

# Table of Contents

The Author	3
List of Abbreviations	19
Preface	21
General Introduction	23
§1. IMMIGRATION HISTORY AND STATISTICAL INFORMATION	23
I. Immigration History	23
II. Statistical Information	23
§2. OVERVIEW OF NATIONAL LEGAL INSTRUMENTS	24
I. Historical Overview	24
A. Federal Republic of Germany	24
B. German Democratic Republic	24
II. Current Applicable Legislation	25
A. Federal Laws	25
1. General Legal Structure	25
2. The Basic Law	25
3. The Residence Act	26
4. The Asylum Act	28
5. The Freedom of Movement Act/EU	28
6. Other Laws and Rules	28
B. European Union Law	29
C. Laws of the Länder	29
D. Transitional Rules	30
III. Administrative and Judicial Authorities	30
A. Foreigners Authorities	30
B. The Federal Foreign Office	31
C. The Authorities Charged with Policing Cross-Border Traffic	31
D. Police Forces of the Länder	32
E. Federal Office for Migration and Refugees	32
F. Commissioner for Migration, Refugees and Integration	33
G. The Federal Employment Agency	35
H. Parallel Competencies	35
I. Head Judicial Authorities	35
§3. OVERVIEW OF APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS	36
	5

## Table of Contents

§4. LEGAL POSITION OF FOREIGNERS IN GENERAL	36
I. Cooperation with Authorities	36
A. Presentation of Documents	36
B. Furnishing of Information	37
C. Personal Appearance	38
D. Identification Measures	38
E. Notification Requirements	39
F. Data Collection	39
1. Data Carriers	39
2. Data Collection at Third Persons	40
3. Data Collection in Specific Circumstances	40
G. Establishing Identity	40
II. Decision on Residence	42
III. Legal Capacity	42
IV. Data Protection	43
V. Political Activities	44
VI. Economic Activity	45
A. General Definition	45
B. Exceptions	45
C. Documents	46
VII. Illegally Staying Foreigners	47
§5. BASIC PRINCIPLES OF GERMAN MIGRATION LAW	47
I. Open-Mindedness and Well-Functioning of the System	47
II. Integration	48
III. Secure Subsistence	48
IV. Health Insurance	48
V. Sufficient Living Space	49
VI. Language Proficiency	49
VII. Integration Measures	49
Part I. Border Control and Entrance	51
Chapter 1. Organization of Border Control	51
§1. AUTHORITIES	51
§2. COOPERATION AND INFORMATION	52
Chapter 2. Right to Enter the Country	53
§1. CONDITIONS FOR THE RIGHT TO ENTER	53
I. Passport Requirement	53
II. Residence Title Requirement	54
A. General Requirement	54
B. Forms of Residence Titles	54

## Table of Contents

C. Residence Purposes	55
D. Conditions	55
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS	56
I. Residence Title Application	56
II. Entry Procedure	57
III. Costs, Accommodation and Transport Obligations	58
IV. Letter of Commitment by Third Persons	59
Chapter 3. Refusal of Entry	61
§1. REASONS FOR REFUSAL	61
§2. BAN ON ENTRY AND RESIDENCE	61
Part II. Right of Residence: General Provisions	65
Chapter 1. Short Stay	65
§1. CONDITIONS FOR SHORT STAY	65
I. Schengen Visa	65
A. General Requirement	65
B. Scope of Entitlement	65
C. Extension	67
D. Discretion	67
II. Airport Transit Visa	68
III. Short-Term Mobility Schemes	69
IV. Transit	69
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS FOR SHORT STAY	70
§3. LEGAL POSITION IN THE EVENT OF A SHORT STAY	70
§4. POSITION OF FAMILY MEMBERS	71
Chapter 2. Residence	72
§1. CONDITIONS FOR RESIDENCE	72
I. Temporary Residence Permit	72
II. EU Blue Card	73
A. Scope	73
B. Refusal	74
C. Permanent Settlement Permit for EU Blue Card Holders	75
III. Intra-corporate Transfers	76
A. ICT Card	76
B. Short-Term Mobility	78

## Table of Contents

C. Mobile ICT Card	80
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS FOR RESIDENCE	81
§3. LEGAL POSITION OF RESIDENTS	81
I. Scope and Conditions	81
II. Integration Courses	82
A. Structure	82
B. Entitlement to Attend an Integration Course	83
C. Obligation to Attend an Integration Course	85
D. Cessation of the Obligation to Attend an Integration Course	87
E. Failure to Duly Attend an Integration Course	87
III. Other Integration Measures	88
A. Integration Programme	88
B. Job-Related Language Training	89
§4. POSITION OF FAMILY MEMBERS OF RESIDENTS	89
I. Subsequent Immigration of Dependants (Family Reunion)	89
A. General Principles	89
B. Subsequent Immigration of Dependants to a Foreigner	91
C. Subsequent Immigration of Spouses	94
1. Conditions	94
2. Exceptions to Conditions	95
3. Particular Hardship	97
4. Extension	97
5. Polygamous Marriage	97
6. Short-Term Mobility for Researchers	97
D. Independent Right of Residence of Spouses	98
1. Termination of Marital Cohabitation	98
2. Particular Hardship	98
3. Extension	99
4. Permanent Settlement Permit	99
E. Subsequent Immigration of Children	99
F. Children Born in Germany	101
G. Right of Residence of Children	101
1. Extension	101
2. Permanent Residence Permit	102
H. Subsequent Immigration of Parents	103
I. Subsequent Immigration of Other Dependants	104
1. Particular Hardship	104
2. Temporary Protection	104
J. Subsequent Immigration to Persons with Subsidiary Protection Status	105
K. Subsequent Immigration to a German National	106
1. Conditions	106
2. Permanent Settlement Permit	108
II. Other Residence Rights for Family Reasons	108

## Table of Contents

Chapter 3. Long-Term Residence	109
§1. CONDITIONS FOR LONG-TERM RESIDENCE	109
I. Permanent Settlement Permit	109
II. EU Long-Term Residence Permit	110
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS FOR LONG-TERM RESIDENCE	112
§3. LEGAL POSITION OF LONG-TERM RESIDENTS	112
§4. POSITION OF FAMILY MEMBERS OF LONG-TERM RESIDENTS	113
Part III. Right of Residence for Specific Categories of Persons	115
Chapter 1. Nationals with Preferential Treatment	115
§1. EU CITIZENS	115
I. Freedom of Movement	115
II. Dependants of EU Citizens	117
III. Permanent Residence	119
IV. Documents and Data Protection	120
V. Loss of the Right to Freedom of Movement	121
VI. Sanctions	123
VII. Relation to the Residence Act	123
VIII. Political Rights of EU Citizens	124
§2. EEA STATES AND SWITZERLAND	124
§3. TURKISH CITIZENS	125
§4. OTHER NATIONALS	126
Chapter 2. Students	127
§1. FURTHER EDUCATION	127
I. Studies	127
II. Conditions	128
§2. STUDENT MOBILITY	130
§3. LANGUAGE COURSES AND SCHOOLS	132
§4. OTHER EDUCATIONAL PURPOSES	133
I. Vocational Training	133

## Table of Contents

II. Recognition of Professional Qualifications	134
III. Study-Related Training Programme EU	136
§5. DENIAL	136
§6. PERMANENT SETTLEMENT PERMIT	138
Chapter 3. Researchers	139
§1. RESEARCH PURPOSE	139
§2. SHORT-TERM MOBILITY FOR RESEARCHERS	140
§3. TEMPORARY RESIDENCE OF MOBILE RESEARCHERS	142
§4. DENIAL	142
Chapter 4. Labour and Economic Migration	144
§1. LABOUR EMPLOYMENT	144
I. Amendment and General Requirements	144
A. Outline of Changes Applicable from 1 March 2020 Onwards	144
1. Basic Development	144
2. Simplification	144
3. Skilled Workers	144
4. No Examination of Priority	145
5. No Limitation to Shortage Occupations	145
6. Seeking Employment	145
7. Determination of Equivalence	146
B. Requirements	146
II. Conditions	147
III. Foreigners Whose Deportation Has Been Suspended	148
IV. Seeking Employment	150
V. European Voluntary Service	150
VI. Permanent Residence Permit for Highly Qualified Foreigners	151
§2. SEASONAL WORKERS AND TEMPORARY WORKERS	152
I. Seasonal Workers	152
A. Conditions	152
B. Denial	154
II. Temporary Workers	155
III. Showman's Assistants	155
§3. INDEPENDENT ECONOMIC ACTIVITIES	155
§4. INVESTMENT ACTIVITIES	158

## Table of Contents

Chapter 5. Humanitarian Reasons	159
§1. HUMANITARIAN GROUNDS	159
I. Scope of Application	159
II. General Provisions	159
III. Admission from Abroad	160
IV. <i>Land</i> Order on Humanitarian Grounds	160
V. <i>Land</i> Order in Cases of Hardship	161
VI. Deportation Ban	162
VII. Impossibility of Departure	162
§2. UNACCOMPANIED MINOR CHILDREN	162
§3. VICTIMS OF TRAFFICKING IN HUMAN BEINGS	164
§4. OTHERS	165
I. Well-Integrated Juveniles and Young Adults	165
II. Lasting Integration	166
A. Scope	166
B. Dependants	168
C. Denial	169
III. Personal Grounds	169
IV. Resettlement	170
V. Jewish Immigrants	170
Chapter 6. Asylum	172
§1. CONDITIONS	172
I. Refugee Status	172
A. Asylum Act: Scope of Application	172
B. Political Asylum	173
C. Refugee Status	174
1. Refugee	174
2. Acts of Persecution	174
3. Lack of Protection	175
4. Agents of Persecution	176
5. Protection Against Persecution	176
II. Subsidiary Protection Status	177
III. Temporary Protection	177
IV. Other	178
A. Displaced Foreigners	178
B. Diplomatic Asylum	179
C. Church Asylum	179
V. Refusal of Asylum	180
A. Internal Protection	180
B. Self-Created Grounds Subsequent to Fleeing	180
C. Refugee	181

## Table of Contents

D. Subsidiary Protection	182
E. Temporary Protection	182
§2. PROCEDURES	183
I. Asylum Procedure	183
A. Form, Scope, Legal Capacity, Contacts and Language	183
1. Form	183
2. Scope	183
3. Legal Capacity	183
4. Contacts and Counselling	184
5. Language	184
B. Cooperation Obligations	185
1. Communications	185
2. Facts	186
C. Competent Authorities	187
D. Data Protection and Information Procedures	188
1. Personal Data	188
2. Data Carriers	188
3. Identity	188
E. Place of Application	189
1. Filing Asylum Application	189
2. Requesting Asylum	190
3. Border Procedure	190
4. Entry by Air	191
F. Procedure Before the Federal Office for Migration and Refugees	191
1. Procedure	191
2. Hearing	192
3. Hearing Procedures	192
4. Decision	193
G. Inadmissible and Manifestly Unfounded Applications	194
1. Inadmissibility	194
2. Manifest Unfoundedness	195
H. Fast-Track Procedure	196
I. Termination of Proceedings	197
1. Content of Decision	197
2. Decision in Case of Withdrawal or Abandonment	198
3. Suspension of Proceedings	198
4. Abandonment	198
5. Follow-Up Application	200
6. Secondary Application	201
II. Review of a Decision Rejecting an Application for Asylum	201
A. Administrative Appeals	201
B. Appeals of Airport Decisions	202
C. Court Proceedings	203
1. Time Limits	203
2. Limited Suspensory Effect	203



## Table of Contents

3. Single Judge and Chamber	204
4. Decision of the Court	205
5. Legal Remedy	205
6. Special Provisions Governing Appeals	206
7. Inadmissibility of Complaints	206
8. Suspension and Withdrawal	206
9. Inspection of Files	207
10. Special Panels	207
11. Notification	207
12. Costs	208
13. Entry and Residence Bans	208
III. Unaccompanied Minor Asylum Claimants	208
IV. Safe Country of Origin and Safe Third Country	209
A. Safe Country of Origin	209
B. Safe Third Countries	210
§3. LEGAL POSITION	211
I. Asylum Seekers	211
A. Residence	211
1. Permission to Remain Pending the Asylum Decision	211
2. Registration Certificate	212
3. Arrival Certificate	213
4. Identification Documents	214
5. Alert	215
6. Expiry	215
7. Residence Title	216
B. Allocation	217
1. Reception Centre	217
2. Residence Obligation	218
3. Documents	218
4. Registration	219
5. Admitted Persons	219
6. Filing an Application at the Reception Centre	220
7. Setting Up and Maintaining a Reception Centre	220
8. Admission Quota	221
9. Responsible Reception Centre	222
10. Residence	223
11. Prolonged Residence	223
12. Children's Residence	224
13. Contacts	224
14. Information	224
15. Termination of Residence Obligation	224
16. Allocation Decision	225
17. Collective Accommodation	225
18. Notification	226
19. Geographic Restrictions	226
20. Enforcement of Geographic Restrictions	227

## Table of Contents

21. Expiry of Geographic Restrictions	228
22. Special Reasons for Geographic Restrictions	228
23. Residence Restrictions	229
C. Economic Activity	229
D. Social and Health Benefits	230
1. Medical Examination	230
2. Benefits	230
3. Limitations to Benefits	232
4. Kinds of Benefits	234
5. Medical Benefits	235
6. Working Opportunities	236
7. Labour Market Programme Refugees Integration Measures	237
8. Further Integration Measures	238
9. Other Benefits	239
10. Income and Assets	240
11. Liability of Third Persons	241
12. Notification	241
13. Relationship with Other Benefit Provisions	241
14. Supplementary Provisions	242
E. Sanctions	243
1. Fines	243
2. Limitation of Benefits	244
II. Persons Granted Asylum Status	244
A. Status in General	244
B. Residence Title	245
C. Allocation	245
1. Residence	245
2. Temporary Protection	247
D. Economic Activity	248
§4. POSITION OF FAMILY MEMBERS	248
I. Scope of Asylum Application	248
II. Asylum Status for Family Members	249
III. Subsequent immigration to Persons Granted Subsidiary Protection Status	250
Chapter 7. Others Grounds	252
§1. RIGHT OF RETURN	252
A. General Approach	252
B. Young Foreigners	252
C. Victims of Forced Marriage	252
D. Pensioners	253
§2. FORMER GERMANS	253

## **Table of Contents**

§3. LONG-TERM RESIDENTS IN OTHER EU MEMBER STATES	254
§4. PUBLIC INTERESTS	255
§5. POLITICAL GROUNDS	256
§6. INTERNATIONAL LAW	258
Part IV. Loss of Right of Residence	261
Chapter 1. Conditions under Which the Right of Residence Might Be Lost	261
§1. REQUIREMENT TO LEAVE GERMANY	261
§2. TERMINATION OF LAWFUL STAY	262
I. Expiry of Residence Title	262
II. Exceptions from Expiry	263
III. Long-Term Residents/EU	265
IV. EU Blue Card	266
V. Permanent Settlement Permit	267
§3. REVOCATION OF RESIDENCE TITLES	267
§4. LOSS OF ASYLUM	270
I. Asylum Status and Refugee Status	270
II. Subsidiary Protection Status	272
§5. CESSATION OF DEPORTATION BANS	272
§6. EXPULSION	273
I. Weighing of Interests	273
II. Particularly Serious Interest in Expulsion	274
III. Serious Interest in Expulsion	275
IV. Particularly Serious Interest in Remaining	276
V. Serious Interest in Remaining	277
VI. Pending Application Procedures	278
Chapter 2. Legal and Administrative Procedures	279
§1. PROCEDURES	279
§2. COSTS	279
Part V. Sanctions	281

## Table of Contents

Chapter 1. Sanctions	281
§1. ADMINISTRATIVE SANCTIONS	281
I. The Basic Structure	281
II. Administrative Offences in the Residence Act	281
A. General Rules	281
B. Specific Administrative Offences	282
III. Administrative Offences in the Asylum Act	285
§2. PENAL SANCTIONS	285
I. Penal Sanctions in the Residence Act	286
II. Penal Sanctions in the Asylum Act	288
§3. DETENTION, CUSTODY, ALLOCATION AND RESTRICTIONS	289
I. Detention and Custody	289
A. Detention Pending Exit from the Federal Territory	289
B. Custody Awaiting Deportation	290
1. Principle of Proportionality	290
2. Custody to Prepare Deportation	290
3. Custody to Secure Deportation	290
4. Enforcement	292
C. Custody to Secure Departure	293
II. Allocation	294
III. Territorial Restrictions	295
§4. EXPULSION, DEPORTATION AND REMOVAL	296
I. Legal System and Terminology	296
II. Removal	296
III. Deportation	298
A. Conditions for Deportation	298
B. Deportation Order	299
C. Deportation Warning	300
IV. Prohibition of Deportation	302
V. Suspension of Deportation	305
VI. Deportation in Cases of Refusal of Asylum	308
A. Asylum Application	308
1. Deportation Order	308
2. Application of Temporary Relief	309
3. Safe Third Countries	309
4. Rejection of Asylum	310
5. Notification	311
6. Reasons Precluding Deportation	311
7. Deportation Warning	312
B. Follow-Up and Secondary Application	312
1. Follow-Up Application	312
2. Secondary Applications	313

## Table of Contents

§5. MONITORING	313
I. Measures	313
II. Electronic Location Monitoring	314
Chapter 2. Sanctions Against Persons Helping Illegal Entry and Residence	317
§1. HUMAN SMUGGLING	317
I. Inciting or Assisting Unlawful Entry	317
II. Inciting or Assisting Unlawful Residence	317
III. Aggravating Circumstances	318
§2. HUMAN TRAFFICKING	320
I. Measures	320
II. Forms of Human Trafficking	322
III. Forced Prostitution	323
IV. Forced Labour	324
V. Work Exploitation	325
VI. Exploitation Through Deprivation of Freedom	326
Part VI. Legal Remedies and Procedural Safeguards	327
Chapter 1. Legal Remedies in Case of Refusal of Right to Enter, Stay or Reside	327
Chapter 2. Legal Remedies in Detention Cases	329
Chapter 3. Other Legal Remedies	330
Part VII. Access to the Labour Market	331
Chapter 1. Overview of Applicable Legislation	331
Chapter 2. Conditions to Work as an Employed Person	333
§1. CONDITIONS	333
§2. DENIAL	334
Chapter 3. Sanctions Against Illegal Participation in the Labour Market	336
§1. SANCTIONS AGAINST EMPLOYERS	336
I. Payment Obligations	336
II. Administrative Offences	337

## Table of Contents

A. Residence Act	337
B. Social Code	338
C. Act on Temporary Employment Businesses	338
III. Criminal Offences	339
A. Act to Combat Clandestine Employment	339
B. Act on Temporary Employment Businesses	340
IV. Exclusion from Public Subsidies and Contracts	341
V. Liability for Costs	342
§2. SANCTIONS AGAINST WORKERS	342
I. Administrative Offences	342
II. Criminal Offences	342
A. Residence Act	342
B. Act to Combat Clandestine Employment	343
Chapter 4. Legal Remedies and Procedural Safeguards	344
Part VIII. Access to Self-Employed Activities	345
Chapter 1. Overview of Applicable Legislation	345
Chapter 2. Conditions for Entitlement to Work in the Country as a Self-Employed	346
§1. GENERAL CONDITIONS	346
§2. ADMINISTRATIVE RULES AND PROCEDURES	346
§3. CONDITIONS FOR SPECIAL CATEGORIES OF SELF-EMPLOYED	346
Chapter 3. Sanctions Against Illegal Exercise of Self- Employment	347
§1. ADMINISTRATIVE OFFENCES	347
§2. CRIMINAL OFFENCES	347
I. Residence Act	347
II. Act to Combat Clandestine Employment	347
Chapter 4. Legal Remedies and Procedural Safeguards	348
Selected Bibliography	349
Index	351