



# BOFAXE

## Germany's Expulsion Policy (PART 1) A Violation of International Law?

— In her book, “The Origins of Totalitarianism”, Hannah Arendt noted that “[s]overeignty is nowhere more absolute than in matters of emigration, naturalization, nationality and expulsion”. While exercising sovereignty by way of expulsion may appear anachronistic, expulsion is, astonishingly, current state practice. In September 2024, for example, the case of Robert A., a stateless person without the right of residence in Germany, made headlines when the Commission for Cases of Hardship for the State of Saxony decided to deport Robert A. to Serbia – a state he was not born in, has never once visited, and whose language he does not speak. Currently, around 30.000 individuals in Germany are stateless and thereby in danger of one day sharing the fate of Robert A. Fears resulting from this volatile status-quo are exacerbated by the current political discourse in Germany, with Friedrich Merz, the Christian Democratic Union (CDU) party leader and likely next chancellor of Germany, recently proposing to deport foreigners convicted of crimes after their second offence at the latest. Against the backdrop of these developments, this post will, first, summarize the current state of international law on the expulsion of stateless persons to then demonstrate how Germany has violated these rules in the case of Robert A. Going beyond the specific case under investigation, the post will, second, assess whether the recently reformed Nationality Act and a decision by the German Federal Constitutional Court from 2024 enhance the protection of stateless persons and discuss how CDU plans potentially conflict with national and international law. Finally, this post will offer specific suggestions for improving the protection of stateless persons.

### Protection from Expulsion in the United Nations Conventions on Statelessness

The two main treaties regulating statelessness are the 1954 Convention relating to the Status of Stateless Persons (CSS) and the 1961 Convention on the Reduction of Statelessness. While the Convention on the Reduction of Statelessness arguably (see Art. 8, Commentary para. 1) prohibits deprivations of nationality for the sole purpose of expulsion, this Convention has no bearing on the case of Robert A. as Robert A. had already been stateless for 30 years at the time of his expulsion. Therefore, he was primarily protected under the CSS.

In this Convention, the main provision regulating the expulsion of stateless persons is Art. 31 CSS, which generally prohibits the expulsion of stateless persons, with exceptions for national security and public order. Because the Convention itself does not define national security or public order, these terms need to be interpreted with the help of other applicable rules of international law (cf. Art. 31(3)(c) VCLT). In this regard, particular attention should be paid to the International Covenant on Civil and Political Rights (ICCPR), which also lists national security and public order as grounds for limiting various rights. With recourse to the ICCPR, the United Nations Commission on Human Rights interprets national security as protecting “the existence of the nation or its territorial integrity or political independence against force or threat of force.” Public order, in turn, “may be defined as the sum of rules which ensure the functioning of society or the set of fundamental principles on which society is founded. Respect for human rights is part of public order”. Thus, a State that wants to expel a stateless person can do so only if either national security or public order are threatened. If the expulsion is in accordance with Art. 31(1), (2) CSS, the individual still benefits from the safeguards of Art. 31(3) CSS, namely, a guarantee for being granted a reasonable amount of time to seek admission to another country.

### Protection from Expulsion in International Law beyond the Statelessness Conventions

While other international documents also address the expulsion of stateless persons, these documents are either substantively similar to the CSS, e.g. Article 7 of the Draft Articles on the Expulsion of Aliens, or provide a lower degree of protection than the CSS: Art. 13 ICCPR or Art. 1 of the European Charter on Human Rights (ECHR) Protocol 7, for example, both allow for exceptions to procedural guarantees. A notable prescription follows from the jurisprudence of the European Court on Human Rights, several judgments of which relate to the rights of stateless persons. According to the Court, the limits expulsions impose on Art. 8 ECHR, the right to respect for private life, must be proportional, especially in cases where the expelled individual already spent most of their childhood in their host country.

### The Case of Robert A.

The following analysis is based solely on news reports, because the relevant decision of the immigration authorities is not publicly accessible. To comply with international law, the decision to expel an individual must be made in accordance with law and on the grounds of threatened national security or public order. Since the decision in the case of Robert A. is not publicly accessible, it will be assumed that the expulsion was based on § 53 Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory (Residence Act) and thus in accordance with law. Under § 53 Residence Act, the State can expel a foreigner, who “endangers public safety and order, the free democratic basic order or other significant interests of the Federal Republic of Germany”.

**VERANTWORTUNG** Die BOFAXE werden vom Institut f r Friedenssicherungsrecht und Humanit res V lkerrecht der Ruhr-Universit t Bochum herausgegeben: IFHV, Massenbergrasse 9b, 44787 Bochum, Tel.: +49 (0)234/32-27366, Fax: +49 (0)234/32-14208, Web: <http://www.ruhr-uni-bochum.de/ifhv/>. Bei Interesse am Bezug der BOFAXE wenden Sie sich bitte an: [ifhv-publications@rub.de](mailto:ifhv-publications@rub.de). **F R DEN INHALT IST DER JEWEILIGE VERFASSER ALLEIN VERANTWORTLICH.** All content on this website provided by V lkerrechtsblog, and all posts by our authors, are subject to the license [Creative Commons BY SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/).



# BOFAXE

## Germany's Expulsion Policy (PART 2) A Violation of International Law?

— It is, however, seriously doubtful that Robert A. presented a risk to national security or public order. The immigration authorities justified a significant interest on a conviction of drug trafficking in 2019 that sentenced him to two years on probation. The definition of public order, however, explicitly calls for respect for the individual's human rights. Infringing these human rights under the Statelessness Convention or the ICCPR in relation to his sentence of two years on probation is not proportional.

Notably, this argument is in line with jurisprudence of the Federal Constitutional Court, which reviewed the constitutionality of an expulsion following drug trafficking charges in a May 2024 decision. While not applying international law directly, the Federal Constitutional Court explicitly referred to the need to respect the individual's human rights and considered whether the expulsion could be justified as a protection of public order. The Court concluded that while a first offence in the shape of drug trafficking could generally constitute a threat to public order, the sentence for this offence needs to be proportional vis- -vis the expulsion. Proportionality was determined based on the individual's conduct after conviction as well as specific and serious grounds informing the danger of repetition. Notably and in line with the ECtHR, the Court emphasized a special degree of protection for those born in Germany and those that entered the country at a very young age.

In light of this jurisprudence, it is difficult to conceive of Robert A.'s expulsion as proportionate: Robert A. came to Germany when he was not even one year old; his conviction for drug-trafficking followed a first offence. Nothing suggests that Robert A. is a danger to Germany's national security or public order. By contrast, he is socially integrated and even participating in local politics. His expulsion from Germany thus constitutes a violation of international law.

### Germany Needs to Do More to Protect the Stateless

Robert A. is exemplary of what the Federal Constitutional Court calls "factual nationals": individuals who are not German nationals but have lived (nearly) all their lives in Germany. Factual nationals are guaranteed an enhanced degree of protection in relation to their fundamental rights but also when assessing the "significant interest" of the State under § 53 Residence Act. Friedrich Merz' new suggestions, which would enable expulsions of foreigners after their second offence at the latest, potentially even expanding the possibility of expulsion to German (dual) nationals, are incompatible with factual nationals' enhanced degree of protection. Merz' ideas are therefore difficult to square with the holding of the Federal Constitutional Court.

For an effective protection of stateless persons as well as continued compliance with Art. 31 CSS and the ECtHR it is necessary that the legislator defines a clear and proportional threshold for factual nationals, guaranteeing that they will only be expelled in very exceptional circumstances. Additionally, granting children born stateless in Germany nationality – even if under strict limitations – should be included in the Nationality Act. This would be a practical and effective approach that would prevent future expulsions and human rights violations.

The Federal Constitutional Court made it clear that factual nationals enjoy an enhanced degree of protection, which aligns with Germany's international obligations under the CSS and the ECHR – now, it is up to the legislator to follow suit.