

Pauline Endres de Oliveira

Safe Access to Asylum in Europe

Normative assessment of safe pathways to protection
in the legal context of the European Union



Nomos

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*'I wouldn't have been able to travel to Switzerland on my own.
The possibility to seek asylum at the Swiss embassy saved my life.'*

*Statement of a Somali refugee,
published by the European Council on Refugees
in Exiles (ECRE) in 2011*

Preface

This book was defended as PhD thesis at the Faculty of Law of the University of Giessen in May 2022. The idea for the thesis was born in 2012, when I worked as a migration and asylum lawyer in Berlin. I remember my first case of a Syrian woman, resident in Germany, asking me to help her family members to obtain visas to leave Syria after the outbreak of the Syrian Civil War in 2011. My client stressed that she would be willing to pay for everything, all travel and living expenses of her relatives. I remember explaining that money was not the problem – the issue was the law. Her family members – her elderly mother and adult siblings – did not qualify for family reunification. The exceptional provision of humanitarian admission under Section 22 of the German Residence Act did not apply, as all Syrians were said to be in the same situation of danger and distress. There was no humanitarian admission program at the time and resettlement, as I was told by UNHCR, did not apply to Syrians – their situation was not protracted (yet). Nevertheless, I supported the family with their claims for humanitarian visas at the German embassy in Beirut. I remember sharing their fears the day they crossed the border from Syria to Lebanon, to submit their visa applications in person. I accompanied every bureaucratic step on the way, witnessing all the administrative hurdles of the visa procedure. But it was only when Germany launched its *ad hoc* humanitarian admission programs that the family was granted visas – based on a private sponsorship scheme. This scheme was one of several *ad hoc* humanitarian admission schemes implemented at *Länder* level from 2013 onwards in Germany, granting access to over 21,000 Syrians fleeing the war. Additionally, Germany set up *ad hoc* humanitarian admission schemes at federal level from 2013 to 2015, with more than 21,000 beneficiaries. By the time of implementation, I had begun working as consultant for UNHCR, where I responded to legal queries from Syrian relatives living in Germany. All of them wanted to know how their family members in Syria could safely reach the EU. I constantly repeated that the options were limited, that UNHCR did not have the power to decide, that States have the sole decision-making authority. By 2016, the number of around 42,000 beneficiaries of the *ad hoc* humanitarian admission schemes in Germany contrasted starkly with the

number of people estimated to have been displaced due to the Syrian civil war by then: 13.5 million.

Now, at the end of 2023, more than ten years after I first had the idea for my thesis, the war in Syria has not come to an end, but most of the humanitarian admission schemes have. Meanwhile, the war in Ukraine has led to the largest refugee crisis in Europe since the Second World War. While the European Union took effective legal measures to offer protection seekers from Ukraine a visa-free entry option and temporary protection status, the majority of the over 108 million people UNHCR declares to be displaced worldwide by the end of 2022 are still in their home countries or regions of origin. There is a political struggle at EU and national level over how to deal with the continuous need for evacuation of thousands of Afghans, whose lives are threatened since the Taliban takeover in 2021. Humanitarian admission programs and other safe pathways are the only way the majority of protection seekers worldwide can reach protection in the EU without risking their lives once more. My practical experiences in the field have raised several questions with regard to the implementation of safe pathways to protection, which I address in this book. My main research interest, however, lies in the relevance of safe pathways with a view to what I describe as the asylum paradox: the paradoxical interplay between the granting of territorial protection by States on the one hand, and the prevention of access to territory through measures of border and migration control on the other.

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Writing and publishing this book has not only taken time, but also required financial resources. I am therefore particularly grateful to the German Research Foundation (Deutsche Forschungsgemeinschaft) for a publication grant. I am further thankful for the scholarship granted by the Heinrich Böll Foundation, which gave me time and freedom for my research and allowed me to spend invaluable time researching abroad. My research stays at the Refugee Studies Centre in Oxford, the University of Copenhagen and the Danish Institute of Human Rights provided me with new insights on the legal and practical implications of safe pathways. Seminars in Oxford, at the Raoul Wallenberg Institute in Lund and the University of Aarhus have been a great source of inspiration. I had the honour to exchange thoughts with outstanding experts in the field. I am particularly thankful for the feedback of Professor Gregor Noll, Professor Jens Vedsted-Hansen and Professor Thomas Gammeltoft-Hansen. Special thanks to Dr Nikolas Feith Tan, who has continuously supported my work.

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I owe the idea for this book to my practical work in the field of asylum law. I therefore want to thank all my former colleagues at the law firm, UNHCR and Amnesty International Germany, as well as all my colleagues from the Network of Migration Law. Their daily commitment to the rights of protection seekers is a constant source of motivation and inspiration to me.

Finally, I want to thank my family and friends for their love and support during the years of writing my dissertation. Special thanks to my parents and my sister, for their constant encouragement. I am also particularly thankful for the help my parents-in-law provided with childcare during the pandemic. Noah and Elias, thank you for always making me smile. Most of all, I am endlessly grateful to my husband David for his tireless support and for always having my back.

Abbreviations

AG	Advocate General
APD	EU Asylum Procedures Directive
ARAP	Active Refugee Admission Policies
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
ATCR	Annual Tripartite Consultations on Resettlement
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BVOR	Blended Visa Office Referred
CAT	Convention against Torture
CEAS	Common European Asylum System
CFR	EU Charter of Fundamental Rights
CJEU	Court of Justice of the European Union
CPA	Comprehensive Plan of Action
CRC	Convention on the Rights of the Child
CRRF	Comprehensive refugee response framework
e.g.	for example
EC	European Communities
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees in Exiles
ECtHR	European Court of Human Rights
ed/eds	editor/editors
EMN	European Migration Network
ERN	European Resettlement Network
EU	European Union
ff	and the following pages

Abbreviations

GCM	Global Compact for Safe, Orderly and Regular Migration
GCR	Global Compact on Refugees
GRSI	Global Refugee Sponsorship Initiative
HAP	humanitarian admission program
IA	Immigration Act
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICORN	International Cities of Refuge Network
IDP	internally displaced people
IRCC	Immigration, Refugees, and Citizenship Canada
JAS	Joint Assistance Sponsorship
LTV	limited territorial validity
n	footnote
NYD	New York Declaration for Refugees and Migrants
NGO	non-governmental organisation
OAS	Organization of American States
OAU	Organization of African Unity
PEP	Protected Entry Procedure
OR	Obligationenrecht (Swiss Code of Obligations)
QD	EU Qualification Directive
R2P	Responsibility to Protect
RDP	regional disembarkation platform
SUR	Strategic Use of Resettlement
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights

UN	United Nations
UN GA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
VHAS	Voluntary Humanitarian Admission Scheme
vol	volume

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