Chapter 3

The Human Rights of Migrants

Legal Bases and Sources for EU Migration Law and Policy

1 Introduction

From the perspective of states, migrant workers are often considered as economic actors, however they are first and foremost human beings who are covered by humans rights' instruments. In the second half of the 20th century, the state community drafted a number of such multilateral agreements for the protection of mankind inter alia as a reaction to the atrocities committed during World War II. Chapter 3 analyses the human rights that migrants enjoy in the sphere of European and international law. Moreover, Chapter 3 elucidates the institutions and initiatives that have substantially contributed to raising awareness of the migration phenomenon among the community of states and, more specifically, in strengthening the human rights of migrants. This synopsis, which acquaints the reader with the relevant human rights legislation that is applicable to all third-country nationals irrespective of nationality, provides the basis for the latter to develop the understanding how the legal status of a third-country national in a privileged position differs from the status of somebody who does not qualify for privileged treatment in legal terms. Furthermore, it will become clear that a number of human rights instruments have strongly influenced EU law and, more specifically, law-making in the field of EU migration policy. The structure of Chapter 3 follows an own pattern: the instruments and organisations are explored in a self-contained way (rather than being classified by the various rights they set forth, which is the approach adopted in Chapters 5–7) taking into account that not all legal documents are ratified by the EU and/or all Member States and no distinction is made on the basis of nationality.

Section 2 of Chapter 3 first outlines the applicable framework for human rights protection in the EU. In this context, the Council of Europe has adopted a pioneering role in drafting and enacting norms and standards for the protection of human rights, including those of migrant communities, among which the ECHR has a prominent role. In the course of time the ECHR has become part of EU law, and the Treaty of Lisbon provides for the EU’s accession to the ECHR. Next, the EU Charter of Fundamental Rights, which is strongly influenced by the ECHR, as well as the general principles of the EU, are important legal sources for the protection of human rights under EU law. Section 2 also
illuminates instruments drafted under the auspices of the Council of Europe that partly inspired Community legislation, such as the European Convention on Establishment (ECE). The Commission recognised the importance of the human rights of migrants and their cross-cutting dimension in EU migration policy in the EU’s Gamm in November of 2011.\(^1\)

Section 3 of Chapter 3 expounds the international dimension of the protection of migrants. To this end, Section 3 first provides a synopsis of relevant international human rights standards applicable to all human beings, including migrants. It has been underlined that “this body of international human rights law has opened a new chapter in international affairs in that it does not concern the traditional function of international law, that of regulating relations between sovereign states, but rather seeks to regulate the relationship between the state and individuals within its territory and jurisdiction.”\(^2\) In the second place, Section 3 specifically addresses treaty regimes composed for the protection of migrants, notably the UN Migrant Worker Convention (ICMW). Third, Section 3 discusses which fora and organisations pushed migration issues on the agenda of governments and advocated a sound protection of the human rights of migrants. The attribution of a set of rights to aliens who settle in a host state can substantially facilitate their economic, social, cultural and political integration in the host society. The more far-reaching the catalogue of rights, the more likely is the successful integration process in the country of residence.

**2 Human Rights Protection in the EU**

The protection of human rights, which by implication includes those of third-country migrants, has over time incrementally developed within the EU legal order from the late 1960s onwards. While the original EEC Treaties made no reference whatsoever to safeguarding human rights, the EU – as it stands today – has transformed into a supranational organisation that “is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights [...].”\(^3\) As regards the issue of whether the EU could be regarded as a human rights organisation, A. von Bogdandy considered that “human rights, though important, should not be understood as the

\(^1\) European Commission Communication, COM(2011) 743, 18 November 2011.


\(^3\) Art. 6(1) TEU.