Chapter 5:
Humanitarian Admission to Germany – Access vs. Rights ?

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Contents

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6.1 Introduction

Legal access to protection is one of the most contested issues in refugee law.[2] In the absence of an explicit entry right for refugees, humanitarian admission seems to be promising for individuals and States by offering a method of safe as well as regulated arrival in receiving countries.[3] After the CJEU indicated that it is within the Member States' jurisdiction to issue a 'humanitarian visa' to access an asylum procedure in the EU,[4] the German Constitutional Court emphasised the fact that there is no such option in national law.[5] As regards Germany, the term 'humanitarian visa', therefore, refers to existing visa schemes with humanitarian scope, ranging from

2 See further P Endres de Oliveira, 'Legaler Zugang zu internationalem Schutz – Zur Gretchenfrage im Flüchtlingsrecht' (2016) *Kritische Justiz* 49(2) 167.

3 See, for instance, F McKay, S L Thomas and S Kneebone, 'It would be ok if they came through the proper channels': Community Perceptions and Attitudes Towards Asylum Seekers' *Australia Journal of Refugee Studies* (2015) 25(1) 113; see also J v Selm, 'The Strategic Use of Resettlement: Changing the Face of Protection?' (2004) Refuge 22, 43: 'if a country resettles refugees, as opposed to seeing them arrive spontaneously, the authorities know who they are, the people enter legally, and the process can be managed.'.

4 See Case C-638/16 *X. and X. vs. Belgium*, ECLI:EU:C:2017:173; for a critical discussion see P Endres de Oliveira, 'Humanitäre Visa für Flüchtlinge, Teil 1: Nicht mit der EU' and C Ziebritzki, 'Humanitäre Visa für Flüchtlinge, Teil 2: Wirklich keine Angelegenheit der EU?' (2017) *Verfassungsblog* 09 March 2017.

5 See BVerfG 2 BvR 1758/17, Judgement of 11 October 2017, para. 16.

individual admission to large scale ad hoc schemes and permanent resettlement. One thing all of these 'protected entry procedures'[6] have in common is that a residence permit on humanitarian grounds is granted immediately upon arrival, without an asylum procedure.[7] Humanitarian admission has a long tradition in Germany, going back to 1956, when approximately 13,000 refugees from Hungary were admitted (to Western Germany).[8] Since 2013, humanitarian admission programmes have focused on the conflict in Syria, enabling the legal entry of over 44,000 individuals from Syria and its neighbouring countries. Beneficiaries are mostly individuals with special needs as well as personal links to Germany.

This chapter analyses different methods of humanitarian access to Germany by outlining existing legal grounds and respective procedures. Thereby, it compares the status of beneficiaries to the status granted in national asylum procedures. A particular focus lies on protection seekers from Syria as the largest group of asylum seekers as well as the main beneficiaries of humanitarian admission. The analysis shows that their status, and therewith the quality of protection, does not merely depend on the individual circumstances of the case, but on external factors such as how and when individuals arrived in Germany.

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6 See further on this notion Noll, Gregor / Fagerlund, Jessica / Liebaut, Fabrice, 'Study on the Feasibility of Processing Asylum Claims Outside the EU against the Background of the Common European Asylum System and the Goal of a Common Asylum Procedure' EU Commission / Danish Centre for Human Rights (Brussels 2002), 21.

7 The term therewith also differs from the notion of 'humanitarian visa' as used by the European Parliament in its resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas (2018/2271(INL)), available at http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2018-0494+0+DOC+XML+V0//EN&language=EN, [last accessed 15 July 2019].

8 See B Huber/J Eichenhofer/P Endres de Oliveira, Aufenthaltsrecht (C.H. Beck, 2017) 107 ff., with reference to the provisions of the former 'Kontingentflüchtlingsgesetz' (HumHAG) that also served as the basis for the admission of around 35,000 Vietnamese 'boat people' between 1970 and 1980, and around 350,000 refugees from Bosnia during the 1990s; for a detailed overview of all cases of humanitarian admission to Germany, see Grote, Janne, 'Humanitarian Admission Programmes in Germany for Beneficiaries of Protection from Syria' (2017) Federal Office for Migration and Refugees, German National Contact Point oft he European Migration Network, 15.

6.2 Admission in exceptional individual cases

When considering legal access options for individuals in need of protection, Section 22 of the German Residence Act[9] is of particular interest. In contrast to admission schemes targeting specific situations and group admission based on quotas (regulated in Section 23 Residence Act, see below at 6.3 ff.), Section 22 Residence Act allows for an *individual* 'admission from abroad'. It is therewith possible to approach a German representation with an individual request for a visa on the basis of this provision, which reads as follows:

> A foreigner may be granted a temporary residence permit for the purpose of admission from abroad in accordance with international law or on urgent humanitarian grounds. A temporary residence permit must be granted if the Federal Ministry of the Interior or the body designated by it has declared, so as to uphold the political interests of the Federal Republic of Germany, that the foreigner is to be admitted. […]

An admission 'in accordance with international law' (sentence 1 Alt. 1) is meant to cover cases of international commitments, as, for instance, on the basis of bi- or multilateral agreements, or respect for the interests of other States and international organisations. The requirement of 'urgent humanitarian grounds' (sentence 1 Alt. 2) can apply to particularly exceptional situations of humanitarian needs, such as cases of severe illness and extreme emergency situations, that differ from the general situation in the country of origin. Thus, the need to flee from an internal conflict, as, for instance, the conflict in Syria, is not considered 'urgent humanitarian grounds'. The provision has therefore been of little use to individuals trying to flee Syria and seek protection through humanitarian admission in Germany. Additionally, there is the unwritten requirement to demonstrate *links to Germany*.[10] Although family reunification is generally not covered by this provision, a recent example of its application is the granting of visas to family members of unaccompanied minors with subsidiary protection status in particularly exceptional cases, after family reunification rights of beneficiaries of subsidiary protection had been restricted in 2016 (see below at

9 Residence Act of 25 Feb. 2008 (*Aufenthaltsgesetz*), available at: www.gesetze-im-internet.de/englisch_aufenthg/ [last accessed 15 July 2019].

10 See Huber/Eichenhofer/Endres de Oliveira (n 8) 116, with further references.

6.7.2).[11] Relevant examples of admissions following a declaration of the Federal Ministry of the Interior to 'uphold the political interests' of Germany (sentence 2) are admissions of local Afghan staffmembers of the German Mission in Afghanistan (part of NATO's ISAF mission) and their family members. This has been an option since 2013 for individual applicants independent of a quota on the basis of a so-called 'risk notifications'.[12] Another recent example is the admission of members of the civil defence unit 'White Helmets'[13] and their families from Syria.[14]

The examples show that while Section 22 allows for an individual admission from abroad, beneficiaries are mostly individuals belonging to certain groups. All in all, Section 22 is of little practical relevance.[15] As in all of the access options described hereafter, the decision to grant access to Germany via humanitarian visa is a discretionary act, an expression of national sovereignty.[16] Only errors in assessment or a failure to exercise discretion are subject to judicial scrutiny. Due to its highly exceptional character and a range of unwritten requirements, Section 22 is rarely applied. In comparison to the (group) admission schemes discussed hereafter, admission numbers in that catgory are therefore very low.

6.3 Quota-based admission at federal level: Ad hoc schemes for individuals fleeing Syria

In light of the highly exceptional character of Section 22, the focus of humanitarian admission in Germany lies on quota-based governmental pro-

11 See H Cremer, 'Kein Recht auf Familie für subsidiär Schutzberechtigte? Zur Anwendung von § 22 Satz 1 AufenthG nach den Vorgaben der UN-Kinderrechtskonvention', *Asylmagazin* 3/2018, 65; see also Anna Schmitt und Sebastian Muy, '"Aufnahme aus dem Ausland" beim Familiennachzug – Anwendung des § 22 Satz 1 AufenthG beim Familiennachzug zu subsidiär Schutzberechtigten', *Asylmagazin* 6/2017, 217.

12 See Grote (n 8) 17 f., 21 and 24, with details on the selection process and actors involved; see also Deutscher Bundestag, Wissenschaftliche Dienste 'Humanitärer Schutz für afghanische Ortskräfte' - WD 3 – 3000 – 170/16.

13 See https://whitehelmets.org/en/ [last accessed 15 July 2019].

14 See https://resettlement.de/aufnahme-von-weisshelmen-in-deutschland/ [last accessed 15 April 2019].

15 See Huber/Eichenhofer/Endres de Oliveira (n 8) 115; see also P Endres de Oliveira, 'Schutz syrischer Flüchtlinge in Deutschland – Welche Möglichkeiten für einen sicheren Aufenthalt gibt es?' *Asylmagazin* 9/2014, 284, 289.

16 See BVerwG 1 C 21.10, Judgement of 15.11.2011, para.10.

grammes, targeting specific situations and groups of people. In contrast to Section 22, there is no general option of applying for an individual admission. Admissions follow specific 'admission orders' (*Aufnahmeanordnungen*) from the Federal Ministry of the Interior, issued in accordance with the supreme *Land* authorities.[17] The 'admission orders' determine the details of the procedure as well as admission criteria regarding potential beneficiaries. In the following, the focus lies on Section 23 subsection 2 Residence Act, which foresees admission at federal level 'when special political interests' apply and reads as follows:

> In order to safeguard special political interests of the Federal Republic of Germany, the Federal Ministry of the Interior may, in consultation with the supreme Land authorities, order foreigners from specific states or certain categories of foreigners defined by other means to be granted approval for admission by the Federal Office for Migration and Refugees. […] The foreigners concerned shall be issued a temporary residence permit or permanent settlement permit, in accordance with the approval for admission. […]

This provision has been the legal basis for various admission schemes at federal level, such as the admission of 2,500 Iraqi nationals from Jordan and Syria in 2009 and 2010, as well as the admission of Jewish immigrants from the former Soviet Union, which is still ongoing.[18] In recent times, the focus has lain on the admission of individuals who fled the conflict in Syria ('HAP Syria' 1 – 3 and 'HAP Turkey').

6.3.1 HAP Syria 1 – 3: Procedure and beneficiaries

The first *Humanitarian Admission Programme for Beneficiaries of Protection from Syria, its Neighbouring Countries, Egypt and Libya* (HAP Syria 1) was launched in May 2013, following urgent calls from civil society, UNHCR

17 For a listing of respective admission orders as well as information on arrivals from 2015 to 2019 through legal access schemes in Germany (including information on numbers, first country of refuge, nationality and residence permit), see https://resettlement.de/en/current-admissions/ [last accessed 15 July 2019].

18 Jewish immigrants receive a permanent residence permit immediately upon arrival on the basis of Section 23 subsection 2 sentence 3 Residence Act, see further Huber/Eichenhofer/Endres de Oliveira (n 8) 122 f.

and the German Parliament.[19] The federal minister of the interior agreed with the interior ministers and senators of the federal *Länder* on the admission of 5,000 particularly vulnerable individuals for the duration of the conflict. Two additional admission programmes followed with quotas of 5,000 places in December 2013 (HAP Syria 2) and 10,000 in July 2014 (HAP Syria 3). Admissions mainly took place from Syria, Lebanon, Egypt and Libya.[20] Together with the Goethe Institute, the International Organization for Migration (IOM) assisted in providing travel and pre-departure information, including cultural orientation. During the respective visa procedures, embassies cooperated with the local immigration offices, which were responsible for issuing residence permits upon arrival.[21] All of these federal programmes have ended.

The Federal Office for Migration and Refugees selected the beneficiaries on the basis of respective case referrals. Individuals qualifying for HAP Syria 1 were initially identified by UNHCR and Caritas Lebanon as well as German missions in the region on the basis of the admission criteria as set out for each programme. The requirements were specified in the respective 'admission orders' and adjusted over time. HAP Syria 2 and 3 also allowed for the federal *Länder* to propose individuals for an admission. Beneficiaries of the three HAP Syria were mainly Syrian nationals, however, HAP Syria 2 and 3 also included stateless Palestinians and Kurds from Syria on an individual basis. The selection was not merely based on humanitarian criteria (such as medical needs, women-at-risk, or other forms of vulnerability). The schemes particularly targeted individuals demonstrating 'links to Germany', or the 'the ability to make a contribution to the reconstruction of Syria' at the end of the conflict.[22] Individuals with a criminal record or under the suspicion of membership of a terrorist or criminal organisation, or believed to have engaged in any kind of activities considered as a danger for international peace and security, were excluded from admission.

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19 Sachverständigenrat deutscher Stiftungen für Integration und Migration (SVR), 'Sicherer Zugang – Die humanitären Aufnahmeprogramme für syrische Flüchtlinge in Deutschland' (2015), 14.

20 Admission orders are available at https://resettlement.de/humanitaere-aufnahmeprogramme/ [last accessed 15 July 2019].

21 See SVR (n 19) 16 for detailed information on the selection process.

22 See further Grote (n 8) 25, pointing out that the first priority of HAP 1 was to oversee the humanitarian situation of the individual applicant, the first priorities of HAP 2 and 3 were links to Germany.

6.3.2 Admissions on the basis of the EU-Turkey-Statement: HAP Turkey

In addition to the three HAP Syria, Germany reassigned 13,694 places originally foreseen to comply with the EU relocation programme[23] to the admission of Syrians from Turkey ('HAP Turkey'), following the EU-Turkey-Statement[24] of March 2016.[25] These admissions are based on 'admission orders' of the German Federal Ministry of the Interior in accordance with the supreme *Land* authorities of the federal *Länder*, foreseeing admission of up to 500 individuals per month until 31 December 2019.[26] Beneficiaries are selected by the German Federal Office for Migration and Refugees on the basis of proposals made by UNHCR in cooperation with the Turkish asylum authority (Directorate General of Migration Management, DGMM). There has been criticism regarding a lack of transparency of the selection criteria applied by the DGMM, which has the right of proposal.[27] While beneficiaries were initially granted a residence permit on the basis of Section 23 subsection 4 Residence Act (resettlement, see below at 6.5), admissions are now based on Section 23 subsection 2 Residence Act. As further discussed below (at 6.7), this distinction is not irrelevant, since the scope of rights granted upon arrival varies substantially depending on the legal basis of the admission.

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23 For information on Member States' Support to the Emergency Relocation Mechanism as of 30 October 2018 see https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_relocation_en.pdf [last accessed 15 July 2019].

24 EU-Turkey Statement, Press Release, 18 March 2016, available at: www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/ [last accessed 15 July 2019].

25 See further on resettlement under the EU Turkey Statement, C Ziebritzky in this volume.

26 The latest 'admission order' of 21 December 2018 is available at https://www.bmi.bund.de/SharedDocs/downloads/DE/veroeffentlichungen/themen/migration/humanitaere-aufnahmeprogramme/aufnahmeanordnung-8.pdf?__blob=publicationFile&v=1 [last accessed 15 July 2019]; for information on latest arrivals see https://resettlement.de/en/current-admissions/ [last accessed 15 July 2019].

27 See E Lutter/V Zehnder/E Knezevic, 'Resettlement und humanitäre Aufnahmeprogramme – Rahmenbedingungen und Herausforderungen der aktuellen Aufnahmeverfahren in der Praxis, *Asylmagazin* 1-2/2018, 29, 33.

6.4 Humanitarian admission schemes at Länder level

Besides humanitarian admission at federal level, there is the possibility of an admission at *Länder* level according to Section 23 subsection 1 Residence Act, providing that:

> The supreme *Land* authority may order a temporary residence permit to be granted to foreigners from specific states or to certain groups of foreigners defined by other means, in accordance with international law, on humanitarian grounds or in order to uphold the political interests of the Federal Republic of Germany. The order may be issued subject to the proviso that a declaration of commitment be submitted in accordance with Section 68. In order to ensure a nationwide uniform approach, the order shall require the approval of the Federal Ministry of the Interior.

Again, there is no institutionalised admission procedure. Details regarding an admission on the basis of this provision are outlined in the respective 'admission orders'. Prominent examples of admissions based on this provision are the private sponsorship schemes for relatives of Syrian nationals implemented from 2013 onwards.

6.4.1 Private sponsorship programmes for relatives of Syrian nationals in Germany

Instead of extending existing options of family reunification or applying Section 22 Residence Act more broadly for relatives of Syrian nationals already living in Germany,[28] the temporary ad hoc schemes at federal level have been complemented by temporary admission schemes at *Länder* level since 2013 (in all federal *Länder* except Bavaria). These *Länder* schemes were particularly designed for Syrians with first or second degree relatives in Germany. They qualify as 'private sponsorship programmes',[29] since the main requirement is a 'declaration of commitment' (*Verpflichtungserklä-*

28 See further on Syrian immigrant population in Germany, N J Ragab/L Rahmeier/M Siegel, 'Mapping the Syrian Diaspora in Germany – Contributions to Peace, Reconstruction and Potentials for Collaboration with German Development Cooperation' (2017), Maastricht Graduate School of Governance, 15.

29 See further on private sponsorship, European Commission, *Study on the feasibility and added value of sponsorship schemes as a possible pathway to safe channels for admission to the EU, including resettlement* (2018).

rung) from a private sponsor in Germany undertaking to cover the accommodation and living expenses of the applicant. So far, the schemes have offered legal entry to over 24,000 individuals and are partly still ongoing.[30] Beneficiaries live in Germany with a residence permit based on Section 23 subsection 1 Residence Act. Although the target group can be the same (eg individuals fleeing the conflict in Syria), a residence permit based on Section 23 subsection 1 entails several restrictions compared to the residence permit granted to individuals admitted through the federal admission programmes or resettlement – and even more so in comparison to a residence permit granted to Convention refugees[31] on the basis of a national asylum procedure (see further below at 6.7). The quality of protection is not the only controversy raised by these private sponsorship schemes.

6.4.2 Controversies raised by private sponsorship: Duration of financial commitments

On the one hand, private sponsorship schemes can empower civil society by offering an option to actively engage in the safe entry of protection seekers. The personal contact between beneficiaries and sponsors has also proven to enhance the general social acceptance of humanitarian admission and facilitate integration.[32] On the other hand, the requirement of providing financial guarantees partly shifts the humanitarian responsibility of the State to civil society, and risks overstraining the financial capacities of the respective sponsors.[33] A particular example in this regard were the high financial burdens related to medical costs. Here, the *Länder* eventual-

30 There are ongoing programmes in Berlin, Brandenburg, Hamburg, Schleswig-Holstein and Thuringia; for an overview see https://resettlement.de/current-admissions/ [last accessed 15 July 2019].

31 See Article 1A of the Refugee Convention (UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, 137, available at: https://www.refworld.org/docid/3be01b964.html [last accessed 15 July 2019].

32 See SVR (n 19) 23.

33 See for instance, C Schwarz, 'German Refugee Policy in the Wake of the Syrian Refugee Crisis', in: E Aksaz and J-F Pérouse (ed.), *"Guests and Aliens": Re-Configuring New Mobilities in the Eastern Mediterranean After 2011 – with a special focus on Syrian refugees* (2016) 1, 4; see also more generally S Labman, 'Private Sponsorship: Complementary or Conflicting Interests?', *Refuge* (2016) 32(2) 67; P T Lenard, 'Resettling Refugees: Is Private Sponsorship a Just Way Forward?' *Journal of Global Ethics* (2016) 12(3) 300; G Richie, 'Civil Society, the State, and Private

ly resumed responsibility for covering the health insurances of beneficiaries. However, a remaining issue is the duration of the declaration of commitment.[34] Until 2016, the declarations of commitment were of unlimited validity in most of the *Länder* schemes, putting the sponsors under great duress. Since the financial guarantees were granted within a visa procedure for a specific residence permit (on the basis of Section 23 subsection 1 Residence Act), several beneficiaries of the *Länder* schemes applied for asylum upon arrival, hoping that a potential change to Convention refugee status (on the basis of Section 25 subsection 2 Alt. 1 Residence Act) would release their relatives from the declaration of commitment. The following increase in asylum applications and judicial appeals put administrative and judicial bodies under pressure, taking away the advantages such an admission scheme offers by not depending on an asylum procedure.[35] A legislative change introduced with the Integration Act (*Integrationsgesetz*) on 7 July 2016 put an end to debates regarding all future admissions: Section 68 subsection 1 sentence 4 Residence Act now provides for a five year duration of the declaration of commitment, independent of the (humanitarian) status of the beneficiary.[36] This was followed by a decision of the Federal Administrative Court of January 2017 regarding a prior case in which the court stated that a change of (humanitarian) status would not release the sponsors from their obligation to provide financial support for the respective applicants.[37] Although there is now a limitation of guarantees, a commitment to cover all costs over five years can still be a heavy burden. This consideration seems to have influenced the design of the current pilot programme 'NesT'. Before drawing attention to this new method of admission, the next section will discuss the German resettlement programme to complete the picture of established humanitarian access methods.

Sponsorship: The Political Economy of Refugee Resettlement' *International Journal of Lifelong Education* (2018) 37(1) 1.

34 To ease the financial burden of sponsors, the civil society organisation 'Flüchtlingspaten Syrien' (*Syrian Refugee Sponsors*) started to collect contributions and coordinate sponsorships, for more information see https://fluechtlingspaten-syrien.de.

35 See further Endres de Oliveira (n 15) 178.

36 See also Section 68a of the Residence Act, stipulating that financial commitments declared before the 6 August 2016 (entry into force of the Integration Act) expire after three years.

37 BVerwG 1 C10.16, 26 January 2017; for a critical discussion see M Riebau/C Hörich, 'Der Streit um die Verpflichtungserklärung geht weiter' *Asylmagazin* 7-8/2017, 272.

6.5 The German resettlement programme

Humanitarian admission based on fixed quotas is often generally referred to as 'resettlement'. This can be misleading as there are substantial differences between the *ad hoc* admission schemes described thus far and a permanent resettlement programme. Differences exist with regard to scope, procedure, admission quota and rights granted to beneficiaries upon arrival. Defined by UNHCR as one of the three 'durable solutions' (alongside voluntary repatriation and integration), 'Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status'.[38] In contrast to the long history of *ad hoc* humanitarian admission, a permanent resettlement programme in cooperation with UNHCR with a focus on protracted refugee situations has only recently been established in Germany. One of the driving forces behind the implementation was the *Save-me* campaign, launched in 2008 by various actors from civil society.[39] A decision by the Conference of Interior State Ministers in December 2011 opened the way for a pilot resettlement programme from 2012 to 2014 with an initial quota of 300 individual admissions per year. A permanent institutionalised scheme has been in place since 2014.[40] In 2015, Germany raised its permanent quota to 500 individuals per year and implemented a separate legal basis for resettlement in Section 23 subsection 4 Residence Act.[41] It provides that

> In consultation with the supreme *Land* authorities, the Federal Ministry of the Interior may, within the context of resettling persons seeking protection, order that the Federal Office for Migration and Refugees grant approval for admission to certain persons seeking pro-

38 See UN High Commissioner for Refugees (UNHCR), *Resettlement Handbook* (2011) 3, available at https://www.unhcr.org/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-country-chapters.html [last accessed 15 July 2019]; see also UNHCR, *Protracted Refugee Situations*, Doc. EC/54/SC/CRP.14, 10 June 2004, 1.

39 For more information see https://www.proasyl.de/material/save-me-fluechtlinge-aufnehmen/ [last accessed 15 July 2019].

40 See Grote (n 8) 13 ff.

41 This change was governed by the *Act to Redefine the Right to Stay and the Termination of Residence* (Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung). Before this statutory change, resettlement admissions were based on Section 23 subsection 2 Residence Act.

tection who have been selected for resettlement (resettlement refugees). […]

6.5.1 Beneficiaries of resettlement

Germany has engaged in resettlement from Lebanon, Sudan, Egypt, Turkey, Tunisia, Syria and Indonesia. Recent admissions focussed on Jordan, Egypt, Ethiopia, Lebanon and Niger.[42] Similar to the ad hoc admission schemes discussed above, details regarding the procedure and admission criteria are not outlined directly in the Residence Act, but in a specific 'admission order'. Individuals admitted through resettlement generally fulfil at least one UNHCR criterion of particular vulnerability.[43] The proportion of women with special risk exposure, or individuals with particular physical or legal needs, such as elderly people or children, is therefore higher than in national asylum procedures.[44] Additionally, there are admission criteria without any humanitarian scope, such as particular links to Germany, as well as other factors indicating the 'integration potential' of the respective individual – for instance the educational level, professional background, language skills, religious affiliation and age.[45] A study analysing the relevance of such 'utilitarian considerations'[46] raises the question of 'whether the resettlement programme is based on an interest in the selection of "desired refugees" or whether the humanitarian concern for protection is foremost'.[47] On the basis of an evaluation of statistical data regarding the background of individuals admitted through resettlement to Germany from 2012 to 2014, the authors conclude that Germany consistently complied with the three key principles of resettlement as proclaimed by UNHCR (that is protection of individuals at risk, providing

42 An overview of recent admissions is available at https://resettlement.de/aktuelle-aufnahmen/[last accessed 15 July 2019].

43 Detailed information on the resettlement criteria of UNHCR is available at https://www.unhcr.org/protection/resettlement/558c015e9/resettlement-criteria.html [last accessed 15 July 2019].

44 See T Baraulina, M Bitterwolf (2018): Resettlement in Germany – What is the programme for particularly vulnerable refugees accomplishing? Issue 04/2018 of the Brief Analyses of the Migration Integration and Asylum Research Centre at the Federal Office for Migration and Refugees, Research Centre.

45 See Grote (n 8) 24.

46 This term is used in the feasibility study on protected entry procedures to describe admission criteria particularly promoting State interests, see Noll et. all (n 6) 5.

47 See Baraulina/Bitterwolf (n 44) 3.

durable solutions and international solidarity),[48] despite the additional national admission criteria.[49]

6.5.2 Resettlement procedures

There is no possibility for individuals to apply directly for resettlement to Germany. The identification and selection of beneficiaries follows the general steps of the UNHCR resettlement programme.[50] The Federal Office for Migration and Refugees conducts a preliminary assessment of cases preselected by UNHCR, focussing on plausibility, matching of national admission criteria and security considerations. This is followed by personal interviews with potential beneficiaries. After a positive decision from the Federal Office for Migration and Refugees, the German embassy in the region conducts the visa procedure, which mainly consists of identity and security checks. IOM assists with medical screenings, pre-departure-orientation and the organisation of charter flights to Germany.[51] Upon arrival in Germany, resettlement refugees are received by officials of the Federal Office for Migration and Refugees at the airport, where further security screenings take place before they are transferred to the initial reception centres in Friedland (Lower Saxony).[52] The local immigration office is responsible for granting a residence permit on the basis of Section 23 subsection 4 Residence Act.

In contrast to the traditional UNCHR definition of (permanent) status, Section 23 subsection 4 provides for a *temporary* 'resettlement refugee' status, which is similar, but not the same as the status granted to Convention refugees on the basis of a national asylum procedure (see further below at 6.7). All in all, resettlement is now well established in terms of admission criteria, procedure, and cooperation with UNHCR. It is therefore questionable whether mandatory requirements regarding the selection of indi-

48 See UNHCR *Resettlement Handbook* (n 38), 36 ff.
49 Baraulina/Bitterwolf (n 44) 10 f.
50 For further information on the UNHCR resettlement programme see https://www.unhcr.org/resettlement.html, [last accessed 15 July 2019].
51 See Huber/Eichenhofer/Endres de Oliveira (n 8) 124; see also Grote (n 8) 19.
52 Further information on the reception in Friedland is available at https://www.bamf.de/SharedDocs/Dossiers/DE/resettlement-dossier-2018.html?nn=1367526&notFirst=true&docId=10785132 [last accessed 15 July 2019].

viduals or target countries potentially introduced by a new Resettlement Regulation[53] at EU level would benefit the programme in Germany.

6.5.3 Germany's commitment to the EU resettlement programme: A game of numbers

In 2016 and 2017, Germany took part in the EU resettlement pilot programme, committing to an admission of a total of 1600 resettlement refugees within two years. This quota replaced (and raised) the annual quota of 500 admissions. A comparably impressive number of admissions was announced for 2018 and 2019: A total of 10,200 places was offered as part of Germany's commitment to the European resettlement framework.[54] For 2020, 5500 places were announced. This raise shows a growing commitment to humanitarian admission. However, the number also add to the confusion of resettlement with other humanitarian access options, because they actually divide themselves over different admission schemes.[55] As will be discussed below (at 6.7), this is not irrelevant in light of differences in status rights depending on the legal basis of the admission. The largest part of the announced 5500 admissions for 2020 covers admissions under 'HAP Turkey' on the basis of Section 23 subsection 2 Residence Act (see above at 6.3.2). Another 200 places are foreseen for an admission at *Länder* level in Schleswig-Holstein on the basis of Section 23 subsection 1 Residence Act. Actual resettlement on the basis of Section 23 subsection 4 is foreseen for in total of 1900 admissions. [56] Eventually, the upcoming 'NesT programme' will provide for admission of up to 400 individuals, who will also be granted 'resettlement refugee status' on the basis of Section 23 subsection 4 Residence. The next section will now draw attention to this new method of admission to Germany.

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53 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, COM/2016/0468 final - 2016/0225 (COD).

54 https://resettlement.de/current-admissions/ and https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:092:0001:0003:EN:PDF, [last accessed 6 January 2020].

55 For an overview see https://resettlement.de/resettlement-aufnahmen-in-2018-und-2019/[last accessed 15 July 2019].

56 See https://www.tagesschau.de/inland/fluechtlinge-umsiedlung-101.html [last accessed 6 January 2020].

6.6 *Combining resettlement with community sponsorship: The NesT-Programme*

The private sponsorship schemes at *Länder* level have shown that personal contact between individuals in need of protection and civil society can enhance the social acceptance of humanitarian admission.[57] Individual relations can also facilitate integration, allowing for more options of participation in social life. The pilot programme 'NesT'[58] combines these positive aspects of private sponsorship with elements of traditional resettlement, setting new standards for community sponsorship in Germany. It has been designed in cooperation with UNHCR, various members of civil society and the support of the Bertelsmann and Mercator Foundations. Beneficiaries are identified and pre-selected by UNHCR and granted a residence permit on the basis of Section 23 subsection 4 Residence Act upon arrival.

6.6.1 *The mentorship scheme as novelty to resettlement*

In contrast to traditional resettlement, the NesT programme foresees a mentoring scheme, including financial as well as non-material (integration) support from civil society. The Federal Office for Migration and Refugees is responsible for mentorship applications. If the application is approved, it proposes allocating a single person or family, previously selected from the UNHCR proposals, to interested mentors. If possible, the first contact between mentors and beneficiaries is to be established before arrival. The first personal encounter is then meant to take place in the presence of the staff members of Caritas in Friedland, where beneficiaries are to be offered orientation classes upon arrival.[59] While anyone can become a mentor – institutions, associations and individuals alike – individuals have to apply in a group of at least five, of whom two are to be the main contact persons. In contrast to the financial commitment required by the *Länder* schemes, 'mentors' are only asked to provide for the basic rent dur-

57 See SVR (n 19) 23.

58 See https://www.neustartimteam.de [last accessed 6 January 2020]. In late 2019, two individuals and three families have already entered Germany on the basis of NesT.

59 See the information provided by the Federal Ministry of the Interior at a conference in January 2019, available at https://www.akademie-rs.de/fileadmin/user_upload/download_archive/migration/20190126_wuertenberger_nest.pdf [last accessed 15 July 2019].

ing a period of *two years* (to be transferred in advance on a fiduciary account). Non-material support is required during a period of *one year* and consists of being the main contact person, offering support with finding a living space, a job, a place at a school or a vocational training, assistance with administrative issues, accompanying beneficiaries to official appointments, helping with translations etc. Further details regarding the mentorship are provided at a one-day information event free of charge, organised by the national contact point for civil society (*Zivilgesellschaftliche Kontaktstelle*, ZKS), an institution implemented for the sole purpose of assisting in the implementation of the programme. During the initial pilot phase of the programme, the ZKS consists of representatives of the German Caritas, the German Red Cross and the Evangelical Church of Westphalia. The latter finances the ZKS together with the Bertelsmann and Mercator Foundations.[60]

6.6.2 NesT – Weak resettlement or improved private-sponsorship?

Declaring admissions under the NesT programme as 'resettlement' has advantages and drawbacks with a view to offering legal access to protection: On the one side, the State relies on civil society to fulfil its commitments to resettlement. Here, an important aspect is the additionality of admissions: Replacing (parts of) the annual resettlement quota by such a private sponsorship scheme would certainly narrow and not enhance the possible scope of protection offered through humanitarian admission. On the other side, the financial commitment of 'mentors' part of the NesT programme is not as broad as the commitment of sponsors of the *Länder* schemes. From this perspective, the NesT programme can be seen as an improved form of private sponsorship. Moreover, beneficiaries of the NesT programme are granted the status of resettlement refugees – and therewith the strongest status to be achieved through humanitarian admission. This tackles the issue of how access and rights relate to each other, to be discussed in the following.

60 See information available at https://www.unhcr.org/dach/de/30736-neues-aufnahmeprogramm-nest-vorgestellt.html [last accessed 15 July 2019].

6.7 *Access vs. rights?*

This section discusses how the rights granted to individuals in need of protection vary depending on external factors such as the method and time of their arrival. Existing differences in status rights have led to harsh criticism of humanitarian admission, described as a 'neo-liberalization of refugee policies'[61] and 'containment of refugee flows'.[62] At first sight, there seems to be a trade-off between access and rights to the detriment of the protection seeker. Most affected are protection seekers from Syria, as they are not only the largest group of asylum seekers,[63] but also the main beneficiaries of humanitarian admission; they live in Germany with different resident permits and therewith different rights, depending on how and when they arrived. However, when comparing the rights accorded to beneficiaries of different humanitarian admission schemes and resettlement with the rights of individuals granted Convention refugee or subsidiary protection status on the basis of a national asylum procedure, the picture becomes more complex: With regard to crucial rights, such as permanent settlement and family reunification, resettlement refugees are in a stronger position than beneficiaries of subsidiary protection who arrived in Germany after 2016 – and therefore after the number of 'spontaneous asylum seekers' had increased significantly. The critizised trade-off between access and rights has since been replaced by a favourable treatement of individuals who accessed Germany legally, particularly through resettlement. To illustrate this changing correlation of access and rights, this section will at first discuss the quality of protection with respect to the method of arrival. A focus will thereby lie on the initial reception, the duration of the residence permit, options of permanent settlement as well as access to employment and language courses. Family reunification will be discussed separately in a second step, as it particularly exemplifies how not only the method but also the time of arrival affects the quality of protection.

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61 Schwarz (n 33) 4.

62 See C Tometten, 'Resettlement, Humanitarian Admission, and Family Reunion: The Intricacies of Germany's Legal Entry Regimes for Syrian Refugees', Refugee Survey Quarterly, 2018, 37, 200 and 203.

63 Statistics of the German asylum authority BAMF are available at http://www.bamf.de/DE/Infothek/Statistiken/Asylzahlen/Asylgeschäftsstatistik/asylgeschaeftsstatistik-node.html [last accessed 15 April 2019].

6.7.1 The quality of protection and the method of arrival

Protection seekers who arrive in Germany 'spontaneously' have to undergo a national asylum procedure, which can lead to either a status based on the national right to asylum,[64] international protection (Convention refugee or subsidiary protection status[65]) or a status based on a national deportation ban.[66] The national right to asylum and Convention refugee status lead to the strongest humanitarian status in Germany.[67] An equally strong legal position cannot be achieved through ad hoc humanitarian admission nor resettlement. Individuals who enter Germany through any of the above discussed admission schemes, including resettlement, receive a temporary residence permit upon arrival, which varies depending on the legal basis of the admission and is generally less favourable than the residence permit granted to Convention refugees. However, the legal position of resettlement refugees comes very close to Convention refugee status.

6.7.1.1 Reception and place of residence

A particular feature of resettlement and *federal* humanitarian admission schemes is the initial accommodation at the special reception centre in Friedland. Beneficiaries are offered 14-day-orientation and language courses before they are allocated to different communities across Germany. This kind of special initial reception is not offered to asylum seekers, nor to beneficiaries of private sponsorship schemes at *Länder* level. Regarding the place of residence, the situation of individuals admitted through resettlement and *federal* humanitarian admission programmes is similar to asylum seekers who have been granted a protection status on the basis of a national asylum procedure: The allocation is determined by a specific distribu-

64 See Article 16a subsection 1 of the German Constitution. The issuance of the respective residence permit is based on Section 25 subsection 1 Residence Act.

65 The issuance of the respective residence permit is based on Section 25 subsection 2 alt. 1 (Convention refugee status) or subsection 2 alt. 2 (subsidiary protection) 2 Residence Act.

66 A residence permit issued due to a national deportation ban is based on Section 25 subsection 3 Residence Act.

67 Due to the exclusion clause (national safe-third-country concept) enshrined in Article 16a subsection 2, a status based on the national right to asylum is hardly ever granted.

tion key, the 'Königssteiner Schlüssel'.[68] Individuals who entered Germany through private sponsorship at *Länder* level or the new NesT programme on the basis of a declaration of commitment are allocated in the same administrative district as the respective sponsor or mentor.[69]

6.7.1.2 Duration of stay and options of permanent settlement

The duration of stay and options of permanent settlement differ widely. Here lies the first difference between resettlement refugees and beneficiaries of other humanitarian admission schemes. As with Convention refugees, resettlement refugees are granted a residence permit with an initial duration of three years. A permanent residence permit shall be granted after three or five years depending on how well integrated the respective person is, in particular concerning language skills and financial subsistence.[70] In contrast to resettlement, with its focus on a durable solution, humanitarian admission schemes are based on the assumption that beneficiaries only need 'temporary protection' for the duration of a specific conflict. Individuals who arrived in Germany through an *ad hoc* admission scheme at federal or *Länder* level are therefore in a less favourable position than resettlement refugees: While the duration of their residence permit varies from two to three years, depending on the respective 'admission order', a permanent residence permit can only be granted after five years at the earliest, with high thresholds regarding the necessary level of language skills and subsistence.[71] Resettlement refugees are also in a stronger pos-

68 See Section 12a Residence Act; for a critical discussion of this provision with respect to beneficiaries of international protection, see Huber/Eichenhofer/Endres de Oliveira (n 8) 162 ff.

69 As in all cases of a mandatory allocation of residence in Germany, the requirement may be lifted for urgent humanitarian reasons or as soon as the respective individual is no longer dependant on social benefits or the financial commitment of a sponsor.

70 See Section 26 subsection 3 Residence Act. While the threshold regarding the necessary level of German (C1 GER) and subsistence is still difficult to meet when applying for a permanent residence permit after three years, the conditions are easier to meet after five years: A lower level of German (A2 GER) and subsistence is needed.

71 See Section 26 subsection 4 Residence Act. Under Section 23 subsection 2 sentence 3 Residence Act, there is also the option of granting a permanent resident permit directly upon arrival, see further Huber/Eichenhofer/Endres de Oliveira (n 8) 122 f.

ition than beneficiaries of subsidiary protection, who are mostly granted a residence permit for the duration of one year, and do not benefit from the option of optaining a permanent resident permit under privileged conditions.[72]

6.7.1.3 Access to work, social benefits and language courses

The residence permits granted to beneficiaries of international protection as well as to individuals who enter Germany legally through federal admission or resettlement allow for both employment and freelance work. In contrast, individuals admitted through private sponsorship schemes at *Länder* level have to obtain a separate work permit to be able to take up employment, and are only allowed to take up freelance work in exceptional cases.[73] Although anyone in financial need can, in principle, claim social benefits in Germany, the financial commitment required for an admission through private sponsorship allows the State to take recourse against the respective sponsor. Another drawback of a residence permit following an admission on the basis of Section 23 subsection 1 Residence Act lies in the restricted access to language courses: While all beneficiaries of international protection as well as individuals admitted through the federal admission schemes and resettlement have the unconditional right to attend integration courses offered by the Federal Office for Migration and Refugees,[74] beneficiaries of private sponsorship at *Länder* level do not have this privilege. All in all, admission through private sponsorship at *Länder* level results in the weakest status that can be obtained through humanitarian admission.

6.7.1.4 The travel document as 'Achilles heel' of resettlement refugee status

Resettlement refugees are granted a status similar[75] to Convention refugees, and therefore the strongest form of protection through legal ad-

72 See Section 26 subsection 3 Residence Act.
73 See Section 4 subsection 2 Residence Act and 31 Employment Regulation, as well as Section 21 Residence Act.
74 See Section 44 subsection 1 Residence Act.
75 Since resettlement aims at offering a 'durable solution', it can be questioned why resettlement refugees are not granted Convention refugee status. For a critical assessment of this issue see Tometten (n 62) 187.

mission. The 'Achilles heel' is the travel document: A Convention travel document on the basis of Article 28 Refugee Convention is only issued to Convention refugees. Resettlement refugees – as well as beneficiaries of all other schemes and subsidiary protection – can only apply for a national travel document for aliens (*Reiseausweis für Ausländer*).[76] Such a travel document is issued on a discretionary basis in case the applicant can prove that he or she is unable to obtain a passport 'by reasonable means', a threshold often difficult to overcome. This situation is therefore pointed out as a major problem in practice.[77]

6.7.2 The changing laws and policies regarding family reunification

The following discussion considers both: family reunification as a right of beneficiaries of protection in Germany as well as family reunification as access method for relatives abroad. A particular focus lies on changing laws and policies restricting the right to family reunification of beneficiaries of subsidiary protection. The resulting difference to the legal position of resettlement refugees is particularly striking and illustrates how there is not only a correlation between the quality of protection and the access method, but also the time of arrival.

6.7.2.1 Family reunification depends on the method of arrival

Individuals admitted through ad hoc admission schemes at federal or *Länder* level have only very limited options of uniting with their family members in Germany.[78] The underlying assumption is that the immediate family should have entered together in the course of the admission. Although this argument could equally apply to resettlement procedures,[79] resettle-

76 See Sections 5 and 6 of the Ordinance on Residence.

77 See Lutter/Zehnder/Knezevic, (n 27) 34; see also Tometten (n 64) 195, 198 further discussing differences in options of naturalisation.

78 According to Section 29 subsection 3 Residence Act, family reunification with members of the nuclear family *may* only be granted 'for reasons of international law, on humanitarian grounds or in order to safeguard political interests of the Federal Republic of Germany'.

79 As stated by Baraulina/Bitterwolf (n 44) 8: 'The norm that families should be resettle together if possible plays a central role in the German resettlement programme. In the admission year 2012, for example, the proportion of people ad-

ment refugees in Germany enjoy the same privileges as Convention refugees: They have a right to family reunification with members of the nuclear family.[80] When exercising this right within three months upon the recognition of their status, Convention and resettlement refugees do not have to demonstrate sufficient financial means to provide for the living expenses of their family members,[81] nor do spouses abroad have to demonstrate German language skills.[82] Furthermore, the reunification of unaccompanied minors with their parents does not depend on the ability to secure the livelihood of the family nor to provide sufficient living space.[83] Here again, the legal position of resettlement refugees is not only stronger compared to beneficiaries of other legal access methods, but also compared to beneficiaries of subsidiary protection. As discussed in the following, the latter have very restricted options for reuniting with their family.[84]

6.7.2.2 *Family reunification depends on the time of arrival: The changing laws and policies regarding beneficiaries of subsidiary protection*

Resettlement refugees were not always in a stronger position than beneficiaries of subsidiary protection. Existing differences with regard to family reunification rights of beneficiaries of subsidiary protection are the result of statutory changes accompanied by changing recognition policies in national asylum procedures. These changes influenced options of family reunification and therewith again legal access. The developments can be traced as follows: In 2012, asylum applicants from Syria were mainly granted subsidiary protection in national asylum procedures.[85] At the time, the Federal Office for Migration and Refugees did not follow the UNHCR recommendations, which suggested that the majority of individuals fleeing Syria qualified for Convention refugee status due to the specific circum-

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mitted with their close or extended family was 73 %. In 2014, 88 % of all those admitted came to Germany together with family members'.

80 The 'nuclear family' consists of the spouse and underage children, as well as the parents of unaccompanied minors.

81 See Section 29 subsection 2 sentence 2 Residence Act.

82 See Section 30 subsection 1 sentence 3 No. 1 Residence Act.

83 See Section 36 subsection 1 Residence Act.

84 See Section 36a Residence Act.

85 See Bundesamt für Migration und Flüchtlinge, Entscheiderbrief 3/2012, available at http://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Entscheiderbrief/2012/entscheiderbrief-03-2012.pdf?__blob=publicationFile last accessed 15 March 2019].

stances of the conflict.[86] This distinction in status mattered significantly then: While Convention refugees could (and still can) apply for family reunification under privileged conditions, the requirement of (showing proof of) being able to provide for housing and livelihood rendered family reunification nearly impossible for individuals with subsidiary protection status at the time.[87] From the end of 2014 onwards, the administrative decision policy changed. Applicants from Syria were mostly granted Convention refugee status, reaching a recognition rate of over 97 percent in 2015.[88] This change in policy was certainly influenced by the high number of court decisions overruling former administrative decisions. But there was also an important legislative change, which has to be added to the picture: In August 2015, family reunification rights of individuals granted subsidiary protection were adjusted to match the legal situation of Convention refugees. This was in line with the overall objective at EU level in terms of achieving a 'uniform status' of international protection.[89] With regard to family reunification, it did therefore not matter anymore whether a person was granted refugee or subsidiary protection status. This could of course be a coincidence, if it were not for another legislative change to turn the picture upside down again. In March 2016, the provision on the right to family reunification of individuals with subsidiary protection status was suspended for two years. This followed the high increase of asylum applications in the year 2015. During the debates preceding this legislative step, it was argued that asylum seekers from Syria (the largest group of asylum applicants) would merely be affected by this suspension, as they were

86 See UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, 2 December 2016, HCR/GIP/16/12, available at: https://www.refworld.org/docid/583595ff4.html [last accessed 15 July 2019].

87 This situation led to a high number of appeals at the administrative courts, which eventually leaned towards refugee status, see further P Endres de Oliveira, 'Wer ist Flüchtling? Zum Hin und Her der Entscheidungspraxis zu Asylsuchenden aus Syrien', Verfassungsblog 22 December 2016, available at https://verfassungsblog.de/wer-ist-fluechtling-zum-hin-und-her-der-entscheidungspraxis-zu-asylsuchenden-aus-syrien/ [last accessed 15 July 2019]; for an overview on current judicial decisions regarding cases of Syrian applicants see https://www.asyl.net/laender/Syrien [last accessed 15 July 2019].

88 See the statistics of 2015, 35, available at https://www.bamf.de/SharedDocs/Anlagen/DE/Publikationen/Broschueren/bundesamt-in-zahlen-2015.pdf?__blob=publicationFile [last accessed 15 July 2019.

89 See Art. 1 Directive 2011/95/EU.

mostly granted Convention refugee status in asylum procedures. However, this did not hold true, since the decision policy simultaneously changed once more. From 2016 onwards, applicants from Syria were largely granted subsidiary protection status again. Up until today, the rights of beneficiaries of subsidiary protection remain very restricted. Instead of lifting the suspension after two years, a new provision was introduced in August 2018, regulating family reunification for beneficiaries of subsidiary protection on a discretionary basis. Section 36a Residence Act now states that family members *can* reunite on the basis of 'humanitarian grounds'.[90] Additionally, amissions are restricted to 1,000 cases per month.[91] All in all these developments reveal the changing dynamics between access and rights.

6.8 Conclusion

Humanitarian admission leads the way in terms of offering safe as well as regulated access to protection in Germany. Although there is no humanitarian visa to access the national asylum procedure, there are various visa schemes with humanitarian scope qualifying as 'protected entry procedures'. While there are only few cases of individual admission from abroad, the focus in Germany lies on *ad hoc* group admission schemes on the basis of fixed quotas. Since 2013, ad hoc admission schemes have increased at federal and *Länder* level, facilitating the legal entry of over 44,000 individuals fleeing the conflict in Syria. Thereby, admission at *Länder* level has relied on private sponsorship. Particular progress has been made with regard to a permanent resettlement scheme in cooperation with UNHCR, with admission quotas increasing every year. A novelty since 2019 is the pilot programme NesT, a hybrid between resettlement and private sponsorship. In contrast to resettlement, ad hoc admission programmes envision a higher number of admissions in a relatively short amount of time, even directly from the country of origin. They offer the flexibility of adjusting procedures, admission criteria and status rights up-

90 See further M Kalkmann, Das Familiennachzugsneuregelungsgesetz, *Asylmagazin* 7-8/2018, 232.

91 See further http://www.bamf.de/DE/Fluechtlingsschutz/FamilienasylFamiliennachzug/familienasyl-familiennachzug-node.html; comprehensive information on family reunification for beneficiaries of protection in Germany is available at https://familie.asyl.net/start/as well as at https://fap.diplo.de/webportal/desktop/index.html#start [both last accessed 15 July 2019].

on arrival. While humanitarian admission can be a win-win tool for individuals and States, the private sponsorship schemes implemented at *Länder* level have raised a number of controversies regarding the legal situation of sponsors and beneficiaries upon arrival. Lessons learned have influenced the design of the NesT programme, providing beneficiaries with the same rights as resettlement refugees.

All in all, the legal status of beneficiaries varies substantially depending on the method and time of arrival. The strongest form of protection can only be achieved through a national asylum procedure when Convention refugee status is granted. In the 'hirarchie of rights' resettlement refugee status comes next, offering an almost equally strong legal position. The situation of beneficiaries of an ad hoc admission scheme at federal level is comparable to the situation of beneficiaries of subsidiary protection following a national asylum procedure: In contrast to Convention and resettlement refugees, respective individuals face restrictions with regard to options for permanent settlement and especially family reunification. Eventually, the status of individuals entering Germany through private sponsorship at *Länder* level is the weakest. Beneficiaries face various restrictions, ranging from access to language courses, employment, social benefits, family reunification and options of permanent settlement.

As shown, the comparably weak status of beneficiaries of subsidiary protection is the result of changing recognition policies in national asylum procedures, accompanied by legislative changes restricting the right to family reunification and therewith to legal access. These changes followed the high increase of 'spontaneous arrivals' in Germany and have particularly affected the situation of protection seekers from Syria, as the largest group of asylum seekers and main beneficiaries of humanitarian admission. Their legal situation particularly illustrates the interplay between access and rights. Individuals with similar backgrounds, sometimes even from the same family, live with different residence permits and thus with different rights, depending on how and when they arrived in Germany. These differences not only impact on the individuals but can also burden administrative structures, as has been seen with the increase in asylum applications from beneficiaries of *Länder* schemes or the judicial appeals by Syrians only granted subsidiary protection in national asylum procedures. All in all, the quality of protection should be determined by individual protection needs and not the method or time of arrival.