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We become aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one's actions and opinions) and a right to belong to some kind of organized community, only when millions of people emerge who had lost and could not regain these rights because of the new global political situation.

Hannah Arendt, *Origins of Totalitarianism* (1951: 296-297)

Introduction

- 1 At the Symposium on Refugee Protection, on June 30, 2014 in Berlin, Germany's President Joachim Gauck exhorted the audience to remember Hannah Arendt and her demand for a *right to have rights*, which she formulated against the background of the statelessness and vulnerability of millions of refugees after the Second World War. Regarding German and European refugee policy, Gauck stated:

We could do more. We could do many things better. We have to do it in respect of the rights we have and are committed to. Most of all, we should do it together, as Europeans.

- 2 These statements by Germany's highest political representative read like a remarkable commitment to refugees' rights. Indeed, Germany – the EU's biggest economy – is also the EU member state that recently accepted the highest absolute number of refugees from Syria, many of them through two special admission programs on the federal and state levels. However, taking a closer look at these programs, it becomes salient that they are designed as temporary exceptional measures for a limited number of refugees to bypass the usual Dublin III procedure, which largely prevents Germany from directly

dealing with the refugee flows from Africa and the Middle East – a position that offers much leeway when it comes to policy-making and would indeed allow “to do more”.

- 3 In the following, I will first outline the programs mentioned above, then take Hannah Arendt’s thoughts regarding refugees’ rights as a point of departure to shed light on their implicit “moral economy” (Thompson 1971; Fassin 2005). It becomes salient that German refugee policy is in practice far from a rights-based admission that would be central for the acclaimed *right to have rights* to be implemented. Instead, when other host states in the region are obviously overburdened, Germany might jump in by offering refugees the role of objects of humanitarian benevolence.

I. Germany’s Temporary Special Admission Programs

- 4 Against the background of the Syrian refugee crisis, the German government implemented a series of programs of admission which can be understood as an exception from the regular Dublin III routine in order to ease the way for certain categories of Syrian refugees to Germany. The *contingent refugees* admitted in these programs enjoy several benefits in comparison to regular Syrian asylum seekers who made it to Germany on their own, and were not “invited” in this framework: for example, *contingent refugees* immediately receive a residency permit and a work permit for two years and do not have to go through the regular asylum procedures (Lütticke 6/10/2014).
- 5 In March 2013, the Federal Ministry of the Interior announced that Germany would take in 5,000 Syrian refugees. At first, this only applied to refugees living in Lebanon, in the following declarations it was extended to refugees in other host states. In December 2013, the Permanent Conference of the Ministers of the Interior decided to extend this program and take in another 5,000 refugees. Finally, in July 2014, the conference approved the admission of another 10,000 Syrian refugees, adding up to the number of 20,000 Syrian refugees in total. Applications were possible through the UNHCR, and they soon exceeded the number of available places. Priority was given to persons who a) deserved special protection (children with parents, endangered women, religious minorities, as well as a maximum of 3% severely ill), b) had “relations with Germany” be it via family, knowledge of the German language, previous visits or relations with Syrian institutions, and c) persons who wanted to further qualify themselves in order to later contribute to the reconstruction of Syria. The first group of 107 highly vulnerable refugees arrived in September 2013 (UNHCR 2013a).
- 6 Already in this federal program, refugees “who have relatives in Germany that are willing to support them shall be considered with priority” (UNHCR 2014). Germany-based relatives of refugees could apply for this program via an online form of the UNHCR.
- 7 In addition to this *Bundesaufnahmeprogramm* (Federal Program of Admission), 15 of Germany’s states (with the exception of Bavaria) set up their own programs (*Länderaufnahmeprogramme*, State Programs of Admission) that all differed in central aspects regarding the details of admission.
- 8 A particularly striking common feature of these programs both at the Federal and State levels is the role attributed to the family: both programs on the one hand allowed Syrian residents in Germany to invite their relatives and friends, and thereby eased the

procedure of visa applications and flights. However, whereas in the Federal Program those with relatives in Germany were merely given priority, in the State Programs it was a prerequisite that relatives (or, in some countries, other private persons) sign an agreement to cover all expenses of their “guests”, who – unlike regular asylum seekers – were in some states even excluded from health insurance (at least until they were granted asylum officially), which without a doubt could have caused the economic ruin of some of the families. Local migration offices would control the financial situation of those inviting their relatives. As a result, it was mainly affluent families who were allowed to invite their relatives or friends; in most states, it was accepted that third persons would sign this declaration (but this, in turn, raises the question whether new dependencies are created). Moreover, only Syrian with either German nationality or a regular permanent residency visa could apply to invite their relatives; Syrian-Kurdish refugees, which had been denied Syrian citizenship by the Assad regime, were therefore excluded, except in two states. The invitation of relatives already registered in other EU member states was not possible.

- 9 On the ground, the implementation of both the Federal and the State programs of admission have been obstructed by many administrative obstacles (Pro Asyl 2014).

II. Discussion: A Right to have Rights?

- 10 One central argument in Hannah Arendt’s (1948, 1951) critique of the concept of human rights was that they are implicitly based on the assumption of “the human” as an abstraction, and therefore as a being without a social context and community. The tragic paradox of human rights according to Arendt lies in the fact that it is refugees and / or stateless persons who empirically come closest to this abstraction of “the human being” bereft of social relations, presupposed in the concept of human rights, as they are expelled from their political community of origin – and that precisely because of this expulsion they are at the same time the ones who are most unlikely to benefit from the concept of human rights. Instead, everything – that is, their “right to have rights” (Arendt 1951) – depends on the condition of them being admitted to a new nation state, which could effectively grant them these rights (Schulze Wessel 2013; Brumlik 2014).
- 11 The priorities of the German *Federal* and particularly *State Programs of Admission* apparently take a different view in the way they address refugees: they practically conceptualize them as *guests*, therefore presupposing social relations. Preference is mostly given to people who can obviously guarantee to be connected to a social community pertaining to the private realm, like their relatives in Germany – relatives who can moreover economically afford to invite them and provide for their upkeep. Those who have no such links to Germany are left out, at least from the State Programs. In public debates, the States programs can be presented as a reaction from German administrations to the pleas of Syrian residents to ease the way for their relatives. Contingent refugees in Federal and State Program enjoy, without a doubt, many benefits in comparison with regular asylum seekers.
- 12 However, the programs contain certain protection gaps that reveal that the argument that this situation is unbearable seems in this case to be “privatized” and directed against the families of the Syrian community in Germany, the families of those who are still in Syria or in the neighboring host countries. The “moral economy of immigration

policies” (Fassin 2005) implied in the State Programs could be summarized as: “If the situation is so bad, then why should those families not throw in their lot?” The consequence is a certain familiarization and privatization of refugee policy. Far from granting a right, it entails the open acknowledgment that the chance of getting a visa – a prerequisite to claim the right to asylum – is unequally distributed: If one’s family is economically well off and has an effective network to mobilize non-relatives to give financial guarantees, one is more likely to be saved. Family networks, which in many cases already play an important role in processes of migration and flight, but in domestic discourse on migration policy are often problematized as obstacles to “integration,” now become official addressees. In that sense, these programs might indicate a certain neo-liberalization of refugee policies, in the sense that the family is to provide for the individual instead of the state – a tendency that runs counter to an actual liberalization of refugee law. In both cases, refugees are not exercising a right, but are treated as objects of exceptional benevolence.

Conclusion: Recognition of Suffering, no Recognition of Rights

- 13 The programs described in this paper might allow tens of thousands of refugees and dozens of refugee students from Syria to bypass the Dublin III obstacles on their way to a safe environment in Germany. They were announced as measures to alleviate the pressure in the host countries most affected by the Syrian refugee crisis. The humanitarian principle to take in those who need it most finds its repercussion in the preference that the Federal Program gives to people who need special protection. But apart from that, all other mechanisms of selection in these programs seem to function as filters that guarantee that mainly those who are taken in, are those who are best connected and have a clearly defined social role. Therefore, they also provide a certain filter in the international refugee flow, which guarantees that Germany receives refugees with a higher employability rate, since they are not only already embedded in a network, but their family is also economically affluent enough and therefore likely to have received higher education. The fact that Germany at the same time rejected to co-finance Italy’s *Mare Nostrum* project indicates that it reserves the right to select who can claim the right to asylum.

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