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Book Review

The Human Rights of Migrants and Refugees in European Law

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1. Introduction

At a time when Europe is faced with a mass influx of migrants trying to reach its territory, *The Human Rights of Migrants and Refugees in European Law* appears as a well-timed and important contribution underlining the tensions between human rights, refugee protection and the sovereign prerogatives of states to control access to their territories.

A central issue analysed throughout the book is the statist approach to migration control, whereby states enjoy a sovereign right to control admission and may exclude aliens without justification (p 10). The book does not propose an analysis of the extent to which migrants and refugees enjoy human rights protection but rather focuses on human rights challenges in the context of the European Union (EU), thereby identifying the limits of human rights law. By examining EU legislative measures and the case law of the European Court of Human Rights (ECtHR) and Court of Justice of the European Union (CJEU), the book presents the interactions and tensions between the two European courts. It suggests that the ECtHR does provide important protections for migrants when issues of admission are at stake, but also claims that the ECtHR might be too deferential to state migration control prerogatives, and identifies circumstances in which EU standards should exceed the minimum standards set by the European Convention on Human Rights (ECHR).[1] In her analysis, the author assumes that strong judicial protection of human rights is appropriate (pp 9–10).

The book is divided into the following eight chapters. Chapter 1 introduces the scope of the book; Chapter 2 explains the particularity of human rights pluralism in Europe; Chapter 3 examines the construction of migration status; Chapter 4 looks at the issue of human rights in relation to family life and family migration; Chapter 5 defines 'refugeehood'; Chapter 6 explores the limits of access to refugee protection and the scope of refugee status under EU law; Chapter 7 analyses immigration detention;[2] and in Chapter 8 the author offers some concluding thoughts on the themes explored in the book. Following a brief description of the pluralist setting

[1] European Convention for the Protection of Human Rights and Fundamental Freedoms (entered into force 3 September 1953) 213 UNTS 222 (ECHR).

[2] In the book, immigration detention refers to 'the detention of migrants (in the broadest sense, to include all individuals entering the territory of a State other than their own, be it as refugees, asylum seekers, stateless persons,

(the EU and the ECHR) of migrants' human rights in Europe, this review discusses five substantive issues analysed in the book (Chapters 3 to 7). The brief discussion of these issues does not contain every nuance presented in the book but rather highlights some interesting elements pertaining to the interactions and tensions between the European courts.

2. THE HUMAN RIGHTS OF MIGRANTS AND REFUGEES IN A PLURALIST LEGAL SETTING

Chapter 2 of the book explores the reasons that explain the different approaches of the two European courts to migrants' rights. In the specific context of Europe and taking into account commitments under international refugee law, it is suggested that EU law should set higher human rights standards than those imposed by the ECHR.[3] The author highlights the key areas where the EU approach to migrant rights should depart from the ECHR minimum – that is, in matters relating to family migration (Chapter 4), the scope of protection for refugees (Chapter 5), access to refugee protection (Chapter 6) and detention standards (Chapter 7). The author argues that the CJEU has no institutional reason to limit its review of EU acts to the ECHR minimum (pp 48–49).

The author explains the institutional differences between the CJEU and ECtHR. First, in matters of jurisdiction the ECtHR's primary jurisdiction is to hear individual applications after the exhaustion of local remedies, and it may also hear interstate disputes.[4] In addition, many of the ECtHR rulings review domestic legal regimes and require reform (p 51). The ECtHR may also indirectly review EU acts in the event of a lack of judicial protection for fundamental rights within the EU system (p 52).[5] As for the CJEU, its main task is to ensure the compliance of member states with EU law and to review the acts of EU institutions (p 53).[6] The CJEU does not engage in the detailed victim-centred factual analysis that is carried out by the ECtHR, but rather interprets and determines the validity of EU acts. An additional feature that distinguishes both courts is that the ECtHR is a subsidiary organ of the member states, the primary organs guaranteeing ECHR rights, whereas the CJEU engages directly with national orders stipulating the duties of national judges (p 55).

The two courts therefore find themselves in different institutional positions, resulting in varying degrees of decisional autonomy with different effects. Drawing on the work of Sadurski and Alter, the author argues that the compliance mechanisms for EU norms are stronger.[7]

irregular migrants or regular migrants) either upon seeking entry to a territory or pending deportation, removal, or return from a territory' (p 279).

[3] Charter of Fundamental Rights of the European Union (entered into force 1 December 2009) [2012] OJ C 326/391, art 52(3).

[4] ECHR (n 1) arts 32–35.

[5] ECtHR, *Matthews v United Kingdom*, App no 24833/94, 18 February 1999 (concerning the right to vote in European elections); ECtHR, *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v Ireland*, App no 45036/98, 30 June 2005 (concerning the competence of the ECtHR to review EU acts).

[6] Treaty on the Functioning of the European Union (entered into force 1 December 2009) OJ C326/01 (TFEU), arts 258, 263.

[7] Wojciech Sadurski, 'Partnering with Strasbourg: Constitutionalization of the European Court of Human Rights, the Accession of Central and East European States to the Council of Europe, and the Idea of Pilot Judgments'

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Furthermore, the margin of appreciation doctrine and European consensus further support the statist approach of the ECtHR. According to the author, this overly deferential approach, however, is ill-fitted for the CJEU (pp 59, 152–53). These differing procedural and institutional settings result in different interpretations and reasoning in the migration-related case law of the European courts, as the author examines further in the following chapters of the book.

3. THE CONSTRUCTION OF MIGRATION STATUS

In Chapter 3 the author challenges the necessity of distinguishing between legal and illegal immigration where only legal entrants are considered to be entitled to fair treatment. She explains that this notion of legal and illegal is inherent in the object of the European area of freedom, security and justice (AFSJ).[8] She suggests examining migration status from a dynamic and multilevel perspective, acknowledging that the status of an individual may change over time and this change in status may be effectuated by a different range of actors based on various legal authorities. The binary 'legal' and 'illegal' division is therefore blurred and concepts other than 'illegal' need to be used to capture the multiplicity of factors influencing the migration status of individuals (pp 64–67).

The author rightly argues that the concept of 'illegal immigration' is a legal creation emerging out of 'illegality traps', 'excessive formalism' referring, inter alia, to the EU visa system, carrier sanctions, the Schengen system, and the Return Directive.[9] She proposes the social membership thesis which 'posits that social connections formed by migrants over significant time in the host state warrant legal recognition with a right to stay' (p 67). The social membership thesis imposes a moral limit to the statist approach to migration. She endorses this theory, which compels states to include individuals in their societies when they have become social members of their own societies (p 101). The jurisprudence of the ECtHR also tends to support the social membership thesis, although it continues to give leeway to states' prerogatives to control migration (pp 79–80; Chapter 4).

The main contention supporting the use of the term 'illegal migrants' is that it could otherwise undermine the integrity of immigration law by rewarding those who break the law (p 70). This contention is refuted by the author who maintains that the creation of a second-class citizenship is not a viable solution and may often result in exploiting the vulnerability of illegal migrants (p 72). The author suggests, therefore, that regularisation should be seen as a key corrective of the endemic situation of illegal immigration and a requirement of justice rather than 'an act

(2009) 9 *Human Rights Law Review* 397, 421; Karen Alter, 'The European Court's Political Power across Space and Time' (2009) 9 Northwestern University School and Law and Economics Working Paper 3.

[8] TFEU (n 6) art 79(1) requires the EU to 'develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, *fair treatment* of third-country nationals *residing legally* in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings' (emphasis added).

[9] Directive 2008/115/EC of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals [2008] OJ L348/98.

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of executive beneficence' (p 101). Both European courts also have an important role to play in such regularisation processes when making individual rights-based assessments of entitlement to stay (pp 101–02).

4. FAMILY LIFE AND FAMILY MIGRATION

Chapter 4 focuses on how migration and family life converge in law (p 106). The author convincingly explains how the concept of family reunification perpetuates the idea of 'insider' (individuals residing legally in a state or citizens of that state) and 'outsider' (individuals not residing legally in a state), where the insider must have obtained a certain legality ('insider privilege') to proceed to the reunification of his or her family (pp 106–12). Referring to Carens, the author explains that family reunification is mainly a moral claim for insiders and not for outsiders: '[t]he state's obligation is derived not so much from the claims of those seeking to enter as the claims of those they seek to join: citizens, residents and those who have been admitted for an extended period'.[10]

The author presents a striking contrast with respect to family reunification matters between the ECtHR and CJEU, referring, inter alia, in the citizenship context, to the CJEU case of *Metock*[11] and the ECtHR ruling in *Omoregie*.[12] The case of *Metock* concerns four nationals of non-EU member states who had unsuccessfully applied for asylum in Ireland, married EU citizens who were not Irish nationals but were resident in Ireland, and were refused residence cards as spouses of EU citizens. The refusal was based on Irish law, which required prior lawful residence in another member state. The CJEU was, therefore, asked to determine whether the Citizenship Directive[13] precludes legislation of a member state which makes the right of residence of a national of a non-member state subject to the conditions of prior lawful residence in another member state and acquisition of the status of spouse of a citizen of the Union before his or her arrival in the host member state. The CJEU held that the application of the Directive was not conditional on the beneficiaries having previously resided in a member state before arriving in the host member state. In addition, the Court held, in accordance with the specific facts of the case, that the Directive applies irrespective of the time and place where the marriage occurred and of how the national of a non-member country entered the host member state. This case illustrates that the Citizenship Directive entails a stable right of residence for the sponsors and their families, and where the status as rejected asylum seeker is irrelevant (pp 133, 153).

[10] Joseph H Carens, 'Who Should Get In? The Ethics of Immigration Admissions' (2003) *Ethics and International Affairs* 95, 96.
[11] Case C-127/08 *Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform* [2008] ECR I-6248.
[12] ECtHR, *Omoregie and Others v Norway*, App no 265/07, 31 July 2008.
[13] Corrigendum to Directive 2004/58/EC of 29 April 2004 on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely within the Territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC [2004] OJ L229/35.

On the other hand, in *Omoregie* the ECtHR was concerned with the right of a family (the first applicant, Mr Louis Osaze Darren Omoregie, was a rejected asylum seeker from Nigeria; the second applicant, Omoregie's wife, was a Norwegian national; the third applicant, their child born in Norway) to stay in Norway. The first applicant applied for asylum in Norway in 2001. His application was rejected and he was therefore under the obligation to leave Norway. He continued to stay in Norway illegally and married the second applicant. In 2003, he applied for the right to stay in Norway on the ground of family reunification. His application was again rejected and he was ordered to leave Norway. He renewed requests to stay in Norway following the birth of his child and remained in Norway until his expulsion in 2007. The ECtHR found that deporting Omoregie would interfere with Article 8(1) ECHR (the right to respect for private and family life) and examined whether the interference might be justified under Article 8(2) ECHR. After balancing the interference with various factors, the Court held that Article 8 ECHR would not provide protection for family life in Norway for the family concerned in this case as there could be no expectation of the asylum seeker's prolonged residence in Norway (pp 148, 168–69).[14] The author underlines the difficult balance between the ECtHR's statist assumption and the moral significance of social ties with the host state (pp 126–30). The author argues that, on the basis of this statist assumption, the refusal of entry to family members is often legitimised, as was decided in *Omoregie*, for example (pp 127–28). She finds that in the proportionality assessment under Article 8(2) ECHR, the ECtHR adopts a 'multifactor balancing approach', distorted by the statist assumption, which does not reflect a 'clear cut proportionality standard' (pp 113–15, 130). She perceives that the '[s]tate's interest in migration control permeates the ECtHR's entire approach' (p 130).

In its overview of the EU legal framework, the chapter confirms that the EU legal context is better suited for securing a more formal right to family reunification and that the CJEU offers a more rigorous proportionality assessment. Through the analysis of the relevant case law, the author also welcomes the potentially beneficial interactions between the European courts on the specific issue of family reunification: 'EU law's bright lines may compensate for the ECtHR's casuistry, while the ECtHR's case-specificity and gradualism may temper EU law's rigidity in defining family life' (p 106).[15]

5. THE SCOPE OF REFUGEE PROTECTION

In Chapter 5 the author looks at the jurisprudence of the ECtHR in relation to refugee status, which is centred primarily on Article 3 ECHR (prohibition of torture, inhumane or degrading treatment). The ECtHR has continuously reiterated the absolute nature of the non-refoulement

[14] *Omoregie* (n 12) para 64: 'Against this background the Court does not consider that the first and second applicants, by confronting the Norwegian authorities with the first applicant's presence in the country as a *fait accompli*, were entitled to expect that any right of residence would be conferred upon him'.

[15] Refer also, among others, to Case C-578/08 *Rhimou Chakroun v Minister van Buitenlandse Zaken* [2011] ECR I-1839 (concerning family reunification); ECtHR, *Jeunesse v the Netherlands*, App no 12738/10, 3 October 2014 (concerning the residence permit of a mother and her three children and their right to family life).

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protection inherent in Article 3 (p 179).[16] The principle of non-refoulement is a key component of refugee protection which guarantees protection against return to a country in which a person fears persecution. This chapter traces a precise overview of the evolution of the case law of the ECtHR under Article 3, highlighting a shift towards an extension of protection under that Article. For instance, the protection under Article 3 has been interpreted as including protection from removal from Europe to a state where the individual would face the death penalty,[17] as well as inhuman living conditions (pp 180–98).[18]

The chapter also includes an analysis of the Qualification Directive,[19] which aims to ensure that member states apply common criteria for the identification of individuals in need of international protection and to ensure that a minimum level of benefits is available for those persons in all member states.[20] More particularly, the chapter looks at the standards of protection guaranteed under the Qualification Directive, encompassing both refugee status and subsidiary protection. Although the book demonstrates that the ECtHR case law provides protection from removal going beyond the requirements of the Refugee Convention,[21] it also shows that the ECtHR does not require states parties to grant a status to those protected from removal. The author explains that the EU codification of the subsidiary protection is then clearly a remarkable step towards affording more protection. Subsidiary protection is granted to a third country national who does not qualify as a refugee but who, if returned to his or her country of origin, would face a real risk of serious harm as defined in the Qualification Directive.[22] The scope of subsidiary protection is somehow limited to those falling within the definition and requirements stipulated in the Qualification Directive[23] and will not be granted to all those who benefit from protection from removal (p 199).[24]

[16] ECtHR, *Saadi v Italy*, App no 37201/06, 28 February 2008 (concerning the absolute protection against refoulement in the case of terrorism extradition).
[17] ECtHR, *Al-Saadoon and Mufdhi v United Kingdom*, App no 61498/08, 2 March 2010 (concerning the transfer by the British army of two Iraqis to Iraqi custody where they would face a real risk of death by hanging).
[18] ECtHR, *MSS v Belgium and Greece*, App no 30696/09, 21 January 2011 (examining the compatibility of the Dublin Regulation II with the ECHR regarding transfers of migrants to Greece); ECtHR, *Sufi and Elmi v United Kingdom*, App nos 8319/07 and 11449/07, 28 June 2011 (concerning the non-refoulement principle).
[19] Directive 2011/95/EU of 13 December 2011 on Standards for the Qualification of Third-Country Nationals or Stateless Persons as Beneficiaries of International Protection, for a Uniform Status for Refugees or for Persons Eligible for Subsidiary Protection, and for the Content of the Protection Granted (Recast) [2011] OJ L337/9 (Qualification Directive).
[20] ibid recital 12.
[21] Convention relating to the Status of Refugees (entered into force 22 April 1954) 189 UNTS 150, as amended by its Protocol (entered into force 4 October 1967) 606 UNTS 267.
[22] Qualification Directive (n 19) arts 2(e), 15.
[23] Only individuals risking serious harm as defined under the Qualification Directive (n 19) art 15 will be protected: 'Serious harm consists of: (a) the death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict'.
[24] Jane McAdam, 'The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime' (2005) 17 *International Journal of Refugee Law* 461; UN High Commissioner for Refugees (UNHCR), 'Asylum in the European Union: A Study of the Implementation of the Qualification Directive', 1 November 2007.

As noted by the author, the ECtHR may, to a certain extent, consider the Refugee Convention in its interpretation of the ECHR but it has no jurisdiction to enforce the Refugee Convention. On the other hand, EU policy is expressly required to do so[25] and the refugee law concepts incorporated in EU law are amenable to the jurisdiction of the CJEU (pp 172, 215). The book suggests that the CJEU can 'truly be characterized as a refugee law Court' and has the potential to interpret the Refugee Convention in an innovative way and widen the scope of refugee status (p 228). The CJEU, however, will not have jurisdiction for all refugee law questions but only for the specific matters concerning refugee-related issues incorporated in EU law. In addition, its interpretations and decisions will depend largely on the questions referred by national judges (pp 174, 215).

6. ACCESS TO PROTECTION

Chapter 6 looks at how refugee protection will depend on the potential access to protection and on access to the territory of refuge. The non-refoulement principle is guaranteed, inter alia, under Article 3 ECHR (see Section 5 above) and has been extended to extraterritorial circumstances by the ECtHR (pp 239–49).[26] This extraterritorial protection is significant in a context where EU states attempt to design zones beyond their territorial jurisdiction in order to avoid legal obligations towards migrants (pp 238). In addition, the author examines EU law, which has created an additional layer of complexity with the concept of safe third country (Asylum Procedures Directive[27] and the Dublin system[28]) (p 233). Under the safe third country principle, an EU member state may reject an asylum application on the ground that protection has already been granted by another country. With the aim of avoiding 'asylum shopping', this principle allows EU states to allocate responsibility to process asylum claims by forcibly removing asylum seekers to countries considered 'safe' (p 252).

Asylum seekers have often resorted to courts to question these safety assessments where states assume that limiting access to their territory will consequently limit their obligations towards those in need of protection (p 276).[29] Notwithstanding attempts by member states to hinder access to protection, the author recalls that the ECtHR has on several occasions reaffirmed that member states may not rely on cooperative arrangements to remove migrants when there

[25] TFEU (n 6) art 78(1): 'The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. *This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties*' (emphasis added).

[26] See, among others, ECtHR, *Hirsi Jamaa and Others v Italy*, App no 27765/09, 23 February 2012 (concerning collective expulsion of migrants on the high seas).

[27] Directive 2013/32/EU of 26 June 2013 on Common Procedures for Granting and Withdrawing International Protection [2013] OJ L180/60, arts 38–39.

[28] Regulation (EU) No 604/2013 of 26 June 2013 establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast) [2013] OJ L180/31, art 3(3).

[29] See, among others, *MSS* (n 18); ECtHR, *Tarakhel v Switzerland*, App no 29217/12, 4 November 2014 (examining the compatibility of Dublin Regulation II with the ECHR regarding transfers of migrants to Italy).

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is a real risk of human rights violations.[30] The author examines the pitfalls and benefits of the vivid judicial dialogue between the ECtHR and the CJEU on the issue of access to protection (pp 25–75).[31] She emphasises, inter alia, the important contribution of *Tarakhel* in requiring an individual assessment of the situation of the person concerned; the duty to not deport anyone when there is a risk of inhumane treatment; and acknowledging that the presumption that a state that is part of the Dublin system will respect fundamental rights may be rebutted in the event of 'systemic flaws' in the asylum procedure and reception conditions for asylum applicants (p 275).[32]

The author concludes this chapter by criticising the recent EU legislative reform of the Common European Asylum System (CEAS) for having failed to include the collective solution required to provide appropriate access to protection (p 277). A collective solution engaging the collective responsibility and commitments of all EU member states could potentially allow for more adequate access to refugee protection.

7. IMMIGRATION DETENTION

Chapter 7 examines how international human rights law confronts immigration detention.[33] Exploring the tension between the right to liberty and migration control prerogatives mediated before the ECtHR and the CJEU, the principal focus of this chapter is on the 'permissibility of detention *per se,* rather than detention conditions', which can also raise serious human rights concerns (p 280).

The chapter identifies two weak points of the approach of the ECtHR to immigration detention (Article 5(1)(f) ECHR): (i) the approach to the determination of 'unauthorised entry' under *Saadi*,[34] and (ii) 'the loose nexus required between deportation and detention in *Chalal*'[35] (p 292). The author suggests that the approach of the ECtHR in granting unlimited leeway to states to refuse entry does not fit well with the Refugee Convention and EU law, both of which view asylum seekers as temporarily authorised entrants. Additionally, by refusing to apply the necessity test to the deportation–detention nexus, the ECtHR applies a lower standard of protection to migrants against immigration detention than in respect of other grounds for detention. The author takes the view that 'the failure to insist on the appropriate demonstrable link between the detention in question and the ground in question (be it to effectuate deportation

[30] See, among others, *MSS* (n 18); *Hirsi Jamaa* (n 26); *Tarakhel* (n 29).
[31] See, among others, *MSS* (n 18); *Hirsi Jamaa* (n 26); *Tarakhel* (n 29); Joined Cases C-411/10 and C-493/10 *NS v Secretary of State for the Home Department* and *ME v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform* [2011] ECR I-13905 (concerning the return of asylum seekers to Greece, the concept of 'safe country' and fundamental rights under EU law).
[32] *Tarakhel* (n 29) paras 102–06, 120–22.
[33] For definition see n 2.
[34] (n 16).
[35] ECtHR, *Chalal v United Kingdom*, App no 22414/93, 15 November 1996 (concerning deportation, detention pending deportation and the absolute character of art 3 ECHR also applicable in the context of national security interest).

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or to prevent unauthorised entry) renders the limitation on legitimate grounds of detention hollow' (p 293).

The CJEU has interpreted the provisions of the Return Directive[36] on detention (Articles 15 and 16) as containing higher standards than those provided by the ECHR, as the Directive requires detention to be necessary to effectuate removal and imposes a strict time limit (p 311).[37] The EU legislative framework could, therefore, contain the necessary components for 'a more rigorous scrutiny of detention of asylum seekers' (p 312). In this sense, the author proposes that '[c]onstructive human rights pluralism stands for critical engagement, not automatic integration' (p 312). Guiraudon's prediction of the 'bold' CJEU and the 'tamer' ECtHR might reveal itself to be reflective of reality (p 313).[38] The author suggests that the EU should not converge with the ECHR minimum and should be cautious of the excessive statism of the ECtHR.

8. CONCLUDING REMARKS

This book is a successful attempt at clarifying the tensions and interactions between the two European supranational courts on migrants' rights (p 323). By acknowledging this existing ECtHR–CJEU interaction, the specificity and originality of this contribution is, then, the exploration of EU legislative norms throughout the interpretations given by these two European courts (pp 60–61). The author concludes her contribution by stating that the judicial dialogue of the two European courts certainly has the potential to enhance human rights protection by challenging restrictive migration measures, but the effective protection of human rights will also require institutional and legislative change. Litigation is certainly a tool but '[d]isruptive and innovative methods of social action are needed if the full inclusivity of human rights is to be realized' (p 326).

It is definitely a well-written and interesting contribution, illustrated by various concrete examples of case law from the courts, which can be of great use for students, scholars and practitioners alike interested in the protection of migrants' rights within the EU.

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[36] Directive 2008/115/EC (n 9).
[37] Case C-357/09 PPU *Said Shamilovich Kadzoev (Huchbarov)* [2009] ECR I-11189, para 64 (concerning immigration detention and the concept of 'reasonable prospect of removal'); Case C-61/11 *Hassen El Dridi, alias Soufi Karim* [2011] ECR I-3015 (concerning the detention of illegally staying migrants).
[38] Virginie Guiraudon, 'European Courts and Foreigners' Rights: A Comparative Study of Norms Difference' (2000) 34 *International Migration Review* 1088, 1094.

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