

Marie-Claire Foblets | Luc Leboeuf (eds.)

Humanitarian Admission to Europe

The Law between Promises and Constraints



HART
PUBLISHING



Nomos

Schriften zum Migrationsrecht

Edited by

Prof. Dr. Jürgen Bast, Universität Gießen

Prof. Dr. Ulrike Davy, Universität Bielefeld

Prof. Dr. Andreas Fischer-Lescano, Universität Bremen

Prof. Dr. Marie-Claire Foblets,

MPI für ethnologische Forschung, Halle

Prof. Dr. Thomas Groß, Universität Osnabrück

Dr. Konstanze Jüngling,

Akademie der Diözese Rottenburg-Stuttgart

Prof. Dr. Winfried Kluth, Universität Halle-Wittenberg

Prof. Dr. Daniel Thym, Universität Konstanz

Volume 30

Marie-Claire Foblets | Luc Leboeuf (eds.)

Humanitarian Admission to Europe

The Law between Promises and Constraints



HART
PUBLISHING



Nomos

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

ISBN: HB (Nomos) 978-3-8487-5730-5
ePDF (Nomos) 978-3-8452-9860-3

British Library Cataloguing-in-Publication Data

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

ISBN: HB (Hart) 978-1-509939-671

Library of Congress Cataloging-in-Publication Data

Foblets, Marie-Claire / Leboeuf, Luc
Humanitarian Admission to Europe
The Law between Promises and Constraints
Marie-Claire Foblets / Luc Leboeuf (eds.)
371 pp.

Includes bibliographic references.

ISBN 978-1-509939-671 (hardcover Hart)



Onlineversion
Nomos eLibrary

1st Edition 2020

© Nomos Verlagsgesellschaft, Baden-Baden, Germany 2020. Printed and bound in Germany.

This work is subject to copyright. All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or any information storage or retrieval system, without prior permission in writing from the publishers. Under § 54 of the German Copyright Law where copies are made for other than private use a fee is payable to "Verwertungsgesellschaft Wort", Munich.

No responsibility for loss caused to any individual or organization acting on or refraining from action as a result of the material in this publication can be accepted by Nomos or the editors.

Foreword

Winfried Kluth¹

Scientific research on migration law is not possible without a close link to reality. For courts and judges the situation is not very different. This was made clear in the opinion of Advocate General *Mengozzi*, presented on 7 February 2018, in the case *X. and X.* involving a Syrian family that had already been subjected to torture and which applied for humanitarian visas at the Belgian embassy in Beirut.

Advocate General *Mengozzi* argued with respect to the responsibility of the EU and the Member States: “It is, in my view, crucial that, at a time when borders are closing and walls are being built, the Member States do not escape their responsibilities, as they follow from EU law or, if you will allow me the expression, *their* EU law and *our* EU law.”

The impulse given by Advocate General *Mengozzi*’s opinion was answered by organizing an international conference focusing on the legal framework of persecution and the genuine dangers that refugees face on their way to “safe harbours”. The formidable scientific network of *Marie-Claire Foblets* and the excellent coordination by *Luc Leboeuf* made it possible to invite outstanding experts from several countries to discuss the legal aspects of humanitarian visas and other instruments that can be used to facilitate safe escape paths.

The conference organizers took the very compelling approach of focusing on the topic from different legal and institutional points of view, and this volume likewise follows that logic. The first part starts with an analysis of humanitarian admission in international and EU law, with *Dirk Hanschel*, *Stephanie Law* and *Sylvie Sarolea* presenting their sophisticated observations. The second part adds three national perspectives. The contributions of *Katia Bianchini (Italy)*, *Pauline Endres de Oliveira (Germany)* and *Serge Bodart (Belgium)* vividly illustrate how different nation-states deal with the same problem. The great difficulties inherent in claiming and actually being granted humanitarian admission in reality are demonstrated by *Sophie Nakueira (with reference to Uganda)* and *Tristan Wibault*, who represented the plaintiffs before the European Court of Justice in the case *X*

1 Professor in the Faculty of Law, Martin Luther University Halle-Wittenberg.

and X. Finally, some future prospects on humanitarian admission to Europe are presented by *Catharina Ziebritzki*, *Eugenia Relano Pastor* and *Jean-Yves Carlier*.

This collection of inspiring and dense articles is the result of two days of intensive discussions. The contributions touch on all relevant legal aspects that should be taken into account by the Member States and the EU when they are searching for a “value-based” response to the problems observed in the Mediterranean Sea region.

Recently, the first steps towards such a response were taken with the Malta Declaration of 23 September 2019, but the political agreement on burden sharing between Germany, France and some other countries is only a first step and is not legally binding. The scientific considerations in this book are sure to prove very useful as further political and legal solutions are sought.

Table of contents

Introduction: Humanitarian Admission to Europe. From Policy Developments to Legal Controversies and Litigation <i>Luc Leboeuf and Marie-Claire Foblets</i>	11
<i>Part 1. Humanitarian Admission Under International and EU Law. The Right to Asylum and its Paradoxes</i>	47
Chapter 1: Humanitarian Admission Under Universal Human Rights Law: Some Observations Regarding the International Covenants <i>Dirk Hanschel</i>	49
Chapter 2: Humanitarian Admission and the Charter of Fundamental Rights <i>Stephanie Law</i>	77
Chapter 3: Is Access to Asylum the Same as Access to Justice? <i>Sylvie Sarolea</i>	115
<i>Part 2. Humanitarian Admission Under Domestic Law. Between Formalised Procedures and Informal Practices</i>	155
Chapter 4: Humanitarian Admission to Italy through Humanitarian Visas and Corridors <i>Katia Bianchini</i>	157

Table of contents

Chapter 5: Humanitarian Admission to Germany – Access vs. Rights ? <i>Pauline Endres de Oliveira</i>	199
Chapter 6: Humanitarian Admission to Belgium <i>Serge Bodart</i>	225
<i>Part 3. Claiming Humanitarian Admission. Survival Strategies and Litigation Attempts</i>	239
Chapter 7: Unpacking Vulnerability: An Ethnographic Account of the Challenges of Implementing Resettlement Programmes in a Refugee Camp in Uganda <i>Sophie Nakueira</i>	241
Chapter 8: Making the Case X&X for the Humanitarian Visa <i>Tristan Wibault</i>	271
<i>Part 4. Some Future Prospects on Humanitarian Admission to Europe</i>	283
Chapter 9: The Objective of Resettlement in an EU Constitutional Perspective <i>Catharina Ziebritzki</i>	285
Chapter 10: EU Initiatives on a European Humanitarian Visa <i>Eugenia Relaño Pastor</i>	341

Conclusion:
The Role of the Judge in Controlling the Genuine Enjoyment of the
Substance of the Rights 367
Jean-Yves Carlier

