine Papiere – keine Geburtsurkunde? Empfehlungen für die Registrierung von in Deutschland geborenen Kindern Geflüchteter' (Position Nr. 18, Dezember 2018) 1 [German Institute for Human Rights, National CRC Monitoring Mechanism, 'No papers – No birth certificate? Recommendations for the registration of children of refugees born in Germany' (Position No 18, Dec 2018) 1]: https://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/POSITION/Position_18_Keine_Papiere_keine_Geburtsurkunde.pdf (DE)</p> <p>SG München, Urteil v 04.05.2018 – S 46 EG 130/17, Rn 16 [Social Court Munich, Judgment of 4.05.2018 - S 46 EG 130/17, recital 16]: http://www.gesetze-bayern.de/Content/Document/Y-300-Z-BECKRS-B-2018-N-9120?hl=true&AspxAutoDetectCookieSupport=1 (DE)</p> <p>Sozialrecht-Justament, 'Sozialrecht-Justament. Rechtswissen für die existenzsichere Sozialberatung (Jg 6/ Nr 7)' (Juli 2018) 1: https://www.asylimobierland.de/fileadmin/user_upload/infos_asyl/Wegweiser_Asyl/Informationen_zum_bayerischen_Familiengeld.pdf (DE)</p> <p>Berufsverband der Kinder- und Jugendärzte e. V., 'Die unsichtbaren Kinder – ohne Geburtsurkunde, ohne Gesundheitsschutz' (4 June 2016): https://www.kinderaerzte-im-netz.de/news-archiv/meldung/article/die-unsichtbaren-kinder-ohne-geburtsurkunde-ohne-gesundheitsschutz/ (DE)</p> <p>Arts 62-63, Einkommensteuergesetz vom 8. Oktober 2009 (BGBl 2009 I, 3366, 3862), zuletzt geändert durch Artikel 5 des Gesetzes vom 21. Dezember 2020 (BGBl 2020 I, 3096) [Income Tax Act]: https://www.gesetze-im-internet.de/estg/BJNR010050934.html (DE)</p> <p>GGUA Flüchtlingshilfe, 'Musterbrief. Eintragung der Familienversicherung für mein/e Kind/er' [GGUA Refugee Aid, 'Sample letter. Registration of family insurance for my child/ children]: https://www.ggua.de/fileadmin/downloads/ggua/Clearingstelle/Muster_Fami_ohne_Geburtsurkunde_Gefluechtete.pdf (DE)</p> <p>Andrea Koch and Victoria Lies, 'Geboren, registriert – und dann? Probleme bei der Geburtenregistrierung von Flüchtlingskindern in Deutschland und deren Folgen (Working Paper 16, Humboldt Law Clinic Grund- und Menschenrechte in Kooperation mit der Monitoring-Stelle UN-Kinderrechts-konvention des Deutschen Instituts für Menschenrechte 2018) 12, 26: http://hlcmr.de/wp-content/uploads/2018/01/Paper_Geburtenregistrierung.pdf (DE)</p> <p>Deutscher Bundestag, Wissenschaftliche Dienste, 'Ausstellung von Geburtsurkunden Zweifel an der Identität der Eltern' (WD 3 - 3000 - 277/19) (2019)</p> |
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| | | | | | <p>https://www.bundestag.de/resource/blob/683282/bc097208e38e09f52e765938a2465b27/WD-3-277-19-pdf-data.pdf (DE)</p> <p>[German Bundestag, Scientific Services, 'Issuing birth certificates. Doubts about the identity of the parents']</p> <p>Art 22(3), 45 Personenstandsrechtsgesetz – PStRÄndG vom 19. Februar 2007 (BGBl. I S. 122), das zuletzt durch Artikel 3 des Gesetzes vom 4. Mai 2021 (BGBl. I S. 882) geändert worden [Civil Registry Act]</p> <p>https://www.gesetze-im-internet.de/pstg/BJNR012210007.html</p> <p>Figures to the registration of gender of newborns and parents: https://www.personenstandsrecht.de/SharedDocs/kurzmeldungen/Webs/PERS/DE/rundschreiben/2021/geschlechtsangabe.html</p> |
| PRS.6.f | Are there mandatory reporting requirements that would deter undocumented parents from coming forward to register their children (e.g. health or civil registry authorities required to report undocumented migrants)? If not, is there a clear firewall to prohibit the sharing of information by other entities with immigration authorities? | <p>Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC and Joint General Comment No. 3 (2017) CMW and No. 22 (2017) CRC: Legal and practical obstacles to birth registration should be removed, including by prohibiting data sharing between health providers or civil servants responsible for registration with immigration enforcement authorities; and not requiring parents to produce documentation regarding their migration status. Children's personal data, in particular biometric data, should only be used for child protection purposes.</p> <p>CoE, ECRI General Policy Recommendation No. 16(2016): States should clearly prohibit the sharing of information about migrants suspected of irregular presence with immigration authorities. These firewalls must be binding on state authorities and the private sector.</p> | <p>Yes. Public bodies (with the exception of schools and other educational and care establishments for young people) must notify the authorities of any foreigner without the required residence permit, whose deportation has not been suspended, or any breach of geographic restrictions, or any other grounds for expulsion.</p> <p>Public Hospitals cannot be affected in their work by their obligation to report undocumented migrants, as their duty of confidentiality is placed higher than their reporting obligation. Some administrative staff in public hospitals are not covered by the reporting obligation and may face criminal charges if not respected. This concerns foremost administrative staff in charge of statements of accounts, as well as the social agencies that are treating bills. The firewall consists in guaranteeing migrants the right to urgent medical care for example, that must be provided without requiring that the persons concerned apply for financial aid to the social agency. Furthermore, German law provides for an extended duty of confidentiality covering every entity (private or public) that holds facts that are already covered by the duty of confidentiality.</p> | <p>Art 87, 87(2) Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> <p>Stellungnahme der Zentralen Kommission zur Wahrung ethischer Grundsätze in der Medizin und ihren Grenzgebieten (Zentrale Ethikkommission) bei der Bundesärztekammer, «Versorgung von nicht regulär krankenversicherten Patienten mit Migrationshintergrund», in Deutsches Ärzteblatt (2013) Heft 18, 899-903</p> <p>Médecins du Monde, 'Access to Healthcare in 16 European Countries. Legal Report 2017' (2018) 44 https://www.doctorsoftheworld.org.uk/wp-content/uploads/import-from-old-site/files/2017_final-legal-report-on-access-to-healthcare-in-16-european-countries.pdf (ENG)</p> <p>Art 88 Aufenthaltsgesetz (AufenthG) vom 25. Februar 2008 (BGBl 2008 I, 162), zuletzt durch Artikel 10 des Gesetzes vom 9. Dezember 2020 (BGBl 2020 I, 2855) [Residence Act]: https://www.gesetze-im-internet.de/aufenthg_2004/BJNR195010004.html (DE)</p> | |
| PRS.6.g | Is there a statutory deadline for birth registration? If yes, please state the deadline and whether late birth registration is possible in law and practice. | <p>Joint General Comment No. 4 (2017) CMW and No. 23 (2017) CRC: Measures should also be taken to facilitate late registration of birth and to avoid financial penalties for late registration.</p> <p>HRC, Resolution A/HRC/RES/20/4 (2012): Calls upon States to ensure free birth registration, including free or low-fee late birth registration, for every child.</p> | <p>No, there is no deadline for late birth registration set in law. Under the Civil Status Act, a person born abroad, or their children, can register late. However, stateless people must have habitual residence and need to present a travel document to register the birth late. Registry offices provide guidance on their webpages on late birth registration (birth abroad), which includes stateless people with habitual residence.</p> | <p>Art 36, Personenstandsgesetz vom 19. Februar 2007 (BGBl 2007 I, 122), zuletzt geändert durch Artikel 88 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Civil Status Act]: https://www.gesetze-im-internet.de/pstg/BJNR012210007.html (DE)</p> <p>Arts 19, 21, Einführungsgesetz zum Bürgerlichen Gesetzbuche in der Fassung der Bekanntmachung vom 21. September 1994 (BGBl 1994 I, 2494; 1997 I, 1061), zuletzt geändert durch Artikel 10 des Gesetzes vom 22. Dezember 2020 (BGBl 2020 I, 3320) https://www.gesetze-im-internet.de/bgbeg/BJNR006049896.html (DE)</p> <p>Universitäts- und Hansestadt Greifswald, 'Standesamt. Leistungen des Standesamtes. Nachbearbeitungen': https://www.greifswald.de/de/verwaltung-politik/rathaus/standesamt/ (DE)</p> | |

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| PRS.6.h | | Are there additional requirements for late birth registration (e.g. fees, documents, court procedure)? Please describe the procedure including the competent authority and procedural deadlines. | As above | The basic fees for late registration for birth abroad paid to the Registry Offices vary between the federal states (e.g. 40 EUR in Greifswald and 60 EUR in Berlin). Other related fees may apply. | |
| PRS.7.a | Reducing <i>in situ</i> statelessness | Does the government have any programmes in place to promote civil registration (including birth registration)? If yes, please provide details. | UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 7 | There is no evidence of any government campaigns to promote civil registration. The German Institute for Human Rights, in cooperation with other NGOs, began a campaign in June 2016 to promote birth registration, targeting refugees. It provides additional information for people who do not have the necessary documentation. The information is provided in English, Farsi, Arabic and German. | Deutsches Institut für Menschenrechte, How to register your newborn: http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weiter_e_Publikationen/Info_How_to_Register_Your_Newborn.pdf Deutsches Institut für Menschenrechte, Informationen für Geflüchtete, So registrieren Sie Ihr neugeborenes Kind: http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/Publikationen/Weiter_e_Publikationen/Info_So_registrieren_Sie_Ihr_neugeborenes_Kind.pdf (DE) |
| PRS.7.b | | Are there particular sections of the population - such as minority groups or people affected by conflict - believed to be stateless/at risk of statelessness? Please provide details and source of information. | 1961 Convention : Article 9 UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Action 4 HRC, Recommendations of the Forum on Minority Issues (2019) : States should take legislative, administrative and policy measures aimed at eliminating statelessness affecting minorities. | Undocumented migrants, refugees, and people with unclear nationality are believed to be at risk of statelessness. | Andrea Koch & Victoria Lies, Geboren, registriert – und dann? Probleme bei der Geburtenregistrierung von Flüchtlingskindern in Deutschland und deren Folgen, Working Paper 16, Humboldt Law Clinic Grund- und Menschenrechte in Kooperation mit der Monitoring-Stelle UN-Kinderrechts-konvention des Deutschen Instituts für Menschenrechte, 2018: http://hlcmr.de/wp-content/uploads/2018/01/Paper_Geburtenregistrierung.pdf (DE) |
| PRS.7.c | | Has the State implemented any other measures specifically aimed at reducing (risk of) statelessness? (e.g. identification, registration or naturalisation campaigns, removal of treaty reservations, reform of discriminatory laws, etc.) | 1961 Convention UNHCR, Global Action Plan to End Statelessness 2014-24 (2014) : Actions 1 & 8 UNHCR, Good Practices Paper - Action 1 (2022) : States generally address and resolve situations of statelessness through law and policy reform enabling stateless persons to acquire nationality automatically by operation of law, through a simple registration process, or through naturalisation. Non-automatic procedures are generally a less effective way to resolve statelessness because they require the person concerned to take certain steps to acquire nationality. | There is no evidence of any other measures specifically aimed at reducing the risk of statelessness. | |
| PRS.8.a | Deprivation of nationality | Are there any provisions on deprivation of nationality that could render a person stateless? Please state whether there is a safeguard against statelessness established in law and on what grounds deprivation of nationality may result in statelessness (e.g. national security, fraud, etc.). | 1961 Convention : Article 8 & 9 ECN : Article 7(3) UDHR : Article 15(2) Principles on Deprivation of Nationality and the Draft Commentary : Principle 2.2: Deprivation of nationality refers to any loss, withdrawal or denial of nationality that was not voluntarily requested by the individual; Principles 4, 5 & 6 HRC, Report of the Secretary-General on Human Rights and Arbitrary Deprivation of Nationality (2009) : para. 23 | Yes, there are provisions on loss and deprivation of nationality in law that could render a person stateless. Deprivation of nationality is allowed even if the person becomes stateless in the case of unlawful naturalisation or permission to retain German nationality. Withdrawal of nationality has been applied in practice on the grounds of intentional deception. Germans can lose their nationality (on the condition it does not make them stateless) if they apply for another nationality (and granting is assured) unless they obtain a retention permit (<i>Beibehaltungsgenehmigung</i>). Loss is not enforceable if the individual applies for nationality of another EU member state or Switzerland. Nationality may also be | Art 16(1), Grundgesetz (GG) für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 1 u. 2 Satz 2 des Gesetzes vom 29. September 2020 (BGBl 2020 I, 2048) [Basic Law]: https://www.gesetze-im-internet.de/gg/BJNR000010949.html (DE) Arts 18, 24-29, 35(1)-(2), Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, |

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| | | | <p>UNHCR Guidelines on Statelessness No.5 (2020): the prohibition of arbitrary deprivation of nationality also includes situations where there is no formal act by a State but where the practice of its competent authorities clearly shows that they have ceased to consider a particular individual/group as national(s) (e.g. where authorities persistently refuse to issue or renew documents without providing an explanation or justification).</p> <p>ILEC Guidelines (2015): Deprivation of nationality must have a firm legal basis, should not be interpreted extensively or applied by analogy and deprivation-provisions must be predictable.</p> | <p>lost: on adoption by foreigners; repeal of adoption (under certain conditions); if someone holds multiple nationalities and wants to be released from German nationality; if born in Germany to foreign parents but grew up abroad and did not declare by their 21st birthday that they want to retain German nationality; if someone voluntarily enlists with the armed forces of a foreign state without the consent of the German Government.</p> | <p>zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE)</p> <p>Art 1764(1) S 1, Bürgerliches Gesetzbuch vom 2. Januar 2002 (BGBl I 2002, 42, 2909; BGBl I 2003, 738) zuletzt geändert durch Artikel 13 des Gesetzes vom 22. Dezember 2020 (BGBl 2020 I, 3256) [Civil Code] https://www.gesetze-im-internet.de/bgb/BJNR001950896.html (DE)</p> <p>Art 22(1), Einführungsgesetz zum Bürgerlichen Gesetzbuche vom 21. September 1994 (BGBl 1994 I, 2494; 1997 I, 1061) zuletzt geändert durch Artikel 10 des Gesetzes vom 22. Dezember 2020 (BGBl 2020 I, 3320) [Introductory Art to the Civil Code]: https://www.gesetze-im-internet.de/bgbeg/BJNR006049896.html (DE)</p> <p>Marcel Kau, ‘§6 Annahme als Kind’ in Kay Hailbronner, Hans-Georg Maaßen, Jan Hecker, Marcel Kau, Staatsangehörigkeitsrecht (6th edn, CH Beck 2017) 281, recital 29</p> <p>Kay Hailbronner and Jan Hecker, ‘StAG § 35 [Rücknahme einer Einbürgerung bzw. rechtswidrige Genehmigung zur Beibehaltung]’ in Kay Hailbronner, Hans-Georg Maaßen, Jan Hecker, Marcel Kau, Staatsangehörigkeitsrecht (6th edn, CH Beck 2017) StAG §35 recitals 45-48</p> <p>Manuela Sissy Kraus, Menschenrechtliche Aspekte der Staatenlosigkeit (Berliner Wissenschafts-Verlag 2013) 276-279</p> <p>Kay Hailbronner and Hans-Georg Maaßen, ‘StAG § 28 [Verlust der Staatsangehörigkeit bei Wehrdienst in fremden Streitkräften]’ in Kay Hailbronner, Hans-Georg Maaßen, Jan Hecker, Marcel Kau, Staatsangehörigkeitsrecht (6th edn, CH Beck 2017) StAG § 28 recitals 1-14</p> <p>Peter Schlotzer, Staatsangehörigkeitsrecht. Praxishandbuch (Jehle 2017) 71-105</p> <p>Federal Constitutional Court, Judgment of the Second Senate of 24 May 2006 - 2 BvR 669/04: http://www.bverfg.de/e/rs20060524_2bvr066904.html (DE); https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2006/05/rs20060524_2bvr066904en.html;jsessionid=47325CE5298E59ED6E98E83D3F07E322.2_cid393 (ENG)</p> <p>Federal Constitutional Court – Judgment of 11 November 2010 - 5 C 12.10: https://www.bverwg.de/111110U5C12.10.0 (DE); https://www.bverwg.de/en/111110U5C12.10.0 (ENG)</p> <p>Administrative Court Stuttgart, Judgment of 3. December 2012 - 11 K 1038/12: https://openjur.de/u/608505.html</p> |
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| PRS.8.b | | Who is the competent authority for deprivation of nationality and what procedural safeguards are in place (e.g. due process, fair trial, participation in the proceedings, legal aid, decision in writing with reasoning, judicial oversight, appeal, time limit, subject to prior sentencing)? | <p>1961 Convention: Article 8(4) ECN: Articles 10 to 13 Principles on Deprivation of Nationality: Principle 7. Deprivation of nationality must be carried out in pursuance of a legitimate purpose, provided for by law, necessary, proportionate and in accordance with procedural safeguards; Principle 8: Everyone has the right to a fair trial or hearing and to an effective remedy and reparation. ILEC Guidelines (2015): The consequences of a decision to deprive somebody of his nationality must be assessed against the principle of proportionality. Adequate procedural safeguards are essential. Decisions should only take effect when the (judicial) decision cannot be challenged anymore.</p> | The competent authority for deprivation of nationality is the corresponding nationality authority in each Federal State and at a local level, the authority where the person has their habitual residence. For Germans abroad, the Federal Office of Administration (<i>Bundesverwaltungsamt</i>) is the competent authority. There are procedural guarantees including time limits and appeal rights. | <p>Art 35(3)-(5), Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE)</p> <p>Art 80(5), Verwaltungsgerichtsordnung (VwGO) vom 19. März 1991 (BGBl 1991 I, 686), zuletzt geändert durch Artikel 1des Gesetzes vom 3. Dezember 2020 (BGBl 2020 I, 2694) [Administrative Procedure Code]: https://www.gesetze-im-internet.de/vwgo/vwgo.pdf (DE)</p> <p>Berthold Münch, § 8 Ermessenseinbürgerung und Erwerb der Staatsangehörigkeit nach ius soli in Reinhard Marx, Ausländer und Asylrecht (3dn, Nomos 2016) §8 recitals 203, 204, 205, 209</p> <p>Arts 41, 43(1), Verwaltungsverfahrensgesetz vom 23. Januar 2003 (BGBl I 2003, 102), zuletzt geändert durch Artikel 5 Absatz 25 des Gesetzes vom 21. Juni 2019 (BGBl 2019 I, 846) [Administrative Procedures Act]: https://www.gesetze-im-internet.de/vwvfg/BJNR012530976.html (DE)</p> <p>Kay Hailbronner and Jan Hecker, ‘StAG § 35 [Rücknahme einer Einbürgerung bzw. rechtswidrige Genehmigung zur Beibehaltung]’ in Kay Hailbronner, Hans-Georg Maaßen, Jan Hecker, Marcel Kau, Staatsangehörigkeitsrecht (6th edn, CH Beck 2017), StAG § 35 recitals 59-60</p> |
| PRS.8.c | | Are provisions on deprivation of nationality applied in practice? Have they been applied even where it results in (risk of) statelessness? If available, please provide any sources of data or information on cases that resulted in statelessness. | | <p>Yes. See also PRS.8.a.</p> <p>If nationality has been acquired by fraud, German law foresees that nationality may be revoked even if the act would result in statelessness. The law providing for this has been applied in practice and was confirmed through jurisprudence as not being contrary to the fundamental law guarantee relating to the prevention of statelessness.</p> | <p>Administrative Court Würzburg, Judgment of 15 June 2015 – W 7 K 14.981</p> <p>Administrative Court (VG) Stuttgart, Judgement of 3 December 2012 - 11 K 1038/12 https://openjur.de/u/608505.html</p> <p>High Administrative Court (OVG) of Nordrhein-Westfalen, Judgement of 31 October 2011 - 19 A 2288/107 https://openjur.de/u/451316.html</p> <p>High Administrative Court (OVG) of Nordrhein-Westfalen, Judgement of 6 June 2012 - 19 A 1170/11 https://openjur.de/u/455731.html</p> <p>Federal Constitutional Court (BVerfG), Judgement of first senate of 17 December 2013 - 1 BvL 6/10 -, Rn. 1-116, http://www.bverfg.de/e/ls20131217_1bvl000610.html</p> <p>Federal Constitutional Court (BVerfG), Judgement of second senate of 17 July 2019 - 2 BvR 1327/18 -, Rn. 1-39, http://www.bverfg.de/e/rk20190717_2bvr132718.html</p> <p>Peter Schlotzer, Staatsangehörigkeitsrecht. Praxishandbuch (Jehle 2017) 73</p> |

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| PRS.8.d | Are there safeguards in law and practice to prevent renunciation or other forms of voluntary loss of nationality from resulting in statelessness? | 1961 Convention : Article 7 ECN : Articles 7 and 8 | Yes. Germans can lose their nationality but only on the condition it does not make them stateless. Germans can lose their nationality if they apply for another nationality (and granting is assured) unless they obtain a retention permit (<i>Beibehaltungsgenehmigung</i>). | Art 16(1), Grundgesetz (GG) für die Bundesrepublik Deutschland in der im Bundesgesetzblatt Teil III, Gliederungsnummer 100-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 1 u. 2 Satz 2 des Gesetzes vom 29. September 2020 (BGBl 2020 I, 2048) [Basic Law]: https://www.gesetze-im-internet.de/gg/BJNR000010949.html (DE) Arts 18, 24, 25(2) Staatsangehörigkeitsgesetz in der im Bundesgesetzblatt Teil III, Gliederungsnummer 102-1, veröffentlichten bereinigten Fassung, zuletzt geändert durch Artikel 4 der Verordnung vom 19. Juni 2020 (BGBl 2020 I, 1328) [Nationality Act]: https://www.gesetze-im-internet.de/stag/BJNR005830913.html (DE) |
| PRS.8.e | Are there any provisions on deprivation of nationality in a national security context (regardless of whether they could render a person stateless)? Please describe these provisions and if/how they are applied in practice. | Principles on Deprivation of Nationality Principle 4: States shall not deprive persons of nationality for the purpose of safeguarding national security. Where provisions exist, these should be interpreted narrowly and in accordance with international law standards. UNHCR Guidelines on Statelessness No.5 (2020) : Laws that permit deprivation of nationality on the grounds of terrorism should be publicly available and precise enough to enable individuals to understand the scope of impermissible conduct. | No. | |
| PRS.8.f | Are there any provisions on deprivation of nationality that directly or indirectly discriminate a person or group of persons on any ground prohibited under international law or that discriminate between nationals? Please describe these provisions and if/how they are applied in practice. | ICCPR : Article 26 1961 Convention : Article 9 ECN : Article 5 Principles on Deprivation of Nationality : Principle 6. Prohibited grounds for discrimination include race, colour, sex, language, religion, political or other opinion, national or social origin, ethnicity, property, birth or inheritance, disability, sexual orientation or gender identity, or other real or perceived status, characteristic or affiliation. Each State is also bound by the principle of non-discrimination between its nationals. | No. | |
| PRS.8.g | Are there safeguards to prevent derivative loss of nationality (i.e., loss of nationality on the basis that a parent or a spouse has been deprived of that nationality)? Please describe the potential impact of deprivation on children and spouses. | CRC : Articles 2(2), 7 and 8 CEDAW : Article 9(1) Principles on Deprivation of Nationality : States must take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members (Principle 9.7). The derivative loss of nationality is prohibited (Principle 9.8). | Yes, see above PRS.8.c Following the jurisprudence of the Federal Constitutional Court, the derivative loss of nationality on the basis of a parent being deprived of that nationality is unconstitutional. | Federal Constitutional Court (BVerfG), Judgement of first senate of 17 December 2013 - 1 BvL 6/10 -, Rn. 1-116, http://www.bverfg.de/e/ls20131217_1bvl000610.html |

Resources

| Item | Subtheme | Question | International Norms & Good Practice | Answer | Source |
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| RES.1.a | Published judgments | Please list the most relevant judgments relating to statelessness and include links to the cases (where available). | | Judgments on issues related to statelessness are available in online databases and have been made at different levels: 1) Administrative Court (Verwaltungsgericht, VG) 2) Upper Administrative Court (Verwaltungsgerichtshof, VGH) 3) Higher Regional Administrative Court (Oberverwaltungsgericht, OVG) 4) Federal Administrative Court (Bundesverwaltungsgerichtshof, BVerwG) 5) Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) | OpenJur : https://openjur.de (DE) Portal of the justice authorities of the federal and state governments: http://en.justiz.de/onlinedienste/rechtsprechung/index.php (DE) Juris, Das Rechtsportal: https://www.juris.de/jportal/index.jsp (DE) beck-online. Die Datenbank: https://beck-online.beck.de/Rechtsprechung/29335 (DE) Informationsverbund Asyl und Migration e.V., 'Rechtsprechungsdatenbank': http://www.asyl.net/rechtsprechungsdatenbank.html (DE) |
| RES.2.a | Free legal assistance | Are there specialised lawyers or organisations providing free advice to stateless people or those at risk of statelessness? If yes, please describe. | UNHCR, Handbook on Protection (2014) : Applicants must have access to legal counsel. | There are lawyers providing support on issues related to statelessness according to their webpages, though it is not clear whether this is pro bono/free of charge. NGOs, such as Pro Asyl or GGUA, as well as Refugee Law Clinics linked with universities offer legal advice free of charge. | For example: Rolf Stahmann (RA): https://stahmann-anwalt.de/migrationsrecht/staatsangehoerigkeit/ Pro Asyl: https://www.proasyl.de/en/ GGUA: https://www.ggua.de/startseite/ Refugee Law Clinics in Germany: https://rlc-deutschland.de/en/ Thomas Oberhäuser (RA): http://www.kanzleiammuenster.de/oberhaeus.html |
| RES.3.a | Literature | Is there domestic academic literature on statelessness? Please list and provide references and hyperlinks (where available). | | Yes | Dieter Gosewinkel, Einbürgern und Ausschließen. Die Nationalisierung der Staatsangehörigkeit vom Deutschen Bund bis zur Bundesrepublik Deutschland (2 nd edn, Vandenhoeck & Ruprecht 2004) Dr. Walter Schätzel, 'Die Staats-angehörigkeit der politischen Flüchtlinge' (1955) 5(1/2) Archiv des Völkerrechts 63 Dr. Thomas Jürgens, Diplomatischer Schutz und Staatenlose (Schriften zum Völkerrecht, Band 85, Duncker und Humblot 1987) Ursula Kötters and Rainer Furth, 'FHoeffR Nr. 11904 – Rechtmäßiger Aufenthalt von Staatenlosen bei befristeter Aufenthaltserlaubnis oder Duldung?' (1990) InfAusIR 268 Prof. Dr. Holger Hofmann, 'Welche Rechte haben Staatenlose?'(2004) 10 Asylmagazin 5 Dr. Stefanie Schmahl, 'Rücknahme erschlichener Einbürgerungen trotz drohender Staatenlosigkeit?' (2007) ZAR 174 Philipp B. Donath and Adela Schmidt, 'Die jordanische Staatsangehörigkeit von Palästinensern' (2010) ZAR 391 Manuela Sissy Kraus, Menschenrechtliche Aspekte der Staatenlosigkeit (Berliner Wissenschafts-Verlag 2013) |

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