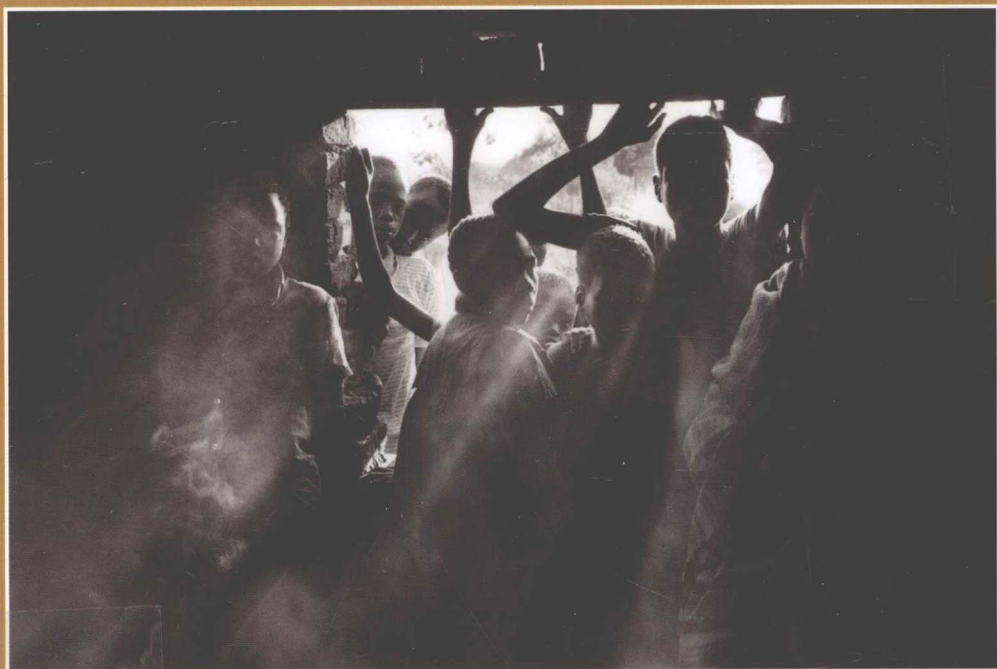


OXFORD

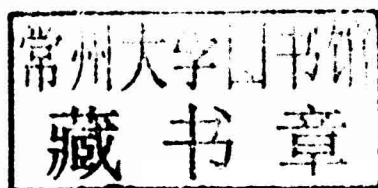
Human Rights and Immigration



Edited by
Ruth Rubio-Marín

Human Rights and Immigration

Edited by
RUTH RUBIO-MARÍN



OXFORD
UNIVERSITY PRESS

OXFORD

UNIVERSITY PRESS

Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide. Oxford is a registered trade mark of
Oxford University Press in the UK and in certain other countries

© R. Rubio-Marín 2014

The moral rights of the authors have been asserted

First Edition published in 2014

Impression: 1

All rights reserved. No part of this publication may be reproduced, stored in
a retrieval system, or transmitted, in any form or by any means, without the
prior permission in writing of Oxford University Press, or as expressly permitted
by law, by licence or under terms agreed with the appropriate reprographics
rights organization. Enquiries concerning reproduction outside the scope of the
above should be sent to the Rights Department, Oxford University Press, at the
address above

You must not circulate this work in any other form
and you must impose this same condition on any acquirer

Crown copyright material is reproduced under Class Licence
Number C01P0000148 with the permission of OPSI
and the Queen's Printer for Scotland

Published in the United States of America by Oxford University Press
198 Madison Avenue, New York, NY 10016, United States of America

British Library Cataloguing in Publication Data
Data available

Library of Congress Control Number: 2014930236

ISBN 978-0-19-870117-0

Printed and bound in Great Britain by
CPI Group (UK) Ltd, Croydon, CR0 4YY

Links to third party websites are provided by Oxford in good faith and
for information only. Oxford disclaims any responsibility for the materials
contained in any third party website referenced in this work.

The Collected Courses of the Academy of European Law

Series Editors: Professor Marise Cremona,
Professor Bruno de Witte,
Professor Francesco Francioni

European University Institute, Florence

Assistant Editor: Anny Bremner

European University Institute, Florence

VOLUME XXI/1

Human Rights and Immigration

The Collected Courses of the Academy of European Law
Edited by Professor Marise Cremona,
Professor Bruno de Witte, and Professor Francesco Francioni
Assistant Editor: Anny Bremner

Each year the Academy of European Law in Florence, Italy, invites a group of outstanding lecturers to teach at its summer courses on Human Rights law and European Union law.

A 'general course' is given in each of the two fields by a distinguished scholar or practitioner, who examines the field as a whole through a particular thematic, conceptual, or philosophical lens, or looks at a theme in the context of the overall body of law. In addition, a series of 'specialized courses' brings together a group of highly qualified scholars to explore and analyse a specific theme in relation to Human Rights law and EU law.

The Academy's mission, to produce scholarly analyses which are at the cutting edge of these two fields, is achieved through the publication of this series, the Collected Courses of the Academy of European Law.

List of Abbreviations

ACFC	Advisory Committee on the Framework Convention on National Minorities
ACHR	American Convention on Human Rights
CAT	Committee Against Torture
CBA	Canadian Bar Association
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention to Eliminate All Forms of Discrimination Against Women
CERD	Committee on the Elimination of Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CFA	Committee on Freedom of Association
CIC	Citizenship and Immigration Canada
CIR	Comprehensive Immigration Reform
CMW	UN Committee on the Protection of the Rights of all Migrant Workers and Members of their Families
CPT	Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
ECSMA	European Convention on Social and Medical Assistance
ECSR	European Committee of Social Rights
ECtHR	European Court of Human Rights
ECmHR	European Commission on Human Rights
ECLSMW	European Convention on the Legal Status of Migrant Workers
ESC	European Social Charter
FCNM	European Framework Convention on National Minorities
FGM	female genital mutilation
H&C	Humanitarian and Compassionate application
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of Migrant Workers and their Families
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996
ILO	International Labour Organization
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
PRRA	pre-removal risk assessment
RAD	Refugee Appeal Division
UDHR	Universal Declaration of Human Rights
UNCLOS	United Nations Convention on the Law of the Sea
UNHCR	United Nations High Commission for Refugees

Notes on Contributors

Vincent Chetail is Professor of Public International Law at the Graduate Institute of International and Development Studies, Geneva, where he is also Director of the Programme for the Study of Global Migration. He is a Board Member of the Geneva Academy of International Humanitarian Law and Human Rights and, from 2004 to 2012, was the Research Director of the Geneva Academy. Professor Chetail is Editor-in-Chief of the *Refugee Survey Quarterly*, member of the founding editorial board of *Oxford Bibliographies in International Law* and General Editor of the series *Organisation internationale et relations internationales* (Bruylant, Brussels). He is also Senior Research Associate at the Refugee Law Initiative (University of London), as well as member of the Academic Network for Legal Studies on Immigration and Asylum in Europe, and the General Assembly of the International Institute of Human Rights (Strasbourg).

Michael J. Churgin is the Raybourne Thompson Centennial Professor in Law at the University of Texas at Austin. A graduate of Brown University and the Yale Law School, he joined the Texas faculty in 1975 and also teaches in the Mental Health Clinic. Professor Churgin teaches and writes in the fields of immigration and refugee law, criminal procedure (including juvenile justice), and mental health law. He has been a visiting fellow at Wolfson College and Clare Hall, and most recently, the Quatercentenary Visiting Fellow at Emmanuel College, University of Cambridge.

Alessia Di Pascale is currently a research fellow in EU law at the University of Milan. She was Jean Monnet Lecturer in international migration law (2011–2013) at the University of Bergamo. She has been a visiting fellow at the Université Libre de Bruxelles and at the University of Nijmegen. Dr Di Pascale has carried out extensive research in the field of human rights, with a special focus on migrants' rights and asylum and corporate social responsibility. She is deputy member for Italy of the Odysseus Network (EU Academic network on migration and asylum law) and is also a lawyer qualified with the Milan Bar.

Virginia Mantouvalou is Reader in Human Rights and Labour Law in the Faculty of Law at University College London (UCL), where she is also Co-Director of the Institute for Human Rights. She is joint Editor of *Current Legal Problems*. Dr Mantouvalou is the author of *Debating Social Rights* (with Conor Gearty, Hart, 2011), as well as articles, book chapters and essays in human rights, labour law and European law. In 2010 she was Dean's Visiting Scholar at Georgetown University Law Center in Washington DC. She holds a PhD in law from the London School of Economics, an LLM in human rights from the London School of Economics, and an LLB from the University of Athens. She has received several scholarships and awards for her research, including an Arts and Humanities Research Council grant to work on theoretical aspects of social and labour rights. She has also worked as a consultant for projects of the International Labour Organization and the Equal Rights Trust.

Siobhán Mullally is Professor of Law at University College Cork and Director of the Centre for Criminal Justice and Human Rights. She is joint Editor of the *Irish Yearbook of International Law* and has published widely in the fields of human rights, gender and migration law. She is an elected member of the Council of Europe monitoring body, the

Group of Experts on Action against Trafficking (GRETA). Professor Mullally has held visiting fellowships at several universities, including a Fulbright scholarship at Columbia University and a Fernand Braudel senior fellowship at the European University Institute. She has worked as an advisor and consultant to UN bodies and NGOs, including UNDP, UNIFEM, International Bar Association and International Crisis Group.

Ruth Rubio-Marín is Professor of Comparative Public Law at the European University Institute in Florence, Italy. She was previously Professor of Constitutional Law at the University of Seville, Spain, and a member of the Faculty of the Hauser Global Law School Program at New York University. Her interests include comparative constitutional law, transitional justice, human rights, migration, minority rights and feminist theory. She is the author and editor of several books, including *Immigration as a Democratic Challenge* (2000); *The Gender of Constitutional Jurisprudence* (edited with B. Baines, 2004); *What Happened to the Women? Gender and Reparations for Human Rights Violations* (ed., 2006), *The Gender of Reparations: Subverting Sexual Hierarchies while Redressing Human Rights Violations* (ed., 2009) and *The Battle for Female Suffrage in the EU: Voting to Become Citizens* (edited with B. Rodriguez Ruiz, 2012).

Bernard Ryan is Professor of Migration Law at the University of Kent, where he teaches and researches all aspects of migration law and policy. His most recent publications have concerned extraterritorial immigration control, integration tests in British migration law and legal aspects of labour migration. In 2010, he was a Fernand Braudel Senior Research Fellow in the Law Department of the European University Institute. He is the co-chair of the Migration and Law Network, which promotes the field of migration law in British universities.

Tullio Scovazzi is Professor of International Law at the University of Milano-Bicocca, Milan, Italy. He occasionally acts as legal advisor for Italy or for international secretariats in negotiations or meetings relating to human rights, the international law of the sea, and the law of cultural properties.

Daniel Thym is Professor of Public, European and International Law at the University of Konstanz, where he is also Co-Director of the Research Centre Immigration & Asylum Law (FZAA). Professor Thym obtained his PhD at Humboldt-University, Berlin in 2004, and completed his *Habilitation* on 'Administrative Migration Governance (*Migrationsverwaltungsrecht*)' in 2009. He was Assistant Professor at Humboldt-University from 2005 to 2009. Since 2006 he has served as a member of the Editorial Board of the *European Law Journal*. Since 2012 he has been a Principle Investigator of the interdisciplinary Centre of Excellence 'Cultural Foundations of Social Integration' in Konstanz. His research interests include migration law at the national, European and international level as well as European constitutional developments, including foreign affairs.

Table of Cases

INTERNATIONAL AND REGIONAL JURISDICTIONS

African Commission on Human and Peoples' Rights

Modise (John K.) v. Botswana (2000) ACHPR Comm. No. 97/93.....	35
Organisation Mondiale Contre La Torture v. Rwanda, ACHPR (1996) Comm. Nos. 27/89, 46/91, 49/91, 99/93.....	55
Pagnoulle (Annette) (on behalf of Abdoulaye Mazou) v. Cameroon ACHPR (1997) Comm. No. 39/90.....	55

Committee against Torture

Aemei v. Switzerland, CAT/C/18/D/34/1995 (1997).....	38
J.H.A. v. Spain (Marine I), decision of 21 November 2008.....	249
M.B.B. v. Sweden, CAT/C/22/D/104/1998 (1999).....	39
Tapia Paez v. Sweden, CAT/C/18/D/39/1996 (1996).....	37
X v. Spain, CAT/C/15/D/23/1995 (1995).....	39

European Commission on Human Rights

Bibi v. The United Kingdom, EComHR (1992) Appl. No. 19628/92, 29 June 1992.....	80
C. v. Netherlands (1984) DR 38, 224.....	36
Farmakopoulos v. Belgium, EComHR (1990) Appl. No. 11683/85.....	57
Fryske Nasionale Partij and others v. The Netherlands (1985), DR 45.....	81
Group of Inhabitants of Sint-Pieters-Leeuw v. Belgium (1968) Appl. No. 2333/64 Recueil 28, 1, 16 December 1968.....	80
Mohammed Zamir v. The United Kingdom, EComHR (1983) Appl. No. 9174/80.....	57
Tuomo Kontinen v. Finland (1996), DR 87-A EComHR.....	84
W.M. v. Denmark, EComHR (1992) Appl. No. 17392/90.....	37
X v. Belgium, EComHR (1961) Appl. No. 984/61, (1961) 6 CD 39.....	34

European Committee of Social Rights

Defence for Children International (DCI) v. Netherlands, ECSR (2009) Complaint No. 47/2008, decision of 20 October 2009.....	17, 205, 284
International Federation of Human Rights Leagues (F.I.D.H.) v. France, ECSR (2004) Complaint No. 14/2003, decision of 8 September 2004.....	17, 204–205

European Court of Human Rights

A.A. v. The United Kingdom, ECHR (2011) Appl. No. 8000/08, judgment of 20 September 2011.....	116
Abdolkhani and Karimnia v. Turkey (n 2), ECHR (2010) Appl. No. 50213/08.....	58
Abdulaziz, Cabales and Balkandali v. The United Kingdom, ECHR (1985) Series A, No. 94, 34, judgment of 28 May 1985.....	110, 113, 310
Airey v. Ireland, ECHR (1979) Series A, No. 32, Appl. No. 6289/73, judgment of 9 October 1979.....	205
Ajayi et al. v. The United Kingdom, ECHR (1999) Appl. No. 27663/95, decision of 22 June 1999.....	120
Aktas v. France, ECHR (2009) Appl. No. 43563/08.....	84
Al-Nashif v. Bulgaria, ECHR (2002) Appl. No. 50963/99.....	57, 80
Al-Saadoon and Mufdhi v. The United Kingdom, ECHR (2009) Appl. No. 61498/08, decision of 30 June 2009.....	305

Amuur v. France, ECHR (1996) Reports 1996-III.	56
Andric v. Sweden, ECHR (1999) Appl. No. 45917/99	61
Antwi et al. v. Norway, ECHR (2012) Appl. No. 26940/10, judgment of 14 February 2012.	120, 125, 126
Aydin (Sükran) and others v. Turkey, ECHR (2013) Appl. No. 49197/06, decision of 22 January 2013.	81
Baghli v. France, ECHR (1999) Appl. No. 34374/97, judgment of 30 November 1999.	143
Bahaddar v. The Netherlands, ECHR (1998) Reports 1998-I.	53
Bajsultanov v. Austria, ECHR (2012) Appl. No. 54131/10, judgment of 12 June 2012.	121, 125, 139
Balogun v. The United Kingdom, ECHR (2012) Appl. No. 60286/09, judgment of 10 April 2012	116, 121
Banković and others v. Belgium, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Norway, The Netherlands, Poland, Portugal, Spain, Turkey and The United Kingdom, ECHR (2001) Appl. No. 52207/99	249
Bayrak v. France, ECHR (2009) Appl. No. 14308/08	84
Beldjoudi v. France, ECHR (1992) Appl. No. 12083/86, judgment of 26 March 1992	114
Benhebba v. France, ECHR (2003) Appl. No. 53441/99, judgment of 10 July 2003.	125, 132
Berrehab v. The Netherlands, ECHR (1988) Appl. No. 10730/84, judgment of 21 June 1988.	112
Bosphorus Airways v. Ireland, ECHR (2005) Appl. No. 45036/98, judgment of 30 June 2005 (GC)	127
Boughanemi v. France, ECHR (1996) Appl. No. 22070/93, judgment of 24 April 1996	143
Boujlifa v. France, ECHR (1997), Reports of Judgments and Decisions 1997-VI, 2264, judgment of 21 October 1997.	310
Boultif v. Switzerland, ECHR (2001) Appl. No. 54273/00, judgment of 2 August 2001.	124–126, 128, 140
Butt v. Norway, ECHR (2012) Appl. No. 47017/09, judgment of 4 December 2012	120, 126
C.N. v. The United Kingdom (2012) ECHR, Appl. No. 4239/08, Judgment 13 November 2012	153, 172, 207
C.N. and V. v. France (2012) ECHR, Appl. No. 67724/09, judgment of 11 October 2012	172
Case ‘relating to certain aspects of the laws on the use of languages in education in Belgium’ v. Belgium (Belgian Linguistic Case), ECHR (1968) Series A, No. 6, judgment of 23 July 1968	81
Chahal v. The United Kingdom, ECHR (1996) Reports 1996-V, para. 80	37, 54, 57
Chapman v. The United Kingdom, ECHR (2001-I) Appl. No. 27138/95 (GC)	80
Clerfayt, Legros et al. v. Belgium, ECHR (1985) Appl. No. 10650/83, decision of 17 May 1985.	80
Čonka v. Belgium ECHR (2002) Reports 2002-I,	54, 56, 61, 303
Connors v. The United Kingdom, ECHR (2004) Appl. No. 66746/01	80
D.H. and others v. the Czech Republic, ECHR (2006) Appl. No. 57325/00, 7 February 2006.	84, 174
Dalia v. France, ECHR (1998) Appl. No. 26102/95, judgment of 19 February 1998.	100, 125
Dogru v. France, ECHR (2009) Appl. No. 27058/05	80
El Boujlifa v. France, ECHR (1997) Appl. No. 25404/94, judgment of 21 October 1997	114
El Morsli v. France, ECHR (2008) Appl. No. 15585/06, decision of 4 March 2008	84
Eweida and others v. The United Kingdom, ECHR (2013) Appl. Nos. 48420/10, 59842/10, 51671/10, and 36516/10, judgment of 15 January 2013	84
Gamaleddyn v. France, ECHR (2009) Appl. No. 18527/08	84

Gaygusuz v. Austria, ECHR (1996) Appl. No. 17371/90, judgment of 16 September 1996	207
Gebremedhin v. France, ECHR (2007) Appl. No. 25389/05	54
Ghazal v. France, ECHR (2009) Appl. No. 29134/08	84
Gül v. Switzerland, ECHR (1996) Appl. No. 23218/94, judgment of 19 February 1996	110, 111, 122
H.R. v. France, ECHR (2011) Appl. No. 64780/09, judgment of 22 September 2011	307
Hirsi Jamaa et al. v. Italy, ECHR (2012) Appl. No. 27765/09, judgment of 23 February 2012 (GC)	9, 111, 250, 256–257, 304, 307
Hoogendijk v. Netherlands, ECHR (2005) Appl. No. 58461/00, decision of 6 January 2005	83
Hussan and others v. Italy, ECHR (2006) Appl. No. 10171/05, 10601/05, 11593/05, and 17165/05, decision of 11 May 2006	302
I.N. v. Sweden, ECHR (2009) Appl. No. 1334/09	53
Ireland v. The United Kingdom, ECHR (1978) Series A, No. 25, para. 162	36
Jabari v. Turkey, ECHR (2000) Reports 2000-VIII	53, 54
Jasvir Singh v. France, ECHR (2009) Appl. No. 25463/08	84
Javeed v. The Netherlands, ECHR (2001) Appl. No. 47390/99, decision of 3 July 2001	113
Johnston and others v. Ireland, ECHR (1986) Series A, No. 112,	79
Kamaliyevy v. Russia, ECHR (2010) Appl. No. 52812/07, judgment of 3 June 2010	126
Kawogo v. The United Kingdom, Appl. No. 56921/09	153, 170
Kaya v. Germany, ECHR (2007) Appl. No. 31753/02, judgment of 28 June 2007	125, 143
Keegan v. Ireland ECHR (1994) Series A, No. 290	79, 80
Khan (A.H.) v. The United Kingdom, ECHR (2010) Appl. No. 6222/10, judgment of 20 December 2011	125, 142
Khan (A.W.) v. The United Kingdom, ECHR (2010) App. No. 47486/06, judgment of 12 January 2010	115, 117
Kissiwa Koffi v. Switzerland, ECHR (2012) Appl. No. 38005/07, judgment of 15 November 2012	121, 125
Koua Poirrez v. France, ECHR (2003) Appl. No. 40892/98, judgment of 30 September 2003	207
Loizidou v. Turkey, ECHR (1995) Appl. No. 15318/89, judgment of 23 March 1995	109
M.S.S. v. Belgium and Greece, ECHR (2011) Appl. No. 30696/09	36, 38, 62, 128, 206, 307
Maaouia v. France, ECHR (2000) Reports 2000-X	53
Mallah v. France, ECHR (2011) Appl. No. 29681/08, judgment of 10 November 2011	116, 126
Mann Singh v. France, ECHR (2008) Appl. No. 24479/07, decision of 13 November 2008	84
Marckx v. Belgium, ECHR (1979) Series A, No. 31, Appl. No. 6833/74, judgment of 13 June 1979	113
Maslov v. Austria, ECHR (2008) Appl. No. 1638/03, judgment of 23 June 2008 (GC)	100, 116, 119, 121, 122, 125, 135, 140
Mayeka and Mitunga v. Belgium, ECHR (2006) Appl. No. 13178/03	58
Medvedyev and others v. France, Application No. 3394/03	250, 305
Milanova and others v. Italy and Bulgaria, Appl. No. 40020/03	153
Moustaquim v. Belgium, ECHR (1991) Appl. No. 12313/86, judgment of 18 February 1991	106, 108, 110
Muñoz Díaz v. Spain, ECHR (2010) Appl. No. 49151/07	80
Muskhadzhiyeva and others v. Belgium, ECHR (2010) Appl. No. 41442/07	57, 58
Mutlag v. Germany, ECHR (2010) Appl. No. 40601/05, judgment of 25 March 2010	133
N. v. UK, ECHR (2008) Appl. No. 26565/05, judgment of 27 May 2008 (GC)	207
Nacic et al. v. Sweden, ECHR (2012) Appl. No. 16567/10, judgment of 15 May 2012	121

Nada v. Switzerland, ECHR (2012) Appl. No. 10593/08, judgment of 12 September 2012 (GC)	119
Nasri v. France, ECHR (1995) Appl. No. 19465/92, judgment of 13 July 1995	113, 114
Niemitz v. Germany, ECHR (1996) Appl. No. 13710/88, judgment of 16 December 1996.	116
Nnyanzi v. The United Kingdom, ECHR (2008) Appl. No. 21878/06, judgment of 8 April 2008	119
Nunez v. Norway, ECHR (2011) Appl. No. 55597/09, judgment of 28 June 2011.	120, 125, 126, 127
O.G.O. v. The United Kingdom, Appl. No. 13950/12, lodged 8 March 2012	153
O'Donoghue and others v. The United Kingdom, ECHR (2010) Appl. No. 34848/07, judgment of 14 December 2010	298, 300
Omorgie v. Norway, ECHR (2008) Appl. No. 265/07, judgment of 31 July 2008	121, 126
Opuz v. Turkey, ECHR (2009) Appl. No. 33401/02, judgment of 9 June 2009	173
Osman v. Denmark, ECHR (2011) Appl. No. 38058/09, judgment of 14 June 2011	153, 154
Phull v. France, ECHR (2005) Appl. No. 35753/03, decision of 11 January 2005.	84
Riad and Idiab v. Belgium, ECHR (2008) Appl. No. 29787/03 and 29810/03	58
Rodrigues da Silva & Hoogkamer v. The Netherlands, ECHR (2006) Appl. No. 50435/99, judgment of 31 January 2006	113, 120
S.D. v. Greece, ECHR (2009) Appl. No. 53541/07.	57
Saadi v. Italy, ECHR (2008) Appl. No. 37201/06	37, 56, 242, 243
Saadi v. The United Kingdom, ECHR (2008) Appl. No. 13229/03	55, 287
Şahin (Leyla) v. Turkey, ECHR (2005) Appl. No. 44774/98 (GC)	80
Samsonnikov v. Estonia, ECHR (2012) Appl. No. 52178/10, judgment of 3 July 2012.	121
Sanchez-Reisse v. Switzerland, ECHR (1986) Appl. No. 9862/82.	57
Şen v. The Netherlands, ECHR (2000) Appl. No. 31465/96, judgment of 21 December 2000	107, 113
Shala v. Switzerland, ECHR (2012) Appl. No. 52873/09, judgment of 15 November 2012	121
Sidabras and Dziautas v. Lithuania, ECHR (2004) Appl. Nos. 55480/00 and 59330/00, judgment of 27 July 2004.	205
Siliadin v. France, ECHR (2005) Appl. No. 73316/01, judgment of 26 July 2005, [2006] 43 EHRR 16.	18, 153, 171, 206, 207
Sisojeva v. Latvia, ECHR (2005) Appl. No. 60654/00, judgment of 16 June 2005	118, 119
Sisojeva v. Latvia, ECHR (2007) Appl. No. 60654/00, judgment of 15 January 2007	107, 110, 122–123, 125, 139
Slivenko et al. v. Latvia, ECHR (2003) Appl. No. 48321/99 (GC)	100, 107, 115, 116, 117, 125
Soering v. The United Kingdom, ECHR (1989), Series A, No. 161, judgment of 7 July 1989	34, 109, 242
Solomon v. The Netherlands, ECHR (2000) Appl. No. 44328/98, decision of 5 September 2000	120
Sufi and Elmi, ECHR (2011) Appl. Nos. 8319/07 and 11449/07, judgment of 28 June 2011	256
Sultani v. France, ECHR (2007) Appl. No. 45223/05, judgment of 20 September 2007	303
T.I. v. The United Kingdom, ECHR (2000) Reports 2000-III.	38, 62
Thlimmenos v. Greece, ECHR (2000) Appl. No. 34369/97.	83
Tomic v. The United Kingdom, ECHR (2003) Appl. No. 17387/03	35
Trabelsi v. Germany, ECHR (2011) Appl. No. 41548/06, judgment of 13 October 2011	100, 116, 121, 125
Tuquabo-Tekle and others v. Netherlands, ECHR (2005) Appl. No. 60665/00, judgment of 1 December 2005	113
Üner v. The Netherlands, ECHR (2006) Appl. No. 46410/99, judgment of 18 October 2006 (GC)	119, 121, 125, 126, 135, 140, 142

Vedran Andric v. Sweden, ECHR (1999) Appl. No. 45917/99, decision of 23 February 1999.	303
X. & Y. v. Germany (1977) Appl. No. 7816/77, DR 9, 57, decision of 19 May 1977	112
X. & Y. v. Liechtenstein (1977) Appl. Nos. 7289 and 7349/75, DR 9, 219, decision of 14 July 1977	112
Yiğit (Şerife) v. Turkey, ECHR (2010) Appl. No. 3976/05 (GC)	80
Z. and T. v. The United Kingdom, ECHR (2006) Appl. No. 27034/05	35

European Court of Justice

Achughbabian, Case C-329/11, judgment of 6 December 2011, not yet published	288, 295
Detiëck, Case C-403/09, [2009] ECR I-12193	128
El Dridi, Case C-61/11 PPU, [2011] ECR I-03015	288, 295
European Parliament v. Council of the European Union supported by European Commission, Case C-355/10, OJ 2010 L 111/20, not yet published	259
Mbaye, Case C-522/11, order of 21 March 2013, not yet published	296
McB (J.) v. L.E., Case C-400/10 PPU, [2010] ECR I-08965	127
Parliament v. Council, Case C-540/03, [2006] ECR I-5769	128
Pupino, Case C-105/03, [2005] ECR I-5285	127
<i>Md Sagor</i> , Case C-430/11, judgment of 6 December 2012, not yet published	296

Human Rights Committee (United Nations)

A v. Australia, CCPR/C/59/D/560/1993 (1997)	55, 57
Adu v. Canada, CCPR/C/60/D/654/1995 (1997)	52
Ahani v. Canada, CCPR/ 80/D/1051/2002 (2004)	59
Al Zery v. Sweden, CCPR/C/88/D/1416/2005 (2006)	53
Baban v. Australia, CCPR/C/78/D/1014/2001 (2003)	55
Bakhtiyari v. Australia, CCPR/C/79/D/1069/2002 (2003)	47, 58
Byahuranga v. Denmark, CCPR/C/82/D/1222/2003 (2004)	46
C. v. Australia (2002), CCPR/C/76/D/900/1999	55
<i>Cap Anamour</i> case (2004), 9 <i>Annuaire du Droit de la Mer</i> 49.	237
Celepli v. Sweden, CCPR/C/51/D/456/1991 (1993)	60
D. and E. v. Australia, CCPR/C/87/D/1050/2002 (2006)	55
Dranichnikov v. Australia, CCPR/C/88/D/1291/2004 (2006)	52
El Dernawi v. Libyan Arab Jamahiriya, CCPR/C/90/D/1143/2002 (2007)	46
G.T. v. Australia, CCPR/C/61/D/706/1996 (1997)	35
Giry v. Dominican Republic, CCPR/C/39/D/193/1985 (1985)	59
Hamida v. Canada, CCPR/C/98/D/1544/2007 (2010)	277
Hammel v. Madagascar, CCPR/C/29/D/155/1983 (1987)	59
Kaba v. Canada, CCPR/C/98/D/1465/2006 (2010)	277
Karker v. France, CCPR/C/70/D/833/1998 (2000)	60
Karnel Singh Bhinder v. Canada, CCPR/C/37/D/208/1986 (1989)	82
Kaur v. Canada, CCPR/C/94/D/1455/ 2006 (2007)	52
Kazantzis v. Cyprus, CCPR/C/78/D/972/2001 (2003)	53
Kindler v. Canada, CCPR/C/48/D/470/1991 (1993)	35
Kříž v. Czech Republic, CCPR/C/85/D/1054/2002 (2005)	49
Maksudov and others v. Kyrgyzstan, CCPR/C/93/D/1461	53
Maroufidou v. Sweden, CCPR/C/OP/1 (1981)	58, 59
Ngambi v. France, CCPR/C/81/D/1179/2003 (2004)	46
Raihon Hudoyberganova v. Uzbekistan, CCPR/C/82/D/931/2000 (2004)	83
Ranjit Singh v. France, CCPR/C/102/D/1876/2009 (2011)	83
V.M.R.B. v. Canada, CCPR/C/333/D/236/1987 (1988)	59

Inter-American Commission of Human Rights

Haitian Centre for Human Rights et al. v. United States, IAComHR (1997) Case 10.675, Report No. 51/96	35
John Doe et al. v. Canada, 23 March 2011, IAComHR No. 24/11	276
Lenahan (Jessica) (formerly Gonzales) et al. v. United States, IAComHR (2011), Case 12.826, Report No. 80/11, 21 July 2011	173

Inter-American Court of Human Rights

Gangaram Panday Case, IACtHR (1994) Series C, No. 16	55
González et al. ('Cotton Field') v. Mexico, IACtHR (2009) Series C, No. 205, judgment of 16 November 2009	173
Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03 of September 17, 2003, IACtHR (2003) Series A, No. 18	174, 284
Legal Status and Rights of Undocumented Workers. Advisory Opinion OC-18/03, (2005) 99 AJIL 460	284
Mayagna (Sumo) Awas Tingni Community v. Nicaragua, IACtHR (2001) Series C, No. 79, judgment of 31 August 2001	79
Vélez Looz v. Panama, IACtHR (2010) Series C, No. 218, judgment of 23 November 2010	288
Yean and Bosico Children v the Dominican Republic, IACtHR (2005) Series C, No. 130, 8 September 2005	209

International Court of Justice

Case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) ICJ Reports (2010) 639	282
---	-----

International Criminal Tribunal for the Former Yugoslavia

Furundžija (Case IT-95-17/1), judgment of 10 December 1998	241
--	-----

International Labour Organisation

Republic of Korea (Case No. 2620), 18 December 2007, Report of the Committee on Freedom of Association No. 353 (Vol XCII 2009 Series B, No. 1)	195
Spain (Case No. 2121), 23 March 2001, Report of the Committee on Freedom of Association No. 327 (Vol. LXXXV 2002 Series B, No. 1)	195
United States (Case No. 2227), Report of the Committee on Freedom of Association No. 332 (Vol LXXXVI, 2003, Series B, No. 3)	195

Refugee Status Appeals Authority (United Nations)

Refugee Appeal No. 71684/99 [2000] INLR 165	40
---	----

NATIONAL JURISDICTIONS**Australia**

A. v. Minister for Immigration and Multicultural Affairs [1999] FCA 227	33
Appellant S395/2002 v. Minister for Immigration & Multicultural Affairs (S395) [2003] 216 CLR 473	162, 163, 164
Applicant A. v. Minister for Immigration and Multicultural Affairs [1997] 190 CLR 225	27
M38/2002 v. Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCAGC 131	31
Minister for Immigration and Multicultural Affairs v. Ibrahim [2000] HCA 55; Refugee Appeal No. 71427/99 [2000] INLR 608	28, 34

Minister for Immigration and Multicultural Affairs v. Khawar [2000] FCA 1130; (2002) HCA 14	21, 30, 156
<i>Tampa</i> case (2002) 96 American Journal of International Law 661	231, 236–237
Win v. Minister for Immigration and Multicultural Affairs [2001] FCA 132	163

Canada

Canada v. Khadr [2008] 2 SCR 125	272
Canada v. Ward [1993] 2 SCR 689 [1993] 103 DLR 4th 1	24, 27, 28, 272
Canadian Council for Refugees v. Canada [2008] 3 FCR 606	275–276
Canadian Council for Refugees v. H.M. The Queen (Case 32820, leave denied 5 February 2009)	276
Charkaoui v. Canada [2007] 1 SCR 350	272
Cheung v. Canada (Minister of Employment and Immigration) [1993] 1 CF 314	36
Krishnapillai v. Minister of Citizenship and Immigration [2002] 3(1) FC 74	44, 52
Mayers v. Canada, 97 D.L.R. 4th 729 (1992)	266
Multani v. Commission scolaire Marguerite-Bourgeoys [2006] 1 SCR 256	84
Pathmanathan v. Canada [2010] 3 F.C.R. 395	268
Pushpanathan v. Canada (Minister of Citizenship and Immigration) [1998] 1 SCR 982	25, 27, 272
Singh [1985] 1 SCR 177	272
Suresh v. Canada (Minister of Citizenship and Immigration) [2002] 1 SCR 3	32

Italy

Constitutional Court, Decision No. 353/1997	294
Constitutional Court, Judgment No. 250 of 8 July 2010	295
Constitutional Court, Judgment of 25 July 2011, No. 245	299, 300
<i>Kater I Rades</i> case, judgment by Tribunal of Brindisi of 19 March 2005	235–236

New Zealand

Attorney General v. Zaoui [2004] Dec. No. CA20/04	32
K. v. Refugee status Appeals Authority [2005] NZAR 441 (2004).	27

Spain

Constitutional Court, Decision 236/2007	300
---	-----

Switzerland

Second Court of Public Law of the Federal Administrative Court, Case 2C_349/2011	299–300
--	---------

United Kingdom

A. and others v. Secretary of State for the Home Department [2004] UKHL 56, 16 December 2004.	293
A.B. (Miss) v. Secretary of State for the Home Department (2003) Immigration Appellate Authority decision CC/64057/2002	155
A.S. (Pakistan) v. Secretary of State for the Home Department [2007] EWCA Civ 703	165
Appellant v. Secretary of State for the Home Department (2003) UKIAT 00023	155
B v. SSHD [2000] Imm AR 478	114
East India Company v. Sandys [1684] 10 ST 371	131
H.J. (Iran) v. Secretary of State for the Home Department (Rev 1), [2010] Imm AR 729, [2011] 1 AC 596, [2010] 3 WLR 386, [2010] UKSC 31	156, 162, 163
Horvath v. Secretary of State for the Home Department, 13 IJRL (2001) 16	20, 24, 27, 28, 71
Islam (A.P.) v. Secretary of State for the Home Department, Regina v. Immigration Appeal Tribunal and Another, <i>Ex Parte</i> Shah (A.P.) (Conjoined Appeals), [1999] 2 AC 629, [1999] 2 All ER 545	27, 28, 156, 159, 160

J v. Secretary of State for the Home Department [2007] Imm AR 73	162
R. v. Immigration Officer at Prague Airport and another <i>ex parte</i> Roma Rights Centre and others [2004] UKHL 55	31, 36, 71, 131
R. v. Secretary of State for the Home Department, <i>ex parte</i> Jammeh [1998] INLR 701 (CA)	40
R. v. Secretary of State for the Home Department, <i>px parte</i> Jahangeer and others [1993] Imm AR 564	52
R. v. Uxbridge Magistrates' Court <i>ex parte</i> Adimi [1999] 4 All ER 520	30
S.S.H.D. v. K. and Fornah v. S.S.H.D., [2006] UKHL 46, [2007] 1 AC 412, [2007] 1 All ER 671, [2006] 3 WLR 733	156, 161
S.Z. and J.M. (Iran C.G.) v. The Secretary of State for the Home Department [2008] UKAIT 00082	36
Secretary of State for the Home Department v. Dzhygun (2000) Immigration Appeal Tribunal Decision 00 TH 00728	155
Secretary of State for the Home Department v. ZH (Women as Particular Social Group) Iran, CG [2003] UKIAT 00207	161
T. v. Secretary of State for the Home Department [1996] AC 742	31
V.H. (Malawi) v. Secretary of State for the Home Department [2009] EWCA Civ 645	165
Z.H. (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4	127
 United States	
Aguilar Ramos v. Holder, 594 F.3d 701 (9th Cir. 2010)	264
Arteaga v. Immigration and Naturalization Service [1988] 836 F.2d 1227, 1231 (9th Cir.)	28
Chang, Matter of, 20 I&N Dec. 38 (BIA 1989)	266
Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir 2011)	266
Hernandez-Montiel v. Immigration and Naturalization Service [2000] 225 F.3d 1084 (US Court of Appeal for the 9th Circuit)	28
Hoffman Plastic Compounds v. NLRB, 535 US 137 (2002)	195, 209
I.N.S. v. Cardozo-Fonseca, 480 US 421 (1987)	264
I.N.S. v. Elias-Zacarias, 502 US 478 (1992)	264
I.N.S. v. Ventura, 537 US 12 (2002)	264
Kasinga, re, Interim Dec. 3278 (B.I.A. 1996)	156
Li v. Gonzales, 420 F.3d 500, vacated, 429 F.3d 1153 (5th Cir. 2005)	266
R.A., Matter of, 22 I&N Dec. 906 (BIA 1999), vacated, 22 I&N Dec. 906 (A.G. 2001), remanded, 23 I&N Dec. 694 (A.G. 2005), remanded, 24 I&N Dec. 629 (A.G. 2008)	159, 160, 161
Sale et al. v. Haitian Centers Council, Inc. et al. (1993) 32 International Legal Materials 1041	251–252, 264

Contents

<i>List of Abbreviations</i>	ix
<i>Notes on Contributors</i>	xi
<i>Table of Cases</i>	xiii
Introduction: Human Rights and the Citizen/Non-citizen Distinction Revisited	1
<i>Ruth Rubio-Marín</i>	
I. The Context	1
II. The Central Question: The Lexical Priority of Human Rights?	5
III. Beyond the Citizen/Non-citizen Divide: Modulating Concepts	10
1. Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law	19
<i>Vincent Chetail</i>	
I. Access to International Protection: Towards a Gradual Merger between Refugee Law and Human Rights Law?	23
II. The Content of International Protection: From Conditionality to Universality	39
III. The Implementation Scheme of Refugee Law and Human Rights Law: The Ultimate Test	50
IV. Conclusion	68
2. Integration in Immigrant Europe: Human Rights at a Crossroads	73
<i>Ruth Rubio-Marín</i>	
I. Introduction	73
II. Multiculturalism, Human Rights, and Immigrants' Cultural Identity	76
III. Immigrants' Equality of Rights under Human Rights Law	90
IV. Immigrant Integration and the Possibility of Complex Identities in Human Rights Law	97
V. Human Rights and Citizenship Virtues in Pluralistic Societies	101
VI. Conclusion	103
3. Residence as De Facto Citizenship? Protection of Long-term Residence under Article 8 ECHR	106
<i>Daniel Thym</i>	
I. Introduction	106
II. Doctrinal Foundations	107
III. Towards De Facto Citizenship?	130
IV. Conclusion	143