

Table of Contents

<i>Acknowledgements</i>	v
<i>Table of Cases</i>	xv

1 Introduction	1
1.1 Reception of Asylum Seekers in the European Union.....	1
1.2 Sovereignty and Equality	4
1.3 Aim and General Approach.....	9
1.4 Research Questions, Delimitations and Outline of the Book	10
1.5 Terminology.....	13
1.5.1 Asylum Seeker	13
1.5.2 Social Security	14
1.6 Sources.....	16
1.6.1 Sources of International Law	16
1.6.2 International Refugee Law, International Social Security Law and International Human Rights Law.....	19
1.6.3 The Charter of Fundamental Rights of the European Union	20
1.7 Method of Interpretation.....	22
1.7.1 Introduction.....	22
1.7.2 Rules of Interpretation.....	23
1.7.3 Authoritative Interpretations.....	27
Judicial Decisions	27
Legal Doctrine.....	27
Views and Decisions of Treaty-monitoring Bodies	28
1.7.4 Summary.....	32

Part I: Reception of Asylum Seekers in the European Union

2 EU Directives on Reception Conditions for Asylum Seekers	35
2.1 Introduction.....	35
2.2 Background: Reception of Asylum Seekers in EU Member States prior to Directive 2003/9/EC.....	36
2.3 Directive 2003/9/EC.....	40
2.3.1 Introduction.....	40
2.3.2 Realization of Directive 2003/9.....	41
2.3.3 Object and Purpose	44
2.3.4 Personal Scope	45
Lodging or Making an Asylum Application.....	46
No Final Decision	48

	Allowed to Remain on the Territory	49
	Concluding Remarks	53
2.3.5	Material Reception Conditions.....	54
	Text of the Directive	54
	Differences from the Commission Proposal.....	57
2.3.6	Health Care.....	58
	Text of the Directive	58
	Differences from the Commission Proposal.....	58
2.3.7	Access to the Labour Market.....	59
	Text of the Directive	59
	Differences from the Commission Proposal.....	61
2.3.8	Reduction and Withdrawal of Reception Conditions	62
	Text of the Directive	62
	Differences from the Commission Proposal.....	64
2.4	Directive 2013/33/EU.....	65
2.4.1	Introduction.....	65
2.4.2	Realization of Directive 2013/33.....	66
2.4.3	Object and Purpose	69
2.4.4	Personal Scope	70
2.4.5	Material Reception Conditions.....	73
	Text of the Directive	73
	Differences from the Commission Proposal.....	74
2.4.6	Health Care.....	76
	Text of the Directive	76
	Differences from the Commission Proposal.....	76
2.4.7	Access to the Labour Market.....	77
	Text of the Directive	77
	Differences from the Commission Proposal.....	78
2.4.8	Reduction and Withdrawal of Reception Conditions.....	80
	Text of the Directive	80
	Differences from the Commission Proposal.....	81
2.5	Concluding Remarks.....	82

Part II: Equality of Treatment?

3	Introduction to Part II.....	87
3.1	Introduction.....	87
3.2	The Empty Character of the Principle of Equal Treatment	88
3.3	Open and Closed Methods	89
3.4	A Further Demarcation of the Scope of the Research.....	90
3.5	Ground of Discrimination.....	92
3.6	Relevant Charter Provisions	98
3.7	Structure of Part II.....	99

4	Equal Treatment under the Refugee Convention	100
4.1	Introduction.....	100
4.2	Personal Scope	101
4.3	Object and Purpose	105
4.4	Equal Treatment Regarding Wage-earning Employment and Social Security	108
4.5	Interpretation of the Various Qualifying Conditions.....	109
4.5.1	Introduction.....	109
4.5.2	Autonomous Meaning.....	110
4.5.3	The Meaning of 'Refugee'	111
4.5.4	The Meaning of 'Lawful'	112
4.6	Refugees 'Lawfully in' the Territory	114
4.7	Refugees 'Residing' in the Territory	126
4.8	Refugees 'Lawfully Staying' in the Territory	128
4.9	Concluding Remarks.....	132
5	International Social Security (Co-ordination) Law	134
5.1	Introduction.....	134
5.2	Contributory, Non-contributory and Social Assistance Schemes	136
5.3	Relevant ILO Conventions.....	139
5.3.1	Introduction.....	139
5.3.2	Convention no 102 on Social Security (Minimum Standards)	140
	Introduction.....	140
	Equal Treatment.....	140
	Ordinarily Resident.....	142
	Summary.....	146
5.3.3	Convention no 97 on Migration for Employment (Revised)	146
5.3.4	Convention no 118 on Equality of Treatment (Social Security)	151
5.3.5	Summary.....	156
5.4	Relevant Council of Europe Conventions	158
5.4.1	Introduction.....	158
5.4.2	European Interim Agreements on Social Security and the European Convention on Social Security.....	159
5.4.3	European Convention on Social and Medical Assistance	164
	Introduction.....	164
	Material Scope.....	165
	Equal Treatment.....	166
	Analysis.....	171

5.4.4	Summary.....	173
5.5	Concluding Remarks.....	174
6	Non-discrimination under International Human Rights Law.....	176
6.1	Introduction.....	176
6.2	International Covenant on Economic, Social and Cultural Rights.....	178
6.2.1	Text and Context.....	178
6.2.2	Application to Aliens.....	180
6.2.3	Interpretation.....	181
6.2.4	Analysis.....	184
6.3	European Convention on Human Rights.....	185
6.3.1	Text and Context.....	185
6.3.2	Application to Aliens.....	191
6.3.3	Interpretation.....	192
	Applicability of Article 14.....	192
	Compliance with Article 14.....	195
6.3.4	Analysis.....	204
6.4	The European Social Charter.....	212
6.4.1	Text and Context.....	212
6.4.2	Application to Aliens.....	213
	Text of the Charter.....	213
	Approach of the European Committee on Social Rights.....	217
	Analysis.....	221
	Concluding Remarks.....	224
6.4.3	Interpretation.....	224
6.4.4	Summary.....	227
6.5	Concluding Remarks.....	228
7	Conclusions to Part II.....	232

Part III: Full Sovereignty?

8	Introduction to Part III.....	239
8.1	Aims and Delimitations.....	239
8.2	Relevant Charter Provisions.....	241
8.3	Structure of Part III.....	243
9	Substantive Rights under the Refugee Convention.....	244
9.1	Introduction.....	244
9.2	Article 7: General Standard of Treatment and Exemption from Reciprocity.....	245
9.3	Article 13: Movable and Immovable Property.....	248
9.4	Article 17: Wage-earning Employment.....	249

9.5	Article 20: Rationing.....	251
9.6	Article 31(1): Freedom from Penalization for Illegal Entry....	252
9.7	Article 33: Non- <i>refoulement</i>	253
9.8	Concluding Remarks.....	254
10	Justifications under the International Covenant on Economic, Social and Cultural Rights	255
10.1	Introduction.....	255
10.2	Nature of the Rights.....	256
10.3	Justifications	261
10.3.1	Introduction	261
10.3.2	Scope of the Limitation Provision	262
10.3.3	Relation to Article 2 of the ICESCR.....	263
10.3.4	'Determined by Law'	265
10.3.5	'Compatible with the Nature of the Rights'.....	266
10.3.6	'For the Purpose of Promoting the General Welfare in a Democratic Society'	270
10.3.7	Additional (Inherent) Requirement of Proportionality?	272
10.3.8	Standard of Review.....	273
10.4	Analysis.....	275
10.5	Concluding Remarks.....	282
11	Positive Obligations under the European Convention on Human Rights	284
11.1	Introduction.....	284
11.2	Article 3	287
11.2.1	Introduction	287
11.2.2	State Responsibility.....	292
11.2.3	Minimum Level of Severity	300
11.2.4	Summary	309
11.3	Article 2	311
11.3.1	Introduction	311
11.3.2	Health Care	313
11.3.3	Basic Necessities of Life	317
11.3.4	Analysis and Concluding Remarks.....	318
11.4	Article 8	320
11.4.1	Introduction	320
11.4.2	Negative and Positive Obligations under Article 8 ...	322
11.4.3	Case Law on Social and Economic Interests under Article 8.....	324
	Health Care	325
	Housing	328
	Social Benefits	330

11.4.4	Asylum Seekers and Article 8	331
11.4.5	Analysis and Concluding Remarks.....	335
11.5	Case Law about Ending Entitlement to Social Security Benefits and Accommodation	336
11.5.1	Introduction	336
11.5.2	Article 8.....	337
11.5.3	Article 1 of the First Protocol	340
11.5.4	Concluding Remarks	342
11.6	Case Law on Access to the Labour Market	343
11.7	Analysis.....	344
11.7.1	Introduction	344
11.7.2	State Obligations to Provide Social Benefits	345
11.7.3	State Obligations if some Kind of Social Security is Provided to Asylum Seekers	348
	Quality of Living Conditions	348
	End or Change of Entitlement to Reception Benefits	351
11.7.4	Concluding Remarks	352
12	Article 18 of the European Social Charter (Revised)	353
12.1	Introduction.....	353
12.2	Personal Scope of Article 18 of the ESC	355
12.3	Substantive Meaning of Article 18 of the ESC	357
12.4	Concluding Remarks.....	359
13	Conclusions to Part III.....	361
14	Conclusions.....	369
14.1	Introduction.....	371
14.2	Reception of Asylum Seekers in the European Union.....	371
14.2.1	Convergence from the Outset and in External Appearance	371
14.2.2	Convergence in Official Discourse	371
14.2.3	Convergence in Standards Ultimately Adopted	372
14.3	Evaluation of the State Obligations Stemming from International Law.....	373
14.3.1	Introduction	373
14.3.2	Separation vs Convergence	374
14.3.3	Relevance of the Right at Stake.....	375
14.3.4	Relevance of Permitted Entry.....	376
14.3.5	Relevance of Being an Asylum Seeker.....	377
14.3.6	Relevance of Availability of Resources	378
14.3.7	Relevance of the Lapse of Time	379

14.3.8	Relevance of the Degree of Control Exercised over Asylum Seekers	380
14.3.9	Concluding Remarks	381
14.4	Assessment of the EU Reception Conditions Directives in Relation to International Law.....	383
14.4.1	Introduction	383
14.4.2	Access to Wage-earning Employment	384
14.4.3	Material Benefits.....	385
14.4.4	Health Care	389
14.4.5	Denial, Reduction and Withdrawal of Reception Benefits	390
14.4.6	State Obligations not Addressed by the EU Reception Conditions Directives.....	392
14.5	Concluding Remarks.....	393
<i>Bibliography</i>		395
<i>Index</i>		407