

**Schleswig-Holstein**

Der echte Norden

# ***Alternatives to imprisonment for young refugees who offended the law***

**Criminal Justice Platform Event - Barcelona, 3<sup>rd</sup> November 2016 – Centre for Legal Studies**

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Kultur und Europa

## *Alternatives to imprisonment for young refugees who offended the law*

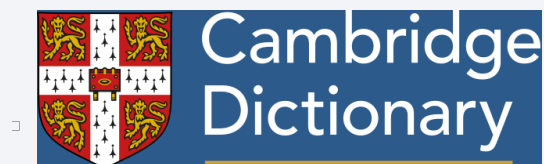
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## Political background and implications

### a) Definitions, Statistics

#### Refugee:

**“A person who has escaped from their own country for political, religious, or economic reasons or because of a war.”**

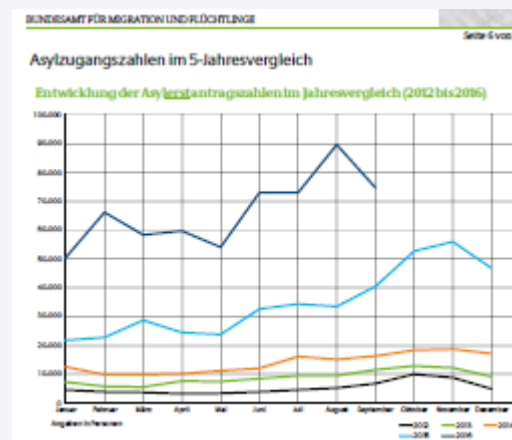
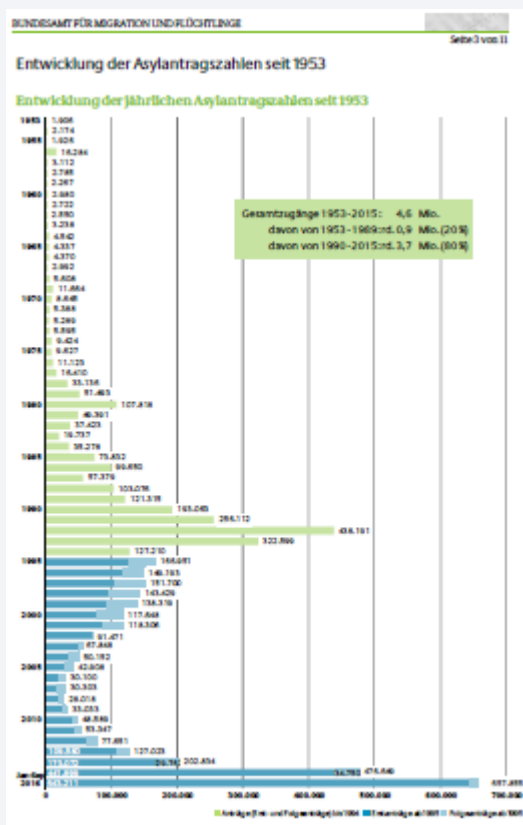


**“Someone who has been forced to flee his or her country because of persecution, war, or violence. A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group. Most likely, they cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries.”**



# Political background and implications

## a) Definitions, Statistics



## Political background and implications

b) Angela Merkel: „wir schaffen das“, the German „yes we can“

Chancellor Angela Merkel on the 31<sup>st</sup> of August 2015,  
press conference of the Federal Government in  
Berlin:

"Wann immer es darauf ankommt, sind wir - Bundesregierung, Länder und Kommunen - in der Lage, das Richtige und das Notwendige zu tun, Deutschland ist ein starkes Land. Das Motiv, mit dem wir an diese Dinge herangehen, muss sein:

**Wir haben so vieles geschafft - wir schaffen das!**

*Whenever we need to, the Federal Government, the Federal States (Länder) and the municipalities are capable of doing the right and the necessary things – Germany is a strong country. The approach for facing these challenges must be:*

***We have achieved so much – we will succeed!***



Bundesregierung, B 145 Bild-00304083  
Foto: Kugler, Steffen 1.22. April 2014

## Political background and implications

c) Countermovement: „besorgte Bürger/worried citizens“ and rise of hatecrime

Das **Straftatenaufkommen** hat sich in den einzelnen Phänomenbereichen der Politisch motivierten Kriminalität (PMK) im Jahr 2015 wie folgt entwickelt:

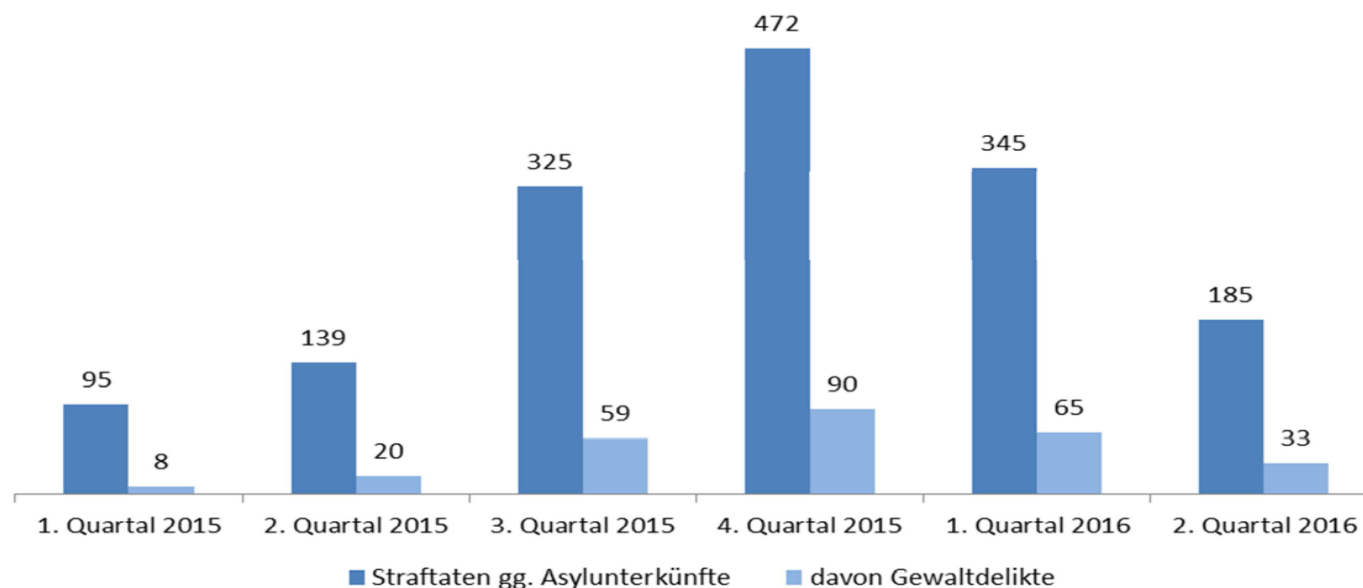
Jahr	2015	2014	in %
<b>PMK-rechts</b>	22.960	17.020	↑ + 34,9 %
<b>PMK-links</b>	9.605	8.113	↑ + 18,3 %
<b>PM-Ausländerkriminalität</b>	2.025	2.549	↓ - 20,5 %
<b>PMK-sonstige</b>	4.391	5.018	↓ - 12,4 %
<b>Gesamt</b>	38.981	32.700	↑ + 19,2 %

Bundesministerium des Inneren, Politisch Motivierte Kriminalität im Jahr 2015 – Bundesweite Fallzahlen

## Political background and implications

c) Countermovement: „besorgte Bürger/worried citizens“ and rise of hatecrime

**Straftaten gegen Asylunterkünfte - PMK-rechts- und PMK-Sonstige/Nicht zuzuordnen<sup>8</sup>**



BKA, Kriminalität im Kontext von Zuwanderung – Kernaussagen 2/2016, Betrachtungszeitraum 01.01.-30.06.2016, Stand 06.09.2016

## Criminological expectations

National, ethnic, cultural background does not lead to any specific criminological expectation.

But:

Of the refugees mentioned in slide 4 a vast majority is

- **Male (approx. 66%)**
- **Young (approx. 72% under the age of 30)**
- **In a vulnerable legal, social and financial position**

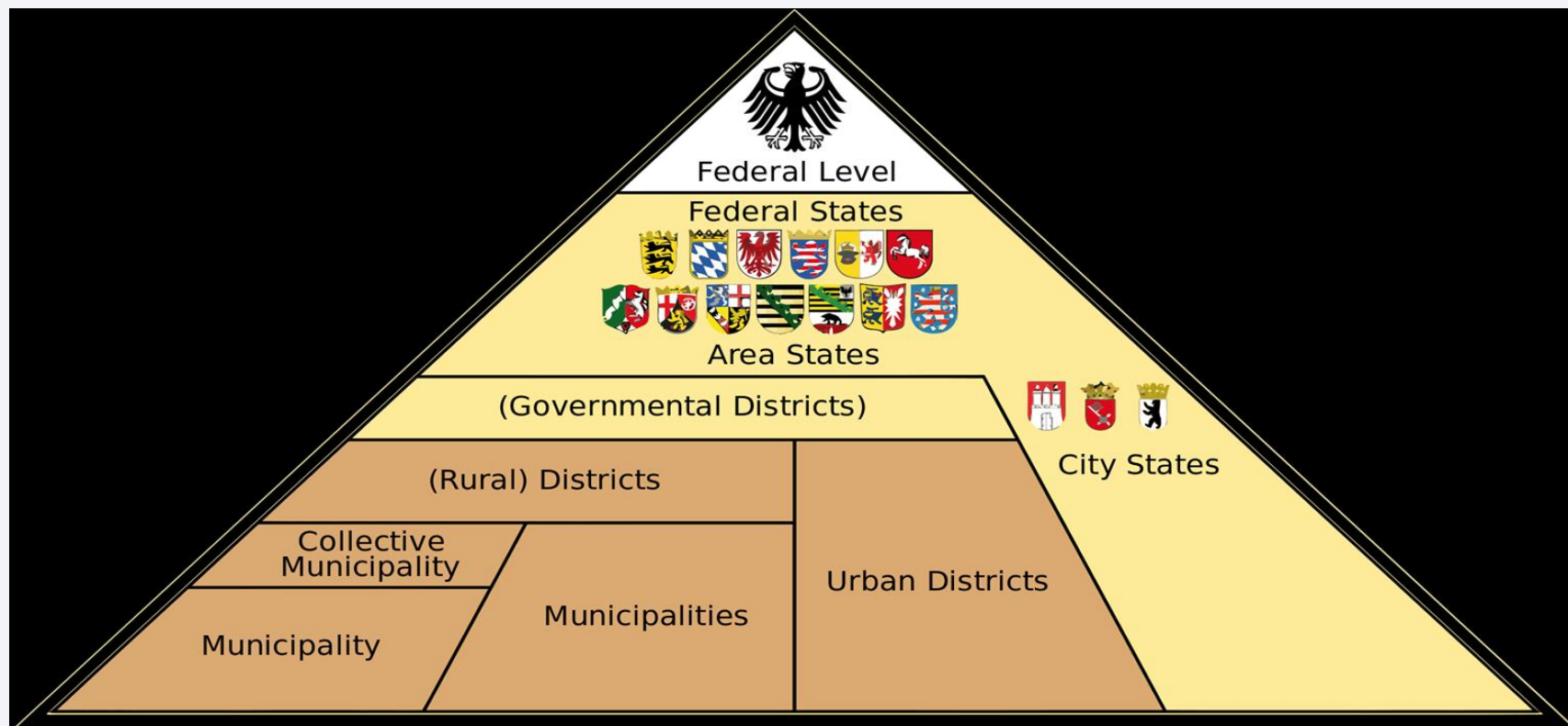
According to criminological research these are three major risk factors for criminal offences.

Therefore: Many German jurisdictions expect a considerable number of criminal offences to be committed by refugees in the (near) future.



## Criminal policy in Schleswig-Holstein

### a) Legal competence of federal states in Germany



graphic: wikipedia.org

## Criminal policy in Schleswig-Holstein

### a) Legal competence of federal states in Germany

Central Government	Central Government/ Federal States	Federal States
<b>Exclusive legislative competence</b> e.g. foreign affairs, defence, currency, telecommunication etc.	<b>Competing legislative competence</b> e.g. civil and criminal law, court procedures, legal counseling etc.	<b>Exclusive legislative competence</b> e.g. prison and probation services,
Art. 71, 73 Basic Law (Constitution)	Art. 72, 74 Basic Law (Constitution)	Art. 70 Basic Law (Constitution)

## Criminal policy in Schleswig-Holstein

### b) Ambulant sanctions vs. detention

Imprisonment is the severest intervention that the state can inflict on the personal rights of individuals. Research on reconviction rates shows that prisons are less successful in reintegrating offenders into society compared to community sanctions.

**Prison sentences should only be the ultima ratio in a criminal justice system.**

In order to make it possible for judges and public prosecutors to take responsibility for inflicting less severe, community sanctions instead of prison sentences, a highly skilled, differentiated and easily accessible system of ambulant measures must exist within a jurisdiction.

**Prison population rate Schleswig-Holstein: 40 per 100.000.**

Europe:

[http://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate?field\\_region\\_taxonomy\\_tid=14&=Apply](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=14&=Apply)

## **Criminal policy in Schleswig-Holstein**

c) A request from the state secretary

E. Schmidt-Elsaeßer, state secretary, Ministry of Justice Schleswig-Holstein in October 2015:

**Are we prepared to deal with young offenders from foreign countries who may not speak German and who come from different cultural backgrounds in our community sanctioning system?**

## **Strategy of the Schleswig-Holstein MoJ towards delinquent young refugees**

### **a) Analysis of demands**

Winter 2015/16

**Consultation of experts from prison, probation, youth care, RJ institutions:**

Spring 2016

**Structured questionnaires answered by all**

**Juvenile courts**

**Public prosecutors in juvenile cases**

**Police inspections**

**In Schleswig-Holstein**

Summer 2016

**Literature review and concept based on all findings**

## Strategy of the Schleswig-Holstein MoJ towards delinquent young refugees

### b) Criteria for productive activities

#### Concept / Findings:

The good message:

The number of cases involving criminal offences of young refugees has been low so far.

The crime level is low as well (typical juvenile offences such as bodily harm, theft, property damage)

#### **Proposed meta-level-activities:**

- PR activities should influence the public discussion on migration and crime.
- The relevance of integration in a broader sense of the word should be focussed.
- Intercultural trainings should be offered to judicial staff and to youth care experts.  
    Apart from the enhancement of individual expertise intercultural aspects should also be brought on the structural agenda of institutions that are involved.
- A cooperation and discussion with muslim religious communities should be facilitated.
- The enhancement of existing structures and measures needs to be considered prior to the development of completely new activities.
- The coordination of all relevant actors is a crucial success-factor.

## Strategy of the Schleswig-Holstein MoJ towards delinquent young refugees

### b) Criteria for productive activities

**Specialised (or enhanced) community sanctions should meet as many of the following criteria as possible:**

- Language
- Cultural orientation – including legal system and gender equality
- Ethnos, culture and religion – promotion of mutual tolerance
- Legal, social and financial position/situation of the client
- Individual biography – respect for the individual
- Restorative Justice approaches

Specialised measures should address the following challenges:

- German language
- Development of daily routines
- Vocational training / jobs
- Integration in sports clubs or other voluntary organisations
- The individual resources of every young client
- Identification with positive role models and possibly the chance to turn into a role model
- Interaction also with young Germans
- Reflection of western norms and values and of own norms and values

## Strategy of the Schleswig-Holstein MoJ towards delinquent young refugees

### c) Cooperation, coordination

The Schleswig-Holstein Association for Social Responsibility in Criminal Justice; Victim- and Offender Treatment (NGO) has been contracted by the MoJ per 01. October 2016 as coordinating body for „alternatives to imprisonment for young refugees who offended the law“

#### Tasks:

Building a network among all relevant actors (NGOs, GOs)

Promotion of communication and where possible formal cooperation agreements

Arrangement of workshops and further education that enhances intercultural competence of practitioners and institutions

Assistance/support for institutions in developing and delivering specialised community sanctions or in enhancing intercultural competence within existing community sanction measures

Evaluation of the activities



## Concrete ambulant measures

### a) Budget and variety of proposals

Budget for „alternatives to imprisonment for young refugees who offended the law“ 2017:

155.000 EUR (including coordination)

Proposals (Background: possible sanctions according to German Juvenile Court Bill, especially § 10: “Orders” / so called “New Ambulant Sanctions”):

- Local and regional projects involving volunteers
- Local and regional projects delivering social trainings
- Local and regional projects delivering individual counseling

## Concrete ambulant measures

### b) Involvement of volunteers with migrant backgrounds

#### Perspective:

Well integrated volunteers with migrant backgrounds are educated and counselled in practice by professional NGOs.

#### Potential tasks for volunteers:

Securing intercultural competence within community sanction measures – taking part in e.g. social trainings.

Assisting German probation officers (in a wider sense of the word) in intercultural cases

Potentially fully responsible supervision of clients executing a court decision / community sanction.



## Concrete ambulant measures

### c) Social trainings involving sports

#### Perspective:

Young refugees and other juvenile delinquents are sentenced to a specialized social training that is delivered by the Schleswig-Holstein Football Association in cooperation with a number of other NGOs.

#### Aims:

Using nonverbal communication (sports) as a key to (re)integration.

Intercultural learning by involving clients with migrant and with German backgrounds.

Basic skills in coaching amateur football teams are conveyed to the clients.

Communication skills and basic values of the German society are conveyed to the clients.

Facilitators of the Football Association actively promote the integration of the clients into football clubs in Schleswig-Holstein

#### Anlage 4 – Beschreibung der Projektidee



**I'd like to finish with a quote of the German criminologist Prof. Heinz Cornel:**

**„The integration into society is the main precondition to prevent people from slipping off into criminal offending – this prevails for natives as well as for new members of our society, and especially for young people.**

**Yes we can –  
with a little inspiration from our European colleagues?**

**I'm looking forward to your comments and suggestions**

# Thank you very much for your attention

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