

Janine Prantl

The legal framework for refugee  
resettlement to the European Union  
with lessons from the American model



Nomos

Schriften zum Migrationsrecht

Edited by

Prof. Dr. Jürgen Bast, Universität Gießen

Prof. Dr. Ulrike Davy, Universität Bielefeld

Prof. Dr. Anuscheh Farahat, Universität Erlangen-Nürnberg

Prof. Dr. Andreas Fischer-Lescano, Universität Bremen

Prof. Dr. Marie-Claire Foblets,  
MPI für ethnologische Forschung, Halle

Prof. Dr. Thomas Groß, Universität Osnabrück

Dr. Konstanze Jüngling,  
Akademie der Diözese Rottenburg-Stuttgart

Prof. Dr. Winfried Kluth, Universität Halle-Wittenberg

Prof. Dr. Nora Markard, Universität Münster

Prof. Dr. Daniel Thym, Universität Konstanz

Prof. Dr. Mattias Wendel, Universität Leipzig

Volume 41

Janine Prantl

# The legal framework for refugee resettlement to the European Union with lessons from the American model



**Nomos**

Published with the support of Austrian Science Fund (FWF): [PUB 993-G]



**The Deutsche Nationalbibliothek** lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

a.t.: Innsbruck, Univ., Diss., 2021

ISBN 978-3-8487-9007-4 (Print)  
978-3-7489-3470-7 (ePDF)

#### **British Library Cataloguing-in-Publication Data**

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-9007-4 (Print)  
978-3-7489-3470-7 (ePDF)

#### **Library of Congress Cataloging-in-Publication Data**

Prantl, Janine

The legal framework for refugee resettlement to the European Union with lessons from the American model

Janine Prantl

359 pp.

Includes bibliographic references.

ISBN 978-3-8487-9007-4 (Print)  
978-3-7489-3470-7 (ePDF)

1st Edition 2023

© Janine Prantl

Published by

Nomos Verlagsgesellschaft mbH & Co. KG  
Waldseestraße 3–5 | 76530 Baden-Baden  
[www.nomos.de](http://www.nomos.de)

Production of the printed version:

Nomos Verlagsgesellschaft mbH & Co. KG  
Waldseestraße 3–5 | 76530 Baden-Baden

ISBN 978-3-8487-9007-4 (Print)

ISBN 978-3-7489-3470-7 (ePDF)

DOI <https://doi.org/10.5771/9783748934707>



Onlineversion  
Nomos eLibrary



This work is licensed under the Creative Commons Attribution 4.0 International License.

*With thanks to  
Univ.-Prof. Mag. Mag. Dr. Andreas Th. Müller, LL.M.  
for encouraging, challenging, and supporting me in all stages of this  
doctoral project,  
and to  
Univ.-Prof. Dr. Werner Schroeder, LL.M.  
for his thoughtful advice and feedback,  
and to  
my beloved sister  
for believing in me in times when I did not believe in myself.*



## List of abbreviations

### *Formal abbreviations*

Art(s)	Article(s)
ed(s)	editor(s)
e.g.	<i>exempli gratia</i>
f(f)	(forth)following
fn	footnote
ibid	<i>ibidem</i>
i.e.	<i>id est</i> , that is to say
lit	<i>litera</i>
no	number(s)
para(s)	paragraph(s)
Stat	Statutes

### *Substantive abbreviations*

ACHR	American Convention on Human Rights
AG	Advocate General
ARIO	Articles on Responsibility of International Organizations
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
ASEAN	Association of South East Asian Nations
ATCR	Annual Tripartite Consultations on Resettlement
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP	US Customs and Border Protection
CEAS	Common European Asylum System
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFR	Code of Federal Regulations
CFSP	Common Foreign and Security Policy
the Charter	Charter of Fundamental Rights of the European Union

*List of abbreviations*

CJEU	Court of Justice of the European Union
CO	Cultural Orientation
Commission	European Commission
CPA	Comprehensive Plan of Action
CRC	United Nations Convention on the Rights of the Child
DHS	US Department of Homeland Security
EASO	European Asylum Support Office
EBCG	European Border and Cost Guard
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EEA	European Economic Area
EMN	European Migration Network
ESMA	European Securities and Markets Authority
EU	European Union
EUAA	European Agency for Asylum
EUMS	Member States of the European Union
EXCOM	Conclusions of the Executive Committee of UN-HCR's Program
FBI	Federal Bureau of Investigation
FRA	European Union Agency for Fundamental Rights
GAMM	Global Approach to Migration and Mobility
GDP	Gross Domestic Product
HHS	US Department of Health and Human Services
IACtHR	Inter-American Court of Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICEM	Intergovernmental Committee on European Migration
ICJ	International Court of Justice
IDP	Internally Displaced Person
IGCR	Intergovernmental Committee on Refugees
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
ILC	International Law Commission

ILO	Immigration Liaison Officer
INA	Immigration and Nationality Act
IOM	International Organization for Migration
IRO	International Refugee Organization
LGBTQIA+	Lesbian, gay, bisexual, transgender, queer or questioning, intersex, asexual, and more
MAA	Mutual Assistance Association
MFJ	Multiannual Financial Framework
MPI	Migration Policy Institute
NGO	Non-governmental organization
OHCHR	Office of the High Commissioner for Human Rights
ORR	Office of Refugee Resettlement
PCIJ	Permanent Court of International Justice
PRM	State's Bureau of Population, Refugees, and Migration
Refugee Convention	1951 Convention Relating to the Status of Refugees
RPP	Regional Protection Program
RRF	Resettlement Registration Form
RSC	Resettlement Support Center
RSD	Refugee Status Determination
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TIQ	Tradable Immigration Quota
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UN Charter	Charter of the United Nations
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
US	United States of America
USCIS	US Citizenship and Immigration Services
USRAP	US Refugee Admissions Program
WGR	Working Group on Resettlement



# Table of Contents

1	Introduction	17
1.1	Resettlement in the EU context	17
1.2	US resettlement policy as point of reference	21
1.3	Relevance of the topic	23
1.4	Methodology and structure	26
2	The concept of refugee resettlement entrenched in international and EU law	27
2.1	Responsibility sharing through resettlement	27
2.1.1	Responsibility sharing at the international level: left to the discretion of states	28
2.1.2	Responsibility sharing at the EU level: mandatory relocation failed	30
2.1.3	Preliminary conclusion	32
2.2	Defining resettlement	33
2.2.1	The United Nations High Commissioner for Refugees	33
2.2.2	The European Union	40
2.2.3	The United States of America	43
2.2.4	Preliminary conclusion	44
2.3	Historical background and development of resettlement (with focus on the US)	44
2.3.1	The beginning of systematic and organized resettlement	44
2.3.2	Resettlement under the UNHCR	47
2.3.3	Adjustments in US immigration law	48
2.3.4	The Hungarian exodus	49
2.3.5	Towards a more diverse US immigration policy	51
2.3.6	The mechanized resettlement of Vietnamese	52
2.3.7	The 1980 Refugee Act	54
2.3.8	The disintegration of Yugoslavia	54
2.3.9	The decade of voluntary repatriation and reconceptualization of resettlement	55
2.3.10	Convention Plus	57

## Table of Contents

2.3.11	The terrorist attacks of 9/11	58
2.3.12	Harmonization efforts	58
2.3.13	Regained recognition of resettlement	59
2.3.14	The 2015-2016 refugee crisis	60
2.3.15	The Trump administration	61
2.3.16	Afghan mass displacement and the revival of parole power	64
2.3.17	Attempts towards private sponsorship	66
2.3.18	Preliminary conclusion	67
2.4	Functions of and motives behind resettlement	69
2.4.1	Functions	70
2.4.2	US motives	72
2.4.3	EU motives	74
2.4.4	Preliminary conclusion	75
2.5	Actors in the resettlement process	77
2.5.1	States	77
2.5.2	United Nations High Commissioner for Refugees	79
2.5.2.1	Legal basis, mandate and funding	79
2.5.2.2	The UNHCR and the US	81
2.5.2.3	The UNHCR and the EU	82
2.5.2.4	Criticism and shortfalls	83
2.5.3	Other non-state actors	84
2.5.3.1	Voluntary resettlement agencies in the US	85
2.5.3.2	From state-orientation to greater NGO-involvement in Europe	87
2.5.4	Resettlement beneficiaries	89
2.5.4.1	Refugee and subsidiary protection status in the EU	90
2.5.4.2	US refugee definition	92
2.5.4.3	Climate migrants	93
2.5.5	Preliminary conclusion	94
3	The international law framework for resettlement	95
3.1	The relevant human rights and refugee law framework	95
3.2	Extraterritorial application	96
3.2.1	Extraterritorial application of human rights	97
3.2.1.1	Legal standard	98

3.2.1.2	Relevant ECtHR case law, decisions of other regional courts and UN Treaty bodies	100
3.2.2	Extraterritorial application of refugee law	109
3.2.3	Preliminary conclusion	111
3.3	Substantive rights	111
3.3.1	Non-refoulement	111
3.3.1.1	Human rights	115
3.3.1.1.1	Art 3 para 1 CAT	115
3.3.1.1.2	Arts 6 and 7 ICCPR	117
3.3.1.1.3	Art 37 lit a CRC	119
3.3.1.1.4	Arts 2 and 3 ECHR	120
3.3.1.2	Refugee law	123
3.3.1.3	Concluding remarks	125
3.3.2	Right to leave and to seek asylum	127
3.3.2.1	Human rights	127
3.3.2.2	Refugee law	130
3.3.2.3	Concluding remarks on the right to leave and to seek asylum	132
3.3.3	Procedural rights	132
3.3.3.1	Human rights	132
3.3.3.2	Refugee law	134
3.3.3.3	Concluding remarks	134
3.3.4	Non-discrimination	135
3.3.4.1	Human rights	136
3.3.4.2	Refugee law	140
3.3.4.3	Concluding remarks	140
3.3.5	Reception conditions	141
3.3.5.1	Human rights	142
3.3.5.2	Refugee law	144
3.3.5.3	Concluding remarks	145
3.3.6	Naturalization	145
3.3.6.1	Human rights	146
3.3.6.2	Refugee law	147
3.3.6.3	Concluding remarks	148
3.3.7	Preliminary conclusion	148
3.4	Responsibility for internationally wrongful conduct in relation to resettlement policies	150
3.4.1	Responsibility for complicity with the country of (first) refuge	151

## Table of Contents

3.4.2	Responsibility for and in connection with international organizations	156
3.4.2.1	Dual attribution	161
3.4.2.2	Derivative responsibility	162
3.4.3	Attribution of conduct of other non-state actors and private actors	166
3.4.4	Preliminary conclusion	168
4	Resettlement to the EU	170
4.1	EU competence and its limits	170
4.1.1	Rules of competence	174
4.1.1.1	Centralized assessment	175
4.1.1.2	Extraterritorial processing	178
4.1.1.3	Cooperation with third countries	179
4.1.2	Principles governing the exercise of EU competences	181
4.1.2.1	Solidarity and fair sharing of responsibility	181
4.1.2.2	A policy in accordance with international refugee law and international and European human rights	187
4.1.2.3	Consistency	191
4.1.3	Preliminary conclusion	194
4.2	Evolution of an EU resettlement policy	194
4.2.1	Intergovernmental rapprochement by three Conventions	195
4.2.2	First attempts on solidarity and responsibility sharing	198
4.2.3	Calling upon resettlement	200
4.2.4	Protection in the region	202
4.2.5	Proposal for extraterritorial processing and third-country partnerships	204
4.2.6	A Joint EU Resettlement Program	205
4.2.7	Global Approach to Migration and Mobility (GAMM)	206
4.2.8	The Lisbon Treaty, mutual trust, and Dublin III	207
4.2.9	The 2015 European Resettlement Scheme	208
4.2.10	EU-Turkey Statement	210
4.2.11	The Proposal for a Union Resettlement Framework	213
4.2.11.1	The legal nature of the Proposal	214
4.2.11.2	Resettlement definition	215
4.2.11.3	Criteria to determine countries of (first) refuge	215
4.2.11.4	Eligibility criteria	216
4.2.12	Current resettlement policy	218

4.2.13 Preliminary conclusion	221
4.3 Institutional involvement in resettlement	223
4.3.1 Support through funding	223
4.3.2 Support through agencies	226
4.3.3 Accountability and legal protection	232
4.3.4 Preliminary conclusion	235
4.4 Analysis: Status quo of EU resettlement	236
4.4.1 Resettlement processing – national or EU level?	236
4.4.2 Implementation of the principle of solidarity and fair sharing of responsibilities – discretion or mandatory quota?	237
4.4.3 A comprehensive CEAS – protection or migration management tool?	238
5 The resettlement process	243
5.1 European and US resettlement practice in comparison	243
5.2 Selection	244
5.2.1 Selection procedures and practices of the UNHCR and EUMS	244
5.2.2 US procedure and practice	251
5.2.3 Analysis	255
5.2.3.1 Referral entities	256
5.2.3.2 Status determination	257
5.2.3.3 Resettlement of prioritized groups	259
5.2.3.4 Family reunification	260
5.2.3.5 Potential to integrate	265
5.2.3.6 Firm resettlement	268
5.2.3.7 Exclusion grounds	269
5.2.3.8 Security screening and health checks	270
5.2.3.9 Right to appeal the selection decision	272
5.2.3.10 Resettlement contract	273
5.2.4 Preliminary conclusion	274
5.3 Pre-departure, arrival and placement	275
5.3.1 Programs of EUMS	276
5.3.2 US program and practice	279
5.3.3 Analysis	281
5.3.3.1 Pre-departure orientation	282
5.3.3.2 Placement	284

*Table of Contents*

5.3.3.3	Cooperation with local governments and receiving communities	286
5.3.3.4	Reception conditions	288
5.3.4	Preliminary conclusion	288
5.4	Long-term integration and naturalization	289
5.4.1	EU law and practice of EUMS	290
5.4.2	US law and practice	297
5.4.3	Analysis	304
5.4.3.1	Temporary approach versus long-term integration	304
5.4.3.2	Economic benefits	305
5.4.3.3	Harmonization of permanent residence status	307
5.4.3.4	Naturalization	309
5.4.3.5	Re-resettlement	309
5.4.4	Preliminary conclusion	311
6	Conclusion	312
	Bibliography	319