



QRP

Quarterly on Refugee Problems – AWR Bulletin

FH·W-S

University of Applied Sciences Würzburg-Schweinfurt
Association for the Study of the World Refugee Problem
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Vol. 61 No. 2 (2022)

Open Access Publication
<https://doi.org/10.57947/qrp.v61i2>

EDITORIAL

Janus-faced Migration Policy: The Obscurity between Chaos, Gate-keeping and Transition¹

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“Janus, almost uniquely, was celebrated for his very obscurity” (Taylor, 2000: 2). While the first name of the double-faced Roman God was Chaos (Ovid, *Fasti* 1; see below), the Latin word “janus” means “doorway” or “entrance” (Taylor, 2000: 1). As doorkeeper to heaven, Janus controlled access to the gods “looking simultaneously on the past and the future, chaos and civilization, the world of gods and the world of men” (Wiseman, 2004: 161, cited after O’Keefe, 2021: 5).

“The ancients called me Chaos, for a being from of old am I; observe the long, long ages of which my song shall tell. [...] Now hear the other reason for the shape you ask about, that you may know it and my office too. Whate’er you see anywhere – sky, sea, clouds, earth – all things are closed and opened by my hand. The guardianship of this vast universe is in my hands alone, and none but me may rule the wheeling pole. When I choose to send forth peace from tranquil halls, she freely walks the ways unhindered. But with blood and slaughter the whole world would welter, did not the bars unbending hold the barricaded [!] wars. [...] Every door has two fronts, this way and that, whereof one faces the people and the other the house-god; and just as your human porter, seated at the threshold of the house-door, sees who goes out and in, so I, the porter of the heavenly court, behold at once both East and West.” (Ovid, *Fasti* 1, cited from Boyle & Woodward, 2000, cited from Atsma, 2002).

As this issue of the QRP will demonstrate once more, today’s migration policy is Janus-like in this very sense. Constantin Hruschka, Tim Rohmann and Christian Hunkler illustrate the challenges of interdisciplinary research on exclusion in the migration area and provide insights on how to possibly overcome it. Joachim Schroeder and Louis Henri Seukwa demonstrate how migrants are forced to refer to a survival habitus to cope with difficult living conditions. Friedegard Föltz looks at minor migrants and refugees with disabilities or medical fragilities as intersectional life situations inadequately addressed by German legislation. Ralf Roßkopf recalls the decades-long protracted displacement of Palestinian refugees and opens a door for inclusion. Andrea Schmelz’s contribution on disrupting borders explores the role of social work between the poles of migration control and activism. The News and Notes report about EU policies for a better control of irregular migration routes in parallel to paving regular pathways into a welcoming migration society.

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Today, States took over God Janus' part. They became the gatekeepers between peace from tranquil halls on the one hand and blood and slaughter on the other. The guardianship to open or to close the two fronts of the one door is in their hands alone.

Chaos could be reduced, hands opened for liberal transit, and eyes turned from the past to the future if the perception of migration could be changed from a narrative of threat to one of opportunities and fairness. If not already for humanitarian reasons, Western politics should recognize the high demand for immigration in so many aging societies to sustain economic prosperity and social welfare. They should accept science-based suggestions,

“that a 1 percentage point increase in the share of migrants in the adult population (the average annual increase is 0.2 percentage point) can raise GDP per capita by up to 2 percent in the longer run”, (Jaumotte, et al: 2016: 2)

that not only high skilled but also medium- and even low-skilled migration increases income per capita to a similar extent for the top earners and for the rest of the population (Jaumotte, et al. 2016: 15), and that measures like transnational skill partnerships bear all the potentials to create a triple win for countries of origin, receiving societies and migrants alike (Clemens, 2015).

What is needed is a rational discourse for Janus to open the gates for save, orderly, and regular migration as was called for and agreed upon in the 2018 UN Global Compact on Migration.

References

- Atsma, A. J. (2022, December 15). *Ovid, Fasti 1*. (Classical Texts Library). <https://www.theoi.com/Text/OvidFasti1.html>
- Clemens, M. A. (2015). *Global skill partnerships: a proposal for technical training in a mobile world*. *IZA Journal of Labor Policy* 4(2), 2-18. <https://doi.org/10.1186/s40173-014-0028-z>
- Jaumotte, F., Koloskova, K., & Saxena, S. (2016). *Impact of migration on income levels in advanced economies*. *Spillover Task Force, International Monetary Fund*. <https://www.imf.org/-/media/Files/Publications/SpilloverNotes/spillovernote8.ashx>
- O'Keefe, M. (2022). The significance of Janus during the Augustan principate. [Master Thesis, George Mason University]. http://jbox.gmu.edu/bitstream/handle/1920/12129/OKeefe_thesis_2021.pdf?sequence=1&isAllowed=y
- Taylor, R. (2000). Watching the skies. Janus, auspication, and the shring in the Roman Forum. *Memoirs of the American Academy in Rome*, 45, 1-40.
- Wiseman, T. (2004). *The myths of Rome*. University of Exeter Press.
- Boyle, A.J., & Woodward, R.D. (2000). *Ovid. Fasti*. Penguin Classics.

Exclusionary Intent and Effects in the Migration Area: Interdisciplinary Reflections¹

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Abstract

The increasing relevance of 'forced' migration, e.g., the movements of refugees, calls for a more refined operationalisation of legal residence status and its effects on exclusion and integration. This article describes an interdisciplinary collaboration project by lawyers and sociologists to tackle this research gap. Within an inclusion-exclusion framework, different disciplinary viewpoints are developed and brought in dialogue with each other to eventually arrive at joint research questions. Starting from the observation that the continued hyperactivity of the legislator increasingly fragments residence statuses, the research project investigated the effects of legal status on the expectations and integration experiences of Afghan migrants. We reflect on the preconditions and challenges of interdisciplinary research as well as on the experiences made during the project to carve out the specifics and potentials of collaborative projects between jurisprudence and the social sciences.

Key Words:

Interdisciplinarity, research, exclusion, law, sociology

1. Introduction

Science, taken objectively, forms an internally closed unit. Its separation into different subjects is not rooted in the nature of the matter, but arises only from the limitations of human comprehension, which inevitably leads to a division of labour (Max Planck, 1933, p. 260).

Over the previous decades, international migration has become an increasingly diverse and widespread phenomenon (e.g., De Vroome & Van Tubergen, 2010), even though the share of the world population that actually migrates stays relatively low at 3.6% (IOM, 2021). Recently, push factors, e.g., wars, conflicts, hunger crises, have grown in importance compared to pull factors, e.g., labour shortages in receiving countries. This change has prompted an increase in other forms of migration, especially in the movement of asylum seekers and refugees, to gain more relevance in the political discourse compared to the previously dominating labour and family migration (see also Massey & International Union for the Scientific Study of Population, 1998: 13). Whereas previous

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research typically used citizenship status (see Euwals et al., 2010, for a discussion), i.e., naturalised vs. not naturalised, or naturalised since birth vs. naturalised later vs. not naturalised, this development calls for a more refined operationalisation of legal status and its effects on integration (see also Söhn, 2014). Even though there is a vast body of literature on migration and integration (e.g., Esser, 2004; Kalter, 2008a; Eichenhofer, 2013; Heckmann, 2015; Gammeltoft-Hansen, 2011) we know remarkably little about those migrants who entered a country illegally, who have exhausted legal possibilities to stay in the country or who ‘fall between the cracks’ otherwise.

In a project jointly conducted by the two departments of the Max Planck Institute for Social Law and Social Policy, two disciplines – law and economic sociology⁵ – were brought together to fill the existing research gap and provide a description of this desideratum that expands the limits and possibilities of the respective individual disciplines. The research project was embedded in the Max Planck Society's research initiative "Challenges of Migration, Integration and Exclusion", which, with the involvement of a total of six Max Planck Institutes, set itself the goal of investigating the consequences of the "long summer of migration 2015" using an inter- and multidisciplinary approach (Hruschka & Schader, 2020: 3).

Based on the legal finding that residence statuses are increasingly fragmented due to the ongoing hyperactivity of the legislator (Hruschka & Rohmann, 2021), one of the questions to be answered was the extent to which legal status actually has an impact on Afghan migrants. To this end, the “Survey on Migrants’ Expectations in Germany” collected both the expectations of migrants in Germany and their legal status and integration results and activities (topics were employment, access to education and social services, vulnerability, participation in integration courses and health). In Berlin, Hamburg and Munich, 1,023 adult Afghan nationals who had arrived in Germany after 2014 were interviewed.

This article will, however, not focus on the data gathered and analysed, but on the process that started with the collaboration. It reflects on interdisciplinary collaboration in the migration area and uses the experiences gathered from the project to reflect on the possibilities and realities of such cooperation. We start with general reflections on interdisciplinary migration research and by way of the example of the concept of “exclusion” and delve into one showcase of interdisciplinary cooperation in our project in section 2. Section 3 outlines the theoretical framework used, with a focus on the analysis how legal status may influence the exclusion or integration of Afghan migrants. The subsequent sections demonstrate and analyse the chances and challenges of cooperation between social scientists and lawyers in migration research. Section 4 focusses on residence statuses and their legal and (presumably) practical implications from a legal point of view, and section 5 shows how we operationalised interdisciplinary perspectives in a quantitative survey design. We conclude in section 6 with some reflections on the interdisciplinary collaboration in this project and by discussing a number of results that we would not have obtained without the collaboration.

⁵ By training of the scholars involved actually three disciplines were involved: law, (behavioural) economics and (analytical) sociology. The approaches and methods used in behavioural economics and analytical sociology do overlap considerably and we therefore refer to these two disciplines as “economic sociology”, which adequately describes the paradigms and methodological approaches in this part of the project team.

2 Interdisciplinary migration research

The theme of “migration” is currently – nearly inevitably in times of a high number of irregularly arriving migrants (Becker, 2017) – one of the core topics of public debate. The political trench warfare seems to deepen over time and there is little chance that the opposing lines of conflict between the political parties and other relevant actors will be bridged any time soon. The underlying reason for this divide is that discussing migration will often not only be an issue as such because it is rooted in moral and ethical convictions of the discourse participants: Is migration good or bad? Open door or controlled borders? Is our way of life sustainable? Is our culture at risk? In Germany, the current migration debate often focusses on asylum and return and much less about regular migration. Scientific research has also focused on the asylum area and is increasingly doing so (Kleist et al., 2019). However, research results find little resonance in a political arena that is mainly driven by events (Hruschka and Rohmann, 2021) and an internal logic of political processes and decision making that may be paraphrased in the antithesis between the right to exclusion and the right to immigration (Angeli, 2018). In this politically charged suspense-packed field, the role of law appears ambivalent and is heavily disputed within migration research (see, e.g., Kneebone et al., 2014). Any given restrictive policy choice will inevitably be attacked as violating the constitutional right to asylum (Article 16a Basic Law), human rights and international law, whereas norms opening the access to the labour market or increasing social welfare benefits are likely to be portrayed as “pull factors” and allude to the loss of control and the dangers of “mass immigration”. Studies showing an overall positive economic effect of irregular immigration (e.g., Bödefeld, 2016, citing the German Institute for Economic Research – DIW and the International Monetary Fund – IMF) or the minimal significance of perceived pull factors for individual migration decisions (e.g., Segrott & Robinson 2002; Scholz, 2013) have little to no effect on the policy choices (see Banulescu-Bogdan, 2018 and, e.g., for the UK: Mayblin, 2019). On the contrary, policymakers seem to believe in the direct and immediate effect of legislative changes in the asylum area, which eventually led to a wave of (incoherent) legal acts amending the existing rules (Hruschka & Rohmann, 2021; Davy, 2019). For all those reasons, migration research is essentially never apolitical and has to take into account different factors in the research design in order to produce scientifically sound and reliable results.

2.1 Disciplinary or interdisciplinary research

Research on forced migration has a long-standing tradition starting with historical and legal dissertations being published already after World War I (Kleist et al., 2019: 6). In contrast to the developments in the UK and the USA, where in the 1980s a whole research field was established under the name “Refugee Studies” (Kleist, 2018: 6), in Germany, the topic remained more of a cross-cutting issue that was researched by several isolated disciplines such as law, social and political sciences. With the rising number of asylum applications from 2008 onward (Konar et al.: 123; Bundesamt für Migration und Flüchtlinge, 2019: 9) and the number of asylum applications reaching 100,000 in 2013 (after more than a decade of relatively low numbers of newly arriving asylum seekers – Bundesamt für Migration und Flüchtlinge, 2019: 13) the increasing availability of funds for scientific research on migration phenomena resulted in a tenfold increase in the number of research projects between 2011 and 2016 and a tripling from 2014 to 2016 (Kleist et al., 2019: 7). Although the overall amount of research projects concerning (forced) migration in Germany has increased over the last years, an analysis of the

research designs shows that despite bringing together several disciplines every so often “there is more multidisciplinary than interdisciplinary” (Foblets et al., 2018: 4) with regard to the methodological approaches. Before the concrete research design for our project was tackled, the basic layout and scope of cooperation between the disciplines involved had to be clarified.

While disciplinary research is the starting point of any reflection on the question of interdisciplinarity and the respective research design, different forms of cross-disciplinary knowledge generation can be distinguished: (mono-)disciplinarity, multidisciplinary, interdisciplinarity and transdisciplinarity (Parthey, 2010: 15). These levels represent the degree of interaction with methods and concepts from other disciplines, whereby the boundaries are fluid and cannot always be clearly defined in individual research projects.

In contrast to disciplinary research, multidisciplinary research is characterised by the fact that the disciplinary perspectives complement each other additively, but without adapting either their own method or their interest in knowledge. Interdisciplinary research, on the other hand, is characterised by a higher degree of integration of methods or concepts from two or more disciplines, so that they significantly influence the research output of the other disciplines involved (cf., e.g., Parthey, 2010: 15 f.). Nevertheless, interdisciplinary research is also carried out in disciplinary terms (Stark, 2020: 193).

For transdisciplinary research projects, however, the situation is different. In such projects, disciplinary boundaries are dissolved in favour of a problem-oriented perspective and the scientific approach is reorganised methodologically, institutionally and conceptually with a view to the research interest (see e.g. Montuori, 2013; Nicolescu, 2014). Since migration is an issue that concerns society as a whole and is therefore highly complex, it is particularly well-suited to become an independent transdisciplinary field of research. The detachment from disciplinary boundaries, however, often encounters resistance within the science system(s). Researchers who engage in transdisciplinary research projects are exposed to the risk of failing to meet classical and thus discipline-bound formal and reputation-based requirement profiles (Fischer, 2010: 39). The fundamental prerequisite for transdisciplinary research is therefore the creation of institutionalised framework conditions for dealing with corresponding problems. The establishment of such structures for refugee research has so far only led to migration or refugee research being accepted as an independent discipline in a few places in Germany (Kleist et al., 2019). Although our project brought the work of the involved lawyers and sociologist closer together and constituted an informal but distinguishable sub-organisation (internally only referred to as “the migration project”), all researchers remained within their respective organisational units, i.e. law and social sciences respectively, and aimed at enriching their own research with knowledge gained from the other discipline. Therefore, we positioned ourselves in an interdisciplinary rather than a transdisciplinary setting.

However, there are also considerable disciplinary limits to interdisciplinary research. Since the input of other disciplines is often missing while formulating the basic research aims, projects are often tailored in such a way that enrichment with external methodological as well as knowledge resources is simply either not necessary or not possible. Thus, legal studies in the field of migration remain predominantly disciplinary and essentially pursue legal positivist questions (on the advantages and disadvantages of this approach, see Leiter, 2005, on the Hart/Dworkin debate). According to the formal understanding thus

taken as a basis, legal norms have an unambiguous meaning that decision makers merely have to find and apply (see, e.g., Hart, 1994 and Raz, 1979). In these areas, interdisciplinary research is neither necessary nor helpful to expand knowledge.

However, even when approaches from other disciplines are considered due to the research question and projects are labelled "interdisciplinary", they are often merely formal collaborations without substantive exchange and little epistemological added value if looking at the outcomes from a multidisciplinary research perspective (see, e.g., Parthey, 2010: 13 ff.; Kleist et al., 2019; Foblets et al., 2018: 4). According to Fischer, the reason for such projects is often not the increase in relevant knowledge, but the facilitated access to research funding ("economic imperative" and "Zeitgeist", Fischer, 2010: 37) as well as the higher recognition for disciplinary results in the "currency" of science (such as peer-reviewed journals, funding for larger projects and references necessary to obtain permanent positions) rendering such pseudo-interdisciplinary projects a particular feature embedded in the inherent logic of scientific research (Fischer, 2020: 38 ff.).

From a theoretical point of view, the advantage of (multi-)disciplinary research is that it enables a deeper disciplinary understanding due to a differentiated and therefore targeted canon of methods that is indifferent to irritations caused by the complexity of issues outside of the research scope. Interdisciplinary approaches, due to their "openness", can only operate with fewer redundancies which leads to a twofold challenge. On the one hand, it has to introduce its own redundancies to do justice to the broader section of reality and therefore sometimes appears superficial from a disciplinary perspective (Parthey, 2010, p. 15; Welzer, 2006). On the other hand, the interdisciplinary approach makes it difficult to connect the results in disciplinarily organised scientific discourses. Overcoming these challenges and expanding knowledge beyond the mere realisation that other disciplines are also dealing with the topic is an inherent task of any interdisciplinary work. Or in other words: a lot of preparatory work is needed before a substantial gain in knowledge can be achieved through interdisciplinary research.

2.2 By way of example: Exclusion research within the "Survey on Migrants' Expectations in Germany"

As outlined above, one of the major challenges in interdisciplinary research is to agree on the use of common concepts or even the development of new concepts resulting in a framework that enables all disciplines involved to conduct their research and communicate their findings, and it ideally facilitates answers to the common research questions. To set a scientific counterpoint to the multitude of research projects in the field of migration that deal with questions of integration and inclusion (Kleist, 2018), the research initiative in which our project was embedded decided to focus on exclusion phenomena, which necessarily go hand in hand with inclusion, but which can differ gradually on the continuum spanned between the two extremes of full inclusion/exclusion.

By the example of the exclusion concept used by the research initiative we will demonstrate in the following that even though the understanding of this term diverges in law and the social sciences, it indeed can be used to lay the ground for an interdisciplinary research project if coupled with a more specific research question that disengages the concept from its moral notions, the latter of which is one of the major impediments to successful interdisciplinary work (Welzer, 2006).

2.2.1 Law

A desk research drawing from standard textbooks on legal theory in general and migration law in particular as well as utilising established legal databases such as “beck-online” and “juris” revealed that there is no theoretical approach in law that explicitly refers to the framework of exclusion. Other than conceptions like “integration” that can even be found in the legal text of the German Residence Act (Aufenthaltsgesetz – AufenthG) and that has been covered by several authors (“Begriff und Konzept der Integration im Aufenthaltsgesetz”, Eichenhofer, 2013; “Integrationsrecht”, Fontana, 2022), exclusion does not have a fixed meaning within the law or legal research (see also Schotel, 2011). One of the rare references in the legal text to exclusion can be found in a comparatively prominent place in European primary law, i.e. Art. 9 Treaty on the Functioning of the European Union, which states that in defining and implementing its policies and activities, the Union shall take into account “the fight against social exclusion”.

However, to fulfill its societal function, the legal system puts itself as Luhmann described it “under the pressure to decide” (“Entscheidungszwang”, Luhmann, 1995: 307). It does so by creating programs inscribed in legal norms that follow the dichotomy of facts and legal effect which in turn determines the binary modus operandi of legal decision making. If the facts do not meet the legal threshold or prerequisites, it triggers or withholds legal effect.

Given that the inclusion/exclusion distinction is engrained in legal decision-making, it transcends all areas of the law so that respective mechanisms can be found in civil, criminal as well as public law. For instance, under German law, property entitles the owner to “deal with [the property] at [his] discretion and exclude others from every influence” (§ 903 German Civil Code – BGB). Thus, while some get excluded from rights, others at the same time may have the right to exercise exclusion. Exclusion mechanisms also shape liability (cf. §§ 444, 639, 827 BGB), attribution of actions and defences and thus regulate the legal relations of private legal entities.

In criminal law, the exclusion of certain persons from culpability (cf. §. 19 ff. German Criminal Code - StGB) is essential to arrive at just results. Moreover, exclusionary rules can even restrict actors of the State to safeguard basic human and constitutional rights. For example, procedural rules can bar a judge from exercising judicial office in case of the fear of bias (§ 24 German Code of Criminal Procedure – StPO). The exclusion of evidence that has been obtained in violation of the constitution or illegal search from the criminal proceedings (e.g., § 136a SPO: prohibited measures of examination) limits the investigation methods of the prosecution as well as the criminal courts.

In social law as a special branch of public law, exclusion clauses are often used by the legislator to define the applicable social benefits subsystem. For example, foreigners who are covered by the Asylum Seekers Benefits Act (AsylbLG) are excluded from benefits under Book II of the German Social Code (SGB). In some cases, undesirable behaviour such as the violation of obligations to cooperate may also lead to full or the partial exclusion of the entitlement to benefits.

In the context of international asylum law, the term exclusion is used within the meaning of Article 1 Sections D, E and F of the 1951 Refugee Convention, which contains provisions whereby persons otherwise having the characteristics of refugees, as defined in Article 1 Section A, are excluded from refugee status (UNHCR Handbook, 2019: para. 140). In its

“Background Note on the Application of the Exclusion Clauses: Article 1 F of the 1951 Convention relating to the Status of Refugees” UNHCR states:

“The rationale behind the exclusion clauses is twofold. Firstly, certain acts are so grave that they render their perpetrators undeserving of international protection as refugees. Secondly, the refugee framework should not stand in the way of serious criminals facing justice. While these underlying purposes must be borne in mind in interpreting the exclusion clauses, they must be viewed in the context of the overriding humanitarian objective of the 1951 Convention.”

Besides such clear exclusion from specific rights, which are mainly either related to a legal status or based on the person’s behaviour, exclusionary effects are also an outcome of the non-promotion of rights. Persons might be excluded from accessing rights because of a lack of information or because no specific measures were taken to include them. There are also other mechanisms of exclusion incorporated into the legal framework. Particularly persons with special needs and/or special rights like, e.g., children, families and elderly persons, persons with disabilities or victims of torture and victims of trafficking – often labelled as “vulnerable persons” – might require additional supporting services in order not to be excluded from accessing their rights. In the Common European Asylum System (CEAS), these persons are entitled to special support *inter alia* under the Reception Conditions Directive as well as under the Asylum Procedures Directive. Both Directives are not yet fully implemented in German law. Non-implementation of specific guarantees for specific groups can therefore also be considered as exclusion.

On a more general note, the Dublin system allocating responsibility for examining asylum applications among the Member States is a system that leads to exclusion by its design and implementation. On a theoretical level, the system was designed to guarantee access to a substantive examination of the application for international protection and to avoid exclusion by limiting “in orbit” situations. However, in practice, the implementation of the Dublin rules has multiple exclusionary effects and affects the access to rights for the persons concerned.

Exclusion in law can also have a spatial dimension. For instance, the Dublin system significantly limits the choice of asylum seekers regarding the country of refuge. Moreover, since 2015 several quasi-legal instruments, for example, the EU-Turkey Statement of March 2016, the EU Partnership Framework of June 2016, the Cooperation with African States of June 2016 or the Italy-Libya cooperation since the Agreement of February 2017, were implemented to curb irregular migration to Europe. This externalisation of procedures and border control to third countries inevitably excludes asylum seekers from EU territory. In addition to the exacerbation of spatial exclusion, these instruments may also restrict access to full protection as guaranteed under international and European law.

Such spatial exclusion tendencies can be observed not only in the form of externalisation but also within the EU. For instance, gathering asylum seekers in hotspots on the Greek islands excludes them from the mainland as well as from the host society. The same applies to the lately introduced “Ankerzentren” in Germany, in which especially people from “safe countries of origin” have to stay until the Federal Office for Migration and Refugees (“Bundesamt für Migration und Flüchtlinge” - BAMF) decides on their asylum application (Rohmann, 2019). The spatial dimension of exclusion also raises fundamental legal issues, in particular about the right to equal treatment, the right to private life and individual liberty (Hruschka, 2019). These questions are posed, for example, if, in contrast

to other asylum seekers, persons from safe countries of origin are not entitled to participate in integration courses. This exclusionary effect, which is merely based on the persons' origin, during the early stages of the stay in the country of refuge, will in many cases multiply throughout the subsequent residence, because swift access to a permanent residence permit (§ 26 and § 9 of the German Residence Act – AufenthaltG) is conditional on proven integration (see below; in particular on language skills, basic knowledge about the German legal and social system as well as economic self-reliance) and on a clear criminal record. This also holds true for naturalisation under the German Nationality Act.

Beyond the abovementioned exclusion mechanisms in law, which have been extensively studied by legal scholars, some other overarching jurisprudential concepts mainly aim to identify exclusive effects and shall eventually provide the legal means to prevent them.

One is the concept of integration, which could be viewed as a mirror image of exclusion. The term can be found in the German Residence Act (AufenthG). § 1 para. 1 sentence 4 AufenthaltG states: “[The Residence Act] shall regulate the entry, stay and economic activity of foreigners and the integration of foreigners.” According to § 43 para. 1 AufenthaltG:

“Foreigners living lawfully in the federal territory on a permanent basis shall be provided with support in integrating into the economic, cultural and social life of the Federal Republic of Germany and are expected to undertake commensurate integration efforts in return.”

Nevertheless, there is no concise legal definition of integration to be found within the AufenthaltG or in related legislative acts (Eichenhofer, 2013: 111), which opens the definition up for input from other disciplines (Thym, 2010: 259). The integration concept of the AufenthaltG is based on four pillars (this systematisation follows Huber et al., 2017: 267): integration requirements for the granting of residence permits, e.g., language skills, actions to promote integration (e.g., integration courses), instruments to reward integration progress, i.e. special residence titles that acknowledge the efforts of a foreigner to integrate (see §§ 18a, 25a or 25b AufenthaltG), consideration of integration achievements in case of imminent expulsion, § 55 AufenthaltG.

Another jurisprudential approach that navigates the area of exclusion is the prohibition of discrimination. Discrimination is defined as “treating some people differently from others for reasons that are extraneous to the matter at hand, especially because of some group membership or characteristic such as race, religion, or national origin” (Random House Webster’s House Dictionary of the Law, 2000). Prohibitions of such behaviour can be found on nearly every legislative level, be it international law (Art. 14 ECHR), European law (Art. 18 TFEU), constitutional law (Art. 3 German Basic Law) or national law (General Act on Equal Treatment).

To sum up, although there is no closed legal theory on exclusion, exclusionary measures and effects can be found in all areas of the law and have therefore to be taken into account while analysing and assessing societal developments from a legal point of view.

2.2.2 Social science

The social sciences and especially sociology, for the most part, do not share a commonly accepted canon of terms, concepts and theories. Similar or the same terms are used by different scholars often with minor or sometimes major differences regarding their meaning or (implied) embedding in theoretical frameworks (see, e.g., Foblets et al., 2018:

26 ff., on the various approaches regarding exclusion). To inform our understanding of exclusion we consulted standard textbooks and reviewed the literature starting from influential contributions in the subfield of integration research in economic sociology and conducted backwards and forward searches, i.e., explored literature that was cited in the initially identified contributions as well as literature that quoted these contributions.

For our project, we started with German “textbook” definitions of exclusion in sociology, i.e. the entries “Ausschließung” and “Exklusion”, both commonly translated as “exclusion” (Fuchs-Heinritz et. al., 2011). Exclusion (“Exklusion”) is defined as depriving affected individuals of life chances and putting them in poverty or neutralising their fitness to communicate without inhibition. Exclusion hence leads to societal cleavages. According to the textbook, the hardly distinguishable concept of “Ausschließung” (commonly translated as “exclusion” as well) can be traced to Weber’s concept of social closure and refers to clear boundaries towards socially undesirable persons, groups or populations. The excluded are denied full citizenship status and are hence limited in their participation. Examples of excluded persons are deviant, poor, mentally ill or convicted individuals or groups like foreigners of a specific nationality. Both definitions discuss the correspondence of exclusion or “Ausschließung” to inclusion. The observation, ascribed to Luhmann, is that exclusion implies inclusion.

The concept of inclusion does not simplify matters, as other scholars (sometimes) mean very related phenomena when referring to (social) integration. Exclusion and integration are prime examples of “essentially contested concepts” (Gallie, 1956). Kalter (2019) notes that the term integration – like many other terms in the social sciences – is often being used vaguely, ambiguously and inconsistently. According to his analysis, for integration – and by logical extension exclusion – to be used fruitfully, one has to make several declarations and distinguish dimensions. First, with regard to the level, Kalter (2019) notes that the term integration is used to refer to the macro-level integration of societies. Second, other scholars use it to refer to individual integration (whereas some use “inclusion” or “participation” of individuals synonymously). Esser (2006) and Kalter (2019) propose using the term social integration for the latter. Kalter (2019) distinguishes a third meso-level referring to groups as corporate actors, e.g., associations or clubs that can be integrated into a confederation (corporate integration).

A common aspect of individual social integration is the inclusive or participative aspect, e.g., being part of something, being included or integrated. With regard to what participation refers to, several dimensions can be distinguished. One prominent scheme distinguishes the structural, cognitive-cultural, social, and emotional-cultural dimensions (e.g., Kalter, 2019; Kalter, 2008). Structural integration refers to the positions in the functional spheres of the receiving country, most notably in the labour market, or the educational system. The cognitive-cultural dimension refers to receiving-country-specific knowledge and skills, most importantly speaking the host country’s language, or knowledge of the institutional setup. Social integration indicates the disappearance of different patterns with regard to social relations, or for example interethnic relationships or marriages. Finally, emotional-cultural integration refers, e.g., to the identification of migrants with the host society.

Moreover, integration can occur in different forms (Kalter, 2019). Immigrants integrate with regard to a sub-part of a typically not homogeneous “mainstream” society, see, e.g., the Segmented Assimilation Theory by Portes & Zhou (1993). Furthermore, immigrants

can integrate with (parts of) the receiving country's society as well as with origin country communities. Berry (1997) distinguishes (1) multiple integration, i.e., integration with regard to origin country community and receiving society, (2) assimilation, i.e., integration into the receiving country but not the origin country community, (3) segmentation, i.e., integration only with regard to the origin country community and finally (4) marginalisation, i.e., no integration with regard to the receiving society or the origin country community. These forms are theoretical ideal types, to be thought of as continua. Moreover, to make matters even more complex, consider a migrant in Germany, who earns his or her income solely as a mechanic at one of the large car manufacturers, but whose social network predominantly consists of people coming from the same origin country. Such an integration pattern might result from different speeds at which integration processes take place on the different dimensions. It can, however, also be a stable State by choice, opportunity, or for other reasons. This person is structurally well integrated into the middle class of what can be referred to as mainstream German society. Regarding the social integration, this person would be classified as multiply integrated.

Given this complexity about the terms commonly used, and the complexity of the phenomenon, it is crucial to define what a research project on integration or exclusion seeks to investigate. For the social science part of the workgroup, the aim is to better understand the structural integration of immigrants and refugees with precarious residential status, e.g., those with subsidiary protection or other short-term residence permits, or those without residence status, i.e. undocumented migrants. With regard to integration, following Kalter (2019), we relate to Alba et al (2015: 5), who defined integration as

“the processes that increase the opportunities of immigrants and their descendants to obtain the valued ‘stuff’ of a society, as well as social acceptance, through participation in major institutions such as the educational and political system and the labour and housing markets”.

Given the above discussion, we are thus interested in social integration, i.e. individual participation, and the systematic variations with regard to residence status and other conditions affecting it.

In sum, the social science part of the project deals with exclusion on two levels: First, the above-described interest in the outcomes of the integration process results in social integration/inclusion or exclusion. Second, given the growing relevance of push factors in international migration, and the accompanying new forms of migration, the question arises as to what extent legal status becomes a relevant condition for the process of social integration.

2.3 Focus of the collaboration

In both disciplines, one can find references to exclusion or its (perceived) counterpart inclusion, but no closed or coherent theory is readily applicable to the phenomena of interest here. In fact, this does not affect its function, because neither in the research initiative nor in our project does the exclusion concept serve the purpose of comprehensively explaining the findings, but rather of providing a framework in which the interdisciplinary exchange may be facilitated and enhanced. Indeed, both disciplines share the view that exclusion can be observed in the form of denying access or membership to societal institutions in a gradual way, with absolute exclusion and

complete inclusion marking the two extreme positions individuals may be confronted with. It is exactly the lens of exclusion positioning within the functional spheres of society that helped shape our common research interest and our project. To answer the question of how exclusionary processes and instances play out and what determinants are in place, we decided to base our research project on the common denominator that according to the literature presented above plays a decisive role in structural integration or the access to social rights: legal status.

3 Legal status for non-citizens

The ambivalence of exclusion and in particular its gradual character can be prominently observed in the construct of legal status. Legal status describes the equivocal position of individuals within the State which results, on the one hand, from being a constitutive element of the State as such and actively influencing the common will (citoyen) and, on the other hand, from being the very subject of it (sujet) (Rousseau, 1923: 44). The respective rights and obligations of each individual therefore arise from a certain position of the person in relation to the State, which can be described as a status according to the model of ancient law (Jellinek, 1921: 418). While it remains controversial if this status-oriented description is accurate or whether it should rather be seen as a legal relationship (Rechtsverhältnis) (for an in-depth analysis see Becker, 2018: 2 ff.), it is clear that the strongest legal bond between a State and an individual is that of nationality which “having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties” (International Court of Justice, *Nottebohm Case*, 6 April 1955, p. 23). Nationality in this sense expresses the membership connection and legal affiliation to the State community and the rights arising directly therefrom (BVerfGE 37, p. 217, para. 88). This personal bond is one of the two constituent elements, namely a personal and a territorial component that create the responsibility of modern nation States to implement social rights by providing the necessary institutions (Becker, 2017: 102). The historical starting point of social security was the “law of the poor” (“Armenrecht”), which served the maintenance of public safety and order in a spatially limited area, e.g., the community (Janda, 2012: 1). Membership was in each case based on special legal relationships such as municipal citizenship (“Stadtbürgerschaft”) and was independent of any relocation because power was exercised over a certain set of people, not territory (Kingreen, 2018: 41). With the development of modern States in the 18th century and the emergence of national welfare States in the 19th century, the responsibility for social security shifted from municipal or regional entities to State institutions and led to a concentration of the membership relation in the respective nationality (Kingreen, 2010, p. 13). Especially concerning the social element of citizenship, which according to Marshall ranges “from the right to a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being” (1950: 11), the welfare State and its institutions promote inclusion and alleviate inequalities (1950: 47).

3.1 Legal status as a prerequisite regarding formal access to rights

For non-citizens, this can create certain obstacles or irritations (Becker, 2017: 102) in the national social protection systems, because in those cases the provision of social benefits can not be based on nationality or citizenship. In fact, there are several social protection systems in place which do not require nationality but rather employment for the purpose of benefit receipt, e.g., the German social insurance system (see § 3 No. 1 Social Code

Book IV – SGB IV). The reason why – besides the personal element – a territorial aspect seems to play a decisive role can be found in the comprehensive responsibility of nation States for all people who reside on their territory, which is the flip side of its corresponding territorial sovereignty (Becker, 2011: 481). In addition, the territorial link also follows from the function of social protection systems, namely to protect persons from certain risks and to enable their social participation within the respective State (Becker, 2004: 11). This is not to say that citizenship does not play any role whatsoever, quite the contrary. In the aggregate view of the personal and the territorial allocation elements, it becomes clear that the common denominator between the two of them is residency, meaning the key to social rights is the right to residence (Kingreen, 2018: 9 ff.). A legal residence and a related residence permit are, at least in the German model (and in most other European States), the ‘Uber-right’ and precondition to fully and formally access social rights in general and it therefore deserves special attention in the context of migration studies (Costello, 2016: 2, 20 ff., 38 ff.). Since nationality guarantees an unlimited, unconditioned right to residence for nationals of the State (Becker, 2018: 14), it is the strongest possible bond and therefore leads to the highest degree of social protection. Due to its territorial responsibility and international as well as constitutional human rights obligations, this protection has to be extended to foreigners present on the State’s territory (Becker, 2011: 482). In this sense, the permission to enter the territory also implies the (reversible and sometimes inferior) inclusion into the national labour and social system, which is basically a status determination that in the abovementioned meaning defines the legal position of migrants in relation to the State (Bast, 2012: 27 ff.).

However, opening up social protection schemes at the same time leads – for some – to the exclusion of others. This does not necessarily result in rendering the latter set of people unprotected as long as they can be assigned to at least one State that is obliged to take care of them. In this regard, the regulations on social law and the criteria to access rights could be interpreted as rules to determine the responsible welfare State (Janda, 2012: 375). In concert with the rules that determine the residence status, States must ensure that, on the one hand, migration processes do not lead to “overcompensation” due to double or triple protection and that, on the other hand, they bridge protection gaps resulting from States failing to live up to their obligations as is the case for refugees. Given the interrelation of social rights and residence status, the immigration rules create a diverse stratification of social protection (Janda, 2012: 378).

While it is common to conduct legal research along the lines of different residence statuses, in recent migration law research the conceptualisation has shifted from this rather static perception to an approach that describes status as a continuum, with the different legal categories only marking doctrinal junctions (Thym, 2010: 11). In line with this, another meta-category has been introduced to overcome the classical, theoretical dichotomy of citizens vs. aliens, namely the category of denizens (in waiting) (Bast, 2012: 222 ff.), which comprises non-citizens who may be approximated to the status of a national to varying degrees depending on which end of the legal continuum they are at (Bast, 2013: 354). Although those alternative perspectives might be suited to highlight some of the horizontal aims, which present themselves as commonalities shared by – at first glance – highly fragmented regulations, that therefore create an overarching continuum in migration law (Thym, 2010: 15), the conventional focus on different status groups is a better fit for legal doctrinal reasons as well as in view of the design of our research project. As for doctrinal reasons, status groups carved out by immigration laws

play an important role in determining subsequent decisions by administrative bodies and courts, because they stabilise the translation of factual cases into the law (Thym, 2010: 14) by way of subsumption of predefined criteria. In this way, the status concept is far better operationalised for practical implementation than the “continuum-approach” that might be suited for a cross-cutting analysis on a more fundamental level but lacks the necessary precision to be modelled in a quantitative study. Regarding our research project on the influence of legal status on the lives of Afghan migrants, the focus on residence status in this sense provides for a variable that we can check our hypotheses against. Thus, we use the legal categories that can be found in German residence and asylum law not as a limitation of our research, but as a point of departure to add quantitative data to the abovementioned existing literature of legal scholars, who pointed out that residence status is not the only determinant in the legal continuum migrants have to navigate.

3.2 Legal status between “integration” and exclusion

Legal status, especially with regard to refugees, is a central factor influencing social integration (Euwals et al., 2010; Söhn, 2014). The process of integration can be conceptualised as an investment decision in line with human capital theory (e.g., Chiswick & Miller, 2001; Esser, 2006: 39 ff.; Kalter et al., 2002). Migrants can invest their time and resources into receiving country-specific capitals and therein integrate, e.g., get a “good” job. Alternatively, a migrant could decide to invest in the ethnic or origin country spheres, e.g., into ethnic economies, or not invest and stick with the status quo. Typically, the decision problem is simplified into a binary choice to invest in the receiving countries’ spheres, or not to invest.

The investment decision generally depends on three theoretical constructs: opportunity, motivation and costs. (Perceived) opportunities are a necessary condition to invest, while the combination of motivation and (perceived) costs determine individual decisions (for details see Esser, 2006: 41 f.). The application of this theoretical framework for labour market integration (cf. Section 2.2.2) and activities leading to integration, like integration courses (cf. Section 2.2.1), is straightforward. Both require time and effort and the application of a human capital investment model is obvious. Moreover, even though the language used suggests deliberate and rational decision processes, this theoretical framework also allows the modelling of unconscious processes. Concerning health outcomes and access to health care, the opportunities and costs obviously play a significant role, while we assume no differences in the motivation to stay healthy. The next sections detail the connections between the common conditions with these theoretical constructs (for a more detailed and extensive discussion see Chiswick & Miller, 2001; Esser, 2006; or Hunkler & Khourshed, 2020, concerning the specific conditions of refugee integration processes). We also elaborate on the specific expectations regarding refugees with precarious residence status. Note that specific conditions can be connected to more than one theoretical construct.

The opportunities for structural integration, i.e., hard restrictions and the perceived likelihood that an investment succeeds, are typically connected to age at arrival in the new country and education (see, e.g., Esser, 2006: 46). This is most obvious when considering language acquisition. Young children show very high efficiency at learning a new language, which decreases with age (e.g., Esser, 2006: 93). In addition, individuals with more education are typically more efficient in language learning. Refugees with precarious residence status often face additional restrictions. For refugees in Germany, access to the

labour market depends on the state of their asylum application, i.e., their current status (cf. Section 3.1). Anticipating employers' awareness of unstable residence statuses, we expect that the opportunities for more costly long-term investments, e.g., investing in receiving country-specific labour market skills, are typically lower when the residence status is undecided or very short-term as in subsidiary protection. Obviously, undocumented migrants face severe restrictions with regard to access to legal employment, i.e., there are no opportunities for undocumented migrants to legally access the labour market. Similarly, the opportunity to attend a State-funded integration course depends on the legal status and the prospect to remain ("Bleibeperspektive"). Concerning health care as well, the access to the standard option of using the public health care system depends on the legal status (cf. Section 3.1).

The motivation for structural integration, i.e., the perceived utility of an investment compared to sticking with the status quo, is typically connected to the intent to stay and to education. With regard to refugees, especially those with a more precarious residence status, the mechanics of residence law in Germany reinforce and create additional incentives for refugees who are interested in a long-term stay (see e.g. Euwals et al., 2010). If they want to achieve a residence status that is not conditioned on the reasons of fleeing from the origin country, they need to show economic independence, e.g., have a secure job, as well as a certain degree of German language competence.

The costs of investment in structural integration are typically connected to education in the country of origin. It is assumed that a person with a higher level of education would generally find it easier to adapt to a new context. Moreover, co-ethnic networks may help with orientation and with finding work, hence decreasing the search costs. With regard to refugees, especially those with a more precarious residence status, additional costs may result from the added bureaucratic steps to be taken by them or by a potential employer, who typically needs to be convinced to do that. With regard to integration courses, when not admitted into the State-funded options, for instance, the cost of investing in learning the receiving country's language can be substantial (except for younger children who are very efficient in language learning and for whom the opportunities in kindergartens or schools are often sufficient).

The primary focus of the social sciences part of the interdisciplinary project is on explaining variation in integration or exclusion outcomes. The theoretical model suggests that having a precarious residence status or not having a residence permit at all, is a crucial factor influencing the outcomes of interest. It can decrease opportunities and increase the costs of structural integration, but in contrast, it may have a positive influence on the motivation to integrate. There is an obvious overlap with the legal perspective on exclusion and status (see above); specifically, it needs to be understood what rules and regulations result in restrictions to accessing employment, i.e., opportunities, and the residence status groups to which these apply must be identified.

4 Establishing the legal and factual foundation

4.1 German residence statuses and social protection system

Although residence status is not the only criterion that determines access to social rights (see above and Janda, 2012: 381 ff.), it is the most decisive one. While this contribution is not the place to give a comprehensive account of German residence and asylum law, the following section will provide a broad overview of the main categories that can be

found in the law. Since the respective statuses mark not only the starting but the focal point of our research project in which the two disciplines intersect and translational challenges might occur, it is crucial to have at least a general understanding of the legal framework and how it stratifies access to social rights. Given the comparatively high fragmentation and complexity of German migration law (see e.g. Hruschka & Rohmann, 2021) and practice (see e.g. Eule, 2014), the current legal status and the status history will often be difficult to determine and complex. However, this complexity is an important component when conducting research on the effects of legal status on migrants. It is therefore vital for researchers with a quantitative method to have a clear understanding of the respective regulations to be able to model and design the questionnaire in a way that takes into account these potential effects. During the field part of the research, it is of utmost importance that the involved social scientists understand the implications of legal status and instruct the interviewers regarding its application as often interviewees will not be able to exactly determine and understand the consequences of their current status. Even less will they be in a position to reconstruct their previous situations during the interviews.

In order not to overextend the time frame of the interviews, the status-related questions in the survey were limited to the reconstruction of the residence status history. Procedural issues and waiting periods, which have been extensively studied in recent years, were only marginally considered. Therefore, the following section focuses on residence statuses and their legal and (presumably) practical implications.

4.1.1 Residence statuses

According to § 4 AufenthG

“foreigners shall require a residence permit, in the absence of any provisions to the contrary in the law of the European Union or a statutory instrument and except where a right of residence exists as a result of the agreement of 12 September 1963 establishing an association between the European Economic Community and Turkey” (FLG 1964 II, p. 509) (EEC/Turkey Association Agreement).

Foreigners are legally defined in § 2 para. 1 AufenthG as “anyone who is not German within the meaning of Art. 116 para. 1 of the Basic Law”, which provides the following as a definition: “Unless otherwise provided by a law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person.” The entrance of foreigners, except inter alia for EU and Turkish citizens, is therefore restricted by means of a general prohibition subject to permission (“Verbot mit Erlaubnisvorbehalt”).

The residence permit shall be granted inter alia in the form of a visa (“Visum”), a temporary residence permit (“Aufenthaltserlaubnis”) or a permanent settlement permit (“Niederlassungserlaubnis”). According to § 4a para. 1 AufenthG foreigners “holding a residence title may pursue an economic activity unless there is a law prohibiting such activity. The economic activity may be restricted by law.”

Residence permits are being issued for the purposes of residence stated in the Residence Act, see § 7 para. 1 AufenthG. Despite the fact that the research was conducted before the takeover by the Taliban, the circumstances in Afghanistan (for a report on the situation

before August 2021, see Stahlmann, June 2021) already allowed us to expect that the majority of persons in our sample group of Afghan migrants would base their right to residence, besides economic activities (§§ 18 ff. AufenthG) and family reunification (§§ 27 ff. AufenthG), on humanitarian grounds (§§ 25 f. AufenthG). The presumption would also be valid at the time of publication looking at the current situation in Afghanistan. This sets the scene to clarify a widespread obscurity regarding the institutional responsibilities. The institutional divide between the immigration authorities (“Ausländerbehörde”), which are under the supervision of the States (“Länder”) (§ 71 AufenthG) and are responsible for implementing the AufenthG by inter alia issuing residence permits, and the Federal Office for Migration and Refugees (“Bundesamt für Migration und Flüchtlinge” - BAMF), that is in charge of the asylum procedure and subsequent determination of the protection needs (§ 5 para. 1 Asylum Act - AsylG) in the asylum area leads to a two-step process: No matter what the outcome of the asylum procedure eventually is, the decision of the BAMF has to be translated into the regime of the AufenthG by the immigration authority. The discretionary power of the immigration authorities is very much shaped by the BAMF decision, be it by the general obligation to issue a respective residence permit to the person for international protection (see § 25 AufenthG) or – in case of a negative decision on the merits of the case – by the legal obligation to focus on the facilitation of the persons’ obligation to leave the Schengen area including potential enforcement by means of deportation (see Art. 6 of the so-called Return Directive 115/2008/EC). Obviously, this institutional divide regularly leads to confusion amongst migrants (see, e.g., SVR, 2018), which needs to be considered in the subsequent data analysis and – to the extent possible – cleared up already during the interviews.

As set out before, as a rule, foreigners need to hold a residence permit to legally reside in Germany. For the period of the asylum procedure, asylum seekers therefore receive permission to remain on the federal territory while the asylum procedure is pending (“Aufenthaltsgestattung”, §§ 55, 63 AsylG) up to the point when either return is enforceable or a positive decision has been issued. This permission to remain is, from a legal point of view, not a residence permit. It has, however, a set of rights attached to it because it provides for a legal stay.

Based on the individual case at hand, the BAMF can positively decide on an asylum application by either granting a right to asylum (Art. 16a Basic Law), refugee status (§§ 3 ff. AsylG), subsidiary protection (§ 4 AsylG) or determine that deportation is prohibited under the terms of the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms (§ 60 para. 5 AufenthG) or due to the risk of substantial concrete danger to life, limb or liberty (§ 60 para. 7 AufenthG). Every outcome results in a different residence permit, which is being issued by the immigration authority and comes with diverging rights depending on the prior status determination, for instance with respect to duration (§ 26 AufenthG) or the right to family reunification (§§ 27 ff., 36a AufenthG). If none of the aforementioned categories applies, the BAMF has to reject the asylum application and the person concerned is obliged to leave Germany subject to legal remedies. If a foreigner can assert that his or her deportation is impossible for legal or factual reasons, he or she can apply for a decision on the suspension of his or her deportation and receives a so-called toleration (“Duldung”, § 60a AufenthG). Although this status is already quite precarious, in August 2019 the German legislator introduced an even more inferior category, namely the possibility to add to the toleration document a notion that the person holding the document is of unclear identity (“Duldung für Personen

mit ungeklärter Identität”, § 60b AufenthG). This notion has severe consequences regarding the access to social rights.

4.1.2 *Fragmented social protection of migrants*

Against the background of the aforementioned intricate interrelation of social protection and residence status, social law adds to the diversified picture we see in the immigration law rules – especially since the social protection system does not in all parts strictly follow the same exact stratification that is prescribed by the immigration law regime (Janda, 2012: 382) due to their specific systemic and/or economic rationalities (Becker, 2004: 12). Thus, a comprehensive description of the complex entanglements of those two fields would again exceed the scope of this contribution. Nonetheless, the basic functions and main distinctions that apply to our sample group have been mirrored in the quantitative survey.

With respect to social assistance (“Grundsicherung”) (for a detailed overview of German, European and international systematisation as well as terminology of social law and its institutions see Becker (2018a: 52 ff.), which ought to provide for the social-economic subsistence minimum (German Federal Constitutional Court, BVerfGE 132, 134-179, 18 July 2012) there are – depending on the residence status – basically two protection strands in place. On the one hand, unemployed third-country nationals who hold a residence permit are treated like German nationals and European Union citizens and are entitled to benefits according to either Social Code Book II (“Sozialgesetzbuch II” – SGB II) if they are able to work (§ 7 SGB II), or according to Social Code Book XII (“Sozialgesetzbuch XII” – SGB XII) if they are unfit to take up unemployment (§ 23 SGB XII). Both systems cover reasonable costs of accommodation and heating as well as benefits for basic needs, e.g., food, clothing, hygiene, household goods etc. On the other hand, persons who do not hold a residence permit, inter alia asylum seekers or persons on a toleration status, fall within the scope of the Asylum Seekers Benefits Act (“Asylbewerberleistungsgesetz” – AsylbLG, see § 1 AsylbLG). In comparison to the other strand, there are several restrictions. For instance, benefits shall mainly be provided in kind for people who live in community shelters (§ 3 para. 2 AsylbLG) and the level of cash benefits is substantially lower (§ 3a AsylbLG). In addition, other than beneficiaries of the SGB II/SGB XII scheme, foreigners under the scope of the AsylbLG do not have access to the statutory health insurance system. If medical treatment is necessary, the local social assistance office can approve cost coverage upon prior application, §§ 4 and 6 AsylbLG. Under specific circumstances, these minimal benefits may be subject to further cuts under § 1a AsylbLG. According to § 2 AsylbLG, after a waiting period of 18 months of uninterrupted residence in Germany, the SGB XII shall apply *mutatis mutandis*, meaning that from this moment on foreigners enjoy health insurance.

Apart from this rather fundamental divide in social assistance schemes, we can observe way more status-related differentiations, some of which refer directly to legal status, others only indirectly result in it or even further fragment the status landscape. For our survey, the areas of particular interest are the legal rules regulating access to the labour market, the access to integration courses and access to health care. In all these areas, the legal status results in immense diversifications regarding the entitlements and benefits that are accessible (see, e.g., Davy, 2019; Hruschka & Rohmann, 2021).

4.2 Limitations of the legal method

The reflections in this contribution brought to light that research on the legal status and its interrelation with the access to social rights for migrants is after all often rooted, if not even bound by and in its disciplinary rationales. However, it would be an undue omission to claim that legal scholars solely focused on the current positive law, since many of the legal findings are put in the respective historical and political contexts and developments. To a certain extent, one could even claim that court decisions and their analysis present themselves as qualitative empirical case studies. Nonetheless, the legal analysis leads, in some cases, to an over-problematisation of some specific issues that were brought before the courts while others are unduly disregarded. Whether the outlined status fragmentation, which from a legal point of view is detrimental to the overall systemic coherence (Hruschka and Rohmann, 2021), indeed has negative effects on Afghan migrants is a question that may not be answered by research that solely focuses on legislation and court cases. Empirical data is needed to effectively analyse the perceived “implementation gap” and may enable us to challenge some of the underlying assumptions regarding the inclusive effects of access to social rights that are vastly shared not only by legal scholars but also policymakers.

5 Operationalising interdisciplinary perspectives in quantitative research?

The overall aim of our research is to better understand the structural integration of migrants and refugees and the systematic variations with regard to residence status, or more precisely precarious statuses, including undocumented persons. In section 3 we have outlined the theoretical framework used, with a focus on how legal status can be expected to influence the integration process. The survey was developed to test the theoretical model and at the same time to provide an empirical foundation for the legal research questions.

The survey’s target population were persons with Afghan citizenship, aged 18 or over, who arrived in Germany in 2014 or after, and lived in one of three urban areas in which we collected data. The sampling consisted of two strategies: (1) a random population sample drawn from the official population registries, and (2) Respondent-Driven-Sampling, which is a strategy to include a “hard-to-reach population”, like Afghan migrants without legal documentation and who therefore are not included in the registries, to our study. The recruitment was successful in Berlin (534 interviews from an estimated population of 6,485) and Munich (264 interviews from an estimated population of 3,006), whereas in Hamburg only 226 interviews (est. population 7.337) could be realised in the area with the largest estimated population of Afghan migrants fitting the criteria.

This section describes the challenges in collecting information on integration outcomes and activities (i.e., employment in the labour market, participation in integration courses, and health) in a closed-form survey that can serve both purposes. With regard to legal status, the main challenge is to overcome the struggle between soliciting information from respondents in a way that most of them can accurately answer the questions, while at the same time collecting data that allows for constructing the most important legal status categories. Moreover, respondents, especially undocumented or other groups with precarious status may be more prone to not answering or to give socially desirable responses, i.e., to brighten answers to direct questions, e.g., about “irregular” border

crossing or irregular employment etc. Finally, the survey collects information on several aspects of respondents' biography, migration and aspects of their current lives, as well as information on other conditions of integration (e.g., expectations, social networks, etc.). Therefore, the number of questions and time devoted to assessing concepts is limited.

5.1 Example 1: Soliciting information on irregular entry into the EU and registrations or asylum applications in other EU countries

The specific aims of the legal status questions are, first, to reconstruct when and how individuals made their way to Germany. The struggles and potentially traumatic experiences of a prolonged journey (e.g., Hunkler & Khourshed, 2019), the potentially extended periods spent at intermediate stations (and the depreciation of human capital that goes along) can influence integration in the destination country. Moreover, having registered as an asylum seeker or having applied for asylum in another European Union State has implications for the legal status assigned in Germany. The second aim is to reconstruct the legal status history in Germany, including the periods in each status.

The survey uses two strategies to solicit this information. First, the legal questions are embedded into the migration module, which starts with the "when and why" of leaving the country of origin and then traces the respondents' journey to Europe and Germany. As shown below, this also allows collecting information on the undocumented entry into the European Union and registrations or applications for asylum in other EU countries without having to ask direct questions about irregular border crossing and the like. Second, given experiences in a previous project (see Khourshed et al., 2019), in which almost 25% of Syrian respondents were not able to report their current residence status in Germany, the survey uses image representations to solicit information on the residence status history of respondents in Germany.

Embedding the information on the legal entry into the EU and registrations or asylum applications in other EU countries into the migration history (see Figure 1) allows reconstructing the information needed, without having to directly ask about irregular border crossing. The questions are formulated in a simple format and ask for information that most interviewees can easily answer. Whether or not the entry was irregular or not can be classified using this information. Also, note that the "status" used to enter the first EU country explicitly includes the option "none of these" conveying to the respondents that this is common and therefore an expected answer.

Figure 1: Extract of the survey questionnaire on legal status

What was the first EU+4 country you entered to get to Germany?
 Interviewer: Please show EU+4 map

When entering <first EU+4 country from the previous question entered here>, did you present yourself to any authorities, e.g., at the border, with customs, the police, or any other official office?

Which status did you use to enter <first EU+4 country>?

1. Visa or another residence permit
2. Apply for asylum/refugee status
3. None of these

Which type of visa or residence permit was that?
 (Detailed list of possible visa types, entry programs, e.g. resettlement, and other options omitted.)

*Did you apply for asylum or refugee status in any EU+4 country on your way to Germany?
[If yes:] What was the outcome of the application?
(Detailed list omitted)*

Were you registered in any EU+4 country on your way to Germany?

Note: The questionnaire module started with questions on the migration motive, year and month of leaving the country of origin, and whether the respondent arrived directly in Germany or another EU country first. Note that the questions on the timing of events, parts of the instructions to the interviewer and parts of the answer options were omitted in Figure 1.

5.2 Example 2: Soliciting information on labour market participation, integration course participation and health care

Relating to the examples laid out in Section 3, Figure 2 shows some examples on how questions on labour market and integration course participation, as well as health and health care, were asked. Note that we only asked whether a person works, and made a subtle distinction on whether it had a contract or not. When connecting this information, e.g., employment without a contract with the current residence status information, i.e., a residence status that would not allow employment, we derived a sufficiently accurate estimate of engagement in irregular employment. While there were constellations conceivable where these assumptions were wrong, directly asking a person whether he or she engages in irregular activities would have most likely resulted in a larger measurement error. The survey also collected details on the job, which helped in checking the reliability of the approach, i.e., specific professions (home care, household help, construction) were known to be more prone to irregular employment. Furthermore, while laws and regulations may be precise to some extent, we also solicited the perceptions of the respondents on how they perceived their access to the labour market.

The questions on language course participation are straightforward, and Figure 2 only shows a few examples. The survey also asks for language level acquired and for plans to attend language and integration courses. Asking who was giving a course serves two purposes. First, it allows for describing course participation in more detail. Furthermore, it can also serve as a cross-check on the legal status information described above, given the access restrictions laid out above.

Understanding the health care system in a different country might generally be a challenge, especially when considering the different procedures applied to the health care needs of asylum seekers at different times. The survey first asks for a general self-evaluation of health and whether the person experienced the need to go to a doctor. In questions not shown in Figure 2, it was also assessed whether these needs were actually met. To get an accurate answer on whether a person was already included in the statutory health insurance system, the survey simply asked whether the respondent had a health insurance card. The pre-test interviews revealed that most respondents had AOK as a health insurance provider and used "AOK" to refer to the card. Therefore, we complemented the question using this example and also added pictures of three insurance cards including a typical AOK card.

Figure 2: Extracts of the survey questionnaire on labour market and integration course participation, and health

[Labour market participation:]

Now we will talk about your current or future work plans. Are you currently working?

1. Yes, in full time employment, with a contract
2. Yes, in full time employment, without a contract
3. Yes, in part time employment, with a contract
4. Yes, in part time employment, without a contract
5. Yes, receiving in-company training / doing an apprenticeship or undergoing occupational retraining
6. Yes, doing an internship
7. No, I am not working

What best describes the job that you are currently employed in?

(Interviewer enters description that can be coded into the international standard classification of occupations)

At this time, how do you perceive your access to work in Germany? Do you have...

1. Full access
2. Somewhat limited access
3. Very limited access
4. No access at all

[Integration and language course participation:]

Did you ever try to get into a German language course or an integration course in Germany?

Who gave this course?

1. Officially provided to refugees and paid by the state (Volkshochschule, vocational schools, organized in refugee housing facility etc.)
2. Officially provided to all migrants and self-financed (e.g. Volkshochschule, private companies)
3. Unofficially provided to refugees, typically no cost to attend (e.g. students for refugee programs, NGOs, community organizations)

[Health]

How would you rate your health today ...

1. Excellent
2. Very good
3. Good
4. Fair
5. Poor

During the last 12 months, did you experience the need to go to the doctor?

1. Yes, several times
2. Yes, once
3. No

Do you have a health insurance card, for example, an AOK card like this?

(visual aid of insurance cards by different providers)

Notes: Note that the questions were embedded with introduction texts in the original questionnaire, and that parts of the instructions to the interviewer and parts of the answer options were omitted in Figure 2.

6 Conclusions

Interdisciplinary research that lives up to its label requires additional efforts to develop a common framework and to agree on collaborative research questions. It will need to understand and reflect methodological and conceptual divergence, but also relevant overlaps, to identify the scope of joint research on the one hand and strictly disciplinary research on the other hand. The common denominator, as well as divergences, need to be identified and discussed to find common ground and a joint starting point for the intended research. This process requires time and resources, but the potential knowledge gain is promising. "Potential" also implies the risk of failure or at least the return to purely or predominantly disciplinary research designs. This question is separate from the question of the use of the data that is collected. What has been achieved by the collaboration on the survey, the research questions and the mutual information and explanation of disciplinary ground rules is a conceptual, interdisciplinary contention of the applied concepts. In particular, the role of legal status was addressed, which shaped the methodology, implementation and design of the research project and in particular the questionnaire. Throughout the drafting, we experienced that the attempt to combine two disciplines at least doubles the number of potential questions that could be included. Finding a working balance between sophisticated legal nuances and complex econometric models every so often brought us to the limits of our respective disciplinary boundaries and resulted *inter alia* in a way too long questionnaire. In this regard, the extensive pre-testing phase was essential. Not only did we learn where interviewees still had difficulties in reconstructing their histories of legal status, but we also encountered – as previously expected – obstacles to reaching undocumented migrants. The subsequent reduction of the number of questions, the re-focus of the sample group and refinement of the methodology again sparked fruitful and inspiring discussions amongst the involved researchers across disciplines, culminated during the analysis of the data.

The first analyses of the data (Méango et al., 2020) already revealed how interdisciplinary cooperation enriched the research from the viewpoint of all disciplines involved. The social scientists in the team profited from a much more fine-grained and more reliable assessment of the previous and current residence status of the respondents. For example, when analysing migrants' intentions to stay in Germany without them currently having the right to stay, it is pivotal to correctly assess the respondents' status. Méango et al. (2020) found that Afghan migrants' intentions to overstay are, on average, relatively high, whereas the possibility to be regularised in the future explained about 20% of these intentions. For the lawyers in the team, the differential effects of the same laws applied in the different regions the survey covered, gave insights into how important information from peers and from the community is compared to the knowledge on actual regulations (Hruschka et al., 2020).

From the perspective of legal research, it became obvious that there is a lack of studies that take a look at the impact of legislation on the ground. In turn, legislative reform proposals every so often are based on empirically shaky assumptions. Social science research, on the other hand, often does not properly reflect the legal situation, and descriptions of the legal framework are either not given at all or merely mirror administrative practice without reflecting the legal norms.

This makes it all the more important to cover the whole spectrum from the European to the national, local and individual levels in research. It requires interdisciplinary and multi-

methodical research that can bring together and synthesise different dimensions of migration research. To think together on the micro, meso and macro levels in the field of the reception, integration or exclusion of refugees and asylum seekers is a challenge that promises not only to provide new insights but above all to facilitate dialogue between different strands of research that all too often merely co-exist instead of mutually enriching each other. However, interdisciplinary research is also limited in various ways and has to be complemented by disciplinary and multidisciplinary approaches. Ideally, the resulting studies influence each other and contribute to an in-depth analysis of the migration phenomena on different levels.

References

- Alba, R., & Foner, N. (2015). *Strangers no more. Immigration and the challenges of integration in North America and Western Europe*. Princeton University Press.
- Angeli, O. (2018). *Migration und Demokratie. Ein Spannungsverhältnis*. Reclam.
- Banulescu-Bogdan, N. (2018). *When facts don't matter*. Migration Policy Institute.
- BAMF. (2018). *Das Bundesamt in Zahlen 2017: Asyl. Migration und Integration*. Bundesamt für Migration und Flüchtlinge. https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/BundesamtinZahlen/bundesamt-in-zahlen-2017.pdf;jsessionid=4043590F3EFBED17B4D0F84ACBDD205A.internet562?__blob=publicationFile&v=14
- Bast, J. (2012). *Aufenthaltsrecht und Migrationssteuerung* (Jus Publicum – Band 207, v.207). Mohr Siebeck.
- Bast, J. (2013). Denizenship als rechtliche Form der Inklusion in eine Einwanderungsgesellschaft. *ZAR*, 2013(353), 353-357.
- Becker, U. (2017). Migration und soziale Rechte. *ZESAR*, 2017(3), 101-108.
- Becker, U. (2004). The Challenge of migration to the welfare state. In E. Benvenisti, G. Nolte, & D. Barak-Erez (Eds.), *The welfare state, globalization, and international law* (pp. 1–31). Springer.
- Becker, U. (2011). Staatsangehörigkeit und Aufenthalt als Anknüpfungspunkte für die Gewährung sozialer Rechte in der Europäischen Union. Thesen zur abgestuften territorialen Verantwortung der Mitgliedstaaten für den sozialen Schutz von Unionsbürgern. In P.-C. Müller-Graff, S. Schmahl, & V. Skouris (Eds.), *Europäisches Recht zwischen Bewahrung und Wandel. Festschrift für Dieter H. Scheuing* (1st ed., pp. 480-492). Nomos.
- Becker, U. (2018a). § 1: Das Sozialrecht. Systematisierung, Verortung und Institutionalisierung. In P. Axer, F. Ruland, & U. Becker (Eds.), *Sozialrechtshandbuch. SRH* (6th ed., pp. 1-90). Nomos.
- Becker, U. (2018b). Art. 16. In H. v. Mangoldt, F. Klein, & C. Starck (Eds.), *Kommentar zum Grundgesetz* (7th ed.). Beck.
- Berry, J. W. (1997). Immigration, acculturation, and adaptation. *Applied Psychology*, 46(1), 5–34.
- Bödefeld, F. (2016). *Die ökonomischen Auswirkungen der Flüchtlingszuwanderung in Deutschland* (Hochschulschriften. Standort Meschede. Nr. 2/2016). Fachhochschule Südwestfalen. https://publikationen.fhb.fh-swf.de/receive/fhswf_mods_00000079
- Chiswick, B. R., & Miller, P. W. (2001). A Model of destination-language acquisition. Application to male immigrants in Canada. *Demography*, 38(3), 391-409.
- Davy, U. (2019). Refugee crisis in Germany and the right to a subsistence minimum: Differences that ought not be. *Georgia Journal of International and Comparative Law*, 47(2), 367-450.
- Decker, A. (2019a). § 4 AsylbLG. In A. Decker, J. Bader, & P. Kothe (Eds.), *BeckOK Migrations- und Integrationsrecht*. C.H.Beck.
- Decker, A. (2019b). § 6 AsylbLG. In A. Decker, J. Bader, & P. Kothe (Eds.), *BeckOK Migrations- und Integrationsrecht*. C.H.Beck.
- De Vroome, T., & Van Tubergen, F. (2010). The employment experience of refugees in the Netherlands. *International Migration Review*, 44(2), 376-403.
- Eichenhofer, J. (2013). *Begriff und Konzept der Integration im Aufenthaltsgesetz* (Dissertation). <http://gbv.ebib.com/patron/FullRecord.aspx?p=1469246>.
- Eule, T. (2014). *Inside immigration law*. Routledge.

- Euwals, R., Dagevos, J., Gijsberts, M., & Roodenburg, H. (2010). Citizenship and labor market position. Turkish immigrants in Germany and the Netherlands. *International Migration Review*, 44(3), 513-538.
- Esser, H. (2006). *Sprache und Integration. die sozialen Bedingungen und Folgen des Spracherwerbs von Migranten*. Campus.
- Fischer, K. (2011). Interdisziplinarität im Spannungsfeld zwischen Forschung, Lehre und Anwendungsfeldern. In K. Fischer, H. Laitko, H. Parthey, (Eds.), *Interdisziplinarität und Institutionalisierung der Wissenschaft, Wissenschaftsforschung Jahrbuch 2010* (pp. 37-58). Wissenschaftlicher Verlag.
- Foblets, M.-C., Leboeuf, L., & Yanasmayan, Z. (2018). *Exclusion and migration. By whom, when, and how?* (Working Paper 190). Max Planck Institute for Social Anthropology Halle.
- Fontana, S. (2022). *Integrationsrecht*. Mohr Siebeck.
- Fuchs-Heinritz, W., Klimke, D., Lautmann, R., Rammstedt, O., Wienold, H., Stäheli, U., & Weischer C. (2011) (Eds.): *Lexikon zur Soziologie* (5th revised edition). Springer VS.
- Gallie, W. B. (1956). Essentially contested concepts. *Proceedings of the Aristotelian Society*, New Series 5, 167–198.
- Hart, H. L. A. (1994). *The Concept of Law* (2nd ed.). Oxford University Press.
- Hruschka, C., & Rohmann, T. (2021). Excluded by crisis management? Legislative hyperactivity in post-2015 Germany. *International Migration* 00, 1-13. <https://doi.org/10.1111/imig.12926>
- Hruschka, C. & Schader, M. (2020). *We managed – And we changed in the process. Selected conclusions of the study of the Max Planck Research Initiative “Challenges of migration, integration, and exclusion” on the effects of the “long summer of migration”*. Max Planck Society. https://www.mpisoc.mpg.de/fileadmin/user_upload/data/Sozialrecht/Projekte/20201210_MPG_WIMI_Forschungsbericht_engl.pdf
- Huber, B., Eichenhofer, J., & Endres de Oliveira, P. (2017). *Aufenthaltsrecht* (1st ed., NJW-Praxis). C.H. Beck.
- Hunkler, C., & Khourshed, M. (2020). The role of trauma on integration. The case of Syrian refugees. *Soziale Welt*, 71(1-2), 90-122. <https://doi.org/10.5771/0038-6073-2020-1-2-90>
- IOM. (2021). *World migration report 2022*. International Organization for Migration. https://publications.iom.int/system/files/pdf/wmr_2022.pdf
- Jellinek, G. (1921). *Allgemeine Staatslehre*. Springer.
- Kalter, F. (2019). *Zum Begriff der Integration und seiner empirischen Umsetzung* (unpublished manuscript). Deutsches Zentrum für Integrations- und Migrationsforschung.
- Kalter, F. (2008). Stand, Herausforderungen und Perspektiven der empirischen Migrationsforschung. Migration und Integration. *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, Sonderheft 48, 11-36.
- Kalter, F. & Granato, N. (2002). Demographic change, educational expansion, and structural assimilation of immigrants: The case of Germany. *European Sociological Review*, 18(2), 199-216.
- Khourshed, M., Hunkler, C., Méango, R., & Börsch-Supan, A. (2019). *Qualifications, potentials and life courses of Syrian asylum seekers in Germany* (MEA-Working Paper 2019-1). Max-Planck-Institute for Social Law and Social Policy Munich. <http://dx.doi.org/10.2139/ssrn.3441134>
- Kingreen, T. (2010). *Soziale Rechte und Migration. Vortrag gehalten vor der Juristischen Studiengesellschaft Regensburg am 17. November 2009* (1st ed.). Nomos.
- Kingreen, T. (2018). Sozialrechtliche Heimat. Soziale Rechte auf und im Aufenthalt. In C. Rolfs (Ed.), *Migration und Sozialstaat. Sozialrechtslehretagung 2018, 28. Februar 2018 bis 1. März 2018 in Speyer* (pp. 39–54, Schriftenreihe des Deutschen Sozialrechtsverbandes, Vol. 68). Schmidt, Erich.
- Kleist, J.O., Engler M., Etzold, B., Mielke K., Oltmer J., Pott A., Schetter C., & Wirkus L. (2019). *Flucht- und Flüchtlingsforschung in Deutschland. Eine Bestandsaufnahme. Abschlussbericht*. Osnabrück: IMIS/bicc.
- Kneebone, S., Stevens, D., & Baldassar, L. (Eds.) (2014). *Refugee protection and the role of Law*. Routledge.

- Leiter, B. (2005). *Beyond the Hart/Dworkin Debate. The methodology problem in jurisprudence* (U of Texas Law, Public Law Research Paper No. 34).
- Luhmann, N. (1995). *Das Recht der Gesellschaft*. Suhrkamp.
- Marshall, T. H. (1950). *Citizenship and Social Class: and other essays*. Cambridge University Press.
- Massey, D. S., & International Union for the Scientific Study of Population (1998). *Worlds in motion. Understanding international migration at the end of the millenium*. Clarendon Press.
- Mayblin, L. (2019). Imagining asylum, governing asylum seekers. Complexity reduction and policy making in the UK Home Office. *Migration Studies*, 7(1), 1-20.
- Méango, R., Khourshed, & M., López-Falcón, D. (2020). From asylum seekers to illegal migrants. The intent to overstay of Afghan asylum seekers in Germany. *MEA-Discussion Paper 18-2020*.
- Montuori, A. (2013). Complexity and transdisciplinarity. Reflections on theory and practice. *World Futures*, 69(4-6), 200-230.
- Nicolescu, B. (2014). Methodology of transdisciplinarity. *World Futures*, 70(3-4), 186-199.
- Parthey, L. (2011). Institutionalisation disziplinärer und interdisziplinärer Forschungssituationen. In K. Fischer, H. Laitko, & H. Parthey (Eds.), *Interdisziplinarität und Institutionalisierung der Wissenschaft* (pp. 9-35 *Wissenschaftsforschung Jahrbuch 2010*). Wissenschaftlicher Verlag Berlin.
- Planck, M. (1933). Ursprung und Auswirkungen wissenschaftlicher Ideen (Conference talk of 17 February 1933 at the Verein Deutscher Ingenieure, Berlin). In M. Planck (Ed.), *Wege zur physikalischen Erkenntnis. Reden und Vorträge*. (pp. 260-280). S. Hirzel.
- Portes, A. & Zhou, M. (1993). The new second generation: Segmented assimilation and its variants. *Annals of the American Academy of Political and Social Science*, 530, 74–96.
- Raz, J. (1979). *The authority of law. Essays on law and morality*. Clarendon Press.
- Rixen, S. (2015). Zwischen Hilfe, Abschreckung und Pragmatismus. Gesundheitsrecht der Flüchtlingskrise: Zu den Änderungen durch das Asylverfahrensbeschleunigungsgesetz vom 20.10.2015. *NVwZ*, 1640–1644.
- Robinson, V. & Segrott, J. (2002). *Understanding the decision-making of asylum seekers* (Home Office Research Study 243). <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.473.3461&rep=rep1&type=pdf>
- Rohmann, T. (2019). Mindeststandards verAnkERn – AnkER-Zentren und die Beschleunigung von Asylverfahren. In C. Hruschka, C. Janda, & K. Jüngling (Eds.), *Deutsche und europäische Migrationspolitik. Bewährungsprobe für die Menschenrechte* (Hohenheimer Tage zum Migrationsrecht) (pp. 117-160). Nomos.
- Scholz, A. (2013). *Warum Deutschland?* Bundesamt für Migration und Flüchtlinge.
- Schotel, B. (2011). *On the right of exclusion and immigration policy*. Routledge.
- Söhn, J. (2014). How legal status contributes to differential integration oportunities. *Migration Studies*, 2(3), 369–391.
- Stahlmann, F. (2021). *Experiences and perspectives of deported Afghans in the context of current political and economic developments in Afghanistan*. (Diakonie Deutschland, Brot für die Welt, Diakonie Hessen). https://www.osar.ch/fileadmin/user_upload/Themen/Laenderinformationen/Herkunftslander/Afghanistan/AFG_Monitoring-Studie_EN_2022.pdf
- Thym, D. (2010). *Migrationsverwaltungsrecht* (Jus publicum, Bd. 188). Mohr Siebeck.
- UNHCR (2019). *Handbook on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol relating to the status of refugees* (Reprint of edition 1979). UNHCR Geneva.
- Welzer, H. (2006, April 27). Nur nicht über Sinn reden! Stets wird "Interdisziplinarität" gefordert. Doch in der Praxis trennen Geistes- und Naturwissenschaftler Welten. Ein Erfahrungsbericht. *Die Zeit*.

Flight, Education and the Art of Survival: Empirical Foundations for Habitus-based Social Education Work¹

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Abstract

The empirical basis for the conceptualization of biographies of refugees living in Germany is shaped by life situation analyses that have been conducted on different age groups, on women and men, and on specific disadvantages due to disability or sexual orientation in several research projects implemented by the authors. The aim of the research program is to reflect the educational and social support system in light of these refugee biographies: On the one hand, the strategies with which the refugees try to cope with the difficult living conditions are reconstructed. The resilience revealed in these strategies is theorized as a survival habitus. On the other hand, we investigated how the professionals working in the education and support system perceive these life situations and take them into account to conceptually frame their work. The empirical materials shows that the professional habitus often cannot grasp the life situations of refugees, but remains trapped in the institutional logic of action. Possibilities are discussed as to how the necessary habitus sensitivity can be established in the academic training of social workers and anchored in the university curriculum.

Key Words:

refugees, habitus, resilience, art of survival, social work

1. Introduction: Our Research Program – Refugee-Specific Habitus Investigations

For more than twenty years, we have been jointly conducting empirical research on the participation in education and work among refugees living in Germany, primarily in Hamburg (Neumann et. al., 2002; 2003; Niedrig et al. 2003a; 2001; 2002; 2003b; Schroeder, 2003; Schroeder & Seukwa; 2007; 2008; 2018; Schroeder et al., 2016). Methodologically, we focus predominantly on the qualitative reconstruction of life situations in the biographical course (Schroeder, 2015). For this purpose, we collect objective data and “hard” facts (income, housing conditions, state of health) on the one hand, and the subjective views of the refugees themselves on their living situation on the other. The analytical breakdown of life situations into different functional areas of everyday life follows the insight that “integration” or “participation” in the area of housing and work, in health or political participation must be achieved consistently in each single

¹ This work is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/) and was accepted for publication on 9/12/2022.

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case, and is confronted in the field of flight to several obstacles.

In various research projects as well as in dissertations supervised by us, studies have been developed on adolescents, and adults, who sometimes belong to a specific region of origin (for example Africa), or share a specific impairment (physical or mental disability, functional illiteracy), sometimes focusing on women or sometimes on queer sexual identities. We analyzed refugee career span passing through various segments of vocational education, be it the transition from a literacy class to vocational preparation school to entering mostly precarious employment, or via high school to university – and from there also often to unemployment (Arouna et al., 2019; 2022; Bach et al. 2021; Goetze, 2021; Grotheer et al. 2018; Hensel, 2022; Mehring, in prep.; Narawitz, in prep.; Neumann et al., 2003; Olbers, 2021; Runge, in prep.; Schäfermeister, in prep.; Schroeder et al. 2007; Seukwa et al. 2019; 2021; Shah Hosseini, in prep., Wagner, 2019). Needless to say, that such qualitative individual case studies are pretty time-consuming. Yet we have been able to document about three hundred biographical trajectories over the past twenty years, generating a corpus of data that facilitates theoretical work beyond the formulation of theses (Schroeder & Seukwa, 2018).

The goal of these qualitative studies is to analyse refugee-specific habitus. This is because “the structured and structuring structure” (Bourdieu, 1987: 280) of social relations is inscribed in life situations and biographies. “Habitus” for Bourdieu encompasses the objective categorization of members of particular social classes within social structures and, moreover, a concept of internalization of collective dispositions related to the subject. The habitus is thus a generating principle of forms of practice and behavioral strategies of the individual, which are spontaneously adapted to the situation and the requirements of the environment or socialization space.

This generative principle produces the class habitus, which distinguishes the different social milieus from one another (Vester et al., 2001). There is also a habitus related to gender, which is formed from the socially dominant gender order and constantly reproduces it (Bourdieu, 1997). Likewise, a professional habitus (Wernet, 2003: 37) can be described that reproduces itself in institutions and through disciplinary logics of action. We surmise that a specific habitus is also formed in the context of forced migration. Flight and migration in general are structuring structures that are characterized by plurilocality, transnationality and multilingualism, as well as by specific forms of violence such as absolute poverty, human trafficking, war, torture and racism, and it can therefore be assumed that this specific field generates specific behaviors and forms of action in the individual, namely a flight-specific “habitus or ingrained art of survival” (Seukwa, 2007: 191), whose characteristics will be described in more detail below.

2. Socio-political Contextualization

If we consider the current discussion and perspective on the causes of flight, it is striking that since 2015, the dominant discourse of the German federal government – including the EU as a whole – regarding flight phenomena has focused on combating the causes of flight (BAMF, 2018; EU, 2016). This means above all poverty and various crises in the countries of origin of refugees. Therefore, in addition to military and political measures to prevent flight, development aid as well as humanitarian and charitable actions are seen as the most important instruments for combating the causes of flight in this approach of the problem (Wirsching, 2016; Raffarin & Bizet, 2017).

In such an interpretation of the problem, which locates the causes of flight exclusively in the refugees' countries of origin, Germany is casted as a savior. The mismanagement, the dictatorships, the adherence to backward cultural traditions, the homemade ethnic and religious conflicts in the affected countries are described as the real causes of flight. Ergo, the countries of origin are depicted as perpetrators. Refugees, in turn, are ascribed the role of victims, either because they are victims of prevailing circumstances in their countries of origin, or because the asylum procedure in the host countries or the 1951 Convention relating to the Status of Refugees (Geneva Refugee Convention) requires them to be victims in order to be granted refugee status (Niedrig & Seukwa, 2010).

This view is problematic for at least three reasons: It (1) overlooks the global contexts of the causes of flight, and – more importantly – it (2) thus creates the discursive and interpretive framework, i.e., the rational as well as emotional basis of our political and ethical stance in dealing with flight phenomena as a whole and in dealing with the relatively few refugees who have managed to make it to Europe. And it constructs (3) an image of the refugee as a mere victim of circumstances, which is demonstrably very counterproductive in educational work.

Therefore, in order to deconstruct the epistemic basis of paternalistic and compassionate attitudes on the issue of integration as well as racist motivated refugee hatred, it is necessary to acknowledge that coping with the political, economic and social consequences of refugee migration remains a major challenge for many countries in Europe so far (Seukwa, 2014). This challenge is expressed, among other things, in contradictions in which refugee issues are seen, on the one hand, primarily as a problem of identity and security issues, i.e., as a threat to an imagined cultural identity (the "Leitkultur") and a threat also to prosperity, due to the overburdening of the social system in host countries.

On the other hand, in view of the aging of the population structure associated with demographic change and the resulting imbalance in the pension system and the problem of a shortage of skilled workers, migration – and thus flight as a type of migration – can also be seen as an opportunity to secure the competitiveness and future viability of these countries.

These contradictions of European refugee and migration policies, which are ostensibly based on the defense of the security and economic interests of nation states, are exacerbated by the self-imposed goals of EU Member States to apply some humanistic ideals, such as human rights and democratic claims, to refugees as well. This is because the associated equality requirements, i.e., the non-discrimination of a group in the struggle for access to and power of disposal over many resources classified as materially and symbolically valuable, i.e., desirable, for society, are difficult to reconcile with the always dominant practice of giving priority to the interests of the nation-state citizen. This narrow migration policy, tailored to the interests of the EU States, often overlooks the global context of the cause of flight. For what, for example, the ongoing macabre spectacle of mass deaths at the external borders of the European Union reveals, beyond the usual hypocritical, emotional and cynical public statements of those politically responsible, is the impossibility of stopping hopeless people from seeking an existence more acceptable to them through repressive measures alone. (Seukwa, 2013, p. 7)

It is not an overstatement to stress that major population displacement and big waves of

flight in human history have always been due to structural causes. Europe and the West as a whole bear considerable historical responsibility in creating structural inequalities on the global scale through the ruthless practice of unequal trade, military interventions to secure natural resources and geostrategic interests, development aid – or better "lethal aid" (Erler, 2012), etc. All this demonstrably destroys the social and ecological livelihood of the countries concerned and drives their populations to flee. Thus, the wealth and political stability of the countries of the North cannot be causally separated from the poverty and political instability of the countries of the South and the resulting flight of the population (push – pull factors).

In other words, it is illusory to think that, although we are creating more and more reasons that trigger flight around the world by ruthlessly pursuing our national interests, we can prevent exploited and impoverished people from coming here, especially since our life of prosperity – thanks to media of all kinds – is perceived to the far corners of the globe.

The repressive and restrictive measures of the EU asylum policy, such as the arbitrary expansion of so-called safe countries, the detention and internment of refugees, the denial of social assistance and work prohibitions, the restriction of family reunification, the debate about the establishment of transit zones or the rapid and consistent deportation of so-called economic refugees, etc. are grimaces of a policy that is incapable of consistently bearing the consequences of its foreign policy, economic, and military actions in ethical responsibility. In this respect, refugees are the bitter yield of our ideology of growth and prosperity (Seukwa, 2016: 109).

In this context, the attempt to clearly distinguish "refugees" from "migrants" according to the criterion of "forced" vs. "voluntary migration" is doomed to failure (cf., e.g., the comments of UNHCR, 2000: 175). This is because political conflicts and instability, wars between states and civil wars, etc., inevitably go hand in hand with the destruction of economic conditions of life; ecological catastrophes are increasingly playing an aggravating role, whereby the question of their "causes" can probably only be answered on a global scale.

In view of this, it must be noted that the ethical justification for active cooperation in overcoming the social challenges for Europe associated with flight cannot and must not be derived from general humanitarian and charitable arguments alone. It must come to terms with aggravating factors that, contribute to or deliberately fail to prevent the causes that produce flight.

Nevertheless, the refugee issue in the European host countries is mainly discussed from the perspective of preventing "asylum abuse". In addition to measures to "prevent entry" as well as measures to shift responsibility to other countries (which leads to the phenomenon of "chain deportations" and amounts to a violation of the fundamental Convention principle of "non-refoulement"), the UNHCR in its October 2018 report notes an increasingly restrictive interpretation of the refugee definition by the authorities of the receiving countries as well as the establishment of various "deterrence measures" aimed at reducing migration through asylum.

The fact that such asylum policies, the associated legal dispositions combined with restrictive official action in its implementation as well as social stigmatization and racism determine the living situation and everyday life of those affected to a high degree negatively, is unmistakably substantiated by all the studies that we have conducted for

over twenty years with and about refugees in Germany (cf. references in section 1).

3. Empirical Contextualization: Main Research Question

Despite the well-known negative effects of asylum regimes on the successful integration of refugees into the functional systems of host societies, research shows that many of them are remarkably successful in their educational ambitions – to limit ourselves to this field only. (Neumann et al., 2003; Schammann & Younso, 2016; Seukwa, 2020, 2022; Stifterverband für die Deutsche Wissenschaft, 2018). In our research, we therefore explored the question of what resources and competencies such refugees with unsecured residency status (can) draw upon to remain capable of acting and to achieve success in their educational and professional endeavors despite the adversity that often characterize their daily lives in Germany. With this question, we focus on the individual resources and especially on their efficient use by the refugees in order to preserve their agency, i.e., their ability to act, despite heteronomous, or alienating structures.

The relevance for political or civil education of such an approach is obvious if one seriously wants to counter the social stigmatization of refugees, for example, as “criminals”, “lazy people”, “unjustified recipients of social allowances” or the victim discourse that is not seldom cultivated by social workers, teachers, caregivers and other so-called “helpers”. In relation to this, most studies show us with astonishing clarity that the ‘refugee’ constructed as a victim, is the one preferred by most pedagogues and social workers. He is the ‘real refugee’, who is assessed as willing and able to integrate, in contrast to the ‘bogus asylum seeker’ or ‘economic refugee’. The attributes associated with this figure are: Misery, sadness, ability to suffer, modesty, obedience, gratitude, etc. This enables a large part of the pedagogues and “helpers” involved in refugee work to position themselves as superior in the interaction and to meet the refugees with paternalistic and merciful attitudes.

A reflexive distance to victimization discourses is therefore necessary here in order to avoid problematic effects of paternalistic victimization and at the same time to avoid instrumentalization for refugee push back discourses, which occur especially when (migration) strategies and ways of acting of refugees do not fit into the concept of the refugee as a helpless victim. It is not uncommon in such cases for the benevolent sympathy of the ‘helpers’ to turn into disappointed cynicism as soon as the refugees become autonomous and capable of assuming himself and thus no longer correspond to society's stereotype of victims.

From the perspective of justice theory, the treatment of refugees appears to be a touchstone for the state of compensatory justice in the educational systems of the European host countries. The advantage of this approach from the perspective of educational theory is that educational or socio-pedagogical as well as labor market promotion instruments that aim to reduce the structural disadvantages refugees are subject to on an individual level need a scientifically sound information base on the resources and competencies of refugees if they want to avoid the pitfalls of the deficit approach.

In order to theoretically pursue this question of agency, the focus must be on the subject in its process of constitution, as this takes place in the ongoing confrontation and struggle with the alienating social structures. In contrast to the Kantian conception of the subject,

the subject in question here is not primarily an autonomous subject. Both its autonomy and its individuality are secondary conditions that always develop against the background of existing social relations and structures in which the subject was initially integrated. Moreover, it is a subject perceived primarily from the point of view of action, which sets in motion the process of becoming an agent in confrontation with the alienating social structures.

Michel de Certeau (1988) has written about this type of action as follows:

"Long ago, for example, the ambiguous process that had undermined the 'success' of the Spanish colonizers among the Indian peoples was studied: Submissive and even willing, these Indians often made of the ritual acts, ideas, or laws that had been imposed on them something quite different from what the conqueror thought he had achieved with them; they subverted them not by rejecting or changing them, but by the way they used them for purposes and with points of reference strange to the system from which they could not escape. Within the colonial system that outwardly 'assimilated' them, they remained strangers; their use of the dominant order was a play on its power, which they could not reject; they escaped from that order without leaving it" (de Certeau, 1988: 13-14).

Our empirical analyses of such actions, shed light on a whole range of tactics that refugees use to circumvent repressive measures. Some of these can be summarized in key words as follows:

- External difficulties are met as a challenge
- Educational time is used optimally
- Opportunities are identified and implemented
- Even in uncertainty, work is courageously continued on the draft of the future
- In days of despair, social contacts are resorted to
- Trust is subordinated to caution
- Realistic goals are subordinated to individual dreams
- The adversities of life are consistently defied

The procedures subsumed under these categories crystallize the types of operations that the confluence of particular circumstances produced in the refugees with whom we did our research. As an impressive subversive "instruction manual" for dealing with the repressive technologies of power, these micro-processes characterize the subtle, persistent activity, the resistance of a subject that has to find its way in the network of established forces and ideas. You have to manage by doing something with it. It is these competencies, which are expressed, among other things, in the resilience ability to develop forms of self-design even in situations of extreme heteronomy and to achieve educational successes, such as those resulting from the precarious status of asylum seekers and refugees in Germany, that lead to the formation of a habitus of survival (Seukwa, 2007: 233).

Despite their impressive educational careers in Germany achieved under difficult structural conditions, many of the refugees in our research perceive their migration to Germany as a biographical upheaval; and this not only because migration itself is a leap into the unknown. For people who have thus escaped the morbidity widespread in the

dysfunctional states of their countries of origin, this leap means above all a spark of hope given the sad reality they are leaving behind. By the way, this hope is not completely unjustified or justified only by the certainty of a lack of future prospects in the home countries, as it is also based on a certain image of the countries of the North, which they themselves disseminate through various media, showing them as places where it is good to live. The refugees often see States like Germany as places where sufficient material goods are distributed rationally and fairly, but above all, where respect for the rights of the person is guaranteed regardless of their origin, gender and social class.

Most of them realize that this image is illusory when they have made the perilous journey to such a northern country and are subjected, body and soul, to the everyday restrictions, discrimination and other forms of exclusion imposed by the asylum laws. Caught in the trap of this unexpected hardship, it is a true art to pull oneself out of the quagmire by one's own hair. It is the art of transgression that, through a combination of different tactics, makes it possible to survive within a restrictive and repressive system, such as the measures derived from asylum law, without leaving it or resigning oneself to it. (Seukwa, 2007: 248).

The habitus of survival or ingrained art of survival is thus a basic human disposition or second-order competence that is the product of socialization in a particular context. This context is characterized by structures that in many respects acts heteronomously for the unfolding of the subject. From this definition it follows that the concept is based on three important elements, the acquisition, the context and the transfer mechanism:

(1) Acquisition points to the historicity of the disposition; thus, it is not innate. (2) Context provides a type of disposition by its characteristics and peculiarities. It also points to its essentially place-bound or local character (socio-contextuality). (3) The art of survival as a habitus makes it possible to gain insight into the mechanisms by which the transfer of this competence from one context to another occurs, because it is precisely a property of the habitus to reproduce itself in a new context when this has similarities with the context in which it was acquired. In this way, the structural similarity between the context of its acquisition and its application forms a necessary condition for generalizations in the study of resilience as resources that migrants possess.

In other words, the empirical evidence of the habitus of survival that manifests as resilience among much of the refugees we have studied is an indication that the refugee context in Germany, like the context in the countries of origin where they fled, affects these refugees heteronomously. Therefore, resilience manifests itself and is necessary where structures are deficient for the development of the individual. That is to say, where the art of living (*art vivendi*) is not possible, the art of survival develops.

This having been said, why has resilience, defined as an individual ability to defy life's adversities, become an important factor in the educational affairs of refugees? The disillusioning answer is: because national egoisms prevent the Occident as a whole from seeing flight and refugees as symptoms and consequences of its global irresponsibility. Consequently, it is not surprising that he (the West) is incapable of facing the question of global solidarity. This solidarity would mean, in terms of educational policy, to implement measures of restorative justice through migration-related structural and institutional educational reforms for refugees as well!

4. Contextualization related to Profession-theory: Habitus Sensitivity

In the literature on profession theories in the field of pedagogy and social work, the term “habitus sensitivity” is being used to deal more intensively with the question of what demands emerge for professional action from the standpoint of social inequality (Sander, 2014). For it should be

“indisputable that the social situation or the available resources, but also the actor-specific dispositions (as elaborated, for example, in Pierre Bourdieu's concept of habitus) (can) have an effect on the actions of the persons involved pedagogical processes and the course of interaction between them that can hardly be underestimated” (Weckwerth, 2014: 38).

“Habitus sensitivity” is especially needed

“where professionals come into contact with the diversity and inequality of life backgrounds and experiences of the clients, which are related to different categories of social difference (e.g., gender, age, origin, religion)” (Kubisch 2014: 117).

Consequently, “habitus sensitivity” is also necessary for a pedagogical communication that is respectful and congruent with young refugees. “Habitus sensitivity” means that teachers, educators, social workers, psychologists and therapists consider the social situation of their clients in their professional actions as well as reflect on their own social situation as professionals (cf. Sander, 2014: 9). “Habitus sensitivity”, according to Sander, becomes necessary whenever “members of different social milieus want to establish a working alliance” (2014: 11) and “have to tackle a task or solve a problem together” (2014: 16). Consequently, it is essential in working alliances to confront the social inequality that exists between the clientele and the professionals, because this social asymmetry shapes all pedagogical communication (2014: 10).

Refugees, as well as persons living on unemployment benefit, those with a disability, and those who are homeless, have addiction problems, or belong to a discriminated minority, are among the vulnerable groups who have to bear the consequences of the unsolvable “social question” in their individual educational trajectories (Schroeder & Seukwa, 2017). In Germany, they are predominantly caught up in a parallel system of social law for refugees, which pushes them into poverty due to asylum for many years. In schools, they are then among themselves in refugee classes or meet peers from other social milieus in mainstream classes. The pedagogical and social work staff in the education and social support system are predominantly from the established classes, so it is highly likely that the pedagogical reference is also characterized by social asymmetries.

According to Bourdieu, habitual patterns are “action-guiding orientations in the sense of habitual modes of perception, construction, and action” (cf. Kubisch, 2014: 117). These are acquired in the course of life, they provide security, and they permanently structure work in professional practice. Several empirical studies on students of social work impressively prove that the habitus “brought along” to the university is a relatively stable and difficult to change structural entity and that “habitus modifications” among students can only be triggered to a limited extent by their university studies. On the other hand, there is probably little more that can be done than to offer such reflective settings in the training, further training, and continuing education of pedagogical professionals in which they can be made aware on their own dispositions and individual practices of distinction, as the habitualized mechanisms of the reproduction of social inequality, can be reduced (cf. Weckwerth, 2014: 58-60).

Thus, in order to be able to train “habitus sensitivity” as a professional competence of refugee work, a curriculum is necessary that provides well-founded life-world knowledge about the social situation of the clientele and enables a realistic self-location of the professionals in the global society as well as offers a methodology for the development of educational and support concepts in which pedagogical communication is organized as institutional responsibility and the identification of hidden barriers is structurally established.

For according to Jürgen Habermas, curricula are the result of social “struggles for recognition in the democratic constitutional state” (1997: 147). And therefore, “the decision about the curriculum of public schools touches the ethical self-understanding of the nation” (1997: 168).

In the 1990s, there were heated debates in universities in the United States and Canada as women, blacks, and people with disabilities demanded that the “canon of dead white old men” be supplemented with perspectives that also made marginalized social groups visible. With reference to these controversies, Habermas argues that, among other things, it is in the university that the equality of cultural ways of life is negotiated (1997: 149). “Usually, of course, cultural non-recognition is combined with blatant social underprivilege, the two being cumulatively reinforced” (1997: 151). Such ethico-political issues could inflame “cultural struggles in which disregarded minorities defend themselves against an insensitive majority culture” (1997: 168). As for now, however, it must be assumed that refugees, due to their “cultural non-recognition” and “blatant social underprivilege”, do not have sufficient power to fight back in such “culture wars”, certainly not in curriculum development.

In recommendations of the German Rectors' Conference on Internationalizing the Curriculum (HRK 2017), with reference to Betty Leask (2015), HRK takes up this perspective to some extent:

“Australian education scholar Betty Leask (LaTrobe University, Melbourne) paraphrases internationalization of curricula as follows: ‘Internationalization of the curriculum is the incorporation of international, intercultural, and/or global dimensions into the content of the curriculum as well as the learning outcomes, assessment tasks, teaching methods, and support services of a program of study.’ Based on this definition, Leask develops a complex model of internationalization of curricula that includes the formal curriculum, the informal curriculum, and the hidden curriculum” (HRK, 2017: 3).

Remarkably, however, the HRK recommendations “in contrast to Leask’s comprehensive definition” then focus in terms of curriculum “primarily on the core areas of goals and content” (HRK, 2017: 3). In contrast, we adhere to positions that call for “hidden curriculum” to be extensively scrutinized and addressed in higher education, because hidden curriculum unavoidably triggers unintended consequences and often reinforces existing social inequalities. Some authors describe the hidden curriculum as those socialization processes that occur “incidentally” during the course of study and are not explicitly expressed or reflected upon. It refers to the entire spectrum of ethical attitudes and communicative skills that are required in professional practice, but are difficult to transmit in an intentional way. Routines, rules and interactions are structured in practice. Students are usually socialized into these without any questioning, and they adapt and subordinate themselves to them.

“The ultimate consequence of the hidden curriculum includes reproducing the existing class structure, socialization, and familiarizing learners for transmission and joining the professional world” (Andarvazh et al., 2017: 204).

Hence the call for this "hidden curriculum" is to be systematically reflected in higher education teaching (Kalantary et al., 2018): Students should learn to perceive such problematic forms of interaction and to develop respectful competencies, patterns of action, and attitudes in comparison with what they are taught in the formal curriculum at university (Kalantary et al., 2018: 2).

This requires, among other things, habitus-critical internships. In majors for social work and pedagogy, internships are constitutive curricular components. Students should gain practical experience and try things out, get to know the institutional structure of the field of action they are studying, reflect on organizational structures and processes, etc. The goal is to train professional competencies for the professional field of action addressed by the academic program. This type of internship, however, leads involuntarily to the formation of the professional habitus, which is desirable. By doing so, however, the “clientele” is seen from the perspective of the profession and the professionals. Yet it is by no means guaranteed that the students can approach the life world of the clientele and their “habitus of survival” in this way.

The term exposure refers to the moment of exposition, but also – for example in pedagogy – to exposing oneself (Hentschel & Krasmann 2020). Many years ago, we read a report, which we can no longer find, but in which an interesting exposure project was reported: Senior World Bank staff were "exposed" to slums in India for four weeks. Whereas they had previously viewed development, finance and credit policy from the perspective of the capitalist banking system and thus from a professional habitus, they later reported that they now always have the people in the slums in mind in their daily work – and thus perhaps a habitus irritation has occurred to some extent in their professional actions. The Catholic Church still offers such exposure projects today (Agiamondo, 2022).

Also, many students immerse to such exposure projects in an internship or a voluntary social year before their studies by working for a time in the poorest countries of the world. For some time now, approaches have been developed to offer this also during their studies and in the environment of the places where they study, in order to enable reflection on this in their studies. For some time now, this has been referred to as "service learning" (Rosenkranz et al., 2020): Students do not engage in highly professionalized fields of action, but in direct encounters with the clientele with whom they intend to work later.

We have been providing everyday mentoring projects for refugees for many years in order to make such experiences possible. In these lifeworld-oriented mentoring projects, there is the chance to get to know these lifeworlds and also to critically recognize the effects and perspectives of institutions on such lifeworlds (Schroeder & Storz, 1994; Bernhardt et Schroeder 2014; Seukwa, 2014; Schroeder, 2019; Schroeder & Wagner, 2021). If future social workers want to learn how to support persons in their life contexts, they must learn to take the entire life situation into consideration and not only the section for which the institutional field of action is responsible. In order to generate the necessary life-world knowledge, they must reflect on the negative effects of milieu barriers when the prospective professionals' systems of interpretation, values and norms come into conflict with the cultural patterns of the clientele. This is one of the important conditions for the possibility that a reciprocal habitus sensitivity can emerge.

5. Conclusion: Research desideratum 'Remigration'

In our research, we have concentrated on the biographical phase of asylum and on the question of what has become of refugees years after they have been recognised and whether integration into society really goes as smoothly or sustainably as is promised to the refugees on their arrival. The entire topic of remigration remains largely unaddressed in migration research. Many integration measures relevant to refugees pursue the promotion of return and sustainable reintegration into the country of origin as an overarching political goal (Cassarino, 2008). However, only sparse research on return to the country of origin has developed in migration research. Long seen as a "special case of migration" (Unger, 1983: 30), there are now a few studies, without a special field of research on flight having emerged from them (Schleimer, 2018). This is because remigration research had always assumed a voluntary return, for example the return of "guest workers" to their "home country" after retirement. It was not until the 1980s and 1990s that forced remigration also became part of the international return debate due to the increase in refugee migration, although it usually does not appear in theoretical approaches (Schleimer, 2018: 59). Until today, forced remigration has remained a very neglected topic in refugee research.

References

- Agiamondo. (2022). *Exposure-Programme. Agiamondo und EDP beginnen Kooperation.* weltkirche.de. <https://weltkirche.katholisch.de/artikel/34503-exposure-programme-agiamondo-und-edp-beginnen-kooperation>
- Andarvazh, M., Afshar, L., & Yazdani, S. (2017). Hidden curriculum. An analytical definition. *Journal of Medical Education* 16(4), 98-207.
- Arouna, M., Breckner, I., Ibis, U., Schroeder, J., & Sylla, C. (2019). *Fluchttort Stadt. Explorationen in städtische Lebenslagen und Praktiken der Ortsaneignung von Geflüchteten.* Springer VS.
- Arouna, M., Breckner, I., Budak-Kim, H., Ibis, U., Meyer, F., & Schroeder, J. (2022). *Transformationsprozesse am Fluchttort Stadt. Erweiterte Explorationen in städtische Lebenslagen und Praktiken der Ortsaneignung von Geflüchteten.* Springer VS.
- Bach, M., Narawitz, L., Schroeder, J., Thielen, M., & Thönneßen, N.-M. (Eds.) (2021). *FluchtMigrationsForschung im Widerstreit. Über Ausschlüsse durch Integration.* Waxmann.
- BAMF (2018). *Konsolidierung des Migrationsgeschehens* https://www.bamf.de/SharedDocs/Anlagen/DE/Forschung/Migrationsberichte/MB-2018/migrationsbericht-2018-konsolidierung.pdf?__blob=publicationFile&v=4
- Bernhardt, R., & Schroeder, J. (2014). Begleitung der Alltagsbegleitung. In R. Bernhardt, S. Rinck-Muhler, & J. Schroeder (Eds.), *Fördern will gelernt sein. Pädagogische Praxisprojekte – ein innovatives Element universitärer Ausbildung* (pp. 155-171). Klinkhardt.
- Bourdieu, P. (1987). *Sozialer Sinn. Kritik der theoretischen Vernunft.* Suhrkamp.
- Bourdieu, P. (1997). Die männliche Herrschaft. In I. Dölling, & B. Kraus (Hrsg.), *Ein alltägliches Spiel. Geschlechterkonstruktion in der sozialen Praxis* (pp. 153-217). Suhrkamp.
- Cassarino, J.P. (2008). Conditions of modern return. *International Journal on Multicultural Societies* 10(2), 95-105.
- De Certeau, M. (1988). *Kunst des Handelns.* Merve.
- Erler, B. (2012). *Tödliche Hilfe. Bericht von meiner letzten Dienstreise in Sachen Entwicklungshilfe.* Dreisam Verlag.
- EU (2016). *Bekämpfung der Fluchtursachen. Geberkonferenz zur Syrien-Krise in London (Februar 2016).* <https://www.bundesregierung.de/breg-de/themen/bekaempfung-der-fluchtursachen-231580?view=renderNewsletterHtml>

- Fluchtursachen und Umgang in den Ursprungsländern mit der Krise (2022, December 14). in *Wikipedia*. https://de.wikipedia.org/wiki/Europ%C3%A4ische_Fl%C3%BChtlingskrise#Fluchtursachen_und_Umgang_in_den_Ursprungsl%C3%A4ndern_mit_der_Krise
- Goetze, K. (2021). *Fluchtspezifische Anomien und sozialmoralische Bewältigung. Selbstkonzepte Geflüchteter im Spiegel asyl- und aufenthaltsrechtlicher Bedingungen der Lebensführung*. Logos.
- Grotheer, A., & Schroeder, J. (2018). Unterbringung von Geflüchteten mit einer Behinderung. Ein Problemaufriss am Beispiel von Hamburg. In M. Westphal & G. Wansing (Eds.), *Migration, Flucht und Behinderung: Herausforderungen für Politik, Bildung und psychosoziale Dienste* (pp. 81-101). Springer VS.
- Habermas, J. (1997). Anerkennungskämpfe im demokratischen Rechtsstaat. In C. Taylor (Ed.), *Multikulturalismus und die Politik der Anerkennung* (pp. 147–196). Fischer.
- Hensel, T. (2022). *Übergänge von der Kinder- und Jugendpsychiatrie und Klinikschule in das allgemeine Schulsystem im Spannungsfeld von Kontinuität und Diskontinuität* [Unpublished doctoral dissertation]. University Hamburg.
- Hentschel, C., & Krasmann, S. (Eds.) (2020). »Exposure«. Verletzlichkeit und das Politische in Zeiten radikaler Ungewissheit. Transcript.
- HRK (Hochschulrektorenkonferenz) (2017). *Zur Internationalisierung der Curricula. Empfehlung der 22. Mitgliederversammlung der HRK am 9. Mai 2017 in Bielefeld*. Bonn/Berlin: HRK. https://www.hrk.de/fileadmin/redaktion/hrk/02-Dokumente/02-01-Beschluesse/Internationalisierung_Curricula_Empfehlung_09.05.2017.pdf
- Kalantary, S., Chehrehgosh, M., Shirazi, N., Behmadi, M., Mojarads, A., & Jouybari, L. (2018). Training professionalism using hidden curriculum in an internship course. Account of experiences of undergraduate students of surgical technology. *Strides Development Medical Education* 15(1), e65704. http://sdme.kmu.ac.ir/article_90529_7fd6b1b823b515b48617a42557f18b41.pdf
- Kubisch, S. (2014). Habitussensibilität und Habitusrekonstruktion. Betrachtungen aus der Perspektive der dokumentarischen Methode am Beispiel Sozialer Arbeit. In T. Sander (Ed.), *Habitussensibilität. Eine neue Anforderung an professionelles Handeln* (pp.103-134). Springer VS.
- Leask, Betty (2015). *Internationalizing the curriculum. Internationalization in higher education*. Routledge.
- Mehring, P. (in prep.). *Empowerment im Kontext von Flucht, Migration und Behinderung* [Unpublished doctoral dissertation]. University Bielefeld and University Hamburg.
- Narawitz, L. (in prep.). *Identifizierung des sozialarbeiterischen Handlungsbedarfs im Kontext der Auswirkungen der hegemonialen Position des ‚Asylbetruges‘ im Einwanderungsdiskurs über Geflüchtete aus ‚sicheren‘ Herkunftsstaaten im Asylverfahren* [Unpublished doctoral dissertation]. University Hamburg and University of Applied Sciences Emden-Leer.
- Neumann, U., Niedrig, H., Schroeder, J., & Seukwa, L. H. (Eds.) (2002). *Wie offen ist der Bildungsmarkt? Rechtliche und symbolische Ausgrenzungen junger afrikanischer Flüchtlinge im Bildungs-, Ausbildungs- und Beschäftigungssystem*. Waxmann.
- Neumann, U., Niedrig, H., Schroeder, J., & Seukwa, L. H. (2003). *Lernen am Rande der Gesellschaft. Bildungsinstitutionen im Spiegel von Flüchtlingsbiografien*. Waxmann Verlag.
- Niedrig, H., & Schroeder, J. (2003a): „Doing black – doing gender.“ Afrikanische Flüchtlingsjugendliche aus der Genderperspektive. In V. Böll (Ed.), *Umbruch – Bewältigung – Geschlecht. Genderstudien zu Afrikanischen Gesellschaften in Afrika und Deutschland* (pp. 91-107). Waxmann Verlag.
- Niedrig H.; Schroeder, J., & Seukwa L. H. (2001). Bildung mit beschränktem Zugang. Ausgrenzung afrikanischer Flüchtlinge. *epd-Entwicklungspolitik* (13), 32-36).
- Niedrig, H., Schroeder, J., & Seukwa, L. H. (2002). Lernen in „totalen Räumen“. Ausgrenzung und Marginalisierung afrikanischer Flüchtlingsjugendlicher im deutschen Bildungssystem. In U. Neumann, H. Niedrig, J. Schroeder, & L.H. Seukwa (Eds.). *Wie offen ist der Bildungsmarkt?*

- Rechtliche und symbolische Ausgrenzungen junger afrikanischer Flüchtlinge im Bildungs-, Ausbildungs- und Beschäftigungssystem* (pp. 27-38). Waxmann.
- Niedrig, H., Schroeder, J., & Seukwa, L.H. (2003b). Verkürzte Jugend. Junge afrikanische Flüchtlinge in Hamburg. In U. Luig, & J. Seebode (Eds.), *Ethnologie der Jugend* (pp. 97-120). Lit.
- Niedrig, H., & Seukwa, H. (2010). Die Ordnung des Diskurses in der Flüchtlingskonstruktion. Eine postkoloniale (Re-)Lektüre. „Diskurs“ *Zeitschrift für Kindheits- und Jugendforschung* (2), 181-193.
- Olbers, Sofie (2022). *Theater im Fluchtcontext: Für ein widerspruchssensibles Re-präsentieren in der kulturellen Bildung*. Peter Lang.
- Raffarin, J.-P., & Bizet, J. (2017). *Europa wieder in Schwung bringen. Den Geist aus Rom wieder finden*. https://www.senat.fr/rap/r16-434-3/r16-434-3_mono.html#toc52
- Rosenkranz, D., Roderus, S., & Oberbeck, N. (Eds.) (2020). *Service Learning an Hochschulen. Konzeptionelle Überlegungen und innovative Beispiele*. BeltzJuventa.
- Runge, Pauline (in prep.). *Lebenslagen zugewanderter Jugendlicher und junger Erwachsener in der Hamburger Straßenszene. Eine explorative Studie zur Analyse der Erscheinungsformen von Straßenkarrieren und Unterstützungsbedarfen unter den Bedingungen von Zuwanderung und Zwangsmigration* [Unpublished doctoral dissertation]. University Hamburg and University of Applied Sciences Hamburg.
- Sander, T. (Ed.) (2014). *Habitussensibilität. Eine neue Anforderung an professionelles Handeln*. Springer VS.
- Schammann, H., & Younso, C. (2016). *Studium nach der Flucht? Angebote deutscher Hochschulen für Studieninteressierte mit Fluchterfahrung. Empirische Befunde und Handlungsempfehlungen*. Universitätsverlag Hildesheim. <https://www.uni-hildesheim.de/media/presse/Studium-nach-der-Flucht.pdf>
- Schäfermeier, L. (in prep.). *Ethnographie eines Flüchtlingslagers in Deutschland. Psycho-soziale Bewältigungsformen geflüchteter Menschen in einer schwierigen Form der Unterbringung*. [Unpublished doctoral dissertation]. University Hamburg and University of Applied Sciences Emden-Leer.
- Schleimer, S.M. (2015). Transnationale Formen der Remigration von Geflüchteten als Herausforderung für Integration und Bildung. In J. Schroeder (Ed.), *Geflüchtete in der Schule. Vom Krisenmanagement zur nachhaltigen Schulentwicklung* (pp. 58-76). Kohlhammer.
- Schmitt, L. (2014). Habitus-Struktur-Reflexivität. Anforderungen an helfende Professionen im Spiegel sozialer Ungleichheitsbeschreibungen. In T. Sander (Ed.), *Habitussensibilität. Eine neue Anforderung an professionelles Handeln* (pp. 67-84). Springer VS.
- Schroeder, J. (2003). Ungesicherter Aufenthalt – verunsicherte Identitäten. Selbst- und Fremdbilder junger afrikanischer Flüchtlinge in Hamburg. In A. Eder (Ed.) (unter Mitarbeit von K. Vagt), *„Wir sind auch da!“ Über das Leben von und mit Migranten in europäischen Großstädten*. Forum Zeitgeschichte, Bd. 14 (pp. 327-348). Verlag Dölling und Galitz.
- Schroeder, J. (2015). Lebenslagenanalysen. In S. Ellinger, & K. Koch (Ed.), *Empirische Forschungsmethoden in der Heil- und Sonderpädagogik* (pp. 254-260). Hogrefe Verlag.
- Schroeder, J. (2019). Annäherungen an Lebenslagen und Biografien junger Geflüchteter. Eine unabdingbare Voraussetzung für eine pädagogische Kommunikation „auf Augenhöhe“. In J. Schroeder (Ed.), *Geflüchtete in der Schule. Vom Krisenmanagement zur nachhaltigen Schulentwicklung* (pp. 13-36). W. Kohlhammer.
- Schroeder, J., & Seukwa, L.H. (2007). *Flucht – Bildung – Arbeit. Fallstudien zur beruflichen Qualifizierung von Flüchtlingen*. von Loeper.
- Schroeder J., & Seukwa, L. Henri (2008). Arbeit und berufliche Bildung für Flüchtlinge. „Standpunkt: sozial“, (1-2), 12-24.
- Schroeder, J., & Seukwa, L.H. (2017). *Soziale Bildungsarbeit mit jungen Menschen. Handlungsfelder, Konzepte, Qualitätsmerkmale*. transcript.
- Schroeder, J., & Seukwa, L.H. (2018). Bildungsbiografien. (Dis-)Kontinuitäten im Übergang. In N. von Dewitz, H. Terhart, & M. Massumi (Ed.), *Neuzuwanderung und Bildung: Eine interdisziplinäre Perspektive auf Übergänge in das deutsche Bildungssystem* (pp. 141-157). Beltz Juventa.

- Schroeder J., Seukwa, L. H., & Voigtsberger U. (Ed.) (2016). *Quality Features of educational and social work - European perspective*. VS- Verlag.
- Schroeder, J., Seukwa, L.H., & Wagner, U. (2019). Vernachlässigte Themen der Flüchtlingsforschung. Über Leerstellen im Feld der Wissenschaft zu Flucht und Asyl. In B. Behrensen, & M Westphal (Eds.), *Fluchtmigrationsforschung im Aufbruch. Methodologische und methodische Reflexionen* (pp. 25-47). Springer VS.
- Schroeder, J., & Storz, M. (1994). *Einmischungen. Alltagsbegleitung junger Menschen in riskanten Lebenslagen*. Vaas Verlag.
- Schroeder, J., & Wagner, U. (2021): "Armut kennt viele Geschichten". Annäherung an Armutslagen als hochschuldidaktische Herausforderung. *Der pädagogische Blick*, 29 (3), 211-213.
- Seukwa, L.H. (2007). *The Ingrained art of survival. The nexus between competences and migration as reflected in refugee biografies*. Rüdiger Köppe.
- Seukwa, L.H. (2013). Integration of Refugees into the European education and labour market. Requirements for a target group-oriented approach. General Introduction. In L. H. Seukwa (Ed.), *Integration of Refugees into the European Education and Labour Market* (pp. 7-16). Peter Lang.
- Seukwa, L.H. (2014). Soziale Arbeit mit Flüchtlingen zwischen Macht und Ohnmacht. In M. Gag, & F. Voges (Ed.). *Inklusion auf Raten* (pp. 49-59). Waxmann.
- Seukwa, L.H. (2016). Flucht. In P. Mecheril (Ed.), *Handbuch Migrationspädagogik* (pp. 196-210). Beltz.
- Seukwa, L.H. (2017). Handlungsfähigkeit und Heteronomie. Eine kompetenztheoretische Perspektive auf fluchtmigrationsbedingte Bildungsdiskontinuitäten. In J. Bröse, S. Faas, & B. Stauber (Ed.), *Flucht. Herausforderungen für die Soziale Arbeit* (pp. 73–93). Springer VS.
- Seukwa, L.H. (2020). Informelle Bildung und Kompetenzerwerb. Der Habitus der Überlebenskunst im Spiegel mitgebrachter Ressourcen neu zugewanderter Jugendlicher. In W. Baros (Ed), *Bildungsherausforderungen in der globalen Migrationsgesellschaft: Kritische Beiträge zur erziehungswissenschaftlichen Migrationsforschung* (pp. 231-252). Peter Lang.
- Seukwa, L.H., & Wagner, U. (2021). *Pädagogik angesichts von Vulnerabilität und Exklusion. Bummeln durch die Landschaft der Randständigkeit*. Peter Lang.
- Seukwa, L.H. (2022). Von Geflüchteten lernen. Kompetenz und Ressourcenorientierung als Motor einer migrationsbedingten Hochschulentwicklung. In W. Baros, & M. Sailer, (Ed.), *Bildung und Kompetenz in Konkurrenz?* (pp. 165-189). Springer VS.
- Shah Hosseini, N. (in prep.). *Lebenslagen von Migrantinnen und Migranten mit einer seelischen Beeinträchtigung in Hamburg. Eine intersektionale Analyse der Einflussfaktoren auf die Lebenslage im Schnittfeld Flucht und Behinderung* [Unpublished doctoral dissertation]. University Hamburg and University of Applied Sciences Hamburg.
- Stifterverband für die Deutsche Wissenschaft (2018). *Hochschul-Bildungs-Report 2020*. <http://www.hochschulbildungsreport2020.de/downloads>
- Thielen, M. (2008). *Wo anders leben? Migration, Männlichkeit und Sexualität. Biografische Interviews mit iranischstämmigen Migranten in Deutschland*. Waxmann.
- Unger, K. (1983). *Die Rückkehr der Arbeitsmigranten. Eine Studie zur Remigration nach Griechenland*. Breitenbach.
- UNHCR (2000). *The state of the world's refugees 2000. Fifty years of humanitarian action*. <https://www.unhcr.org/publications/sowr/4a4c754a9/state-worlds-refugees-2000-fifty-years-humanitarian-action.html>
- Vester, M., von Oertzen, P., Geiling, H., Hermann, T., & Müller, D. (2001). *Soziale Milieus im gesellschaftlichen Wandel. Zwischen Integration und Ausgrenzung*. Suhrkamp.
- Wagner, U. (2019). *Übergänge hinter Gittern. Übergangserfahrungen junger Menschen von Haft in Freiheit im Spiegel institutioneller Bedingungen*. Beltz Juventa.
- Weckwerth, J. (2014). Sozial sensibles Handeln bei Professionellen. Von der sozialen Lage zum Habitus des Gegenübers. In T. Sander (Ed.), *Habitussensibilität. Eine neue Anforderung an professionelles Handeln* (pp. 37-66). Wiesbaden: Springer VS.
- Wernet, A. (2003). *Pädagogische Permissivität. Schulische Sozialisation und pädagogisches Handeln jenseits der Professionalisierungsfrage*. Leske + Budrich.

Wirsching, S. (2016). *EU schottet sich ab statt Flüchtlinge zu schützen*. Brot für die Welt.
<https://www.brot-fuer-die-welt.de/blog/2016-eu-schottet-sich-ab-statt-fluechtlinge-zu-schuetzen/>

Children and Youth with Flight and Migration Experiences Affected by Disability and Medical Fragility: Challenges at the Intersection of Asylum Law and Disability Law in Germany¹

Friedegard Föltz²

Abstract

Flight, migration, asylum seeking and disability or medical fragility as an intersectional life situation is not a rare situation. As per international principles, special support and protection is granted for groups of so-called vulnerable persons. Nevertheless, persons with disabilities who are refugees often remain in a particularly complicated living situation. They have a great need for specific information, care and support in their own or host country. Children and youth at the intersection of flight and migration and also having a disability or medical fragility are disadvantaged in more than one way - as a refugee, as a child, and as a person living with a disability. So far, although they belong to the group classified as vulnerable persons, their need of special support and their rights are often not regarded. Despite international principles and instruments for identifying and determining special situations of refugees, their situation and needs are not systematically identified. In Germany, due to the complexity of shifts in responsibility of authorities, inter-institutional transitions of persons in the assistance system and corresponding coordination and procedural problems, there are significant gaps in information and counseling. Whether and in what form refugees, affected by disabilities, are protected and supported through appropriate measures often depends on the commitment of individuals and thus is subject to randomness. In Germany, information and care is often not sufficiently available, with corresponding serious long-term consequences, particularly for children. This article aims to increase knowledge in this special field of child and youth welfare, to provide insights towards a better practice, and to clarify implications for policies. It is a theoretical contribution in investigating what topics regarding this focus group have been documented and dealt with in the literature and through studies. In addition, six semi-structured interviews with families and professionals were conducted to verify findings from the literature on a micro level. In analyzing the situation of the German reception system, findings concentrate on the legal framework and on the essential issues of identification of special protection needs, medical support and safe accommodation.

Key Words:

flight, migration, disability, medical fragility, child and youth welfare

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1. Introduction

Flight and (forced) migration seem to be worldwide historical constants (Otten et al., 2017: 197). According to the United Nations High Commissioner for Refugees (UNHCR), the UN agency commissioned to care for the world's refugees, 82.4 million persons were displaced at the end of 2020. The numbers continue to rise despite the COVID-19 pandemic. By mid-2021 the number of displaced persons worldwide was more than 84 million. Children account for 30 per cent of the world's population, but an estimated 42 per cent of these displaced persons are minor children and youth. Children who are fleeing on their own are particularly at risk. The UNHCR aims to raise awareness of the needs and rights of children in particular. It is estimated that nearly one million children were born refugees between 2018 and 2020 (UNO Flüchtlingshilfe, 2022; UNHCR, 2022).

As per international principles, special support and protection is granted for groups of so-called vulnerable persons such as children, persons with disabilities, the elderly or (pregnant) women (UNHCR, 2016) amongst displaced persons.

This article explores the intersectional situation of children and youth sharing flight and migration experiences and who are affected by disability and medical fragility at the same time. It aims at drawing attention to a specific aspect in flight and migration. As research is sparse, its purpose is to increase knowledge in this special field of child and youth welfare. Gathering information should provide insights towards a better practice in institutions, and clarify implications for policies. It is a theoretical contribution in investigating what topics regarding this focus group have been documented and dealt with in the literature and through studies. In addition, six semi-structured interviews with families, non-governmental-agencies and an out-of-home-care institution in Germany were conducted to verify and explicate findings from literature on a micro level. In analyzing the situation of the German reception system, findings concentrate on the legal framework and on the essential issues of identification of special protection needs, medical support and safe accommodation.

The term disability and impairment in this article is defined according to the 2006 Convention on the Rights of Persons with Disabilities (CRPD)³, which states in Art. 1:

“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

Notably, in the CRPD definition of disability in accordance with the World Health Organisation's definition of disability, it is acknowledged that both impairments and physical and intangible barriers in society generate disability and exclusion. It focuses on the obstacles and barriers within a society which prevent or hinder an individual's equal participation, rather than focusing on an individual's impairments. This means leaving a deficit-oriented perspective in favor of a resource-oriented one.

In addition to the issues already mentioned, psychosocial problems are also common in displaced persons. It was found that these persons usually suffered from more than one health problem, and their conditions were accompanied by additional issues such as pain

³ General Assembly Resolution A/RES/61/106, Conventions on the Rights of Persons with Disabilities (adopted 13/12/2006, UNGA Res. A/RES/61/106 [VIII]).

and/or fatigue (Crock et al., 2017: 10 ff.).

According to Crock et al. (2017), legal frameworks have been rather neglectful of disability rights, particularly in relation to displaced persons. Persons living with a disability often seem to have been overlooked in crises of displacement. These persons, because of various disabilities that are seen as to limit capacities to fleeing or migration, are not expected to be among displaced persons. They state that there is no comprehensive empirical data about the actual number of refugees affected by disability. It is also not known how and when the disabilities were acquired, there is no differentiation for sex, age or form of disability in the data either. In summary, they find a tendency to under-estimate the number of persons with disabilities among refugees (Crock et al., 2017: 4-5; see also Otten, 2019: 182; Gag & Weiser, 2017: 5; Schülle, 2017). Difficulties in identification due to the lack of data collecting structures as in Germany may also contribute to under-reporting.

Among the above mentioned numbers of minor refugees are also minors with disabilities, traumatized children and children at risk of disability with their families or on their own. Children who have flight or migration experiences and who are additionally living with a disability or medical fragility are disadvantaged as displaced persons, as children and as affected by disability. Without the protection a certain citizenship of a country or region provides, they are most vulnerable in disasters and more likely to be killed or acquire (additional) injuries, or being limited by an impairment (Crock et al., 2017: 3). Especially because of their vulnerability and needs children require protection and assistance.

Physical and visible disabilities, as well as cognitive disabilities, are not always diagnosed, disclosed, or easily identifiable. They are often hidden while fleeing. In some countries, persons with disabilities continue to be marginalized, shamed and ridiculed. Many have learned not to disclose their own or their child's disability. Parents deliberately hide their child's impairment, do not look for help or reject offers of help. While fleeing, a detected child is in acute danger of being thrown overboard by others when there is a shortage of food and drink, for instance. Families also fear being deported back because of the disability of the child. Most parents make it to Europe by carrying their child all the way. But even if the parents could afford a train or plane ticket, the journey remains a feat of strength (Hombach, 2015).

Children are less likely to be able to self-advocate due to their developmental stage, implications of (potential) impairments as well as heightened vulnerabilities that often accompany the status of child migrants such as foreign language or social marginalization. This prevents them from making their opinions and needs known, even in participatory research approaches. This is all the more true for this minoritized group of children and youth at the intersection of flight, migration and disability. A closer look at this topic may give insights and ideas for developing an attitude of advocacy. Refugee children with disabilities need people and institutions who will give them a voice and stand up for their human and civil rights (Peucker, 2018: 133).

It requires a continuous look at the experiences and needs of these children, their parents and caregivers, as well as looking at the quality of child welfare of the receiving countries in this respect. German legislation for instance created a child and youth welfare system that excluded children and youth with special needs due to disability or medical fragility. They are cared for instead through the social welfare legislation. This poses disadvantages

for children in a system geared towards adults and generates conflicts over responsibilities (Dialogforum, 2019: 4-6). This fact will not quickly change even with the new inclusive approach of the child and youth welfare legislative reform in 2021.

2. Current Situation in Germany

Despite international principles and instruments for identifying and determining refugee status, there is no empirical data on the number of persons with disabilities among refugees and asylum seekers in host countries nor on the living situation and the resulting needs for assistance and care (Otten, 2019: 182; Gag et Weiser, 2017: 5). This also applies to Germany. Neither the German federal government nor the federal states or the Federal Office for Migration and Refugees (BAMF) as the responsible authority are able to provide reliable information. The official asylum seeker statistics do not collect disability status separately (Schülle, 2017). Likewise, there are no official numbers or data about children and youth with disabilities. Accordingly, the actual needs for support and aid remain unknown (Hombach, 2015).

As a reference, however, reliable data from a project in Lebanon and Jordan by the two international aid organizations HelpAge International and Handicap International at the end of 2013 can be used for an estimation of the number of refugees with disabilities. The study shows that one in five was affected by physical, sensory or intellectual impairment. One in seven was affected by chronic disease and one in 20 suffered from injury, with nearly 80% of these injuries resulting directly from the conflict. 77% of elderly refugees had special needs. Refugees with and without impairments have the same basic difficulties and needs in daily life, which are, for example, lack of income, accommodation, access to basic health care and food. The difficulties faced by those with impairments in addressing these basic concerns and getting access to appropriate support had more severe impacts on their health and living conditions than the general refugee population. It was found that 22% of the Syrian refugees living in the two countries had a physical, sensory or mental impairment, 6% of them rated as severe and almost 16% suffered from chronic diseases (HelpAge International & Handicap International, 2014: 4, 6). Other sources state a number of 15% of all refugees worldwide with disabilities (Otten et al., 2017: 197). Regarding migration, there are an estimated two million people with a disability in Germany (Familienratgeber.de Migration, o. J.).

Although children with disabilities and medical fragility belong to the group of so-called vulnerable persons, they are a rather invisible population at risk among displaced persons in Germany. Their need for special protection and their rights are often not guaranteed or tended to. There are gaps in information and care, significant legal, communication and access barriers, legal uncertainties and insecurities of the institutions involved. In Germany, many asylum seekers, refugees or migrants do not find their way into the standard counseling and aid services for persons with disabilities. This is due to the complexity of federal shifts in responsibility, inter-institutional transitions of persons in the assistance system and corresponding coordination and procedural problems (Schülle, 2017). Thus, in Germany, information and care is often not sufficiently available for children with disabilities and flight/migration experiences, with corresponding serious long-term consequences (Hombach, 2015; Lebenshilfe, 2016: 5; Otten et al., 2017: 202). Children's (basic) rights are often not considered or granted in asylum procedures (Hombach, 2015; UNHCR, 2022).

In the practice of health care in Germany for instance, it means waiting for a special wheelchair for almost two years just to find out that the child has outgrown it when it finally arrives. Then the application process has to be restarted. Being denied proper aid on time also can mean acquiring a worsened condition in the future. When a child of two years needing a standing aid and foot orthoses receives the wrong ones after two years, the outcomes can be grave. As reported in this case, as a consequence, the hips were hardly developed and the development of a severe misalignment of the joints due to the spasms occurred (Berlin Global Village et al., 2015; Hombach, 2015).

For children fleeing and arriving in Germany on their own, the child and youth welfare law applies. If they are affected by disability, they are in a difficult situation because in this case the social welfare law comes into effect. This fact often causes time consuming conflicts over responsibilities, fewer services and is to the children's disadvantage. In section 5, additional background is given about federal attempts of bringing together both legal areas for children and youth with disabilities.

3. Methodology

This article explores the intersectional situation of children and youth sharing flight and migration experiences and who are affected by disability and medical fragility at the same time. It aims at drawing attention to a specific aspect in flight and migration by asking "What are the experiences of children affected by flight and migration and disability or medical fragility?"

Because of the paucity of research done so far, this article is exploratory, theoretical and its results are descriptive in its approach. The purpose of the article is to increase awareness of the needs of this focus group as well as to contribute to knowledge in this special field of child and youth welfare. Gathering information can provide insights towards better practice in institutions and clarify implications for policies.

In the area of flight or migration and disability in Germany, there is only scarce knowledge or research and few publications. In general, in Germany there are two recent clusters of publications about flight or migration topics in the 1990s and another one around 2015-2021 stimulated by the heightened influx of refugees during these periods of time. Since the legal framework regarding refugees and disability on the international, federal and state level is background and foundation for implications and policies on a practical level, it will be dealt with in sections 4 and 5.

In addition, six semi-structured interviews were conducted to explicate findings from literature on a micro level. The sample comprised two families and four professionals working in three non-governmental-agencies and one residential group home in the federal states of Saxony-Anhalt and Bavaria in Germany.

In order to explore and verify challenges and criticisms of handling the situation and needs of persons with disabilities found in the literature, some empirical data were generated through two semi-structured interviews with families from Syria in Germany. Furthermore, four professionals of three non governmental organizations (NGOs) for the federal state of Saxony-Anhalt and one professional in a residential care institution in the federal state of Bavaria were interviewed: the Workers' Welfare Association Headquarters (AWO), the state network of migrant organizations (LAMSA), the German Red Cross Headquarters and a social worker in the federal state of Bavaria, responsible for the management of

residential care for unaccompanied minors in a residential group home.

In analyzing the situation of refugees affected by disabilities in the German reception system, findings concentrate on the legal framework and the essential issues of identification of special protection needs, medical support and safe accommodation.

4. Legal Framework and Definitions on an International and National Level and their Effects on Flight and Migration and Disability or Medical Fragility

There are legal international and national frameworks which have developed around displacement, disaster and disability, serving as human rights instruments.

According to the 1951 Convention relating to the Status of Refugees⁴, the term *refugee* describes a status of a person with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, [who] is outside the country of his nationality”.

The term *asylum seeker* is used for a person who does not have the status of a refugee yet, but requests asylum in a foreign country. The person has to prove his or her reason for fearing persecution in order to obtain the status of a refugee, i. e. to be eligible for the associated protection and assistance in a foreign country (UNHCR Deutschland, 2022). As long as their asylum application has not been decided, they are not yet officially recognized refugees. They are protected by the Declaration of Human Rights⁵, which states in Art. 14 para. 1: “Everyone has the right to seek and to enjoy in other countries asylum from persecution”. However, the Universal Declaration of Human Rights is not binding under international law - the rights defined there cannot be claimed by referring to the Declaration (BMZ, 2022).

People who leave their native country or move internally by their own choice in search of better prospects in life are called *migrants*. They move to live temporarily or permanently in another place inside or outside their home country. International law makes a clear distinction between migrants and refugees. Migrants are not covered by the international refugee protection system. However, in practice, the distinction between flight and migration is not always clear-cut when dealing with people who have had to leave their homeland. According to the 1951 Convention, someone who wants to save himself and his family from hunger, drought, war and conflict or economic challenges, for instance, typically is not a refugee, but a migrant. Even those who leave their homeland due to a natural disaster have the status of migrants and thus do not fall under the protection of the 1951 Convention. Such fates are called forced migration (BMZ, 2022; Concern worldwide, 2019).

In regard to children with disabilities, Art. 2 of the 1989 Convention on the Rights of the Child⁶, states that:

⁴ General Assembly Resolution 2198 (XXI), Convention and Protocol relating to the Status of Refugees (adopted 28/07/1951, UNGA Res. 2198 [XXI]).

⁵ General Assembly Resolution 217 A (III), Universal Declaration of Human Rights (adopted 10/12/1948, UNGA Res. 217 A [III])

⁶ General Assembly Resolution 44/25, Convention on the Rights of the Child (adopted 20/11/1989, UNGA Res. 44/25).

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Applicable also is the 2006 Convention on the Rights of Persons with Disabilities (CRPD), which was designed specifically to acknowledge and internationally coordinate the human rights of persons with disabilities. The 2006 Convention

“demands that persons with disabilities be treated as rights bearers rather than as persons suffering from medical problems: objects of pity or subjects of charity. It demands that persons with disabilities be afforded respect, dignity and assistance so as to facilitate their full participation in society” (Crock et al., 2017: 8).

The question is to what extent refugees are able to invoke the Convention and have enforceable inclusion rights. The terms "flight" and "asylum" are not explicitly mentioned in the wording of the CRPD, but this does not allow the conclusion that these phenomena are not included. Rather, Art. 18 of the Convention on the liberty of movement and nationality suggests that the cross-border application of rights is meant and protected from the outset, regardless of the reasons for emigration or immigration. Moreover, fleeing persecution, hardship or war-related dangers to life should, in the sense of an interpretation of the convention in line with its intent, constitute a special legitimacy for claiming these rights outside one's own country (Otten et al., 2017: 198).

Within the European Union, the reception and provision of services to refugees and the specific situation of persons with disabilities are defined in the legally binding European Directive 2013/33/EU.⁷ Art. 21 and 22 of this Directive define persons with special needs and state their right to an individual assessment of their situation and special support throughout the whole asylum process.

In most cases, however, official decisions seem to refer exclusively to minimum standards of the German Asylum Seekers Benefits Act (AsylbLG). Although according to the AsylbLG, health care and its benefits can be reduced to a basic level during the duration of the asylum or recognition process, this would not apply to persons with special needs: “The compatibility of the reduced entitlement to health care benefits under § 4 AsylbLG with higher-ranking law is legally controversial.” (Schülle, 2017: 6).

The international guidelines of the UN and EU for a differentiated assessment of individual special needs have so far met little political willingness for its implementation. In Germany, they vanish in the process of shifting responsibilities between the federal, state and local authorities (Otten, 2017: 199). Often the central importance of higher-ranking law is ignored. But international law, the law of the European Union as well as national constitutional law contain binding requirements that are to be taken into account in particular when making discretionary decisions or interpreting indeterminate legal terms (Gag et al., 2017: 21).

The legal framework also includes the Council of Europe's Convention for the Protection

⁷ European Parliament and Council Directive 2013/33 EU, Establishing standards for the Reception of Applicants for international Protection, adopted on 26/6/2013 (EU Reception Directive, 2013).

of Human Rights and Fundamental Freedoms⁸, the German Child and Youth Welfare Act⁹, the German Disability Act¹⁰, the German Social Welfare Act¹¹, and the German Asylum Seekers Benefits Act. For children and youth affected by disability and medical fragility, the legal situation is highly complex.

5. Background on the New Child and Youth Strengthening Act of 2021 and its Impact on Inclusion

Art. 3 para 3 of the Basic Law of the Federal Republic of Germany emphasizes that “no one may be disadvantaged because of disability”. For children and adolescents with or without disabilities in Germany, a two-track support system exists. Children and youth with a physical or cognitive disability are assigned to the social welfare legislation (SGB XII), or recently to SGB IX for integration assistance, an assistance provided by the supra-regional social welfare agency¹². Children and youth needing assistance without a disability or with a (suspected) mental disability are assigned to the youth welfare legislation (SGB VIII), which has more differentiated options for assistance and better provision. As of June 2021, an inclusive approach is enshrined in a new Child and Youth Strengthening Act.

After failed attempts to reform the child and youth welfare law (SGB VIII) for decades, trying to make it applicable to all children and youth, without or with disability, on May 7, 2021, the Federal Council approved the new Child and Youth Strengthening Act (KJSG). It was passed by the Federal Parliament on the 2nd/3rd reading on April 22, 2021. Among the key points of the reform is the previously long-held desire for an inclusive paradigm – the unconditional access of all children and adolescents, whether with or without disabilities, to the multiprofessional assistance offered by child and youth welfare and its overall responsibility (Dialogforum Pflegekinderhilfe, 2019; Oehme & Schröer, 2018).

After being signed by the Federal President and published in the Federal Law Gazette, the act essentially entered into force on the day after promulgation.¹³ This took place on June 10, 2021.

However, this does not apply to stages 2 and 3 of the inclusion concept. As of January 1, 2024, Art. 1 no. 14 KJSG, the commencement of the activity of a so-called process controller becomes mandatory. With this function, the challenges of supporting children and youth with disabilities are taken into account in the legislative architecture. But this position is limited to December 31, 2027, although the challenges and the need for expertise will, however, continue to exist after its ending in 2027.

Only on January 1, 2028, with the 3rd stage, the amendment of § 10 para. 4 SGB VIII, and thus the takeover of the integration assistance by the child and youth welfare offices, is full inclusion to be implemented. And this, however, only if a federal law according to Art.1 no. 12, § 10 para. 4, Sentence 3 has been promulgated by January 1, 2027 on the basis of a law evaluation. Above all, it will be a matter of clarifying the question of staff and

⁸ Council of Europe Convention for the Protection of Human Rights and Fundamental freedoms, adopted on the 4th of December 1950 (ECHR, 1950).

⁹ Sozialgesetzbuch VIII, Child- and Youth Welfare (SGB VIII).

¹⁰ Sozialgesetzbuch IX, Rehabilitation and Participation of Persons with Disabilities (SGB IX).

¹¹ Sozialgesetzbuch XII, Social Welfare (SGB XII).

¹² Bundesteilhabegesetz, Integration Assistance Act (BTHG, Part 2 of SGB IX).

¹³ Bundesgesetzblatt (Federal Law Gazette) I No. 29 of 9/6/2021, p. 1444

costs. After all, the process holds many uncertainties about the outcome. As much as the inclusive approach of the new Child and Youth Strengthening Act (KJSG) is to be welcomed, it is to be feared that it will not imply much improvement in the situation of children and adolescents with disabilities for years to come.

Unconditional belonging apart from the scheme “normalcy – deviation” is the goal of inclusive efforts and a human right. Art. 7, para. 1 of the Convention on the Rights of Persons with Disabilities aims to ensure that children with disabilities “enjoy all human rights and fundamental freedoms”. In its concluding observations on the first State Report of the Federal Republic of Germany in 2015, the UN Committee of Experts gives Germany a poor report card with regard to human rights, equal opportunities and inclusion of children with disabilities (UN CRPD, 2015).

Inclusion achievements and efforts are attained in particular by families and dedicated persons in the private environment, as well as taking on the socio-political struggles and advocacy for the interests of children and adolescents with disability and medical fragility.

6. Practical Challenges in the Reception System in Germany

Furthermore, findings show that there are typical structural challenges in the German reception system in regard to first of all determining a situation of need for special protection; in providing appropriate and timely medical support; in providing safe, child-friendly accommodation and in the attitude to giving priority to the child’s welfare.

6.1 Determining the Need for Special Protection

In particular persons with special needs among the refugees such as children and the elderly, persons with disabilities or (pregnant) women are not systematically identified. Whether and in what form they are protected and supported through appropriate measures often depends on the commitment of individuals and thus is subject to randomness (UNICEF, 2016). In the reception centers even severe disabilities are often overlooked and parents do not know that they are entitled to special support (Hombach, 2015). This delayed identification and documentation of impairments during an initial examination means consequently delayed or no medical or social counseling and care (Otten, 2019: 182). Reiteration 14 and Art. 21 and 22 of Directive 2013/33/EU oblige the establishment of a special procedure to identify persons with special needs. The Federal Office for Migration and Refugees points out that such a procedure must be followed for every application (BAMF, 2015: 2). So far, Germany has only partially implemented this EU Directive (Familienratgeber.de, o. J.).

Practical experience shows that such a clearing procedure has only been firmly established in Germany for so-called unaccompanied minor refugees (BAMF, 2016), but not for any other group of persons in particular need of protection (Schülle, 2019). The special scope of benefits for persons with special needs, including persons with disabilities, receives little attention in practice because a systematic recognition procedure has not been implemented. But, according to one interviewee, even unaccompanied minor refugees who are affected by disabilities often have their disabilities overlooked in this residential setting with daily contact. In one case of learning disability, only after a long time did the realization set in with staff, that the issue of lagging behind in school probably was not due to problems with language anymore, but a possible learning disability. But then, because of the legal two track assistance system for children

and youth with disabilities, the conflict over the responsible legal agency arose. After being cared for in the children and youth welfare legal system as an unaccompanied minor refugee, suddenly the concerned youth is supposed to be cared for by the disability law with other guidelines to follow (Interview Professional 2).

Conditions in a receiving country can even cause (further) acquisitions of handicaps. Mostly, neither refugees with disabilities nor their needs are properly identified. Because of not determining the status of disability, persons with disabilities get no or only limited access to needed medical and social services. And often access is delayed or even too late. In this way, existing injuries or disabilities can lead to conditions that remain as permanent disabilities. Even with efforts to check for special needs, the less noticeable impairments – like difficulties with vision and hearing or mental illnesses – often go undetected (Crock et al., 2017: 10-11).

6.2 Providing Appropriate Medical Support

Health and social care, the provision of necessary aids and participatory or inclusive options pose problems for social work practice with refugees with disabilities, because providing health and social care usually requires individual and long-term solutions (Otten et al., 2017: 202). Even though empirical data about the needs and possible deficits of health care for refugees is lacking, in the following, some statements can be derived from legal guidelines and practical knowledge (Schülle, 2017).

Health and social care is to be provided by the reception facilities for which the respective federal state is responsible. After being assigned to a certain municipality, the community is responsible for providing care. However, the already legally limited health care mandate of the asylum law varies at both the local and state level and is organized non-uniformly. Thus, the quality and scope of medical treatment depend on the state and region asylum seeking persons were assigned to, which can be rated as discriminatory (Schülle, 2018, p.8).

In Germany, healthcare for asylum seeking persons is legally limited to the treatment of acute or painful illnesses (§§ 4, 6 AsylbLG) (Lebenshilfe, 2016: 9). The treatment of and aid for (for instance prostheses or special wheelchairs) existing chronic impairments like deformities or a lost limb that are not emergencies, will not be granted in the first place, ignoring international law. But impairments can cause health problems in the present daily life and accumulate to problematic conditions in the future. Not getting the appropriate help means preventing full health and participation as well as causing much higher costs for the health system later on through necessary surgeries or long term medical or therapeutical support. The struggles with responsible authorities to provide better access to health care, aid and rehabilitation measures are immense (Hombach, 2015). The cooperation with institutions such as social pediatric centers is important to provide good care and support for children (Lebenshilfe, 2016).

For an illustration about the manifold barriers and the heightened effort necessary to obtain health care, the access to the health care system for asylum-seekers in Germany will be described in more detail. This access is organized with so-called treatment vouchers. Often treatment vouchers, in particular, create a significant barrier to the access of the health system as well as medical undersupply, especially for persons with disabilities.

In many places, health care services are obtained by submitting a personal application for treatment to the relevant social welfare authority. It then issues a treatment voucher which is valid for a doctor's visit. In the case of follow-up treatment or referral to a specialist, a treatment voucher must be applied for again. In practice in many cases obviously necessary treatment vouchers are not approved because medical laymen (social welfare office employees) decide on the issuance without having necessary medical knowledge. The practical enforcement of medical treatments often requires increased efforts on the part of the persons concerned, lengthy expert procedures by the medical authorities and recourse to official and judicial legal protection (Schülle, 2018: 8-9).

Some German states and regional municipalities now provide health vouchers valid for a longer period of time or health cards such as every German citizen uses. Although the scope of benefits is still restricted, at least it makes the access to health care more non-discriminatory and appropriate for those affected. The fact that asylum seeking persons with disabilities receive health vouchers instead of health cards, can be seen as a structural barrier in access to health services and as an inadmissible discrimination (Schülle, 2019: 9). Furthermore, according to a study by the University of Heidelberg, there is evidence that it is even more economical for a state to use health cards for better access to appropriate health care right from the start. It simplifies administrative processes such as billing procedures for health care providers. There is no hint that it leads to cost increases or the overuse of health care. It also has positive effects on both mental health and self-reported general health (Gold et al., 2021).

After asylum seeking persons have received benefits under the AsylbLG for 18 months, they are entitled to the same benefits of the public health insurance as any other citizen. The alterations of migration acts passed in the summer of 2019 has extended the waiting period for full health care from 15 to 18 months. This has an effect on health (Flüchtlingsrat, o.J.).

Language acquisition and cultural sensitive communication is also very important for refugees, not just with respect to health care but also for receiving and giving appropriate information and gaining access to other aid systems such as counseling, ministerial bureaus, school or kindergarten. There is a great need for staff in standardized education, for training and further education on the topics of intercultural sensitive skills and communication in health care, working with translators, dealing with particularly vulnerable refugees like children with disabilities as well as raising awareness of discrimination in the health care system (Ministerium für Arbeit, Soziales, Gesundheit und Gleichstellung des Landes Sachsen-Anhalt, 2021).

6.3 Providing Safe, Child-friendly Accommodation

Upon arrival in Germany, asylum-seeking persons are accommodated in reception centers and secondary facilities such as shared accommodation. According to the subjective health experience of refugees, they frequently perceive physical and psychological impairments, which are associated in particular with the living conditions in reception centers and shared accommodation or uncertainty and lack of prospects with regard to status and residency (Schülle, 2017). Young people stated, for instance, that they suffered from the loss of friends or the spatial restrictions in the accommodation (Paiva Lareiro, 2019: 2).

Accommodation in reception centers and shared accommodation poses risks and is not

conducive to the development of children and youth (Peucker, 2018: 133). Living together with many strangers in a confined space, lack of privacy, lack of places to retreat, lack of common spaces suitable for young people, no or few youth-oriented offers for activities and inadequate equipment, conflicts, lack of a daily routine, rules, sometimes problematic hygienic conditions and a lack of protective concepts and measures against violence and (sexual) abuse has an impact on children's safety and well-being (Lewek & Naher., 2017: 7; Lechner & Huber, 2017: 38-39). This is all the more true for children with disabilities and their families, who lack the support of specialized help and often are not able to get support on their own. The Covid-19 pandemic is making the situation even worse (BAfF, 2020: 10-11)

Often the accommodation is located in a very remote place. This in addition can lead to a reduced access to health care or education due to limited mobility. Participation in the social life of communities is becoming even more difficult than it is already (Lewek & Naher, 2017: 7).

Children spend prolonged periods of time in this accommodation. After the stay in reception centers, refugees are assigned to shared accommodation in different federal states until their asylum process is finished. Extensive legislative changes in asylum and residence law since 2015 have resulted in the permissible length of stay in reception facilities being extended from three to six months. However, even stays of more than six or eight months are common. Prolonged stays in refugee accommodation that is not suitable for children are very stressful, delay integration and increase the risk of becoming victims of violence. Only when the family is referred to a specific municipality at the end of their asylum process, will the children be able to go to kindergarten or school and be able to access and participate in education (Lewek & Naher, 2017: 8-9; Scholz, 2017: 144-145; UNICEF, 2016).

The everyday life of many children and youth is marked by dreariness and waiting - waiting for a decision on their asylum procedure, waiting for an apartment suitable for their family, for a place at school or kindergarten, recreational activities or health care. Particularly for children, long waiting times are unjustifiable. Especially for children with disabilities, time is lost for support, learning, therapies and fostering development. In this unique phase of life, which is so crucial for development, the course is set for life. The decisive developmental steps are made in the first years of life (Berlin Global Village et al., 2015: 3; Lewek & Naher, 2017: 7-8). Long waiting times for schooling or language classes for youth means falling behind. Further interruptions of their educational processes are due to school changes because of reallocations (Lechner & Huber, 2017: 57-58).

With regard to barriers for physical and sensory impairments or other special protection needs, there is hardly any systematic information available on the structural situation in the shelters (Otten, 2017: 200). In practice, there is a lack of accessibility in shared accommodation and no adequate housing for individuals and families affected by disability (Otten, 2019: 182). Living with barriers in reception accommodations such as no elevators for instance, forces a single mother, who lost her husband during the war, to carry an older child with a disability up and down the stairs to the kitchen for food preparation and to the bathroom, which is one floor above the living room and bedroom (Berlin Global Village et al., 2015; Hombach, 2015).

Reception centers and shared accommodation are places of rights violations against

children and adolescents, harm the well-being of children and prevent them from participating in society (González Méndez de Vigo et al., 2020: 3).

6.4 Giving Priority to the Child's Welfare

In general, the focus of refugee social work in reception centers is not on the children and young people in the facility (Peucker, 2018: 131). The idea of unconditionally putting the best interest of the child first is anchored in the UN Convention on the Rights of the Child. This thought also is the foundation of the German Child and Youth Welfare Act. However, if a refugee child in Germany has to wait several months for medical or other services to be approved of and in too many cases is denied the necessary services, then his or her rights are being disregarded. During the period of their asylum procedures and beyond, special attention must be paid to children's special needs due to disability and also their well-being, including child-friendly housing and care as well as participatory entitlement to education and training (UNHCR, 2022; Lewek et al, 2017: 6).

The best interest of the child needs to have priority. It is essential to create positive conditions of life for all children and youth. Up to now, the child's welfare has not been sufficiently taken into account in asylum procedures. A thorough examination of the best interests of the child should be mandatory from the beginning. This should especially apply to refugee children with disabilities (UNICEF 2016; Berlin Global Village e.V. et al., 2015: 3).

Findings from the interviews mirror and underpin the situation described in the literature. Interviewees reported situations where obvious impairments were not documented or taken into account even in official hearings by authorities. In this way it would be possible to reject an application for asylum (Interview Professional 4). Likewise, a family with a child affected by disability was mentioned as having been deported during the night regardless of any harm being done (Interview Professional 2).

7. The Role of Social Work

The intersection of flight and migration and disability or medical fragility is considered an inter-institutional field of social work in Germany (Otten, 2019: 182). For both sides, for the person affected by disability in flight and asylum situations and in their existential dependence, but also for the social worker, major challenges arise. This has to do with the often very difficult life situation of the clients and their needs but also very much with the form of institutional responses and procedures. On an individual level, in many areas of social work, the legal requirements for services force a constant "putting oneself in certain categories" in order to be able to obtain even rudimentary access to appropriate assistance. Existing competencies, developmental designs or self-designs of refugees often take a back seat to the necessary proof to be a "case" in special need of protection and assistance. The question arises, how, under these circumstances, the human rights principle of full participation in society can be understood and promoted (Otten, 2019: 181).

On a structural level, what makes social work in this intersection so challenging is working in the paradoxical situation of dealing constantly with two contrary welfare state basic principles in an individual case. Inclusion and exclusion are constantly mixed. On the one side, the welfare state presents disability law with an entitlement to support, benefits and participation. On the other side, the same state presents asylum law in the perspective of

non-citizens with the restriction or denial of social benefits due to non-German citizenship. The examination and recognition or denial of reasons for asylum is ultimately such a form of exclusion justification. Asylum aid and assistance for the disabled as specific fields of action of social work, however, have hardly any institutional points of contact. Inadequate or failure of support is less due to the often overworked social work professionals in reception centers, but rather the lack of functioning procedural and co-operational structures (Otten, et al. 2017 :200-201).

As a rule, social work as a profession is not directly involved in the legal status decision or the determination of a recognized disability for the severely disabled person's pass for instance. But it assumes a very important role in obtaining and pre-evaluating information relevant to these kinds of decisions. It enables and exercises available protective rights, identifying and articulating a special need for protection or forwarding information and concerns. Especially when the asylum status is still unclear, a lot depends on the interpretation of the problem or a specific life situation such as being affected by disability. Supervising social workers are then able to involve other actors and institutions if necessary. As mentioned, unfortunately the politically intended inclusion paradigm clashes with a practice of exclusion under asylum law. The intersection of flight and migration and disability or medical fragility with the corresponding legal areas of asylum law and disability law induces the contradictory basic principles of inclusion and exclusion at the same time. The practical exclusion of persons with disabilities created by asylum law thus has a direct effect on social work practice (Otten et al., 2017: 201).

Persons at this intersection have a heightened need for specific counseling and information. This situation poses practical consequences and challenges for social work professionals due to the complex political, legal and structural framework conditions of each area. Professional and socio-legal expertise from the fields of asylum social work and disability assistance are indispensable. In order to have an impact on and to improve the general situation, the challenges need to be mastered in multi-professional cooperation structures (Otten et al., 2017: 197). This is even more the case as refugees and asylum seeking persons have no political lobby because they do not bring votes - to the contrary in states struggling with right-wing populism (Interview Professional 4).

For this multiprofessional task, cooperation with civil, church, private as well as regional welfare organizations and services is important. These organizations offer facilities and services such as daycare centers, nursing services, counseling centers, self-help groups, hospitals, nursing homes, residential homes for people with disabilities, homes for children and young people, homeless facilities, after-school care centers, women's shelters, technical schools for social professions, family centers or hospices.

Caritas in Germany, for example, is the Catholic welfare association, being the largest of the six German welfare associations (Caritas, 2022). Diakonie is the welfare organization of the Protestant Church in Germany. Alongside Caritas and the German Red Cross, Diakonie is one of the largest welfare organizations in Germany (Diakonie, o.J.). The German Red Cross is part of the International Red Cross and Red Crescent Movement. This worldwide humanitarian organization, the largest in the world with 192 National Societies, has been providing comprehensive assistance to people in conflict situations, disasters, health or social emergencies for over 150 years (DRK, o.J.). The Workers' Welfare (Arbeiterwohlfahrt) is also one of the six large welfare organizations in Germany. Its special character is that women and men come together as members, volunteers and

full-time workers in order to help deal with social problems and tasks of society and to implement the democratic, social state (AWO, o.J.). The Parity Welfare Association is an association of independent welfare organizations, institutions and groups which offer social work. It is based on the idea of parity, the equality of all in their standing and possibilities, on principles of tolerance, openness and diversity. It aims to mediate between generations, world views, approaches and methods of social work or between its member organizations (Der Paritätische, 2022). The Central Welfare Office of the Jews in Germany¹⁴ forms the association of Jewish welfare work in Germany. Its main concern is helping in the sense of balancing social justice (ZWST, o.J.).

And then there are special regional organizations like MediNetz Magdeburg e.V., which is a human rights initiative that aims to improve the situation of persons who are completely or partially excluded from medical care by the legislation of the Federal Republic of Germany (Medinetz, 2017).

Furthermore, since 2018 independent counseling centers have been established by legislation on disability law¹⁵ to give information about the special aids and services the disability law in Germany provides. In practice, access to this kind of counseling again is difficult. Professionals report that the distribution of information providing access to services in reception centers is often not permitted or discouraged by the owners of the buildings. And even if refugees affected by disability find their way into those above mentioned counseling centers, it often depends on the political conviction of the staff, whether they are treated and counseled appropriately. When treated rudely, in an unfriendly and humiliating manner by staff some of whom may be right wing voters, refugees may not be willing to ask for further help (Interview Professional 4).

The overall objective is to provide refugees and migrants with a needs-based access to medical, psychosocial, psychiatric and psychotherapeutic services and facilities as well as language assistance (Ministerium für Arbeit, Soziales, Gesundheit und Gleichstellung des Landes Sachsen-Anhalt, 2021: 89). In practice, professionals report many examples of lack of staff and financial resources for language services (Interview Professional 3). There is a great need to have multilingual staff with the ability to communicate in a culturally sensitive way and an attitude of openness. Standardized education, training and continuing education in the areas of intercultural competencies in health care, working with language mediators, dealing with trauma and particularly vulnerable refugees and migrants, and sensitizing medical staff to discrimination in the health care system are all essential (Interview Professional 4; Ministerium für Arbeit, Soziales, Gesundheit und Gleichstellung des Landes Sachsen-Anhalt, 2021: 89).

Because the need for multiprofessional and inter-institutional cooperation has been recognized by practitioners, during the past years a number of model projects in Germany have developed which address precisely this intersection in order to improve system transitions. For example, online compilations of information at the intersection of flight and disability, like the “Roadbox” of Handicap International in Germany, have proven helpful. It is an online topic portal which provides practice-oriented information, working aids and downloadable materials for professionals in the field of disability aid and refugee

¹⁴ Zentralwohlfahrtsstelle der Juden in Deutschland (ZWST).

¹⁵ Ergänzende unabhängige Teilhabeberatung (EUTB) [Supplementary independent participation counseling], § 32 SGB IX.

aid “in order not to give up prematurely in the complicated subject area of flight and disability” (Handicap International Deutschland, o.J.). Worth mentioning also is MINA, the Diversity Inclusive project in the city of Berlin, which is dedicated to multiplying knowledge around the topics of flight and migration and disability. MINA especially provides workshops for professionals at this intersection (MINA, 2021). Also situated in Berlin is InterAktiv, an association dedicated to establishing self-help groups, providing counseling, support and cultural and leisure activities for persons with or without a disability as well as with and without a history of immigration and/or flight (InterAktiv, 2022). Also worth mentioning is the Berliner Netzwerk für schutzbedürftige Geflüchtete (BNS) [Berlin Network for Vulnerable Refugees], a special office for refugees with disabilities situated in the Berlin Center for Self-Determined Living of Disabled Persons (BNS, 2022).

8. Conclusion

Flight, asylum seeking, migration and disability or medical fragility as an intersectional life situation is not a rare situation, although it seems that only gradually practice and politics are recognizing the needs and challenges and are looking for initial solutions and strategies. Numerous parties are involved in support and aid. In particular, it has become clear that the two legal systems concerned, asylum law and disability law, are so complex that the intersections hardly meet with expertise in many places. Neither the disability assistance services nor the support systems for asylum seekers have been sensitized to and/or trained in the other field. There is a lack of expertise and knowledge of the other area whereas knowledge of both areas of law is required in order to gain access to services (Schülle 2017; Gag et al., 2017: 5).

It is necessary for politics to provide appropriate framework conditions and assure the implementation of international and national law as well as legal guidelines in the practical fields (Otten et al., 2017: 203). According to Crock et al., “no country can yet claim to fully apply the principles in the landmark United Nations Convention on the Rights of Persons with Disabilities to displaced persons” (2017: 5).

There is still significant inequality to be acknowledged. Refugees, adult and minor, seeking protection and asylum in Germany are subject to considerable legal restrictions, which have become even more severe in recent years. The unequal treatment runs through all areas of life (health, housing, participation, education, protection) and is even intensified within the already very heterogeneous group of refugee children, depending on the predicted “stay perspective” (Lewek et al, 2017: 9; UNICEF, 2016).

Inequality in health care provision is especially severe for those with disabilities. Due to the increased but inconsistent introduction of the health card, the existing inequality within the health care system for refugees has increased just the same. In order to counteract this health inequality due to different and reduced access to services, a uniform federal regulation is required. In particular, such a regulation would also reduce barriers for persons with disabilities in accessing the health care system and ensure a needs-based range of services for this particular group of people at risk (Schülle, 2017).

Despite a slowly emerging awareness of the problem, it can be assumed that many refugees, migrants and children with disabilities will still be left with limited medical care, temporary, non-barrier-free accommodation and few opportunities for social and cultural participation (Otten et al. 2017: 201).

Civil and welfare organizations are organizing themselves to network, gather information, counsel and support persons with special needs. They create projects, raise funding and work on political (internet) platforms to bring about change. But it still will need a lot of continuous efforts and staying power to provide asylum seeking persons, refugees and migrants, especially those with disabilities, with a needs-based access to health care as well as to the therapeutical, psychosocial, psychiatric and psychotherapeutic services and facilities.

Child welfare should have priority. This thought underlies the Convention on the Rights of the Child as well as the child and youth welfare legislation in Germany. To ensure this fundamental idea and transfer it accordingly into a well-functioning practice for displaced persons with disabilities, needs-based supply and support for them and their families is an order. This is with regard to medical supply, as well as accommodation or social, pedagogical, educational and legal issues, ensuring inclusive participation and well-being in all areas involved.

Professionals and volunteers in the respective fields of refugee law and disability law are challenged to work and bring together the different disciplinary areas in order to have a meaningful impact on the situation for children and youth with disability or medical fragility. Taking on their perspective may contribute to an even broader understanding of flight and migration issues.

References

- AWO (Arbeiterwohlfahrt). (2022, March 7). *Über Uns*. <https://www.awo.org/ueber-uns>
- BAfF (Bundesweite Arbeitsgemeinschaft der Psychosozialen Zentren für Flüchtlinge und Folteropfer). (2020). *Living in a box. Psychosoziale Folgen des Lebens in Sammelunterkünften für geflüchtete Kinder*. https://www.baff-zentren.org/wp-content/uploads/2020/05/BAfF_Living-in-a-box_Kinder-in-Ankerzentren.pdf
- BAMF (Bundesamt für Migration und Flüchtlinge). (2015). *Leitfaden zur unmittelbaren innerstaatlichen Anwendung der Richtlinie 2013/32/EU des Rates vom 26.06.2013. Referat 410-7406-30/15*. https://www.fluechtlingsrat-thr.de/sites/fluechtlingsrat/files/pdf/gesetze_verordnungen/europa/Lietfaden%20Umsetzung%20Verfahrensrichtlinie.pdf
- BAMF (Bundesamt für Migration und Flüchtlinge). (2016) *Das Bundesamt in Zahlen. Asyl, Migration und Integration*. https://www.bamf.de/SharedDocs/Anlagen/DE/Statistik/BundesamtinZahlen/bundesamt-in-zahlen-2016.pdf?__blob=publicationFile&v=16
- Berlin Global Village, Menschenkind, Lebenshilfe Berlin, & HVD. (2015). *(K)eine Zukunft. Flüchtlingskinder mit Behinderungen. Menschenrechtsverletzungen in Berlin*. https://www.lebenshilfe-berlin.de/media/docs/Kita/HVD_Menschenkind_Fluechtlingskinder.pdf
- BMZ (Bundesministerium für Internationale Zusammenarbeit). (2022). *Flucht und Migration. Grundlagen und Begriffe*. <https://www.bmz.de/de/entwicklungspolitik/flucht/fachbegriffe>
- BNS (Berliner Netzwerk für schutzbedürftige Geflüchtete) (2022). *Beratung + Unterstützung für Geflüchtete*. <http://www.bzsl.de/bns.html>
- Caritas (2022) *Cariwas? Caritas!* <https://www.caritas.de/diecaritas/wir-ueber-uns/wofuerwirstehen/cariwas>
- Concern worldwide us. (2019). *Forced migration: 6 causes and examples*. <https://www.concernusa.org/story/forced-migration-causes/>
- Crock, M., Smith-Khan, L., McCallum, R., & Saul, B. (2017). *The legal protection of refugees with disabilities. Forgotten and onvisible?* Edward Elgar Publishing.
- Der Paritätische (2022, March 7) *Gesamtverband*. <https://www.der-paritaetische.de/>
- Diakonie (2022, March 7) *Evangelische Kirche in Deutschland*. <https://www.ekd.de/Diakonie-11055.htm>

- Dialogforum Pflegekinderhilfe. (2019). *Pflegekinder mit Behinderungen. Fachliche Positionen des Dialogforums Pflegekinderhilfe*. Internationale Gesellschaft für erzieherische Hilfen (IGfH). <https://www.mitreden-mitgestalten.de/sites/default/files/downloads/p4a7q8v.pdf>
- DRK (Deutsches Rotes Kreuz) (2022, March 7) *Das sind wir*. <https://www.drk.de/das-drk/selbstdarstellung-des-roten-kreuzes/>
- Familienratgeber.de Migration (2022, January 24) *Migration und Behinderung*. <https://www.familienratgeber.de/beratung-hilfe/weitere-hilfen/migration-behinderung.php>
- Familienratgeber.de. (2022, January 24). *Informationen, Rat & Adressen für Menschen mit Behinderung und deren Angehörige. Flüchtlinge und Behinderung*. <https://www.familienratgeber.de/beratung-hilfe/weitere-hilfen/fluechtlinge-behinderung.php>
- Flüchtlingsrat (2022, February 16). *Medizinische Versorgung*. <https://www.nds-fluerat.org/leitfaden/12-status-fluechtlinge-mit-duldung/medizinische-versorgung/>
- Gag, M. & Weiser, B. (2017) *Leitfaden zur Beratung von Menschen mit einer Behinderung im Kontext von Migration und Flucht*. <https://b-umf.de/src/wp-content/uploads/2018/02/Beratungsleitfaden-Behinderung-im-Kontext-von-Migration-und-Flucht-2017.pdf>
- Gold, A. W., Weis, J., Janho, L., Biddle, L., & Bozorgmehr K. (2021). *Die elektronische Gesundheitskarte für Asylsuchende. Zusammenfassung der wissenschaftlichen Evidenz*. Health Equity Studies & Migration Report Series, 2021-02. <https://doi.org/10.11588/heidok.00030347>
- González Méndez de Vigo, N., Schmidt, F., & Klaus, T. (2020). *Kein Ort für Kinder. Zur Lebenssituation von minderjährigen Geflüchteten in Aufnahmeeinrichtungen*. https://www.tdh.de/fileadmin/user_upload/inhalte/04_Was_wir_tun/Themen/Weitere_Themen/Fluechtlingskinder/2020-06_terre-des-hommes-AnkerRecherche.pdf
- Handicap International Deutschland (2022, March 14) *Herzlich willkommen in der Roadbox*. <https://www.hi-deutschland-projekte.de/crossroads/capacity-building/roadbox/roadbox-uebersicht/>
- HelpAge International, & Handicap International. (2014). *Hidden victims of Syrian crisis. Disabled, injured and older refugees*. <http://www.helpage.org/resources/publications/?ssearch=hidden+victims&adv=0&topic=0®ion=0&language=0&type=0>
- Hombach, S. (2015). *Interview. Traurig, aber keine Einzelfälle*. <https://www.igp-magazin.de/traurig-aber-keine-einzelfaelle/>
- InterAktiv. (2022) *Über uns*. <https://www.interaktiv-berlin.de/de/ueber-interaktiv-ev/>
- LAMSA. (2022, February 1) *Landesnetzwerk Migrantenorganisationen in Sachsen-Anhalt*. <https://www.lamsa.de/projekte/projekte-misa-migration-und-inklusion-in-sachsen-anhalt-projektbeschreibung/>
- Lebenshilfe. (2016). *Kinder mit Behinderung und Fluchterfahrung. Eine Praxishilfe für Kindertageseinrichtungen*. Bundesvereinigung Lebenshilfe e.V., Marburg. https://www.lebenshilfe.de/fileadmin/Redaktion/PDF/2_Informieren/BVLH-Flucht-und-Behinderung-Praxishilfe-fuer-KiTas.pdf
- Lechner, C. & Huber, A. (2017) *Ankommen nach der Flucht. Die Sicht begleiteter und unbegleiteter junger Geflüchteter auf ihre Lebenslagen in Deutschland*. <https://www.dji.de/veroeffentlichungen/literatursuche/detailansicht/literatur/25854-ankommen-nach-der-flucht.html>
- Lewek, M., & Naber, A. (2017) *Kindheit im Wartezustand. Studie zur Situation von Kindern und Jugendlichen in Flüchtlingsunterkünften in Deutschland*. UNICEF Deutschland. <https://www.unicef.de/blob/137024/ecc6a2cfed1abe041d261b489d2ae6cf/kindheit-im-wartezustand-unicef-fluechtlingskinderstudie-2017-data.pdf>
- MediNetz Magdeburg (2017) *Wer wir sind*. <https://medinetz-magdeburg.de/deutsche/>
- MINA Leben in Vielfalt e. V. (2021) *Projekt Vielfalt Inklusiv*. <https://mina-vielfalt.de/home>
- Ministerium für Arbeit, Soziales, Gesundheit und Gleichstellung des Landes Sachsen-Anhalt (2021). *Integrationskonzept des Landes Sachsen-Anhalt 2020*. https://integrationsbeauftragte.sachsen-anhalt.de/fileadmin/Bibliothek/AGSA/Integrationsbeauftragte/Integrationskonzept2020_gesamt.pdf

- Oehme, A., & Schröer, W. (2018). Beeinträchtigung und Inklusion. In K. Böllert (Ed.), *Kompendium der Kinder- und Jugendhilfeforschung* (pp. 273-290). Springer VS.
- Otten, M., Farrokhzad, S., & Zuhr, A. (2017). Flucht und Behinderung als Schnittstellenaufgabe der Sozialen Arbeit. *Gemeinsam leben*, 4/2017, 197-206.
- Otten M. (2019) Partizipative Forschung zur Teilhabe von geflüchteten Menschen mit Behinderung. In V. Kломann, N. Frieters-Reermann, M. Genenger-Stricker, & N. Sylla (Eds.), *Forschung im Kontext von Bildung und Migration. Kritische Reflexionen zu Methodik, Denkglogiken und Machtverhältnissen in Forschungsprozessen* (pp. 181-194). Springer VS.
- Paiva Lareiro, P. d. (2019). *Kinder und Jugendliche nach der Flucht. Lebenswelten von geflüchteten Familien in Deutschland*. (BAMF-Kurzanalyse, 5-2019). Bundesamt für Migration und Flüchtlinge (BAMF). Forschungszentrum Migration, Integration und Asyl (FZ). https://www.ssoar.info/ssoar/bitstream/handle/document/67582/ssoar-2019-paiva_lareiro-Kinder_und_Jugendliche_nach_der.pdf?sequence=1&isAllowed=y&inkname=ssoar-2019-paiva_lareiro-Kinder_und_Jugendliche_nach_der.pdf
- Peucker, C. (2018). Kinder, Jugendliche und Familien mit Fluchthintergrund. Ausgangslage und Potenziale der Kinder- und Jugendhilfe. In J. Bröse, S. Faas, & B. Stauber (Eds.), *Flucht. Herausforderungen für Soziale Arbeit* (pp. 125-137). Springer VS.
- Scholz, A. (2017). Flüchtlingskinder und ihr Zugang zu Kindertagesbetreuung. Chancen und Herausforderung an der Schnittstelle von Kita und Flüchtlingssozialarbeit. In T. Kunz, & M. Ottersbach (Eds.), *Flucht und Asyl als Herausforderung und Chance der Sozialen Arbeit* (pp. 144-154). Beltz Juventa.
- Schülle, M. (2017) *Gesundheits- und Teilhabeleistungen für asylsuchende Menschen mit Behinderungen. Teil II: praktische Barrieren und Möglichkeiten*. <https://www.reha-recht.de/fachbeitraege/beitrag/artikel/beitrag-d18-2017>
- Schülle, M. (2018). Medizinische Versorgung für Menschen mit Behinderungen, die Leistungen nach dem Asylbewerberleistungsgesetz erhalten. Rechtliche und praktische Barrieren der Barrierefreiheit. In M. Westphal, & G. Wansing (Eds.), *Migration, Flucht und Behinderung. Herausforderungen für Politik, Bildung und psychosoziale Dienste* (pp. 145-165). Springer VS. https://doi.org/10.1007/978-3-658-15099-0_8
- UN CRPD. (2015) *Abschließende Bemerkungen über den ersten Staatenbericht Deutschlands*. https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/CRPD_Abschliessende_Bemerkungen_ueber_den_ersten_Staatenbericht_Deutschlands.pdf
- UNHCR. (2022) *Flagship Reports. Forced Displacement in 2020*. <https://www.unhcr.org/flagship-reports/globaltrends/>
- UNHCR Deutschland (2022, January 21). *Asylsuchende*. <https://www.unhcr.org/dach/de/ueber-uns/wem-wir-helfen/asylsuchende>
- UNHCR. (2016). *Vulnerability Screening Tool*. <https://www.unhcr.org/protection/detention/57fe30b14/unhcr-idx-vulnerability-screening-tool-identifying-addressing-vulnerability.html>
- UNICEF. (2016) *Wachsende Probleme für Flüchtlingskinder. Aktueller UNICEF-Lagebericht zur Situation der Flüchtlingskinder in Deutschland*. <https://www.unicef.de/informieren/aktuelles/presse/2016/unicef-bericht-fluechtlingkinder-deutschland/115146>
- UNO Flüchtlingshilfe Deutschland für den UNHCR (2022). *Flüchtlingszahlen*. <https://www.uno-fluechtlingshilfe.de/informieren/fluechtlingzahlen>
- ZWST (Zentralwohlfahrtsstelle der Juden in Deutschland e.V.). (2022, March 17). *We care. Since 1917*. <https://zwst.org/de>

Other Sources

Upon request, these sources are available from the author:

- Interview Professional 2
- Interview Professional 3
- Interview Professional 4

Palestinian Refugees: Triggering the Inclusion Clause of the 1951 Convention relating to the Status of Refugees¹

Ralf Roßkopf²

Abstract

Palestinian refugees have not only been called the largest and most protracted refugee community (UNHCR, 2006), they also have a unique status under the 1951 Convention Relating to the Status of Refugees³ (1951 Convention). What was meant to be a privilege, turned into a trap Palestinian refugees have been locked in for over seven decades, have not been able to and meant to escape from, that has served and still serves everyone well but the Palestinian refugees. If legal analysis, though, was actually allowed to lift the politically imposed veil, one would see the bars removed and the door wide open. This article focuses on Art. 1 D 1951 Convention, introduces its historical and institutional background, analyzes and interprets its exclusion and inclusion clauses and applies the outcome to the reality on the ground. The conclusions are astonishing, demonstrating that the very legal provision having caused the Palestinian refugees to be excluded from refugee protection in the beginning, has long been triggered for their ipso facto inclusion. Acknowledging this could become a game changer for the Palestinian fate and the Middle East Conflict.

Key Words:

Palestinian refugees; exclusion; inclusion; UNRWA; UNHCR

1. Introduction: The Refugee Definition

The legal definition of a refugee is found in Article 1 A para. 2 of the 1951 Convention. In its 1967 New York Protocol⁴ version, it covers any person who

“owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

¹ This work is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](https://creativecommons.org/licenses/by-nc-nd/4.0/) and was accepted for publication on 12/12/2022. It is based on Roßkopf, 2021, 331-379.

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³ Convention Relating to the Status of Refugees (adopted 28/7/1951, entered into force 22/4/1954, 189 UNTS 137, 1951 Convention).

⁴ Protocol Relating to the Status of Refugees (adopted 31/1/1967, entered into force 4/10/1967, 606 UNTS 267, 1967 Protocol).

However, Art. 1 D 1951 Convention introduces the following exception:

“This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.”

Art. 1 D cl. 1 marks an exclusion clause, from which Art. 1 D cl. 2 not only formulates a counter-exception but also an independent element of inclusion (UNHCR, 2020: 240, 242; Albanese & Takkenberg, 2021: 107-108; German Federal Constitutional Court [BVerfG], Judgement of 4/6/1991, No. 1 C 42 88, paras. 17-21). This is explained by the traditional particularity of statutory refugee protection (Art. 1 A para. 1; Albanese & Takkenberg 2021: 82), which, according to the temporary (Art. 1 A para. 2) and territorial restrictions (Art. 1 B), was originally also applied to neo-refugees under the 1951 Convention and broken up only by the 1967 Protocol. The provision considers the special characteristics of certain refugee groups. The combination of exclusion and ipso facto inclusion proves that the Article 1 D seeks to ensure continuity of international protection and thus has rightly been called the "contingent inclusion clause" by the UNHCR (2020: 243; Qafisheh & Azarov 2011: MN 72).

2 Justification of the particularity of special protection

The 1950 UNHCR Statute⁵ already provides for a corresponding exclusion (Para. 7 lit. c UNHCR Statute). Since the 1951 Convention incorporated the statutory protection of refugees, and the mandate of the UNHCR extended to it and replaced the International Refugee Organization, at the time the 1951 Convention came into being, only the United Nations Conciliation Commission for Palestine (UNCCP) (overlooking this Kraft, 2016: MN 14), and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)⁶ identified as “organs or agencies of the United Nations” that provided “protection or assistance” for refugees (cf. Art. 1 D cl. 1 1951 Convention). This remained unchanged until today. Both were founded in connection with the 1948 Arab Israeli War, the preceding 1947 displacements, and in view of an estimated 700,000-1,000,000 displaced persons (Albanese & Takkenberg, 2021: 35-36; Qafisheh & Azarov, 2011: MN 9). Discussions during the formation of the 1950 UNHCR Statute and 1951 Convention referred exclusively to Palestinian refugees (Albanese & Takkenberg, 2021: 78.73; Hathaway & Foster, 2014: 510-513; Qafisheh, 2015: 65; Qafisheh & Azarov 2011: MN 3-8). Art. 1 D of the 1951 Convention goes back to a joint intervention by Egypt, Lebanon and Saudi Arabia justified as follows:

“The delegations concerned were thinking of the Palestine refugees, who differed from all other refugees. In all other cases, persons had become refugees as a result of action taken contrary

⁵ General Assembly Resolution 428 (V), Statute of the Office of the United Nations High Commissioner for Refugees (adopted 14/12/1950, UNHCR Statute).

⁶ The United Nations Korean Reconstruction Agency had already been established by UN General Assembly Resolution 409 (V), Organization and Operation of the Work of the Economic and Social Council and Its Commissions (adopted 1/12/1959, UN-GA Res. 409 [V]) but not operationally active until 1953 (Lyons, 1958: 181-188).

to the principles of the United Nations, and the obligation of the Organization toward them was a moral one only. The existence of the Palestine refugees, on the other hand, was the direct result of a decision taken by the United Nations itself, with full knowledge of the consequences. The Palestine refugees were therefore a direct responsibility on the part of the United Nations and could not be placed in the general category of refugees without betrayal of that responsibility. Furthermore, the obstacle to their repatriation was not dissatisfaction with their homeland, but the fact that a Member of the United Nations was preventing their return. That Member claimed to abide by United Nations decisions; the Organization should therefore prevail upon it to permit the Palestine refugees to return to their homes. He was addressing his remarks particularly to those Member States which had taken a leading part in bringing about the partition of Palestine.”⁷

The specificity was thus based on the international responsibility for the emergence of the refugee situation, the unconditional will to return of the persons concerned as reflected in the mandate and group-based refugee definition of the UNCCP (Qafisheh, 2015: 64-66) and the fact that the Palestine refugees did not necessarily seek refuge outside their country of origin (Albanese & Takkenberg, 2021: 36). The exclusion from the 1951 Convention should provide for a special form of protection (Akram, 2018: 426), avoid additional obligations on Arab and European States (Hathaway and Foster, 2011: 512-513), and take into account the institutional delimitation interest of the UNHCR (Robinson, 1997: 54).

3 Exclusion Clause

3.1 Organs and Agencies of the United Nations

3.1.1 UNCCP

The UNNCP was established under the 1948 UN General Assembly Resolution 194 (III), Palestine – Progress Report of the United Nations Mediator (adopted 11/12/1948, UNGA Res. 194 [III]) (Albanese & Takkenberg, 2021: 41). The Commission was comprehensively mandated (No. 2 UNGA Res. 194 [III]) to assist the governments and authorities concerned to bring about a final settlement of all outstanding issues between them (No. 6 UNGA Res. 194 [III]). Specifically with regard to refugees, the General Assembly

“Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible.

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations” (No. 11 UNGA Res. 194 [III]).

Diplomatic efforts by the UNNCP to resolve disputes over territorial and refugee issues through international conferences failed (Albanese & Takkenberg 2021: 41-42, referring to the Conferences of Lausanne, 27/4-12/9/1949, Geneva, 30/1-15/7/1950, and Paris, 13/9-19/11/1951). Despite formal continued existence, no substantial work by the

⁷ United Nations General Assembly, Fifth Session, Official Records, Third Committee, 328th Meeting of 27.11.1950, UN Doc. A/C.3/SR.328, para. 47.

Commission can be discerned any longer (Albanese & Takkenberg 2021: 46-49). Since 1951, the UNCCP has declared in its annual reports that it is unable to make progress (UNCCP, 1951c: para. 22, 79; most recently UNCCP, 2020).

3.1.2 UNRWA

Almost exactly one year after the UNCCP, on the third recommendation (UNCCP, 1949: 17) of the Economic Survey Mission (ESM) (Albanese & Takkenberg, 2021: 43-44), the UNRWA was established by General Assembly Resolution 302 (IV), Assistance to Palestine Refugees (adopted 8/12/1949, UNGA Res. 302 [IV]) with the following mandate:

(a) To carry out in collaboration with local governments the direct relief and works programs as recommended by the Economic Survey Mission;

(b) To consult with the interested Near Eastern Governments concerning measures to be taken by them preparatory to the time when international assistance for relief and works projects is no longer available" (No. 7 UNGA Res. 302 [IV]).

This was done in recognition of the need for continued assistance to support the Palestinian refugees, without prejudice to No. 11 of UNGA Res. 194 (III) (No. 5 of UNGA Res. 302 [IV]). At the same time, its establishment was a recognition of the failure of the UNCCP to provide economic and social reintegration to the refugees as targeted by its mandate (see No. 11 UNGA Res. 194 [III]) (cf. Albanese & Takkenberg 2021: 77). UNRWA was instructed to coordinate with UNNCP (No. 20 UNGA Res. 302 [IV]). Unlike the UNHCR, UNRWA does not work globally but is limited to five areas ("fields"), namely the Gaza Strip, the West Bank (including East Jerusalem), Syria, Lebanon and Jordan (UNHCR, 2020: 241; Albanese & Takkenberg, 2021: 195).

3.2 Persons Enjoying Protection or Assistance of the United Nations.

3.2.1 Institutionalized Collective Determination

While Art. 1 A, C, E and F of the 1951 Convention refer to "person" in the singular, Art. 1 D uses the term "persons" in the plural with regard to exclusion and inclusion. This underlines the group-related character of the provision already expressed in the delimitation of the areas of competence of the UN organizations (though differing in conclusions Hathaway & Foster, 2014: 516). The 1951 Convention determines the excluded through the enjoyment of protection or assistance from other UN specialized agencies.

3.2.2 Beneficiaries under UNCCP

UNGA Res. 194 (III) does not define its beneficiaries. However, its drafting history evidences related discussions (Albanese & Takkenberg, 2021: 85-86). When asked by the representative of New Zealand whether the term "refugees" included Arabs as well as Jews, the representative of the United Kingdom responded affirmatively (UNCCP 1961: para. 25). Accordingly UNCCP interpreted the refugee concept on a group basis (Akram, 2018: 425):

"According to the above interpretation the term "refugees" applies to all persons, Arabs, Jews and others who have been displaced from their homes in Arab Palestine..." (UNCCP, 1950: point 1).

However, UNCCP saw the need for further specification in order to implement its own

mandate. In 1951, a memorandum from the Principal Secretary presented an expert opinion of the Legal Advisor, in which nationality, ethnic origin, the auxiliary factors of domicile, establishment and residence, and persons assimilated to refugees were specified as constituent factors (UNCCP, 1951b). For Palestine, reference was made to the Ordinance on Nationality for Palestine of July 24, 1925. Ethnic origin was regarded as the decisive reason for expulsion and, to that extent, as constituting the concept “refugee” (UNCCP, 1951b: B). The exclusivity of this finding is surprising and contradicts the drafting history of No. 11 UNGA Res. 194 (III). It ignores the fate of some 17,000 Jewish refugees in the aftermath of the 1948 events (on this figure UNCCP, 1949: 16; Albanese & Takkenberg, 2021: 35-36). Also, displaced persons who were considered “others” (21,555 residents) in the 1931 Census of the Mandate Power because they were neither of Arab (i.e., Muslim or Christian) (Krämer, 2015: 375) nor Jewish origin were excluded from the refugee definition (UNCCP, 1951b: B). In summary, the study defined the term “refugee” as follows:

“Article 1

Are to be considered as refugees under paragraph 11 of the General Assembly resolution of 11 December 1948 persons of Arab origin who, after 29 November 1947, left territory at present under the control of the Israel authorities and who were Palestinian citizens at that date.

Are also to be considered as refugees under the said paragraph stateless persons of Arab origin who after 29 November 1947 left the aforementioned territory where they had been settled up to that date.

Article 2

The following shall be considered as covered by the provisions of Article 1 above:

1. Persons of Arab origin who left the said territory after 6 August 1924 and before 29 November 1947 and who at that latter date were Palestinian citizens;
2. Persons of Arab origin who left the territory in question before 6 August 1924 and who, having opted for Palestinian citizenship, retained that citizenship up to 29 November 1947.” (UNCCP, 1951b: at the end).

The Legal Advisor’s Addendum proposed to amend it in two respects. Art. 1 should be given a third paragraph, which should read:

“Persons who have resumed their original nationality or who have acquired the nationality of a country in which they have racial ties with majority of the population are not covered by the provisions of the above paragraphs of this Article. It is understood that the majority of the said population should not be an Arab majority” (UNCCP, 1951a).

Furthermore, a third article should clarify the concept of “of Arabic origin”:

“Article 3

The term “of Arab origin” appearing in the foregoing Articles related to persons belonging to the Palestine Arab community and to those who are considered or who considered themselves as belonging to that community” (UNCCP, 1951a).

This refugee definition was neither followed up nor adopted by the UN General Assembly. It has no legally binding force. Nevertheless, it refers to “persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance” and would therefore in principle be excluded from the scope of the 1951 Convention under Article 1 D cl. 1 of the

1951 Convention or included via cl. 2. The restriction to refugees of Arab origin was ultra vires.

3.2.3 *Beneficiaries under UNRWA*

The organizational purpose of UNRWA was to implement the relief and work programs for Palestine refugees (Akram, 2018: 425). This necessarily also reflected on the needs-based (Akram, 2018: 425) definition of the beneficiaries (Albanese & Takkenberg, 2021: 90) in an Interim Report:

“For working purposes, the Agency has decided that a refugee is a needy person, who, as a result of the war in Palestine, has lost his home and his means of livelihood. A large measure of flexibility in the interpretation of the above definition is accorded to chief district officers to meet the many border-line cases which inevitably arise. In some circumstances, a family may have lost part or all of its land from which its living was secured, but it may still have a house to live in. Others may have lived on one side of the boundary but worked in what is now Israel most of the year. Others, such as Bedouins, normally moved from one area of the country to another, and some escaped with part or all of their goods but cannot return to the area where they formerly resided the greater part of the time. These examples give an idea of the varying conditions that must be met in administering the relief program” (UN General Assembly 1950: para. 15).

After multiple changes, the definition has been essentially stable since 1952. The 2009 Consolidated Eligibility and Registration Instructions (CERI) describe eligible individuals in two groups:

“1. persons who meet UNRWA's Palestine Refugee criteria

These are persons whose normal place of residence was Palestine [i.e., the territory formerly designated as British Mandate Palestine (UNRWA, 2009: VII.I)] during the period 1 June 1946 to 15 May 1948, and who lost both home and means of livelihood as a result of the 1948 conflict. Palestine refugees, and descendants of Palestine refugee males, including legally adopted children, are eligible to register for UNRWA services. The Agency accepts new applications from persons who wish to be registered as Palestine Refugees. Once they are registered with UNRWA, persons in this category are referred to as Registered Refugees or as Registered Palestine Refugees.

2. persons who do not meet UNRWA's Palestine Refugee criteria

These persons are grouped in the categories listed below. While registered for the purposes of receiving UNRWA services, these persons are not counted as part of the official Registered Refugee population of the Agency. They consist of persons who at the time of original registration did not satisfy all of UNRWA's Palestine Refugee criteria, but who were determined to have suffered significant loss and/or hardship for reasons related to the 1948 conflict in Palestine; they also include persons who belong to the families of Registered Persons. These categories are:

- 2.1 Jerusalem Poor and Gaza Poor [...]
- 2.2 Frontier Villagers [...]
- 2.3 Compromise Cases [...]
- 2.4 MNR Family Members [...]
- 2.5 Non-Refugee Wives [...]
- 2.6 Kafalah Children [...]" (UNRWA, 2009: III.A).

In addition, UNRWA considers, among others, 1967 IDPs as eligible for benefits without being registered in UNRWA's system (UNRWA, 2009: III.B).

3.2.4 *Palestinian Refugees under the UNHCR Guidelines on International Protection No. 13*

The UNHCR Guidelines on International Protection No. 13 on the Applicability of Article 1 D of the 1951 Convention to "Palestinian Refugees" define the same as follows:

"Palestine refugees: Persons who are "Palestine refugees" within the sense of UN General Assembly Resolution 194 (III) of 11 December 1948 and subsequent UN General Assembly Resolutions and who, as a result of the 1948 Arab-Israeli conflict, were displaced from that part of Mandate Palestine which became Israel, and who have been unable to return there.

Displaced persons: Persons who are "displaced persons" within the sense of UN General Assembly Resolution 2252 (ES-V) of 4 July 1967 and subsequent UN General Assembly resolutions, and who, as a result of the 1967 conflict, have been displaced from the Palestinian territory occupied by Israel since 1967 and have been unable to return there. It also includes those persons displaced by "subsequent hostilities".

Descendants: "Descendants" refers to all persons born to Palestine refugees or displaced persons, as defined above. Based on principles of gender equality and non-discrimination on the basis of sex, as well as the principle of family unity, these descendants, whether they are descended through the male or female line, would be considered to fall within the purview of Article 1D. This includes descendants who were born outside of and who have never resided in UNRWA's areas of operation, where the criteria for the application of Article 1D are met." (UNHCR, 2020: 242, footnotes omitted).

With regard to the definition of "Palestine Refugees", a footnote refers on the one hand to the UNCCP definition in the Addendum to a Definition of a "Refugee" and the underlying Note by the Principle Secretary, and on the other hand to the UNRWA definition (UNHCR 2020: 242, fn. 17). The reference only in a footnote makes it possible to make a determination based on the UNCCP definition without recourse to the ethnic narrowing there. If this is combined with the UNRWA definition, Palestinian refugees are persons,

1. who have left the territory currently under the control of the Israeli authorities and that is
 - a. after November 29, 1947, and
 - were Palestinian nationals at the time, or
 - as stateless persons had resided there until then;
 - b. after August 6, 1924 but before November 29, 1947, and who were Palestinian citizens at the latter date;
 - c. before August 6, 1924, and who had opted for Palestinian citizenship and regained it by November 29, 1947;

or

2. whose habitual residence during the period June 1, 1946, to May 15, 1948, was Palestine (i.e., the area formerly known as British Mandate Palestine), and who lost both their homes and livelihoods as a result of the 1948 conflict.

"Palestinian refugees" also include "displaced persons" as defined in UN General

Assembly Resolution 2252 (ES-V), Humanitarian Assistance (adopted 4/7/1967, UNGA Res. 2252 [ES-V]) and subsequent resolutions, because they were displaced as a result of the 1967 conflict from Palestinian territory occupied by Israel since that time and cannot return there. In that resolution, UNRWA was mandated to provide, to the extent possible, humanitarian assistance on an emergency basis and as a temporary measure to others in the area who were displaced at the time and in urgent need of assistance due to hostilities. An exact definition is lacking again. Historically, the majority came from the West Bank, which was annexed by Jordan at the time, held Jordanian citizenship as a result, fled to the other side of the Jordan River, and were considered IDPs by Jordan. IDPs from the Gaza Strip were not assimilated to this group by Jordan but are considered IDPs under UN GV Res. 2252 (ES-V) (Albanese & Takkenberg, 2021: 104, 200). Referring to UN General Assembly Resolution 37/120, United Nations Relief and Works Agency for Palestine Refugees in the Near East (adopted 16/12/1982, UNGA Res. 37/120), UNHCR also includes persons displaced by subsequent hostilities (UNHCR, 2020: 242).

Consideration of descendants of “Palestine refugees” is not grounded in the UNCCP definition. UNRWA-CERI considers as “Palestine refugees” only descendants of the male line. Descendants of female “Palestine refugees” who are married to a non-refugee are not listed as “[p]ersons who meet UNRWA's Palestine Refugee criteria” but as “[p]ersons who do not meet UNRWA's Palestine Refugee criteria”. However, they are still eligible for benefits. Descendants of “displaced persons” are not only ineligible for registration under UNRWA's benefits system – as is the displaced person himself – but are not eligible for benefits in their own right. This would, if protection is not indirectly provided through a parent, lead to exclusion from both protection regimes and contradict the intention of Art. 1 D 1951 Convention, which seeks to convey unconditional (“ipso facto”) protection through the combination of exclusion (cl. 1) and inclusion (cl. 2).

Whereas Article 1 D cl. 1 of the 1951 Convention neutrally refers to “persons [!] currently enjoying the protection or assistance of a United Nations organization or institution, with the exception of the United Nations High Commissioner for Refugees,” UNHCR Guidelines No. 13 narrow the scope of application in terms of persons to the aforementioned subcategories. In doing so, they leave out of account numerous groups of persons to whom UNRWA provides protection and assistance but who have not suffered displacement. This is consistent with the nature of the Convention as a refugee protection instrument.

3.3 Exclusion for Current Enjoyment of Protection or Assistance.

3.3.1 Protection respectively Assistance

According to Art. 1 D cl. 1 1951 Convention, exclusion requires that UN organs or institutions provide “protection or assistance”. None of the terms is specified further. Some assume – also in view of the drafting history of the Convention – that the terms had synonymous meanings and could also have been replaced by “care”, “aid” or “support” (Qafisheh, 2015: 69; Qafisheh & Azarov, 2011: MN 52; obviously similarly undifferentiated Marx, 2019: § 3 para. 72). However, this would ignore that the terms “protection” and “assistance” were ultimately and alternatively chosen. Others argue that a distinction is irrelevant, since both aspects would be covered by UNRWA's mandate. To establish this, however, would first require a sound determination of the terms.

Although the term “protection” is neither defined in the 1951 Convention, nor in the

UNHCR Statute or the General Assembly resolutions establishing UNCCP or UNRWA (Albanese & Takkenberg, 2021: 401), systematic interpretation reveals that it is mentioned in several places in the Convention, including in the refugee definition (Art. 1 A para. 2 and C para. 1, 3 and 5). This is very much in favor of defining the various mentions in close reference to each other (Storey, 2016: 488; more cautiously Hathaway, 2016: 484-485). It corresponds to the intention of Art. 1 D 1951 Convention to avoid a duplication of responsibilities, but not to deny protection as foreseen by the Convention (Qafisheh, 2015: 67). "Protection" thus means protection from persecution (Art. 1 A para. 2) (see also Qafisheh & Azarov, 2011: MN 54), diplomatic protection (Art. 1 C para. 1), as well as a minimum human rights standard actually realized (cf. Art. 1 C para. 5), and is thus a comprehensive refugee-specific, compensatory legal status as well as its redemption and transfer into durable solutions (Albanese & Takkenberg, 2021: 404-408).

Although the mentioned concept of protection always refers to States as guarantors, the UNHCR Statute assigns "international protection" also as a task to UNHCR (Para. 1 1950 UNHCR Statute). Since UN bodies and institutions always operate on the territory of a State and thus in its dependence and usually without enforcement power, a cooperative relationship (cf. the obligation of States Parties to cooperate with the UNHCR in Article 35 of the 1951 Convention or the call for cooperation with the UNHCR in the underlying UNGA Res. 428 [V], para. 2) is required in which UN bodies and institutions are often limited to urging the State to grant protection in full (Albanese & Takkenberg, 2021: 402). This is reflected in the obligations of UNHCR as to how protection is to be granted (Para. 8 1950 UNHCR Statute), which also form the standard for other UN organs or agencies that grant refugee protection under Art. 1 D 1951 Convention (Qafisheh & Azarov, 2011: MN 53, 78).

According to Goodwin-Gill & McAdam, a synopsis of the 1951 Convention and the 1950 UNHCR Statute reveal the following direct and indirect aspects of UNHCR's protection activities: direct protection activities, including intervention on behalf of individuals or groups, comprise, first, the protection of the refugee's basic human rights (e.g., non-discrimination, freedom and security of the person), but in addition:

"(1) the prevention of the return of refugees to a country or territory in which their life or liberty may be endangered; (2) access to a procedure for the determination of refugee status; (3) the grant of asylum; (4) the prevention of expulsion; (5) release from detention; (6) the issue of identity and travel documents; (7) the facilitation of voluntary repatriation; (8) the facilitation of family reunification; (9) the assurance of access to educational institutions; (10) the assurance of the right to work and to benefit of other economic and social rights; (11) the treatment generally in accordance with international standards, not excluding access to and by UNHCR, the provision of physical and medical assistance, and personal security; and (12) the facilitation of naturalization." (Goodwin-Gil & McAdam, 2007: 447; Albanese & Takkenberg, 2021: 402).

Indirect protection activities refer to

"(1) promoting the conclusion of international conventions for the protection of refugees, supervising their application and proposing amendments thereto; (2) promoting through special agreements with governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection; and (3) promoting the admission of refugees." (Goodwin-Gill & McAdam, 2007: 426; Albanese & Takkenberg, 2021: 402).

The UNHCR itself rightly emphasizes that international protection, to be implemented in

cooperation with States and non-governmental organizations, would have to cover all needs arising from the absence of national protection (UNHCR 1983: para. 12, footnotes omitted).

The English term “assistance” is also used by the 1951 Convention in connection with legal assistance (Art. 16 para. 2), public assistance (Art. 23) and administrative assistance (Art. 25). The French term “assistance” is found in Art. 16 para. 2 and Art. 23, but not in the context of administrative assistance. This clearly establishes the primary meaning of “assistance” in the sphere of public welfare.

3.3.2 *Protection AND Assistance*

According to the wording of Art. 1 D cl. 1 1951 Convention, it seems to be sufficient for exclusion that either “protection or assistance” is provided. However, this would mean accepting deficits in protection and assistance that would be alien to the 1951 Convention. Only protection and assistance in their cumulation enable “the widest possible exercise of these fundamental rights and freedoms” as defined to be the objective of the 1951 Convention (Preamble, 2nd recital). In case of State protection, both aspects would have to be jointly considered as primary State tasks. Nothing else can apply to international protection replacing it.

Moreover, Art. 1 D cl. 2 of the 1951 Convention bases inclusion on the alternative of protection or assistance, too; i.e., the omission of only one of the two would be sufficient to trigger the protection of the Convention ipso facto. If alternatives were required for both exclusion and inclusion in strict accordance with the wording, this would lead to results that make no sense and would have to be resolved in either the inclusion or the exclusion provision. In accordance with the protective purpose of the Convention, the decision can only be made in favor of a corrective interpretation in the exclusion clause (disagreeing Hathaway & Foster 2014: 520-521). Exclusion from the personal scope of application of the Convention is therefore only given if the UN bodies or institutions provide protection and assistance, whereby it is sufficient that several participants together provide protection and assistance by shared responsibilities.

3.3.3 *Protection and Assistance by UNCCP*

The mandate of UNCCP originally referred to repatriation, resettlement and economic and social rehabilitation of refugees, as well as compensation for loss of or damage to property, in accordance with No. 11 of UNGA Res. 194 (III). Repatriation and resettlement are generally durable solutions in the field of refugee protection. Compensation payments are also directly linked to the refugees’ fate and are thus also aimed at finding a durable solution. These task descriptions can therefore be seen as measures of “protection”. Compared to the mandate of the UNHCR, they concern only part of the latter’s protection responsibilities and are designed to bring about an early pacification of the conflict (Albanese & Takkenberg, 2021: 403-404). In contrast, the economic and social rehabilitation also mentioned is an element of public welfare and thus of “assistance”.

3.3.4 *Assistance and Protection by UNRWA*

The organizational purpose of UNRWA is to implement the assistance and work programs for Palestine refugees (No. 7 UNGA Res. 302 [IV]). This corresponds to the element of “assistance” as defined in Art. 1 D of the 1951 Convention. At the same time, the establishment of UNRWA was an expression of the failure of the UNCCP and, in effect, a

replacement of the UNCCP's mandate, which was also designed to provide assistance, and which subsequently focused on the "protection mandate". Initially, UNRWA's mandate did not include the protection aspect. With the de facto cessation of UNCCP's work and the resulting defencelessness of the refugees (Akram, 2018: 426), UNRWA was asked to include compensatory protection aspects in its mandate. This was reflected in the concept of "passive protection" by Refugee Affairs Officers and Refugee Affairs Assistants during the first Intifada (Albanese & Takkenberg, 2021: 418-420), Operation Support Officers during the second Intifada (Albanese & Takkenberg, 2021: 425-426) and, after various conceptualizations (see for the development of UNRWA's protection mandate Albanese & Takkenberg, 2021: 408-434), in a renewed UNRWA mandate by the UN General Assembly:

"The General Assembly [...]

Recognizes the acute protection needs of Palestine refugees across the region, and encourages the Agency's efforts to contribute to a coordinated and sustained response in accordance with international law, including the Agency's development of its protection framework and function in all field offices, including for child protection." (UN General Assembly Resolution Res. 71/93, Operations of the United Nations Relief and Works Agency for Palestine Refugees in the Near East [adopted 6/12/2016, UNGA Res. 71/93], para. 19).

On this basis, while the UN General Assembly continues to emphasize the primary responsibility of States to provide protection, it recognizes that UNRWA makes a contribution to this end (UNRWA, 2016: 30), although it does not relate to finding durable solutions to the refugee issue (Akram, 2018: 426).

3.3.5 *Current enjoyment*

According to Article 1 D cl. 1 of the 1951 Convention, all persons who "currently" enjoy "protection" and "assistance" from the UNCCP and/or UNRWA are excluded. The wording allows for several variants of interpretation. A cut-off date approach that looked at the date of interpretation of the Convention on July 28, 1951, or its entry into force on April 22, 1954 (thus on both dates Symes & Jorro, 2010: 380), and asked who was enjoying appropriate protection and assistance at that time (so Hathaway & Foster, 2014: 513-515), would not do justice to the intention of separating a special group of refugees who share a common fate (German Federal Administrative Court [BVerwG], Judgement of 4/6/1991, No. 1 C 42.88, para. 23). This would lead to different protection mechanisms and standards, and thus unequal treatment for a single refugee group (Goodwin-Gill & McAdam, 2007: 157-158), and to numerous demarcation difficulties of an institutional and organizational nature (UNHCR 2020: 243). Moreover, it would have been obvious to anchor a corresponding point in time in the Convention text. The temporal and spatial delimitation of the 1951 Convention by the 1967 Protocol underlines the future-open nature of the term "at the time" and refers to the point in time at which refugee protection is considered. Therefore, UNHCR could rightly refer Article 1 D cl. 1 1951 Convention to the 1967 IDPs as well (UNHCR 2020: 242). UNGA Res. 2252 (ES-V), which extends UNRWA's mandate in this respect, is dated 4 July 1967 and is framed in terms of time by the ratification of the 1967 Protocol on 31 January 1967 and its entry into force on 4 October 1967.

It is disputed whether protection and assistance must actually be enjoyed (European Court of Justice [ECJ], Judgement of 17/6/2010, Nawras BolBol, No. C-13/09, para. 51;

Judgement of 19/12/2012, Mostafa Abed El Karem El Kott, No. C-364/11, para 44; Qafisheh & Azarov, 2011: MN 27) or must still have been enjoyed shortly before the application was filed (extending the previous case law, ECJ, Mostafa Abed El Karem El Kott, paras. 49-52), or whether it is sufficient that a member of the group of persons enjoying the protection and assistance would be entitled to do so. The wording and the exceptional nature of the clause initially suggest the former (ECJ, Nawras BolBol, para. 51; Kraft, 2016: MN 19) but the systematic interpretation points to a collective character due to the use of the plural for the personal scope of the clause. The institutional delimitation also speaks in favor of a provision along the lines of an institutional distribution of responsibilities that avoids overlaps.

However, on a teleological interpretation, the community of fate thus established can only go so far as the individual person could actually avail himself of the protection offered by the UN organs or agencies elsewhere. This is consistent with the interpretation of the other refugee statuses, which are based on the actual existence of priority protection. Such an interpretation is further supported by the fact that the determination of the personal scope of application of Article 1 D of the 1951 Convention is not directly based on a jointly suffered fate of displacement or flight, but only on the enjoyment of protection and assistance based on it.

Current enjoyment of protection and assistance therefore means that, at the time of refugee status determination, the person either actually enjoys it or is entitled to it (legal entitlement) (UNHCR, 2020: 243) as well as actually able to avail of it (accessibility). This has considerable significance in the case of secondary displacement from a State of residence outside UNRWA's areas of responsibility (on such secondary expulsions in the Middle East, see Erakat, 2014: 590-598, 601-611).

If, on the other hand, a person who objectively shares the fate of the refugee group or who would actually be under the UN mandate is legally or factually prevented from enjoying protection and assistance, he or she is not affected by the exclusion (Qafisheh & Azarov, 2011: MN 58-59). Reasons for this could include exclusion from eligibility for benefits due to legal requirements or being prevented from entering or returning (Qafisheh & Azarov, 2011: MN 56) to UNRWA's area of operation. The persons concerned may therefore claim to be refugees within the meaning of Article 1 A para. 2 of the 1951 Convention, provided that the relevant conditions apply.

3.3.6 *Presumption Rule*

If a person actually enjoys protection and assistance according to these standards, the actual quality of the protection and assistance does not need to be further examined to determine whether and to what extent it meets the standards required for adequate refugee protection. The systematics of the exclusion and inclusion clauses of Article 1 D cl. 1 and 2 1951 Convention show that the examination of this is reserved for the inclusion clause. The prerequisite for inclusion is a substantial deficit of protection and assistance. The systematics of Art. 1 D is based on the institutional confidence that the protection and assistance currently enjoyed, as provided by the competent other UN organs and institutions, is sufficient to justify exclusion from the scope of the 1951 Convention. As a result, in the case of the current enjoyment of protection and assistance via other UN organs or institutions, there is an irrebuttable presumption (alluding though in a different context Albanese & Takkenberg, 2021: 115-116) regarding the sufficient quality of the

exclusion in Art. 1 D cl. 1.

3.4 Exclusion

The 1951 Convention does not apply to persons meeting the above outlined criteria for exclusion (Art. 1 D cl. 1 1951 Convention) unless he or she at the same time meets the conditions of inclusion (Art. 1 D cl. 2). Therefore, they cannot claim refugee status under Art. 1 A para. 2 1951 Convention even if they fulfilled the criteria of the general refugee definition there. The exclusion is naturally limited to the protection granted by the 1951 Convention but does not affect the applicability of other instruments of humanitarian migration law (Qafisheh & Azarov, 2011: MN 26).

4 Inclusion

4.1 General Considerations

The exclusion of persons from Convention protection under Art. 1 D cl. 1 1951 Convention is intended to last only as long as protection and assistance are actually provided. Art. 1 D cl. 2 therefore calls for their inclusion

“[w]hen such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations”.

First, it should be noted that while this clause also indirectly affects the institutional delimitation of UNRWA's and UNHCR's responsibilities, it directly impacts the coordination of the special refugee protection regime for Palestinian refugees with the general one of the 1951 Convention. There is nothing in the wording of Article 1 D 1951 Convention to suggest that the Convention intended to establish clearly defined geographical areas of responsibility and that the applicability of the exclusion clause or inclusion clause would depend on where the refugee was currently located.⁸ Instead, the only question that matters is whether the refugee is receiving benefits or whether they have ceased. Insofar as this is geographically determined for UNRWA (UNHCR, 2022: 241), the scope of application of the 1951 Convention and thus the mandate of UNHCR adapts geographically as a reflex for the question of exclusion; the inclusion clause, however, breaks through any geographical delimitation of areas of responsibility precisely when its criteria are fulfilled. Otherwise, protection gaps would arise, which the systematics of Article 1 D cl. 1 and 2 1951 Convention teleologically aim to avoid. Because of the ipso facto inclusion, it does not even matter whether the person concerned is outside his or her country of origin, as would have been required by the general refugee definition of Article 1 A 2 1951 Convention.

4.2 Ceasing of Protection or Assistance.(

4.2.1 Protection or Assistance

“Protection” or “assistance” must have ceased to exist. As in the case of the exclusion in Art. 1 D cl. 1 1951 Convention, both elements in the inclusion clause of Art. 1 D cl. 2 are

⁸ Of different opinion Albanese & Takkenberg (2021: 115-116): "Accordingly, Article 1 D (2) can only be triggered when Palestinian refugees are outside UNRWA's areas of operations." Their argumentation apparently focuses more on the exclusion element than on the consequences for the inclusion element.

linked with an “or”. As already explained (see 3.3.2), it is sufficient for inclusion that only one of the two elements has ceased to apply (Albanese & Takkenberg, 2021: 115, also applicable to the inclusion of Palestinians).

The yardstick for the required quality of protection and assistance cannot therefore be solely the mission of the competent UN bodies/institutions and their implementation, though this is the only point made by Albanese & Takkenberg (2021: 116-117). The latter is necessarily limited and dependent on the States of their field of operation: As in Art. 1 A para. 2 1951 Convention, Art. 1 D cl. 2 of the 1951 Convention is not about the attribution of responsibility (accountability view) but protection (protection view). What is crucial is whether under the umbrella of the competent UN organs and agencies the persons concerned are actually offered a kind of protection and assistance, which according to the human rights standard of the 1951 Convention could be regarded as adequate compensation for the State protection lost due to the conflict.

4.2.2 Cessation

According to the wording, “cessation” means more than just a qualitative deterioration. This is confirmed by a systematic interpretation of the term in Art. 1 C para. 5 and 6 1951 Convention, where the term “cessation” (there with regard to the circumstances giving rise to the fear of persecution) is given a fundamental and permanent meaning. The meaning and purpose of the provision in Art. 1 D cl. 2 1951 Convention also speak in favor of focusing on substantial changes in order not to endanger the institutional and organizational structure of international refugee protection in the case of only temporary deficits. This is particularly true in view of the difficulties of demarcation and randomness that might otherwise be expected in case of gradual fluctuations in effectiveness of protection and assistance.

On the other hand, systematics and teleology of other inclusion clauses (Art. 1 A para. 1 and 2 1951 Convention) show that it is not the formal legal but actual situation that should determine refugee status. Nothing else can apply to the interpretation of the term “cessation” in the inclusion clause of Art. 1 D cl. 2 1951 Convention. Moreover, in contrast to Art. 1 C para. 5 and 6, the purpose of Art. 1 D cl. 2 is not to justify the termination of refugee protection by way of exception, but to ensure its continuity. Against the background of the protective purpose of the Convention and refugee protection in general, by arguing with the functioning of the international protection system; refugees can be expected to accept restrictions on their rights at most temporarily and depending on the degree of impairment. As in all other respects for the determination of the refugee concept, the future development is decisive, i.e., a prognosis must be made, for which in turn the past can provide indications.

As the wording itself (emphasized by ECJ, Mostafa Abed El Karem El Kott, para. 53) indicates with the phrase “for any reason”, the term “has ceased” is to be interpreted broadly (UNHCR, 2020: 244). Namely, it is not limited to the end of the mandate of UNCCP and UNRWA (without any further justification referring to UNRWA alone UNHCR, 2021: 244) or even to the case of definitive settlement of the fate of the refugee group in accordance with the relevant resolutions adopted by the UN General Assembly. Conversely, it would be contrary to the teleology of the provision and the establishment of two deliberately separate institutional systems of protection and assistance to assume that the individual refugee could determine, purely on a subjective basis, by his own

conduct, the responsibility for the protection and assistance to be granted to him (Qafisheh & Azarov, 2011: MN 57). The wording of the inclusion clause (Art. 1 D cl. 2), like that of the exclusion clause (Art. 1 D cl. 1), is once again directed at “persons” in the plural instead of at a “person” in the singular, as in Art. 1 A, C and F. As in case of the exclusion clause, a collective responsibility for the protection and assistance systems of the individual refugee is defined, a similar collective view is also to be taken for the inclusion clause. From this the intention can be inferred that inclusion and exclusion should, at least as a rule, be group related.

On the other hand, it would be contrary to the purpose of both protection instruments to assume that gaps in protection for the individual refugee should be accepted. On the contrary, Article 1 D 1951 Convention aims precisely at the continuity of refugee protection across institutional boundaries. The wording is also sufficiently flexible to include the individual fate under the “person” concept, if only the criteria for this are of an objective nature.

Therefore, in order to trigger UNHCR's jurisdiction and the applicability of the 1951 Convention, the cessation of protection or assistance must be objectively justified in the collective and individual case, i.e., be beyond the control of the persons concerned (UNHCR, 2020: 243; ECJ, Mostafa Abed El Karem El Kott, para. 58; Kraft, 2016: MN 21).

4.2.3 Institutional Review

The concept of Art. 1 D 1951 Convention is institution related. The protection and assistance of only one UN organ or agency would be sufficient for exclusion (Art. 1 D cl. 1), while exclusion could also be based on the protection or assistance of several. As with the exclusion clause, the inclusion clause (Art. 1 D cl. 2) must first be examined for each individual institution and then considered comprehensively. As long as exclusion could still be based on the protection and assistance of another UN organ or agency, it would continue.

4.2.4 No Final Settlement pursuant to the Relevant UN General Assembly Resolutions

The discontinuation of protection and assistance would only lead to inclusion under Art. 1 D cl. 2 1951 Convention if “the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations”. According to the wording of the provision, such a settlement must already be “definitive” and is necessarily of a collective nature due to the use of the plural in the term “persons”.

With regard to the legal status to be achieved by the regulation and the factual living and protection conditions, the Convention does not make any independent statements. The substance and quality of the regulation to be made are rather derived from the reference “in accordance with the relevant resolutions adopted by the General Assembly of the United Nations”. Particular importance is attached to No. 11 of UNGA Res. 194 (III), which sees the final solution in a return or compensation of the refugees:

“The General Assembly, [...]

Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or

authorities responsible" (UNGA Res. 194 [III]).

Again, though, the fundamental criterion for the 1951 Convention is not the form but the substance of protection. The definitive settlement must therefore also meet substantive requirements and grant the persons concerned respectively permanent protection and assistance.

The requirements for the return can be derived from the concept of protection in Art. 1 C para. 5 1951 Convention, since this also bases termination of refugee protection on a renewed, adequate offer of protection by the State of origin which the refugee cannot reject. A final option of return (cf. on the origins and development of the right to return Albanese & Takkenberg, 2021: 352-354, 364-369), which in fact would not provide the Palestinian refugees with a dignified perspective on life and enable them to live "in peace with their neighbors", as explicitly mentioned in the resolution, would therefore be insufficient. The return should only take place at the request of the refugees and thus voluntarily. As return is to be made possible, it is concluded that restitution payments would also have to be made (Albanese & Takkenberg, 2021: 350). For the compensation solution expressly demanded by the resolution, international law provides general guidelines to be observed (Albanese & Takkenberg, 2021: 354-358, 369-372, 451-454). Merely symbolic compensation would be insufficient.

In the end, there is no question that a definitive settlement in this sense has not yet been reached (ECJ, Mostafa Abed El Karem El Kott, para. 54).

4.2.5 *Objective Reasons for Cessation*

UNHCR (2020, 244-247) lists as alternative objective grounds for cessation (1) termination of UNRWA's mandate; (2) UNRWA's inability to fulfill its protection or assistance mandate; (3) threat to life, physical integrity, security or freedom or other protection-related grounds; and (4) practical, legal or security obstacles that prevent applicants from availing of UNRWA's protection or assistance.

Firstly, the exclusive focus on UNRWA and neglect of UNCCP must be criticized. Although UNCCP no longer plays any role in the actual protection and assistance of refugees due to its de facto demise, this is precisely a crucial point for the examination of Art. 1 D cl. 2 1951 Convention and the triggering of the inclusion clause. Secondly, the threat to life, physical integrity, security or freedom or other protection-relevant reasons within the area of operation of the responsible UN organs or agencies is a sub-case of the de facto loss of the granting of protection and assistance. And thirdly, according to the view taken here, practical, legal or security obstacles that prevent applicants from availing themselves of the protection or assistance of the UN organs or agencies already lead to a lack of current enjoyment of the same and thus already to an exclusion from the scope of the Convention (Art. 1 D cl. 1).

Therefore, only (1) the formal termination of the mandate of the UN organs or agencies and (2) the de facto cessation of protection and assistance can be considered as objective reasons for discontinuation.

4.2.5 *Formal Termination of the Mandate of the UN Organ or Agency*

The formal termination of the mandate of a UN organ or agency, and thus also of UNCCP and UNRWA, requires a decision by the UN General Assembly (cf. Art. 22 of the 1945

Charter; Albanese & Takkenberg, 2021: 118) and would collectively affect everyone who had previously enjoyed protection and assistance (UNHCR, 2020: 245).

If the formal termination of the mandate was linked to the definitive settlement of the fate of the group of persons in accordance with the resolutions of the UN General Assembly relating thereto, there would be no change to the protection regime of the 1951 Convention; rather, subsidiary refugee protection would be replaced by newly established State protection.

If, on the other hand, there was no such final settlement and the persons concerned do not still receive protection and assistance through other UN organs or agencies, the inclusion clause (Art. 1 D cl. 2 1951 Convention) ensures continuity of refugee protection via the 1951 Convention and through UNHCR (Para. 7 lit. c UNHCR Statute).

4.2.6 *Factual Cessation of Protection or Assistance*

As is generally the case, it is not the formal legal situation that is ultimately decisive for determining the refugee concept under Art. 1 1951 Convention, but rather the actual existence of sufficient protection, which is intended to ensure “the widest possible exercise of these fundamental rights and freedoms” (reiteration 2 of the preamble). It must therefore be assumed that protection and assistance have ceased if they are not any or no longer sufficient (Marx, 2019: MN 74). This is confirmed by the wording, which refers to that protection and assistance have “ceased for any reason” (ECJ, Mostafa Abed El Karem El Kott, paras 56-57).

The duration of the absence of a final settlement is not in itself evidence of the de facto cessation of protection and assistance. Even if the mandate of the UNCCP is aimed at a final resolution of the conflict and its consequences, success in this regard is dependent on conditions that go beyond the scope of refugee protection and would also be alien to the convention in other respects. Rather, the quality of the protection and assistance provided by the other UN bodies and institutions is decisive. This must not be merely formal or symbolic. According to the European Court of Justice (ECJ), Judgement of 13/1/2021, XT, No. C-507/19, para. 51, the inclusion clause therefore applies

“where it becomes evident, based on an assessment, on an individual basis, of all the relevant evidence, that the personal safety of the stateless person of Palestinian origin concerned is at serious risk and that it is impossible for UNRWA, whose assistance was requested by that person, to guarantee that the living conditions of that individual would be compatible with its mission, and that person is forced to leave the UNRWA area of operations owing to circumstances beyond his control.”

Even if the standards of refugee protection under the 1951 Convention are not directly relevant due to the exclusion clause of Article 1 D cl. 1, which is to be applied in principle, they nevertheless represent a comparative standard of what the contracting states had in mind as an image of meaningful protection. International bodies and institutions can be of varying degrees of robustness, but as a rule they are dependent on the cooperation of the states in their area of operation. In this respect, the provision of protection and assistance involves a division of labor. This is clearly illustrated by the protection mandate of the UNCCP, i.e., a commission that is aimed at providing protection and assistance, but from the outset did not have enforcement mechanisms or even sufficient implementation resources in this regard. Where such a division of labor is lacking, the enjoyment of protection and assistance is at risk and a lapse is foreseeable.

The assumed or actual temporary nature of the loss of protection is irrelevant (Marx, 2019: MN 75). At most, a very temporary, only selective failure of protection could constitute an exemption (cf. Albanese & Takkenberg, 2021: 118). Similarly, the reason for the factual loss of protection and assistance is irrelevant. It can take place as a whole or limited to a certain area (geographical, country-specific, group-related, personal, factual), i.e. collectively, if the other UN organs or agencies would no longer be able or willing to continue to provide protection and assistance precisely there (UNHCR, 2020: 245). However, since the fundamental priority of the protection of the other UN organs and agencies over that one of the Convention is formulated in general terms in Art. 1 D No. 1 1951 Convention and does not recognize any geographical subdivision according to geographical fields (ECJ, XT, paras. 52-53), the ECJ comes to the conclusion that

"[...] in order to determine whether the protection or assistance from UNRWA has ceased, it is necessary to take into account, as part of an individual assessment of all the relevant factors of the situation in question, all the fields of UNRWA's area of operations which a stateless person of Palestinian origin who has left that area has a concrete possibility of accessing and safely remaining therein" (ECJ, XT, para. 67).

With regard to the possibility of access to protection in another field of operation, the European Court of Justice specifies,

"that the fact that a stateless person of Palestinian origin is registered with UNRWA does not give him or her any right to access or move within the area of operations of that organisation by moving from one field of that area to another. UNRWA does not have the authority to allow stateless persons of Palestinian origin to access the territories of the five fields of that area, which are under the jurisdiction of different States or autonomous territories.

In these circumstances, the determining authority and the court or tribunal hearing an appeal against the decision of that authority must take into consideration all the relevant factors of the situation in question which shed light on the question whether the stateless person of Palestinian origin concerned had, at the time of his or her departure from UNRWA's area of operations, the concrete possibility of accessing one of the five fields of UNRWA's area of operations in order to receive UNRWA's protection or assistance.

To that end, the fact that that stateless person has a right to obtain a residence permit in the State or in the autonomous territory of the relevant field of UNRWA's area of operations is an indication that that stateless person is able to access that area and thus receive UNRWA's protection or assistance, provided that UNRWA is able to provide that protection or assistance to him or her in that area.

In the absence of such a right, the fact that that stateless person has family ties in a given field of UNRWA's area of operations, had his or her actual or habitual residence in that area or resided there before leaving that area may be relevant, provided that the States or territories concerned consider that such elements are sufficient to enable, irrespective of the granting of any residence permit, a stateless person of Palestinian origin to access and safely remain on their territory.

Likewise, account must be taken of all evidence, such as declarations or practices of the authorities of the said States and territories, which imply a change of attitude towards stateless persons of Palestinian origin, in particular where, through such declarations and practices, they express an intention no longer to tolerate the presence on their territory of such stateless persons if they do not have a right of residence" (ECJ, XT, paras. 58-62).

However, a move to another geographical area of responsibility of the previously responsible UN organs or agencies in order to be subject to the same protection or

assistance in the second area in the event of the loss of protection or assistance in the first area is only reasonable if it can be assumed that the mandate will be fulfilled there at least for the duration of a conflict, but in case of doubt permanently.⁹ Insofar as the discontinuation of protection in a field of operations is not linked to country-specific peculiarities but to the general limitations of the UN organs and agencies themselves, this is doubtful. In many cases, the de facto cessation of protection and assistance, despite the continued existence of a mandate to do so, indicates an unwillingness or inability to provide protection in general. In such a case, it is therefore up to the State Party to the Convention to prove that the protection provided by the previously responsible UN entity elsewhere meets the minimum requirements on a permanent basis.

On the other hand, the European Court of Justice assumes,

"[...] that UNRWA's protection or assistance cannot be regarded as having ceased where a stateless person of Palestinian origin left the UNRWA area of operations from a field in that area in which his or her personal safety was at serious risk and in which UNRWA was not in a position to provide that individual with protection or assistance, first, if that individual voluntarily travelled to that field from another field in that area in which his or her personal safety was not at serious risk and in which that person could receive protection or assistance from UNRWA and, secondly, if he or she could not reasonably expect, on the basis of the specific information available to him or her, to receive protection or assistance from UNRWA in the field to which he or she travelled or to be able to return at short notice to the field from which he or she came [...]" (ECJ, XT, para 80).

In doing so, however, the courts must examine the voluntary nature of the departure and the foreseeability of the loss of protection and assistance in the area of operation to which the person concerned is heading, as well as the foreseeable lack of possibility of return on the basis of concrete information available to him. The standard applied by the European Court of Justice is that of individual obviousness. Sudden and unforeseen developments of the situation in this regard are contrary to the assumption of foreseeability (ECJ, XT, paras. 77-79).

The formal establishment of a de facto cessation of protection and assistance, for example through a General Assembly resolution, is a helpful source of knowledge in such cases but not a prerequisite for the assumption. This can also result from the analysis of the situation on the ground (UNHCR, 2020: 245). In this respect, the European Court of Justice assumes a far-reaching duty of clarification on the part of the competent authorities and courts, from which a material burden of proof is read at the expense of the States Parties (Albanese & Takkenberg, 2021: 116):

"It should be added that, where the competent authorities of the Member State in which the application for asylum has been made seek to determine whether, for reasons beyond his control and independent of his volition, it was in point of fact no longer possible for the person concerned to benefit from the assistance of which he had availed himself before leaving the UNRWA area of operations, those authorities must carry out an assessment, on an individual basis, of all the relevant factors, in which Article 4(3) of Directive 2004/83 may be applicable by analogy" (ECJ, Mostafa Abed El Karem El Kott, para. 64).

With regard to protection and assistance by the UNCCP, such a discontinuation can be

⁹ Unspecifically regarding the requirements of protection respectively assistance and based on EU secondary law mixing elements of Art. 1 A para. 2 and Art. 1 D cl. 2 1951 Convention: European Court of Justice (ECJ), Judgement of 25/7/2018, Serin Alheto, No. C-585/16, para. 134 u. 140.

assumed (Qafisheh & Azarov, 2011: MN 47, 50, depending on interpretation). Related to the assistance aspect, this can already be attributed to the fact that UNRWA's mandate has at least de facto been superseded. With reference to the protection aspect, it can also be assumed that it has ceased to exist, at least in view of the factual inactivity and insignificance that has occurred in the meantime (Albanese & Takkenberg, 2021, 183-244). UNHCR Guidelines No. 13 (2020: 245) explicitly address this by referring to the continued existence of the UNCCP on the one hand and to its annual report to the UN General Assembly on the other, in which UNCCP confesses that it is not in a position to exercise the mandate assigned to it.

Since UNCCP and UNRWA were responsible for protection and assistance, at least initially, on the basis of a division of labor, and UNRWA's protection mandate only developed over time, but on the other hand, inclusion once occurred due to discontinuation of protection and assistance cannot be reversed even upon acceptance of renewed granting of protection and by other UN organs and agencies, the Palestinian refugees were deprived of protection by the UNCCP and not simultaneously compensated by UNRWA, and therefore the inclusion of the entire group was triggered for this reason alone. Qafisheh (2015: 68) hints at this consequence, but ultimately does not defend it due to the assumption of a conceptual synonymy of protection and assistance (cf. also, by way of suggestion, Erakat, 2014: 615).

A qualitative examination of the UNCCP protection mandate leads to the same conclusion. It is limited to finding a final solution to the conflict, including the return, restitution and compensation of Palestinian refugees through negotiations. All other aspects of international protection, as characterized by the mandate of the UNHCR, especially at the operational level, are missing (cf. Albanese & Takkenberg, 2021: 403-404, for a comparison of the UNCCP and UNRWA mandates). Under such a minimalist protection mandate of the UNCCP, actual enjoyment of protection would have been highly dependent on voluntary state action from the outset. The enjoyment of a sufficient degree of protection would thus have been virtually impossible to guarantee internationally, even for a short period of time, and would have been illusory in view of a refugee situation that had dragged on for more than 70 years.

If, on the other hand, one was to assume that UNRWA, contrary to its original mandate, also offered sufficient protection in addition to assistance due to extensions of its mandate in the meantime, inclusion would be possible at least for those groups of people who were not also covered by its mandate.

At the same time, it should be asked whether and to what extent UNRWA itself can or does adequately fulfill its assistance mandate and a protection mandate that is only further assumed here for the sake of argument. Even if no conclusive analysis can be made at this point, this is extremely questionable or even can be ruled out with regard to certain areas of its mandate (Erakat, 2014: 585-586). The dependence on the cooperation of the host States has meant that in the course of the decades of a protected refugee situation, temporary if not permanent defencelessness has arisen in every UNRWA field of operation. In addition, the provision of assistance, which is dependent on government and non-governmental donors, is only partially able to compensate for a lack of governmental assistance. This is also evident to varying degrees in the different fields (cf. Albanese & Takkenberg, 2021: 183-244, for a summary of developments in UNRWA's individual fields of operation). The situation of Palestinian refugees in the West Bank and

Gaza Strip is characterized by the dependence and arbitrariness of the occupying forces (Albanese & Takkenberg, 2021: 227-244). In Lebanon, refugees are not only largely left to themselves and UNRWA, but have been subjected to military arbitrariness or targeted persecution several times over the decades and are permanently prevented from adequate participation by legal barriers (Albanese & Takkenberg, 2021: 207-219). The previously largely legally integrated Palestinian refugees in Syria have been caught between the fronts in the similarly protracted civil war since 2011 (Albanese & Takkenberg, 2021: 219-227). Only in the case of Jordan could it be debated whether, despite a partly chequered relationship with the State and in particular the events surrounding the "Black September," it can still be assumed that protection and assistance are being provided throughout (Albanese & Takkenberg, 2021: 198-207).

Finally, the wording of Article 1 D cl. 2 1951 Convention, which states that protection or assistance "shall have ceased for any reason", also permits an interpretation that considers individual lack of protection and assistance independently of mandate and institutional reasons (ECJ, Mostafa Abed El Karem El Kott, para. 58; Goodwin-Gill & McAdam, 2007: 158-159). This is also teleologically necessary to avoid protection gaps and to provide the necessary actual protection and assistance (ECJ, Mostafa Abed El Karem El Kott, para. 60). In this regard, the European Court of Justice states:

"Mere absence from such an area or a voluntary decision to leave it cannot be regarded as cessation of assistance. On the other hand, if the person concerned has been forced to leave for reasons unconnected with that person's will, such a situation may lead to a finding that the assistance from which that person benefited has ceased [...]."

As regards the examination, in an individual case, of the circumstances giving rise to the departure from the UNRWA area of operations, the national authorities must take account of the objective of Article 1D of the Geneva Convention [...] namely to ensure that Palestinian refugees continue to receive protection, as Palestinian refugees, until their position has been definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.

In the light of that objective, a Palestinian refugee must be regarded as having been forced to leave UNRWA's area of operations if his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted to that agency" (ECJ, Mostafa Abed El Karem El Kott, paras. 59, 62-63; confirmed in *Serin Alheto*, para. 86).

However, the European Court of Justice has not yet specified further standards for the quality of the necessary protection and assistance (Albanese & Takkenberg, 2021: 111). In the literature, the minimum requirements are dignified living conditions and protection against refoulement or deportation (Funke-Kaiser, 2022: MN. 20). In view of what has already been said about the general situation in the fields, a correct interpretation of the inclusion clause would only make it all the more likely that, even if it were assumed for the sake of argument that UNRWA generally continues to provide sufficient protection and assistance, this lack of protection and assistance could at least be demonstrated in individual cases and the claim to inclusion could be substantiated.

4.3 *Ipsa-facto* Inclusion

According to Art. 1 D cl. 2 1951 Convention, the legal consequence of cessation is that the persons concerned should "*ipso facto*!" fall under the provisions of the Convention (cf. Keßler, 2016: MN 16, on the insufficient transposition into German law). This legal

formula is understood to mean that a legal consequence occurs of its own accord (Merriam-Webster, n.d.; Qafisheh & Azarov, 2011: MN 72), i.e., it does not require any further conditions (Hathaway & Foster, 2014: 519; see also Goodwin-Gill & McAdam, 2007: 159).

In particular, the persons concerned do not have to prove or even fulfill the criteria of a neo-refugee (Art. 1 A para. 2 1951 Convention) in order to qualify for refugee status (Qafisheh & Azarov, 2011: MN 75; Wittmann, 2021: MN 82) because otherwise the inclusion of the characteristic "ipso facto" in the inclusion criteria of Art. 1 D cl. 2 1951 Convention would be superfluous (ECJ, Mostafa Abed El Karem El Kott, para. 73; Kraft, 2016: MN 22). This corresponds to the special situation of the Palestinian refugees, which was recognized by the signatory states in the form of special treatment by Art. 1 D 1951 Convention (ECJ, Mostafa Abed El Karem El Kott, para. 80; Hathaway & Foster, 2014: 520).

Although refugee status as such is in this case, as in the case of Article 1 A para. 2 1951 Convention, only dependent on the fulfillment of the actual requirements, the real enjoyment of the legal status thus established is in many ways necessarily dependent on the prior determination of the same, which is why recognition is also preceded by an application procedure in this respect (somewhat simplifying ECJ, Mostafa Abed El Karem El Kott, para. 75-76).

The fact that Art. 1 D cl. 2 1951 Convention requires that a person be subject to the provisions of the Convention also means that the provisions of Art. 1 E and F as well as Art. 2-34 of the 1951 Convention and, via teleological interpretation, Art. 1 C 1951 Convention are directly applicable (Hathaway & Foster 2014: 518; Qafisheh & Azarov 2011: MN 79).

5 Conclusions

The above analysis demonstrates that and to what extent Palestinian refugees were originally excluded from general refugee protection under the 1951 Convention, but in the meantime must be considered included without further condition due to the removal of protection and assistance from the originally responsible UN institutions.

This in no way implies the automatic end also of UNRWA's protection system but of UNHCR's additional mandate for this group of people and - even more essential - the obligation to recognize the general refugee status by the States Parties.

The associated legal obligations of States Parties, especially outside the region, to one of the largest refugee groups in the world are not only explosive in terms of domestic politics with regard to discussions on receiving capacities. Rather, this is precisely the impetus for the realization that the Palestinian refugees should not be taken hostage and left to themselves in the framework of an inadequate and arbitrarily underfunded special system, but that their fate should actually be settled as quickly and definitively as possible; a step that could also contribute to the pacification of the wider Middle East conflict; – something all of a sudden again in the responsibility and (probably more decisive on the ground) the core interest of the international community.

References

- Akram, S. (2018). The search for protection for stateless refugees in the Middle East: Palestinians and Kurds in Lebanon and Jordan. *International Journal of Refugee Law* 30(3), 407-443.
- Albanese, F. & Takkenberg, L. (2021). *Palestinian refugees in international law*. Oxford University Press.
- Erakat, N. (2014). Palestinian refugees and the Syrian uprising: Filling the protection gap during secondary forced displacement. *International Journal of Refugee Law*, 26(4), 581-621.
- Funke-Kaiser, M. (2022). § 3 AsylG. In M. Funke-Kaiser (Ed.), *Gemeinschaftskommentar zum Asylgesetz* (loose-leaf, status 2022). Luchterhand.
- Goodwin-Gill, G. S. & McAdam, J. (2007). *The refugee in international law* (3rd ed.). Oxford University Press.
- Hathaway, J. (2016). What is the meaning of state protection in refugee law? A debate: Response. *International Journal of Refugee Law*, 28(3), 484-488.
- Hathaway, J. & Foster, M. (2014): *The law of refugee status* (2nd ed.). Cambridge University Press.
- Keßler, S. (2016). § 3 AsylVfG/AsylG. In R. M. Hofmann (Ed.), *Ausländerrecht* (2nd ed., pp. 1873-1879). Nomos.
- Kraft, I. (2016). Art. 11 QRL. In K. Hailbronner & D. Thym (Eds.), *EU immigration and asylum law: Commentary* (2nd ed., pp. 1191-1199), Beck.
- Krämer, G. (2015). *Geschichte Palästinas* (6th ed.). Beck.
- Lyons, G. M. (1958). American policy and the United Nations Program for Korean Reconstruction, *International Organization* 12(2), 180-192.
- Marx, R. (2019). *AsylG: Kommentar zum Asylgesetz* (10th ed.). Luchterhand.
- Merriam-Webster (n.d.). *Ipsa facto*. In Merriam Webster Legal Dictionary. Retrieved February 26, 2020, from <https://www.merriam-webster.com/dictionary/ipsa%20facto#legalDictionary>
- Qafisheh, M. M. (2015): An ongoing anomaly. Pre- and post-second world war Palestinian refugees. *International Journal of Refugee Law* 27(1) 52-74.
- Qafisheh, M. M. & Azarov, V. (2011). Art. 1 D. In A. Zimmermann (Ed.), *The 1951 convention relating to the status of refugees and its 1967 Protocol: A commentary* (pp. 537-569). Oxford University Press.
- Robinson, N. (1997). *Convention relating to the status of refugees: Its history, contents and interpretation* (Division of International Protection of the United Nations High Commissioner for Refugees, Ed.). UNHCR. (Original work published 1953).
- Rofßkopf, R. (2021). Humanitäres Migrationsrecht. In S. Wollenschläger (Ed.), *Handbuch des Ausländerrechts der Bundesrepublik Deutschland* (loose-leaf, chapter 2B, pp. 1-404). Luchterhand.
- Storey, H. (2016). What is the meaning of state protection in refugee law? A debate: Rebuttal. *International Journal of Refugee Law* 28(3) 488-490.
- UNCCP (1949). *Final report of the United Nations Economic Survey Mission for the Middle East. An approach to economic development in the Middle East, Part I*. The final report and appendices (UN Doc. A/AC.25/628.12.1949). <https://www.un.org/unispal/document/auto-insert-211397/>
- UNCCP (1950). *Analysis of paragraph 11 of the General Assembly's Resolution of 11 December 1948* (UN Doc. A/AC.25/W/45). Working Paper Compiles Secreteriat, 15/5/1950. <https://unispal.un.org/DPA/DPR/unispal.nsf/0/94F1C22721945319852573CB00541447>
- UNNCP (1951a). *Addendum to definition of a "refugee" under paragraph 11 of the General Assembly Resolution of 11 December 1948*. Legal Advisor, 29/5/1951. <https://unispal.un.org/DPA/DPR/unispal.nsf/0/C36917141A0A192A8525683A005DCE2D>
- UNCCP (1951b). *Definition of a "refugee" under paragraph 11 of the General Assembly Resolution of 11 December 1948* (UN Doc. A/AC.25/W/61). Note by the Principal Secretary, 9/4/1951. <https://unispal.un.org/DPA/DPR/unispal.nsf/0/418E7BC6931616B485256CAF00647CC7>
- UNCCP (1951c). *Progress report of the United Nations Conciliation Commission for Palestine, covering the period from 23 January to 19 November 1951* (Official Records: Sixth Session,

- Supplement No. 18, A/1985). General Assembly. <https://www.un.org/unispal/document/auto-insert-186738/>
- UNCCP (1961). *Historical survey of efforts of the United Nations Conciliation Commission for Palestine to secure the implementation of paragraph 11 of General Assembly Resolution 194 (III). The question of compensation* (UN Doc. A/AC.25/W/82/Rev.2). Working Paper, 2/10/1961. <https://unispal.un.org/DPA/DPR/unispal.nsf/0/3E61557F8DE6781A052565910073E819>
- UNCCP (2020). *Seventy-fourth report of the United Nations Conciliation Commission for Palestine* (UN Doc. A/75/305). <https://www.un.org/unispal/document/seventy-fourth-report-of-the-united-nations-conciliation-commission-for-palestine-a-75-305/>
- UN General Assembly (1950). *Assistance to Palestine refugees. Interim report of the Director of the United Nations Relief and Works Agency for Palestine Refugees in the Near East* (Official Records, Fifth Session, Supplement No. 19, UN Doc. A/1451/Rev.1). General Assembly, 6/10/1950. <https://unispal.un.org/UNISPAL.NSF/0/EC8DE7912121FCE5052565B1006B5152>
- UNHCR (1993). *Note on international protection* (UN Doc. A/AC.96/815). 31/8/1993. <http://www.unhcr.org/refworld/docid/3ae68d5d10.html>
- UNHCR (2006) *The state of the world's refugees 2006. Human displacement in the new millenium*. <https://www.unhcr.org/publications/sowr/4a4dc1a89/state-worlds-refugees-2006-human-displacement-new-millennium.html>
- UNHCR (2020). *Handbook on procedures and criteria for determining refugee status and guidelines on international protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*. New edition, February 2020. <https://www.unhcr.org/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html>
- UNRWA (2009). *Consolidated eligibility and registration instructions (CERI)*. 1/9/2009. <https://www.unrwa.org/sites/default/files/2010011995652.pdf>
- UNRWA (2016). *Medium term strategy 2016-2021*. https://www.unrwa.org/sites/default/files/content/resources/mts_2016_2021.pdf
- Wittmann, P. (2021). Art. 1 GFK. In A. Decker, J. Bader, & P. Kothe (Eds.), *BeckOK Migrations- und Integrationsrecht* (8th ed.). Beck. https://beck-online.beck.de/?vpath=bibdata%2fkomm%2fBeckOKMigr_10%2fcont%2fBECKOKMIGR%2ehtm

Disrupting Borders?: Migration, Political Activism and Social Work¹

Andrea Schmelz²

Abstract

The article explores the role of social work between the poles of migration control and activism by refugees and migrants. On the one hand, the question is raised how the processes of externalization and internalization of borders by migration politics affect the action framework of Social Work and contribute to a (permanent) exclusion of refugees and migrants, particularly in camps. On the other hand, the question is posed how refugees and migrants express their right(s) to inclusion, participation and freedom of movement in protests and activism, and how they are supported by solidarity movements in countries of refuge and along the migration routes. The organization Social Workers without Borders exemplifies how social workers might become activists of unconditional solidarity and defenders of human rights. The example of Women in Exile shows how refugee women can resist against the border-making in the asylum regime by raising their voices for human rights activism. Hereby, their critical reflection on refugee women's experiences with social workers underlines that these often times risk to play an depoliticized role in social work practice, not applying the political mandate of social work as a human rights profession. Additionally, the claims of refugee and migrant activists provide knowledge to social workers in applying radical social work practice.

Key Words:

borders, migrants, refugees, activism, social movements, international social work

1. Introduction

Social work with migrants and refugees is framed by policies of migration control and exclusion, whereby also social workers become actors in border and mobility politics.³ Samaddar has highlighted in his book „The postcolonial age of migration“ multiple forms of boundaries and borders towards unwanted migrants as a key issue, and he accentuates the coloniality of today's migration:

„What are the meanings of the boundary-making exercises ordaining the lines of inclusion, differential inclusion, and exclusion? ... borders, border management, and border controls, jails, camps, jails, slums, or detention centres, all ... are shaping migration today“ (Samaddar, 2020: 5).

As legal migration routes to EU member states are largely absent, the Mediterranean Sea emerged as the most dangerous border in the world. However, similar policies and

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³ Border regimes in international politics describes the institutional arrangements of border demarcation and control that, following border studies, have an impact on social structures.

practices of defence against migrants can be observed at the Mexico-U.S. border or in Australia (Ferguson et al., 2018; Briskman, 2019), which were intensified by the Covid-19 pandemic and the climate crisis (Triandafyllidou, 2022; Behrmann et al., 2022; UN, 2022, 2021). These developments have resulted in new challenges for social work along migration routes, in contexts of deportation and forced immobility, and across borders. According to Boccagni et al. following the European refugee protection crisis of 2014-2016, social work increasingly faces a "complex and hard-to-address demand for social protection" (Boccagni et al., 2020: 378), which has also to address a growing number of mobile migrants.

On World Refugee Day 2022, the German Institute for Human Rights has again highlighted that protection against refoulement, access to a fair asylum procedure, decent housing, and medical care are rights of all people seeking asylum at the external borders. In March 2022, the EU Member States have shown in the reception of Ukrainian protection seekers that they are able to support a high number of refugees in an unbureaucratic and solidary action plan and grant them the rights they are entitled to on the basis of the Geneva Refugee Convention and European directives. But the same rights are systematically ignored to protection seekers at the external borders of the EU (DIMR, 2022). A few days after the World Refugee Day 2022, 37 people died at the Spanish-Moroccan border by police shootings while trying to cross the Spanish exclave of Melilla. The International Federation of Social Workers (IFSW) accuses therefore state authorities in Spain and Morocco for the murder of migrants at the external borders of Europe (IFSW, 2022).

The International Federation of Social Workers (Human Rights Commission) stated on the International Migrant Worker Day, December 18, 2021, that exclusion characterizes the everyday life of a growing number of migrants and refugees in host countries internationally. The Transnational Platform Europe (TMP-E), an association of networks for migrant and refugee rights, describes the related experiences of exclusion, racism and criminalization as follows:

„Despite the fact that we as migrants and refugees, make an enormous contribution with our work and remittances to the economy and development of our home countries and also to the European economy and society, our working and living conditions have become dramatically worse. We are confronted with criminalization, racism, discrimination and islamophobia on a daily basis. Especially the undocumented among us are very heavily affected by the daily reality of exclusion, mass raids and deportations“ (TNP-E, 2021).

Based on selected examples, the article explores the role of social work between the poles of migration control and activism of refugees and migrants.⁴ On the one hand, I raise the question how processes of externalization and internalization of border politics affect the action framework of social work and moreover contribute to a permanent exclusion of refugees and migrants, e.g., in camps and mass shelters. On the other hand, I pose the question how refugees and migrants express their right(s) to inclusion, participation and freedom of movement in protest movements and how they are supported by solidarity movements in countries of refuge and along the migration routes. The organization Social Workers without Borders exemplifies how social workers might become activists of unconditional solidarity and defenders of human rights. The example of Women in Exile

⁴ The article summarizes selected findings of a project on social movements and activism in international social work at Coburg University of Applied Sciences and deepens the reflections on (un-)doing borders, activism of migrants and Social Work.

shows how refugee women can defend themselves against the border-making in the asylum regime by raising their voices in human rights activism. Hereby, a critical reflection regarding refugee women's experiences with social workers underlines that social work often times risks to play an unpolitical role in practice, not applying the political mandate of social work as a human rights profession.

2. Externalization and Internalization of Borders

In the global migration and refugee regime social work has been operating for more than 30 years within the shrinking asylum spaces of the postcolonial world order and increasingly unequal mobility opportunities (e.g., Mitsilegas et al., 2020; Mau, 2021). At the EU level, the Fortress Europe is symbolically represented by barbed wire, military operations, surveillance technologies in border spaces such as, e.g., at the Southern Mediterranean Sea or the "Jungle" in Calais and at the Belarusian-Polish, the Aegean or the Balkan borders (e.g., Galis et al. 2022; Hudson et al., 2022; UN, 2021, 2022). Furthermore, migration management has been developed, which implies, on the one hand, the partial opening of the respective national labor markets based on the welcomed economic benefit of migrants and, on the other hand, measures to prevent so-called illegal migration (cf. Ogg, 2022; Buckel, 2014).

To control and prevent migration, the EU has once again tightened border security plans beyond its own territory since the refugee protection crisis of 2014-2016: militarization of the Mediterranean, increased border security in West Africa, agreements with autocratic and dictatorial regimes to detain people in countries of origin and transit, and finally, poverty reduction in the classical developmental sense (cf. Ceccorulli et al., 2022; Calabrò, 2021). This demarcation of borders by EU migration policies of externalization has impacted on the scope of action of social work far beyond a national border that can be imagined as a cartographic line. In this context, the following mechanisms of making boundaries have been contributing to the internalization and normalization of borders:

Ubiquity of borders: Border studies unveil that by securitization and externalization of migration control in Europe, borders have become detached from their territorial location and are present everywhere. This insight prompts the French philosopher Balibar to conclude that "the border is everywhere" (2002: 80). In these processes, mechanisms of border making have expanded and border spaces/borderlands/borderscapes have emerged that no longer correspond to geographically located territories (Mezzadra et al., 2013). Border spaces have expanded into "complex social institutions" that include "legal, cultural, social and economic components" (Monforte, 2020: 48). As part of complex surveillance mechanisms operating at many levels, the EU delegates migration control policies to public service providers. These are, e.g., hospitals, schools, universities or private security companies and airlines to enforce border controls within the whole society (e.g., Schweitzer 2022). Social workers are involved in these processes as actors who can (re-)produce or overcome borders.

Selective, stratified rights: Migration management has produced "civic stratification" for different groups of migrants (Morris, 2002). A distinction is made between, first, migrants with access to citizenship (citizens), second, migrants with secure residence status (denizens), and third, those with no or insecure residence status (margizens) (cf. also Buckel, 2013: 160-161). This stratification of rights means that migrants' access to rights is restricted or denied entirely. This formal classification according to different residence

status positions has an effect in multi-layered processes of partial inclusion and exclusion, whereby social work with migrants and refugees faces discriminatory and racializing regulations, depending on the respective residence status (Schütze, 2021: 398-399). At the same time, processes of “filtering and selection” (cf. Mezzadra et al., 2013; cf. also Mau, 2021) normalize the absence of rights for certain migrant groups such as the undocumented.

De-/serving humanitarianism: The security and border paradigm of migration control is accompanied by a specific form of humanitarian regulation of immigration and asylum (Fassin, 2011: 213, cited in Monforte, 2020: 49). EU institutions and member states as well as NGOs and international aid organizations, replace the discourse on (universal) rights of migrants and asylum seekers with a moral discourse of protection forms based on discretionary powers of humanitarianism, understood as the protection of humans from existential threats. The main criterion for assessing who can enter EU territory is vulnerability and the extent of sufferings experienced. In this perspective, border policies act as a filter that serves to distinguish between people who deserve compassion and others who are deemed undesirable. These border-making processes have exacerbated intersectional exclusionary dynamics based on hierarchies of race, class, and gender that are legacies of the colonial history of European States (Fassin, 2020; Bhimji, 2020). Furthermore, globally many camps constitute a form of permanent territorial exclusion of refugees and migrants.

Camps as a form of existence: This postcolonial present includes camps that the sociologist Bauman (2005: 44ff.) has described as a consequence of unequal globalization. As an instrument of control towards populations, camps were implemented for the first time during colonial rule (Briskman, 2020). Camps shape the lives of a growing number of migrants and refugees around the globe (Agier, 2011; 2019). There are many names and forms of camps, such as camps for refugees and displaced persons, anchor centers⁵, migrant camps, waiting zones for people without residence status, transit camps, deportation centers, initial reception centers, ghettos, and jungles. Camps, for all their diversity, have three characteristics in common: Exterritoriality, the regime of exception, and exclusion. As spatially demarcated special zones they are “non-places” that are usually not marked on any map. The camps are administered according to their own laws and the freedom of movement of the “residents” is arbitrarily regulated. The social exclusion of this form of accommodation marks that refugees and migrants are superfluous as a population group (Baumann, 2005: 81-82). Camps in the many border spaces worldwide serve to (im)mobilize population groups (cf. Lutz, 2017). In her study of German refugee activism, Bhimji (2020: 26) interprets the institutional and everyday racism - as mentioned above - in camps as colonial legacy and postcolonial present. The domination and control mechanisms of the camp continue to operate in restrictive asylum legislations that solidify exclusions along race, class, and gender lines.

Immigration Detention: The everyday life of many asylum seekers is characterized by “Living with Deportability and Detainability” (Bhimji, 2020: 27), a perseverance of life perspectives that are characterized by deportation and detention due to illegalised and

⁵ *Ankerzentren* can literally be translated as anchor centres. In Germany, these are admission centres for refugees. The word anchor is an acronym made up of the following words: “*An(kunft)*” (arrival), “*k(ommunale Verteilung)*” (municipal distribution), “*E(ntscheidung)*” (decision) and “*R(ückführung)*” (return).

residence status. On a global scale, this experience is shared by an increasing “global deportspora” (Nyers, 2019: 4), a global “underclass” for which deportation has become the “way of life”. In response to the 2014-2016 refugee protection crisis, a study by the Global Detention Project examines the criminalization of migrants and refugees through detentions in European countries. Exacerbated practices have been observed regarding the frequency, reasons, duration, and treatment of children and families in detention (Majacher et al., 2020). In resistance to criminalization and exclusion, protests were mobilized by refugees. However, they are insufficiently supported by social workers, where they do not know or use their professional ethics and human rights orientation - as Burzlaff et al. (2018: 346) have shown by the example of the Berlin refugee protests in 2015.

3. Protests, Human Rights and Solidarity

„We are here because you were there.” With this slogan Ambalavander Sivanandan, activist and director of the Institute of Race Relations in London, explained in the 1980s the connection between European colonialism and migration from former colonies to Europe (Bendix, 2018: 247). Since the mid-1990s, refugee activists in Germany slightly modified the slogan: “We are here because you destroyed our countries.” In doing so, they point to global interconnections and postcolonial structures of exploitation and deny to think the right to stay limited to nation-state borders. In Germany, refugees have become visible as subjects of political action, especially in protests since 2012 (Bendix, 2018: 248).

In the German refugee movement, four central human rights demands are recurring: abolish camps, stop deportations, end compulsory residence, and the right of refugees to work and study (Bendix, 2018: 249). Refugees moreover demand simplified family reunification, certified interpreters, and free legal counselling services (Burzlaff et al., 2018: 347). Refugees also articulate structural causes of flight that are often overlooked and invisibilized in social work. Networks such as The VOICE or the Caravan for the Rights of Refugees and Migrants also draw a direct comparison between the asylum system in Germany and colonial rule (Bendix, 2018: 253). Refugee activists, such as the network Afrique-Europe-Interact, advocate for the right to self-determined development, the right to stay, and the right to global freedom of movement and settlement, and denounce structural causes of flight such as land grabbing, the destruction of farmers’ livelihoods, unfair world trade policies and climate crisis (Bendix, 2018: 253).

In response to European migration and asylum policies in the 1990s, activist alliances of migrants and refugees have developed across borders, which until then were primarily organized locally and nationally. In social movements migrants - both documented and undocumented - have developed transnational collective actions, such as the “European march of the sans-papiers and migrants” (2014) from Brussels to Strasbourg, the “European day of struggle for regularization and for the closure of all detention centers for foreigners” (2004) or “A Day without Us” (2011) with demonstrations and strikes across Europe (Monforte, 2020: 51). When migrants express their protest publicly, they articulate demands of inclusion and belonging (Nyers et al., 2012). Critical citizenship studies interpret these as resistive enactment of their citizenship rights, claiming “their right to have rights” (Isin et al., 2008; quoted from Monforte, 2020: 53). These protests challenge the exclusionary and divisive logic of (European) border demarcations. The universalist claims of migrants and support networks undermine European border policies:

“citizenship for all” “no border”, “no one is illegal”, or “we are all foreigners“. A radical, universal and post-national or post-colonial “citizenship” (Stierl, 2018) is demanded, which calls for equal rights for all and wants to overcome exclusions.

Without networks of supporters, however, the articulation power of these movements remains limited (cf. Carney, 2021). Therefore, social movement research emphasizes that especially migrants with precarious status (in particular regarding work and housing) and those without paper have a lack of material and symbolic resources, which makes their mobilization more difficult. Moreover, by participating in protests, they expose themselves to the public, and risk being arrested and deported. This danger has been exacerbated in the last decade by right-wing parties in Europe and anti-migration social movements with their media campaigns in many countries in Europe and worldwide (Steinhilper, 2021).

Forms of collective solidarity and structures of self-help have also been developed in places where people from Europe are forced to return (Kilian et al., 2021). In Bamako, for example, the Association des Refoulés d’Afrique Centrale au Mali (ARACEM) was founded to improve precarious situations of lack of housing, food, medical and psychosocial assistance. In Lomé, the Togolese Association of Deportees (ATE) was established to provide psychosocial support for the failed migration project, which is accompanied by stigmatization in the societies and families of origin (Jacob, 2020: 43). Also mothers joined together to cope with trauma and grief regarding missing children, applying activism with others and working on structural causes of migration. The “Caravan of Mothers” and relatives from Latin American and African countries came together to demand the right to search for and receive information on their missing children (Stierl, 2020: 96-97).

As European countries failed to guarantee social rights for refugees from above, solidarity grew from below to fill existing gaps in social assistance systems and support structures. In the wake of the 2015-16 European refugee protection crisis, however, refugee activists and their mobilizations in solidarity for newly arrived refugees faded into the background. What emerged in the media was the so-called welcome culture, which became visible as “white” and “helping” (Bhimji, 2020: 9; Bendix, 2018: 256). In the middle of the European refugee protection crisis (2014-2016), migration sociologist Pries interpreted the organizing of refugees and their supporters as an empowering, collective social movement. He perceived in the refugee migration movement an “emergent, transnational, civic-social movement comparable to the national labor movements of the 19th century, which aimed to solve the social question in the struggle between capital and labor” (Pries, 2016: 23; translated by the author). Policies of migration control yet, in particular the so-called EU-Turkey Deal (March 2016), have almost completely stopped this movement at the EU's external borders.

Civil society engagement for the support of illegalized, tolerated and recognized refugees is developing into a controversial field of tension for social work: On the one hand, civil society assistance and forms of action are significant for the provision of social support and involve political activism for the rights of migrants. On the other hand, voluntary engagement might be instrumentalized as a substitute for non-provided assistance and insufficient welfare state services. This implies the danger that unavailable government social services and disadvantages are accepted as normality (Scherr et al., 2019: 95). To the extent that European countries failed to guarantee social rights for refugees from above, solidarity grew from below. Existing gaps in social assistance systems and support structures were partially filled in this way. Three strands of solidarity movements emerged

that are able of expanding the scope of action of state-funded social work (cf. Hill et al., 2021; Bauder, 2022):

First, the broad welcome movement in 2015/16 has been interpreted as a Europe-wide citizens' movement that seeks to promote the reception, arrival, and inclusion of refugees in cooperation with local actors (Feischmidt et al., 2019; Fleischmann, 2020). Migration researcher Werner Schiffauer estimates that there were 15,000 refugee projects (2016) in Germany where more than five million people were involved - often side-by-side - with social workers. These initiatives demonstrated everyday solidarity, willingness to help, and provided support to improve access to information, housing, education and health care, work, and community life (Scherr et al., 2019).

Second, in many European cities, the concept of Solidarity Cities/Sanctuary Cities is also gaining momentum for social work. Municipalities and cities are a microcosm of social demarcations between desired and undesired immigration (Schmelz, 2019). In 2017, "Solidarity City" was founded as an activist network of refugee councils, migrant organizations, leftist movements, urban policy NGOs, church groups, social workers, and academics working internationally with sea rescue initiatives by thinking together EU border policies and social rights in communities. Direct reception of refugees and ban on deportation are linked to the democratic structures of urban social spaces (Schmelz, 2019; Kron, 2020: 45).

Third, along the external borders, new forms of solidarity with protection seekers are evolving. Non-governmental organizations have succeeded in saving tens of thousands of refugees from drowning with their ships since 2014. A broad protest movement emerged in Europe against the criminalization of this private sea rescue, fighting to ensure that maritime rescue is not a crime. (Stierl, 2020: 47) Alarm-Phone runs a unique project of political solidarity. Activists from Europe and Africa are available around the clock to respond to distress calls from refugees, preventing state actors such as the coast guard from failing to provide assistance in distress at sea. This intervention represents a radical form of solidarity that transcends national borders and humanitarian motivations for aid (Stierl, 2019: 105; cf. also Hill et al., 2021).

Social workers can broaden their perspectives of action through alliances with solidarity movements and they can become activists themselves, what the example of Social Workers without Borders (SWWB) shows. The claims of refugee and migrant activists provide knowledge to social workers in applying radical social work practice.

4. Social Workers without Borders: (Un-)Doing Borders?

SWWB International was founded in Australia (2014) within the International Federation of Social Workers. In the UK, an independent national organization was founded in the context of social work in the "Jungle" of Calais (2016). The Jungle of Calais refers to a "slum tent city" of temporary accommodation in the French town of Calais, where 9,000 migrants were waiting to continue their journey to the UK in 2016. Although the camp was evacuated in October 2016, the "slum" was reorganised again a short time later (cf. Tyerman, 2022; Agier, 2019).

Programmatically, the founders of SWWB (GB) summarize the political, critical reflexive positions in an anthology based on case studies (Wroe et al., 2019). The case studies cover a broad spectrum of social work areas, ranging from support for unaccompanied

minors and single-parent families to the work with victims of torture and detention pending deportation. SWWB opposes the distinction of the deserving-undeserving nexus in social work with refugees, migrants and asylum seekers. To their opinion by this juxtaposition, State support is made dependent on a humanitarian, determined “vulnerability”. This is responsible for the demarcation between refugees who deserve protection on humanitarian grounds and other refugees who are declared to be migrants not worthy of protection. The organization SWWB, furthermore, advocates for an unconditional social work based on human rights and professional ethics, committed to the principles of solidarity, protection and allyship. Grounded in the International Social Work Ethics Standard (IASSW 2018), the initiators of SWWB (GB) (Wroe et. al., 2019: 19) see the social work profession as having a responsibility to promote social justice and equality, to confront discrimination, and to express and defend its professional integrity through its actions.

The involvement of social work in welfare state restrictions, which at the same time serve as instruments of migration control, are (for SWWB) incompatible with principles such as the “promotion of human rights”, “respect for diversity” and “access to equal resources”. Defending the rights of migrants should rather be the main indicator for defending the autonomy and integrity of the social work profession:

“Defending the rights of asylum seekers, refugees and migrants, then, is just as much about defending the autonomy of our profession to deliver services to all who need it, as it is about opposing immigration control” (Wroe et. al., 2019: 21).

In this context, the task of disrupting and transcending borders is not limited to migrants and refugees, but relates to all target groups in social work given neoliberal policies:

“[...] social work without borders means not only working across national borders, or those imposed by immigration control, but also transcending those borders imposed by liberalist ideologies and market-led approaches” (Wroe et al., 2019: 276).

Based on Kessl et al. (2010, quoted from Schütze, 2021: 404) social work can establish and (re)produce existing borders and boundaries through its actions, or change and undermine them through a critical-reflexive practice. Borders are reproduced in everyday life through exclusion, marginalization, and criminalization of the “migrant other” (Schütze, 2021: 397) or they are determined by unequal material living conditions through stratified rights (Schütze, 2021: 397). Another dimension becomes evident in access to welfare state benefits, which is linked to vulnerability and need for protection. At the intersection of migration control and social policy, social work can become a crucial actor that confirms borders, destabilizes and changes them (Atac et al., 2019).

In order to radically change structural conditions that violate human rights of migrants, however, the micro practices of undoing borders in social work, according to Ferguson et al. (2018: 104-110) have to be flanked by political demands of a human rights-oriented social work at the macro and mezzo level. In particular, this includes holding governments accountable to ensure safe migration routes, ending detention and criminalization, realizing the right to family reunification, protecting unaccompanied minors, and enforcing the right to dignified work in recognition of refugees' abilities. As guiding principles for practice, Ferguson et. al. highlight in particular the need to promote agency, initiative, and self-help, and to resist social workers' collusion with discriminatory laws. Thus, social work should unconditionally refuse to cooperate with institutions that undermine the social,

political and civil rights of migrants.

To redeem such demands, social work cannot act uncritically within a framework that remains limited to legal requirements (Briskman et al., 2018; Mapp, 2022). Instead, social work professionals and organizations are called upon to influence politics and legislation in order to translate human rights standards into applicable law and to maximally expand solidarity-based support for refugees and (undocumented) migrants - if necessary by using forms of civil disobedience (Prasad, 2021; Staub-Bernasconi, 2019). Social work can thereby make greater use of the opportunity to engage and act as allies with refugee self-organizations in order to open their voices to political advocacy and establish independent, well-financed self-help structures.

In this context, social work can use human rights as its professional, ethical compass and has an independent mandate to invoke and to contribute to structural transformation in the context of the triple mandate, bridging the gap between individual assistance and social control by the professional autonomy of social work (Staub-Bernasconi, 2019: 83ff.). In doing so, human rights and ethical professional standards become the frame of analysis and reference for social work in the context of flight and migration. The triple mandate enables social workers to reject illegitimate and discriminatory mandates and to formulate an independent political mandate for social work practice. (Prasad, 2021: 227).

5. Women in Exile (WiE) and Breaking Borders: Gender Perspectives on Human Rights

Women around the globe are raising their voices against injustices suffered in the context of refugee migration and human trafficking. They stand up for women's and human rights and against gender-based violence. Nevertheless, sexual assault, sexism and racism remain largely invisible as an everyday structure, they are normalized and they are rarely prosecuted. The example of Women in Exile (WiE) can show how women seeking refuge and protection oppose against exclusion and fight for their rights to inclusion. In the anniversary publication "Women in Exile - Breaking Borders to Build Bridges" (2022), WiE documents and reflects on the experiences and knowledge of a two-decade struggle for the right to self-determination and freedom of movement. WiE continuously insists on the abolition of the "camp system", denounces the violation of women's and human rights, racism and intersectional discrimination, and calls for resistance and protest against injustices suffered. WiE fights for a "world without borders", highlighting two demands: On the one hand, WiE calls for overcoming the consequences of colonization and the ending of the exploitation as well as pillage of the countries in the Global South; on the other hand, they champion "the right to come, the right to go, and the right to STAY!" (WiE, 2022: 33).

WiE organizes a safe space of learning and living, exploring the new possibilities where the personal becomes political, and self-empowerment can be experienced (cf. WiE, 2022: 48 ff.). The organisation positions itself as an activist space where experiences of violence and human rights violations as well as togetherness and hope can be shared in view of exclusionary and harmful living conditions in camps and beyond. As refugees, women live forcibly with their children in cramped, remote mass shelters, entitled to just a few square meters of living space with shared kitchen and sanitation facilities. Without any protection of privacy, women and their children feel particularly exposed to the dangers of sexual, physical violence and daily harmful stress. In the campaign "No camps for women and

children! Abolish all camps!” (translation by the author) WiE has been fighting for the abolishment of camps, organizing for many years a bus tour to various camps throughout Germany (WiE, 2022: 50-51).

WiE expanded in 2011 to Women in Exile & Friends by involving solidary activists without a history of flight. Since then, women with and without a history of flight have been working together for political change strategies and protesting loudly against the inhumane housing and living conditions of refugee women. Together, they fight for the realization of equal rights for all people (WiE, 2022: 13). As a safe space, WiE stands for intersectional solidarity and empowerment of other asylum seekers. Applying peer education and the opportunity to become a mentor themselves, women explore creative action space as well as self-empowerment:

“We develop and exchange synergies to fight for our rights in the asylum process and to defend ourselves against sexualized violence, discrimination and exclusion. Through peer education, we have encouraged and helped many refugee women not only to stand up for their rights, but also to organize themselves into groups in the parts of the country where they live to be vocal and bring the problems they face in the asylum process to the public” (WiE 2020: 12, translation by the author).

While WiE in the anniversary publication describes fellow activists without refugee histories as bridge builders in solidarity, refugee women have often times experienced their relationship with social workers and refugee volunteers as apolitical and paternalistic. Social workers in the camps have rather discouraged refugee women from political engagement and instead encouraged them to get involved in cultural events. For instance, they made the women cooking food typical of their origins as means to integrate into the German society. Whereas social workers had not once addressed the living conditions in the camps and the residency requirement (WiE, 2022: 28). WiE also criticizes that social workers often tend to victimize refugee women and tend to the white saviour syndrome where mental decolonization is required (WiE, 2022: 66). Refugee women from WiE also reprove the fact that they are involved in social work as voluntary, unpaid project workers, while at the same time they have to make a living in dirty jobs of the low-wage sector (WiE, 2022: 67).

A particular focus of WiE's work refers to the mental and physical health of refugee women. WiE continuously highlights that a large proportion of female protection seekers have experienced sexual violence and multiple traumas prior to, during and after their flight. Moreover, due to accommodation in German camps and an uncertain outcome of the asylum procedure “a constant re-traumatization takes place - the situation of ‘being on the run’ continues.” (WiE, 2020: 20, translation by the author). Nevertheless refugee women encounter structures in the German health care system that systematically undermine their right to adequate health care - a situation that has worsened as a result of the COVID-19 pandemic (WiE, 2020: 23f.). The human right to health (Art. 12 of the 1966 International Covenant on Economic, Social and Cultural Rights) stipulates a highest attainable standard of physical and mental health for every person: On the one hand, this includes the right to determine one's own body and health as well as the right not to endure medical interventions without consent. On the other hand, conditions should be created so that all persons have access to adequate health care (Krennerich, 2020: 25). The central UN criteria for the right to health are availability, accessibility, acceptability and quality of health care. In the case of availability, access to medical facilities and

treatment should be non-discriminatory for all. To this regard, WiE denounces a three-classes health care system that promotes institutional discrimination along the lines of residence status. In particular, health facilities and medical professionals should take into account gender, age and cultural specificities in order to meet the criterion of acceptability. WiE women hence take their right to health into their own hands because acceptable and quality health care is not available, recognizing the stress- und harmful living conditions of refugee women in a culturally sensitive and non-discriminatory way.

6. Conclusion: Towards Politics of Inclusion

Refugee and migrant protests and solidarity movements are interpreted as social movements of growing importance in search for global justice (cf. Weber, 2022). Social workers can broaden their perspectives of action for social justice through alliances with solidarity movements and they can become activists themselves together with refugees and migrants. The claims of refugees and migrants and their critical reflection on paternalism or white saviour complex brings critical knowledge to social workers. It urges social workers for critical self-reflection and decolonizing social work curricula and practices based on human rights. However, social work with asylum seekers who have been granted international protection status, e.g., after a successful asylum application or as a result of resettlement programs, and who have access to state welfare programs, differs from forms of popular social work in which social workers form alliances with solidarity movements and refugee activists (Lavalette, 2019). Together, they build self-help structures for all and provide social support beyond state social work. Furthermore, in allyship with refugee and migrant activism social work can open new corridors for political advocacy and potentials of social transformation. In doing so, the political mandate of social work with refugees and migrants can start through networking on different levels and can be applied in human-rights based practice.

References

- Atac, I., & Rosenberger, S. (2019). Social policies as a tool of migration control. *Journal of Immigrant and Refugee Studies*, 17(1), pp. 1-10.
- Agier, M. (2011). *Managing the undesirables. Refugee camps and humanitarian government*. Polity Press.
- Agier, M. (2019). *The jungle. Calais's camps and migrants*. Polity Press.
- Balibar, É. (2002). *Politics and the other scene*. Verso.
- Bauder, H. (2022). *From sovereignty to solidarity. Rethinking human migration*. Routledge.
- Behrman, S., & Kent, A. (Eds.) (2022). *Climate refugees. Global, local and critical approaches*. Cambridge University Press.
- Bendix, D. (2018). Migration und soziale Ungleichheit. Perspektiven aus dem Geflüchtetenaktivismus in der BRD. In N. Prasad (Ed.), *Soziale Arbeit mit Geflüchteten. Rassismuskritisch, professionell, menschenrechtsorientiert* (pp. 247-259). Barbara Budrich.
- Bhimji, F. (2020). *Border regimes, racialisation processes and resistance in Germany. An ethnographic study of protest and solidarity*. Palgrave Macmillan.
- Bocagni, P., & Righard, E. (2020). Social work with refugee and displaced populations in Europe. (Dis-)continuities, dilemmas, developments. *European Journal of Social Work*, 23(3), 375-383.
- Briskman, L. (2020). Social work co-option and colonial borders. In T. Kleibl, R. Lutz, N. Noyoo, B. Bunk, A. Dittmann, & B. Seepamore (Eds.), *The Routledge handbook of postcolonial social work* (pp. 51-60). Routledge.
- Briskman, L. (2019). Challenging harmful political contexts through activism. In S. A. Webb (Ed.), *The Routledge handbook of critical social work* (pp. 549-560). Routledge.

- Briskman, L., Ife, J. (2018). Extending beyond the legal: social work and human rights. In: Rice, S., Day, A., Briskman, L. (Eds.), *Social work in the shadow of the law* (5th ed.). The Federation Press.
- Buckel, S., Graf, L., Kopp, J., Löw, N., & Pichel, M. (Eds.) (2021). *Kämpfe um Migrationspolitik seit 2015. Zur Transformation des europäischen Migrationsregimes*. transcript 2021.
- Buckel, S. (2013). "Welcome to Europe". Die Grenzen des europäischen Migrationsrechts. transcript.
- Burtzlaff, M., & Eifler, N. (2018). Kritisch intervenieren!? Über Selbstverständnisse, Kritik und Politik Sozialer Arbeit – oder aber: Was ist der „weiße Kittel“ Sozialer Arbeit? In N. Prasad (Ed.), *Soziale Arbeit mit Geflüchteten. Rassismuskritisch, professionell, menschenrechtsorientiert* (pp. 345-365). UTB.
- Calabro, A. R. (Ed.) (2022). *Borders, migration and globalization: an interdisciplinary perspective*. Routledge.
- Castro Varela, M. (2018). Das Leiden der Anderen betrachten. Flucht, Solidarität und postkoloniale Soziale Arbeit. In J. Bröse, S. Faas, B. Stauber (Eds.), *Flucht. Herausforderungen für Soziale Arbeit* (pp. 3-20). Springer.
- Carney, M.A. (2022). *Island of hope. Migration and solidarity in the Mediterranean*. University of California Press.
- Ceccorulli, M., & Fassi, E. (Eds.). *The EU's external governance of migration. Perspectives of justice*. Routledge.
- DIMR (Deutsches Institut für Menschenrechte). (2022). *Weltflüchtlingstag am 20. Juni. EU-Flüchtlingspolitik muss die Menschenrechte von Geflüchteten an den EU-Außengrenzen achten*. Press Release. <https://www.institut-fuer-menschenrechte.de/aktuelles/detail/weltfluechtlingstag-am-20-juni-eu-fluechtlingspolitik-muss-die-menschenrechte-von-gefluechteten-an-den-eu-aussengrenzen-achten>
- Fassin, D. (2020). *Deepening divides. How territorial borders and social boundaries delineate our world*. Pluto Press.
- Fassin, D. (2011). *Humanitarian reason. A moral history of the present*. University of California Press.
- Feinschmidt, M., Pries, L., & Cantat, C. (Eds.) (2019). *Refugee protection and civil society in Europe*. Palgrave Macmillan.
- Ferguson, I., Ioakimidis, V., & Lavalette, M. (2018). *Social work in a global context*. Policy Press.
- Fleischmann, L. (2020). *Contested solidarity. Practices of refugee support between humanitarian help and political activism*. transcript.
- Galis, V., & Jørgensen, M.B. (Eds.). *The migration mobile. Border dissidence, sociotechnical resistance and the construction of irregularized migrants*. Rowman & Littlefield.
- Hill, M., & Schmitt, C. (Eds.) (2021). *Solidarität in Bewegung. Neue Felder für die Soziale Arbeit*. Schneider Verlag Hohengehren.
- Hudson, G., & Adil, A. (Eds.) (2022). *Migration, security and resistance. Global and local perspective*. Routledge.
- Ife, J., Soldatic, K., & Briskman, L. (2022). *Human rights and social work* (4th ed.). Cambridge University Press.
- IFSW (International Federation of Social Workers). (2022). *Migrants murdered at Spain-Morocco border*. <https://www.ifsw.org/migrants-murdered-at-spain-morocco-border/>
- Inis, E., & Nielsen, G. (Eds.) (2008). *Acts of citizenship*. Zed Books.
- Jacob, C. (2020). Migrant organisations. Learning the ropes. In C. Jacob, S. Kron, & C. Wenke (Eds.), *Atlas of migration* (pp. 42-43). Rosa-Luxemburg-Stiftung.
- Jacob, C., Kron, S., & Wenke, C. (Eds.) (2020): *Atlas of Migration*. Rosa-Luxemburg-Stiftung.
- Kasperek, B., & Schmidt-Sembdner, M. (2020). Schengen and Dublin. Unprepared and uncoordinated. In: C. Jacob, S. Kron, & C. Wenke (Eds.) (2020). *Atlas of Migration* (pp. 30-31). Rosa-Luxemburg-Stiftung.
- Kilian, J., & Bendix, D. (2021). Refugee resistance against deportation in Germany, post-deportation, and social work. *Österreichisches Jahrbuch für Soziale Arbeit* 2.2020, 51-73.

- Krennerich, M. (2020). Gesundheit als Menschenrecht. *Aus Politik und Zeitgeschichte*, 70(46/47), 22–27.
- Kron, S. (2020): Solidarity Cities. A counterweight to xenophobia. In Jacob, C., Kron, S., & Wenke, C. (Eds.), *Atlas of Migration* (pp. 44-45). Rosa-Luxemburg-Stiftung.
- Lavalette, M. (2019). Popular social work. In S.A. Webb (Ed.). *The Routledge Handbook of Critical Social Work* (pp. 536-548). Routledge.
- Lutz, R. (2017). Der Flüchtling woanders. Verletzliche Orte des Ungewissen. Ein Leben in Lagern. In C. Chaderi, T. Eppenstein (Eds.), *Flüchtlinge. Multiperspektivische Zugänge* (pp. 367-380). Springer.
- Majcher, I., Flynn, M., & Grange, M. (Eds.) (2021). *Immigration detention in the European Union*. Springer.
- Mapp, S. C. (2022). *Human Rights and Social Justice in a Global Perspective* (3rd ed). Oxford University Press.
- Mau, S. (2021): *Sortiermaschinen. Die Neuerfindung der Grenzen im 21. Jahrhundert*. C.H. Beck.
- Mezzadra, S., Neilson, B. (2003). *Border as a method or the multiplication of labor*. Duke University Press.
- Monforte, P. (2020). From “Fortress Europe“ to “Refugee Welcome“. Social movements and the political imaginary on European borders. In F. C. Fominaya, & R. A. Feenstra (2020) (Eds.), *Routledge handbook of contemporary European social movements* (pp. 59-70). Protest in turbulent times. Routledge.
- Morris, L. (2002). *Managing migration. Civic stratification and migrants' rights*. Routledge.
- Mitsilegas, V., Moreno-Lax, V., & Niovi, V. (2020). *Securitisating asylum flows. Deflection, criminalisation and challenges for human rights*. Brill Nijhoff.
- Nyers, P. (2019). *Irregular citizenship, immigration, and deportation*. Routledge.
- Nyers, P., & Rygiel, K. (Eds.) (2012). *Citizenship, migrant activism and the politics of movement*. Routledge.
- Ogg, K. (2022). *Protection from refuge. From refugee rights to migration management*. Cambridge University Press.
- Prasad, N. (2014). Teaching the use of complaint mechanisms of UN treaty bodies as a tool of international social work practice. In K. Libal, S. Berthold Megan, R. Thomas, & L. Healy (Eds.), *Advancing human rights in social work education* (pp. 235-249). Council of Social Work Education.
- Prasad, N. (2018). Statt einer Einführung. Menschenrechtsbasierte, professionelle und rassismuskritische Soziale Arbeit mit Geflüchteten. In N. Prasad (Ed.), *Soziale Arbeit mit Geflüchteten. Rassismuskritisch, professionell, menschenrechtsorientiert* (pp. 9-32). Budrich.
- Prasad, N. (2021). Rassismus, Migration und Flucht als Themen im Kontext menschenrechtsbasierter Sozialer Arbeit. In ogsa AG Migrationsgesellschaft (Ed.), *Soziale Arbeit in der Migrationsgesellschaft* (pp. 220-233). Beltz.
- Pries, L. (2016). *Migration und Ankommen. Die Chancen der Flüchtlingsbewegung*. Campus.
- Samaddar, R. (2020). *The postcolonial age of migration*. Routledge.
- Scherr, A., & Scherschel, K. (2019). *Wer ist ein Flüchtling? Grundlagen einer Soziologie der Zwangsmigration*. Vandenhoeck & Ruprecht.
- Schmelz, A. (2021). Social work as a human rights profession in the context of refuge and migration. Global perspectives. In R. Roßkopf, & K. Heilmann (Eds.), *International Social Work and Forced Migration* (pp. 204-215). Barbara Budrich.
- Schmelz, A. (2019). „Recht auf Rechte“ in Kommunen Europas praktizieren? Lokale Politikstrategien in Deutschland und Italien. In E. Arslan, & K. Bozay (Ed.), *Flüchtlingsbewegungen und symbolische Ordnung. Interdisziplinäre Zugänge* (pp. 189-206). VS Springer.
- Schmelz, Andrea (2018). (Un-)welcoming refugee politics in Germany. Challenges for social work professionals and volunteers. In Schmelz, A., & Lohrenscheit, C. (Eds.): *Together for justice and peace. International social work education, gender and the global goals for sustainable development* (pp. 139-162). Paulo Freire Verlag.

- Schütze, T. (2021). Grenzarbeiten. Anschlüsse kritischer Grenzregimetheorie für die Soziale Arbeit. In ogsa, AG Migrationsgesellschaft (Eds.), *Soziale Arbeit in der Postmigrationsgesellschaft. Kritische Perspektiven und Praxisbeispiel* (pp. 394-405). Beltz.
- Schweitzer, R. (2022). *Micro-management of irregular migration. Internal borders and public services in London and Barcelona*. Springer Nature.
- Staub-Bernasconi S. (2019). *Menschenwürde – Menschenrechte – Soziale Arbeit. Die Menschenrechte vom Kopf auf die Füße stellen*. Budrich.
- Steinhilper, E. (2021). *Migrant protest. Interactive dynamics in precarious mobilizations*. University Press.
- Stierl, M. (2020). From sympathy to solidarity. In C. Jacob, S. Kron, C. Wenke (Eds.) (2020), *Atlas of migration* (pp. 46-47). Rosa-Luxemburg-Stiftung.
- UNHCR (2022). *Global Trends 2022*. UNHCR.
- UN General Assembly (2022). *Human Rights Violations at international borders. Trends, prevention, accountability*. Report by the Special Rapporteur on the human rights of migrants (26 April 2022). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/328/57/PDF/G2232857.pdf?OpenElement>
- UN General Assembly (2021). *One and a half years after. The impact of COVID-19 on human rights of migrants*. Report by the Special Rapporteur on the human rights of migrants (30 July 2021). <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/212/04/PDF/N2121204.pdf?OpenElement>
- TNP-E (Transnational Migrant Platform Europe). (2021, Dec. 5). *What we do and why*. <https://transnationalmigrantplatform.net/about-us/>
- Triandafyllidou, Anna (Ed.) (2022). *Migration and pandemics. Spaces of solidarity and spaces of exception*. Springer Nature.
- Tyerman, T. (2022): *Everyday border struggles. Segregation and solidarity in the UK and Calais*. Routledge.
- Women in Exile (WiE) (2020). *Gesundheitsversorgung für alle ohne Diskriminierung*. Self-published.
- Women in Exile (WiE) (2022). *Breaking Borders to Build Bridges. Women in Exile & Friends, 2002-2022*. Self-published.
- Wroe, L., Larkin, R., & Maglajic, A. R. (2019): Social work with refugees and asylum seekers and migrants. In L. Wroe, R. Larkin, & A. R. Maglajic (Eds.), *Social work with refugees, asylum seekers and migrants. Theory and skills of practice* (pp. 17-26). Jessica Kingsley Publishers.
- Wroe, L., Larkin, R., & Maglajic, A. R. (2019): Concluding Thoughts. In L. Wroe, R. Larkin, & A. R. Maglajic (Eds.): *Social work with refugees, asylum seekers and migrants. Theory and skills of practice* (pp. 267-278). Jessica Kingsley Publishers.
- Weber, L., & Tazreiter, C. (2021) (Eds.). *Handbook of migration and global justice*. Edward Elgar Publishing.

BOOK REVIEW

Bibliography of Migration related Literature 2021-2022: A Selective Compilation of Books¹

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The following gives an overview over relevant literature on migration of the years 2021/2022 with some forecasts to 2023:

Acker Housman, S. (2022). *Doing the maths to end the refugee crisis. Modelling responsibility-sharing in refugee response*. European University Institute. <https://doi.org/10.2870/132556>

Al-Dajani, H., Baroud, M., & Yassin, N. (2023). *Refugee resilience and adaptation in the Middle East. Reclaiming Agency*. Routledge Taylor & Francis Group. <https://www.routledge.com/Refugee-Resilience-and-Adaptation-in-the-Middle-East-Reclaiming-Agency/Al-Dajani-Baroud-Yassin/p/book/9781032253121>

Banks A., J. (2023). *Global migration and civic education. Research, policy, and practices*. Routledge Taylor & Francis Group. <https://www.routledge.com/Global-Migration-and-Civic-Education-Research-Policy-and-Practices/Banks/p/book/9781032462622>

Behrman, S., & Kent, A. (2022). *Climate refugees. Global, local and critical approaches*. Cambridge University Press. <https://www.cambridge.org/core/books/climate-refugees/0094AE0297AD7A6FBA4B372C66B9B7A4>

Bijak, J. (2022). *Towards Bayesian model-based demography. Agency, complexity and uncertainty in migration studies*. Springer International Publishing. <https://link.springer.com/book/10.1007/978-3-030-83039-7>

Boersma, S. (2022). *The aftermaths of participation. Outcomes and consequences of participatory work with forced migrants in museums*. transcript Verlag. <https://www.transcript-verlag.de/978-3-8376-6411-9/the-aftermaths-of-participation/>

Borgato, M. T., & Phili, C. (Ed.). (2022). *In foreign lands. The migration of scientists for political or economic reasons*. Springer International Publishing. <https://doi.org/10.1007/978-3-030-80249-3>

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- Butler-Kisber, L., Clark/Keefe, K., & Savin-Baden, M. (2023). *Narrative inquiry of displacement. Stories of challenge, change and resilience*. Routledge Taylor & Francis Group. <https://www.routledge.com/Narrative-Inquiry-of-Displacement-Stories-of-Challenge-Change-and-Resilience/Butler-Kisber-ClarkKeefe-Savin-Baden/p/book/9780367173715>
- Caponio, T. (2022). *Making sense of the multilevel governance of migration. City networks facing global mobility challenges*. Springer International Publishing. <https://doi.org/10.1007/978-3-030-82551-5>
- Caponio, T., & Ponzio, I. (Ed.). (2022). *Coping with migrants and refugees. Multilevel governance across the EU*. Taylor & Francis. <https://doi.org/10.4324/9781003129950>
- Choe, J., & Lugosi, P. (2023). *Migration, tourism and social sustainability* (1st Ed.). Routledge Taylor & Francis Group. <https://www.routledge.com/Migration-Tourism-and-Social-Sustainability/Choe-Lugosi/p/book/9781032414805>
- Dadabaev, T. (Ed.). (2022). *The grass is always greener? Unpacking Uzbek migration to Japan*. Springer Singapore. <https://doi.org/10.1007/978-981-16-2570-1>
- Darieva, T. (2022). *Making a Homeland. Roots and routes of transnational Armenian engagement*. transcript Verlag. <https://www.transcript-verlag.de/978-3-8376-6254-2/making-a-homeland/>
- Goodwin-Gill, G., & McAdam, J. (2021). *The refugee in international law* (4th ed.). Oxford University Press. <https://global.oup.com/academic/product/the-refugee-in-international-law-9780198808572?cc=de&lang=en&>
- Hathaway, J. C. (2021). *The rights of refugees under international law* (2nd ed.). Cambridge University Press. <https://www.cambridge.org/core/books/rights-of-refugees-under-international-law/A7533B16F033C9FA03612B4F829B74E2>
- Jacob, F. (2022). *Wallerstein 2.0: Thinking and applying world-systems theory in the 21st century*. transcript Verlag. https://www.academia.edu/61014359/Wallerstein_2_0_Thinking_and_Applying_World_Systems_Theory_in_the_21st_Century
- Kreichauf, R., & Glorius, B. (2023). *Displacement, asylum and the city. Understanding migration processes through urban studies approaches*. Routledge Taylor & Francis Group. <https://www.goodreads.com/book/show/63368734-displacement-asylum-and-the-city>
- Lasek-Markey, M. (2023). *Law, precarious labour and posted workers: A sociolegal study on posted work in the EU*. Routledge Taylor & Francis Group. <https://www.routledge.com/Law-Precarious-Labour-and-Posted-Workers-A-Sociolegal-Study-on-Posted/Lasek-Markey/p/book/9781032395982>
- Liu-Farrer, G., Yeoh S.A., B., & Baas, M. (2023). *The Question of Skill in Cross-Border Labour Mobilities* (1st ed.). Routledge Taylor & Francis Group. <https://www.routledge.com/The-Question-of-Skill-in-Cross-Border-Labour-Mobilities/Liu-Farrer-Yeoh-Baas/p/book/9781032448695>

- Luongo, K. (2023). *African witchcraft and global asylum-seeking: Border-crossing beliefs*. Routledge Taylor & Francis Group. <https://www.routledge.com/African-Witchcraft-and-Global-Asylum-Seeking-Border-Crossing-Beliefs/Luongo/p/book/9781032128474>
- Mack, E. T. (2022). *Acquired Alterity: Migration, Identity, and Literary Nationalism*. University of California Press.
- McCabe Lashua, K. (2023). *Children at the birth of empire. British law, liberty, and the global migration of destitute children, c. 1607–1760*. Routledge Taylor & Francis Group. <https://www.routledge.com/Children-at-the-Birth-of-Empire-British-Law-Liberty-and-the-Global-Migration/Lashua/p/book/9780367507077>
- Preiser-Kapeller, J., Wenzlhuemer, R., & Zanoni A., E. (2022). *Studies in global migration history*. Brill. <https://brill.com/display/serial/SGMH>
- Rahman, A., Babu M., S., & Ansari, P. A. (2023). *Indian migration to the Gulf. Issues, Perspectives and Opportunities*. Routledge Taylor & Francis Group. <https://www.routledge.com/Indian-Migration-to-the-Gulf-Issues-Perspectives-and-Opportunities/Rahman-M-Ansari/p/book/9781032307640>
- Thym, D. ,& Odysseus Academic Network. (Ed.) (2022). *Reforming the Common European Asylum System. Opportunities, pitfalls, and downsides of the commission proposals for a new pact on migration and asylum*. <https://doi.org/10.5771/9783748931164>
- Reich, H., & Di Rosa, R. T. (Eds.). *Newcomeers as agents for social change. Learning from the Italian Experience. A Recourse Book for Social Wrok and Social Work Education in the Field of Migration*. FrancoAngeli. <https://series.francoangeli.it/index.php/oa/catalog/book/762>
- Roßkopf, R., & Heilmann, K. (2021). *International Social Work and Forced Migration. Developments in African, Arab and European Countries*. Barbara Budrich. <https://shop.budrich.de/en/product/international-social-work-and-forced-migration/>
- Rzadtcki, L. (2022). „We are all activists“. *Exploring solidarities in activism by, with and for refugees and migrants in Hamburg*. transcript Verlag. <https://www.transcript-verlag.de/978-3-8376-6349-5/we-are-all-activists/>
- Sakurai, T., & Zamboni, M. (2023). *Can Human Rights and National Sovereignty Coexist?* Routledge Taylor & Francis Group. <https://www.routledge.com/Can-Human-Rights-and-National-Sovereignty-Coexist/Sakurai-Zamboni/p/book/9780367609658>
- Sandberg, M., Rossi, L., Galis, V., & Bak Jørgensen, M. (Ed.). (2022). *Research Methodologies and Ethical Challenges in Digital Migration Studies. Caring For (Big) Data?* Palgrave Macmillan. <https://doi.org/10.1007/978-3-030-81226-3>
- Schweitzer, R. (2022). *Micro-management of irregular migration. Internal norders and public services in London and Barcelona*. Springer International Publishing. <https://doi.org/10.1007/978-3-030-91731-9>
- Serpa, R. (2023). *Migrant homelessness and the crimmigration control system*. Routledge Taylor & Francis Group. <https://www.routledge.com/Migrant-Homelessness-and-the-Crimmigration-Control-System/Serpa/p/book/9781032206325>

- Steiner, N. (2023). *International Migration and Citizenship Today* (2nd ed.). Routledge Taylor & Francis Group. <https://www.routledge.com/International-Migration-and-Citizenship-Today/Steiner/p/book/9781032114118>
- Thym, D., & Hailbronner, K. (ed.). *EU Immigration and Asylum Law. Article-by-Article Commentary* (2nd ed). Beck, Hart, Nomos. <https://www.beck-shop.de/hailbronner-thym-eu-immigration-asylum-law/product/33016145>
- Tinius, J., & Totah, R. (2022). »PostHeimat«. Inquiries into migration, theatre, and networked solidarity. transcript Verlag. <https://www.transcript-verlag.de/978-3-8376-6251-1/postheimat-inquiries-into-migration-theatre-and-networked-solidarity/>
- Tittel-Mosser, F. (2022). *Implementing EU mobility partnerships. Putting soft law into practice* (1st ed.). Routledge Taylor & Francis Group. <https://www.routledge.com/Implementing-EU-Mobility-Partnerships-Putting-Soft-Law-into-Practice/Tittel-Mosser/p/book/9780367493530>
- Triandafyllidou, A. (2022). *Migration and Pandemics. Spaces of solidarity and spaces of exception*. Springer International Publishing. <https://link.springer.com/book/10.1007/978-3-030-81210-2>
- Yeo, C. (2022). *Refugee law*. Bristol University Press. <https://bristoluniversitypress.co.uk/refugee-law>

NEWS & NOTES

Selected Developments related to Migration: 2022¹

Ralf Roßkopf²

This is a compilation of news and notes of relevance for the field of migration.

1. EU Action Plan for the Central Mediterranean

The European Commission presented an EU Action Plan on the Central Mediterranean in advance of the Extraordinary Justice and Home Affairs Council of 25 November 2022 (EU Commission, 2022a). The Plan was welcomed by the ministers who expressed their readiness for the implementation and considered possible benefits of similar plans for other main migration routes (EU Home Affairs Council, 2022).

Reiterating that over 90 000 migrants and refugees arrived through the Central Mediterranean Route in 2022 departing mainly from Libya and Tunisia, and originating primarily from Egypt, Tunisia, and Bangladesh, the Plan sets out 20 actions for the three pillars of (1) strengthened cooperation with partner countries and international organizations, (2) a more coordinated approach on search and rescue, as well as (3) the reinforced implementation of the voluntary solidarity mechanism and the Joint Roadmap (EU Commission, 2020a) for the adoption of the proposals under the Pact on Migration and Asylum (EU Commission, 2020b).

2. EU Plan for Attracting Skills and Talent to the EU

The European Commission proposed a comprehensive plan for attracting skills and talent to the EU in its Communication of 27/4/2022 (EU Commission 2022b). The objectives are to meet the demographic challenges in an aging society as reflected on a shrinking working population, to respond to occupational shortages in specific sectors and regions, and to foster a legal pathway for migration to the EU in line with the New Pact on Migration and Asylum (EU Commission, 2020a) and the European Skills Agenda (EU Commission, 2020c).

The plan sets out

“three key pillars of a suggested sustainable EU policy on legal migration:

- a legislative pillar, recasting the Long-Term Residents Directive and the Single Permit Directive, to simplify the procedures for the admission of workers of various skill levels to

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the EU, and the mobility within the EU of workers from non-EU countries that are already in the EU, and improving their rights and their protection from labour exploitation;

- an operational pillar, addressing the challenge of international matching by setting out concrete steps to develop Talent Partnerships with key partner countries and the key features of an EU Talent Pool; and
- a forward-looking pillar, based on three specific priorities for action that should further guide the EU's policy on legal migration: care, youth and innovation" (EU Commission, 2020b: 7-8; footnotes omitted).

3. German Government Agrees on Key Points on the Immigration of Skilled Workers From Third Countries

The German Government has agreed on key points on the immigration of skilled workers from third countries on 30 November 2022 (German Federal Government, 2022a) as a basis for a respective bill expected for March 2022. The strategy on immigration is an element to tackle the severe lack of skilled workers already addressed by the Government's Skilled Worker Strategy, which was adopted just a month before on 12 October 2022 (German Federal Government, 2022b).

According to the Institute for Employment Research (Insitut für Arbeitsmarktforschung – IAB), without external migration and rising labor force participation rates, the number of people available to the German labor market would fall by more than seven million by 2035. On the basis of a necessary positive annual net migration of 330,000 respectively 400,000 persons, the Institute assumes an immigration requirement of 1.64 million respectively 1.79 million persons annually (IAB, 2022). Major obstacles for companies to recruit from abroad are identified with regard to bureaucratic barriers as well as uncertainties related to the accreditation of foreign degrees and qualifications, the needed German language skills and the capability to successfully integrate into the German society (Keita & Konle-Seidl, 2022; Mayer 2021). A further expansion of international recruitment, for example in the context of bilateral placement agreements is recommended, whereas the involvement and support of ministries and universities is considered beneficial in this respect. (IAB, 2022; Roßkopf, 2022).

The German Government's keypoints aim at three pillars to attract skilled workers from abroad, (1) the skilled workers pillar, (2) the experience pillar, and (3) the potential pillar. In times of acute bottlenecks, this would be accompanied by short-term employment even in sectors without specific qualification requirements. These measures are expected to be embedded into an improvement of the relevant framework conditions, including promotion for the German labor market, expanded options for language training in Germany and abroad, optimization and acceleration of accreditation procedures for foreign qualifications as well as an accelerated, digitized and transparent administrative procedure. One of the suggested measures is an offer for vocational training programs with integrated language training, especially in the nursing sector, which are supposed to be located mainly abroad and financed by the industry itself (German Federal Government, 2022a). Unfortunately, the necessary but lacking ministerial and institutional responsibilities for qualification measures abroad (Roßkopf, 2022: 113-114) have not really been addressed so far.

References

- EU Commission. (2020a). *Annexes to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum of 23/9/2020. Roadmap to implement the New Pact on Migration and Asylum*. COM(2020) 609 final. https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_4&format=PDF
- EU Commission. (2020b). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum of 23/9/2020*. COM(2020) 609 final. https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF
- EU Commission. (2020c). *European Skills Agenda for Sustainable Competitiveness, Social Fairness and Resilience*. <https://ec.europa.eu/social/BlobServlet?docId=22832&langId=en>
- EU Commission. (2022a). *EU Action Plan for the Central Mediterranean*. https://home-affairs.ec.europa.eu/system/files/2022-11/EU%20Action%20Plan%20for%20the%20Central%20Mediterranean_en.pdf
- EU Commission. (2022b). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 27/4/2022. Attracting skills and talent to the EU*. COM(2022) 657 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022DC0657&from=EN>
- EU Home Affairs Council. (2022). *The Extraordinary Home Affairs Council on the situation along all migratory routes and a joint way forward Brussels, 25 November 2022*. Presidency summary. <https://www.consilium.europa.eu/media/60347/fin-pres-summary-migration.pdf>
- German Federal Government. (2022a). *Eckpunkte zur Fachkräfteeinwanderung aus Drittstaaten*. <https://www.bmbf.de/SharedDocs/Downloads/de/2022/221130-eckpunkte-feg.pdf?blob=publicationFile&v=1>
- German Federal Government. (2022b). *Fachkräftestrategie der Bundesregierung*. <https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/fachkraeftestrategie-der-bundesregierung.pdf?blob=publicationFile&v=7>
- IAB. (2022). *Wie sich eine demografisch bedingte Schrumpfung des Arbeitsmarkts noch abwenden lässt*. <https://www.iab-forum.de/wie-sich-eine-demografisch-bedingte-schrumpfung-des-arbeitsmarkts-noch-abwenden-laesst/>
- Keita, S., & Konle-Seidl, R. (2022a). *Rekrutierung von Fachkräften aus dem Ausland. Einschätzungen zu Praxis und Herausforderungen in deutschen Betrieben. Stellungnahme des IAB zur Anhörung beim Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung am 13.10.2022*. <https://doku.iab.de/stellungnahme/2022/sn1222.pdf>
- Mayer, M. M. (2021). *Fachkräfteengpässe und Zuwanderung aus Unternehmenssicht in Deutschland 2021. Stärkerer Anstieg als im Vorjahr angenommen*. <https://www.bertelsmannstiftung.de/de/publikationen/publikation/did/fachkraefteengpaesse-und-zuwanderung-aus-unternehmenssicht-in-deutschland-2021-staerkerer-anstieg-als-im-vorjahr-angenommen-all>
- Roßkopf, R. (2022). *Binational Career Services. Transfer von "Köpfen" in den deutschen Arbeitsmarkt*. *Transfer & Innovation*, 1, 103-116, www.transfer-und-innovation.de/media/gnnboh/yg0wc5/0be28bff09b34be4026621bce526333bc7d9db27.pdf