

Klaus Kapuy

# The social security position of irregular migrant workers

New insights from national social security law  
and international law

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## PREFACE

This doctoral thesis is part of an international and multi-disciplinary research programme called Cross Border Welfare State. The Cross Border Welfare State programme investigates the relationship between immigration, social security and integration. It is clustered around six topics. The first two topics deal with access to social security for two different groups of migrants: asylum seekers and irregular migrant workers. The other four topics are: income requirements in immigration law; integration, social security and fundamental rights; integration, enhanced participation and return migration; and perceptions of social security and immigration. These issues are being dealt with by legal researchers from the Vrije Universiteit Amsterdam and the Katholieke Universiteit Leuven, as well as by sociological researchers from the institutes Regioplan Beleidonderzoek Amsterdam and ITS Nijmegen. The research of the four legal researchers is being carried out as doctoral research projects, whereas the sociological research is being carried out by postdoctoral investigators. The programme is financed by the Dutch Stichting Instituut GAK. The aim is to assist national and European legislators in making informed choices concerning the legal position of migrants in social security systems.

I have striven to state the law as it stood on 1 December 2010. Exceptionally, I have also referred to legal developments that have occurred after this date. On 1 December 2010, I also accessed all internet links referred to in this research for the last time.

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## ABBREVIATIONS

Admin L.R.	Administrative Law Reports (Canada)
AKW	Algemene Kinderbijslagwet (General Child Benefits Act) (The Netherlands)
All E.R.	All England Law Reports (England)
Alta. L.R.	Alberta Law Reports
Anw	Algemene Nabestaandenwet (General Survivor's Benefits Act) (The Netherlands)
AOW	Algemene Ouderdomswet (General Old Age Pension Act) (The Netherlands)
AP	Additional Protocol
Arr. Cass.	Arresten Hof van Cassatie (Judgments of the Court of Cassation) (Belgium)
Arr. R.v.S.	Arresten Raad van State (Judgments of the Council of State) (Belgium)
AWBZ	Algemene Wet Bijzondere Ziektekosten (General Exceptional Medical Expenses Act) (The Netherlands)
BCLI Report	British Columbia Law Institute Report
B.L.R.	Business Law Reports (Canada)
B.S.	Belgisch Staatsblad (Belgian State Gazette)
BSN	Burgerservicenummer (Citizen Service Number) (The Netherlands)
B.Z.	Buitengewone zitting (Extraordinary session) (Belgium)
c.	chapter
C97	Migration for Employment Convention
C102	Social Security (Minimum Standards) Convention
C121	Employment Injury Benefits Convention
C128	Invalidity, Old-Age and Survivors' Benefits Convention
C130	Medical Care and Sickness Benefits Convention
C143	Migrant Workers (Supplementary Provisions) Convention
C168	Employment Promotion and Protection against Unemployment Convention
C183	Maternity Protection Convention
CAD	Canadian Dollar
CarswellAlta	Carswell Alberta Cases

## Abbreviations

CarswellNat	Carswell National Law Reports (Canada)
CarswellOnt	Carswell Ontario Cases
CarswellQue	Carswell Quebec Cases
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
C.C.E.L.	Canadian Cases on Employment Law
CCTB	Canada Child Tax Benefit
CDB	Child Disability Benefit (Canada)
C.E.B. & P.G.R.	Canadian Employment Benefits and Pension Guide Reports
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CHC	Community Health Centre (Canada)
C.L.L.C.	Canadian Labour Law Cases
COA	Centraal Orgaan opvang asielzoekers (Central Agency for the Reception of Asylum-Seekers) (The Netherlands)
CoE	Council of Europe
COM	Commissievergadering (Meeting of the Commission) (Belgium)
Cowp.	Cowper's King's Bench Reports (England)
CPP	Canada Pension Plan
C.R.	Criminal Reports (Canada)
CRC	Convention on the Rights of the Child
C.R.C.	Consolidated Regulations of Canada, 1978
CRIV	Voorlopige versie van het Integraal Verslag (Provisional version of the integral protocol) (Belgium)
CRPD	Convention on the Rights of Persons with Disabilities
CSA	Children's Special Allowance (Canada)
C.T.C.	Canada Tax Cases
CTHB	Convention on Action against Trafficking in Human Beings
CTOC	Convention against Transnational Organized Crime
CTOC-P1	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
CUB	Canadian Umpire Benefit (decision of the Umpire under the EI Act)
CVZ	College voor Zorgverzekering (Health Care Insurance Board) (The Netherlands)
DIMONA	Déclaration immédiate/onmiddellijke aangifte (Immediate declaration system) (Belgium)
D.L.R.	Dominion Law Reports (Canada)
DmfA	Déclaration multifonctionnelle/multifunctionele Aangifte (multifunctional declaration system) (Belgium)
D.T.C.	Dominion Tax Cases (Canada)
EC	European Community
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECMW	European Convention on the Legal Status of Migrant Workers

ECR	European Court Reports
EEA	European Economic Area
EI	Employment Insurance (Canada)
E.R.	English Reports (England)
EU	European Union
EUCFR	The Charter of Fundamental Rights of the European Union
EUR	Euro (European currency)
FAO	Fonds voor Arbeidsongevallen (Labour Accident Fund) (Belgium)
FBZ	Fonds voor de Beroepsziekten (Occupational Diseases Fund) (Belgium)
FC	Federal Court (for neutral citation) (Canada)
F.C.	Canada Federal Court Reports
FCA	Federal Court of Appeal (for neutral citation) (Canada)
FEDASIL	Federaal Agentschap voor de opvang van asielzoekers (Federal Agency for the Reception of Asylum-Seekers) (Belgium)
FOD	Federale Overheidsdienst (Federal Public Service) (Belgium)
F.T.R.	Federal Trial Reports (Canada)
GAINS	Guaranteed Annual Income System (Canada)
GBA	Gemeentelijke basisadministratie (municipal database) (The Netherlands)
GIS	Guaranteed Income Supplement (Canada)
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of All Migrant Workers and Members of Their Families
I.C.R.	Industrial cases reports (England)
IFH	Interim Federal Health (Canada)
ILO	International Labour Organization
INSZ	Identificatienummer van de Belgische sociale zekerheid (Social Security Number) (Belgium)
IOAW	Inkomensvoorziening Oudere en gedeeltelijk Arbeidsongeschikte werkloze Werknemers (Act on Income Provisions for Older, Partially Disabled Unemployed Persons) (The Netherlands)
IOAZ	Inkomensvoorziening Oudere en gedeeltelijk Arbeidsongeschikte gewezen Zelfstandigen (Act on Income Provisions for Older, Partially Disabled Formerly Self-Employed Persons) (The Netherlands)
I.R.L.R.	Industrial Relations Law Reports (England)
IRPA/R	Immigration and Refugee Protection Act/Regulations (Canada)
IVA	Inkomensvoorziening Volledig Arbeidsongeschikten (Benefit for Permanently and Fully Disabled Employees Scheme) (The Netherlands)
JTT	Journal des tribunaux du travail (Belgian law journal)

KSZ	Kruispuntbank van de Sociale Zekerheid (Crossroads Bank for Social Security) (Belgium)
LJN	Landelijk Jurisprudentie Nummer (National Case Law Number) (The Netherlands)
LMR	Labour Market Re-entry (service) (Canada)
LOE	Loss of Earnings (benefit) (Canada)
LRI	Loss of Retirement Income (benefit) (Canada)
N.B.R.	New Brunswick Reports
NCBS	National Child Benefit Supplement (Canada)
NEL	Non-Economic Loss (benefit) (Canada)
Nfld. & P.E.I.R.	Newfoundland and Prince Edward Island Reports
N.R.	National Reporter (Canada)
O.A.C.	Ontario Appeal Cases
OAS	Old Age Security (Canada)
OCCS	Ontario Child Care Supplement for Working Families
OCMW	Openbare Centra voor Maatschappelijk Welzijn (Public Centres for Social Welfare) (Belgium)
ODSB	Ontario Disability Support Program
OHIP	Ontario Health Insurance Plan
OJ	Official Journal of the European Union
ONWSIAT	Ontario Workplace Safety and Insurance Appeals Tribunal
O.R.	Ontario Reports
Q.B.D.	Queen's Bench Division (England), Law Reports
QPIP	Quebec's Parental Insurance Plan
QPP	Quebec Pension Plan
R151	Migrant Workers Recommendation
(R)ESC	(Revised) European Social Charter
Rev.dr.étr	Revue du droit des étrangers (Belgian law journal)
R.F.L.	Report of Family Law (Canada)
RIZIV	Rijksinstituut voor ziekte- en invaliditeitsverzekering (National Sickness and Invalidity Insurance Institute) (Belgium)
RKW	Rijksdienst voor Kinderbijslag voor Werknemers (National Office for Family Allowances for Employees) (Belgium)
R.P.R.	Real Property Reports (Canada)
R.S.C.	Revised Statutes of Canada, 1985
R.S.O.	Revised Statutes of Ontario, 1990
R.S.Q.	Revised Statutes of Quebec
RSZ	Rijksdienst voor Sociale Zekerheid (National Social Security Office) (Belgium)
RVA	Rijksdienst voor Arbeidsvoorziening (National Employment Office) (Belgium)
Rva 2005	Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005 (Regulation on Services for Asylum-Seekers and Other Categories of Aliens) (The Netherlands)

Rvb	Regeling verstrekkingen bepaalde categorieën vreemdelingen (Regulation on Services for Certain Categories of Aliens) (The Netherlands)
RVP	Rijksdienst voor Pensioenen (National Office for Pensions) (Belgium)
S.C.	Statutes of Canada
SCC	Supreme Court of Canada (for neutral citation)
Sched.	Schedule
S.C.R.	Canada Law Reports, Supreme Court of Canada
SIN	Social Insurance Number (Canada)
SIS-kaart	Sociale identiteitskaart (Social Security Card) (Belgium)
S.O.	Statutes of Ontario
Soc. Kron.	Sociaalrechtelijke kronieken (Belgian law journal)
Sofi-nummer	Sociaal-fiscaal nummer (Social Fiscal Number) (The Netherlands)
SOR	Statutory Orders and Regulations (Canada)
S.Q.	Statutes of Quebec
Stb	Staatsblad (State Journal) (The Netherlands)
Stcrt	Staatscourant (State Gazette) (The Netherlands)
Supp.	Supplement
Tax A.B.C.	Tax Appeal Board Cases (Canada)
T.C.J.	Tax Court Judge (Canada)
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
T.L.R.	Times Law Reports (England)
UCCB	Universal Child Care Benefit (Canada)
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN Doc	Documents of the United Nations
U.K.	United Kingdom
U.S.	United States of America
Wajong	Wet arbeidsongeschiktheidsvoorziening jonggehandicapten (Disablement Assistance Act for Disabled Young Persons) (The Netherlands)
WAO	Wet op de Arbeidsongeschiktheidsverzekering (Occupational Disability Insurance Act) (The Netherlands)
WAZ	Wet arbeidsongeschiktheidsverzekering zelfstandigen (Occupational Disability Insurance Act for Self-Employed Persons) (The Netherlands)
WAZO	Wet arbeid en zorg (Work and Care Act) (The Netherlands)
W.C.A.T.R.	Workers' Compensation Appeals Tribunal Reports (Canada)
Wet BIG	Wet op de beroepen in de individuele gezondheidszorg (Individual Health Care Professions Act) (The Netherlands)
Wet COA	Wet Centraal Orgaan opvang asielzoekers (Act on the Central Agency for the Reception of Asylum-Seekers) (The Netherlands)
Wet Wia	Wet werk en inkomen naar arbeidsvermogen (Work and Income According to Labour Capacity Act) (The Netherlands)



Abbreviations

WGA	Werkhervattingsregeling Gedeeltelijk Arbeidsongeschikten (Resumption of Work for Partially Disabled Employees Scheme) (The Netherlands)
WL	Westlaw
WSI (B/AT)	Workplace Safety and Insurance (Board/Appeals Tribunal) (Canada)
WW	Werkloosheidswet (Unemployment Insurance Act) (The Netherlands)
WWB	Wet Werk en Bijstand (Work and Social Assistance Act) (The Netherlands)
WWIK	Wet Werk en Inkomen Kunstenaars (Work and Income for Artists Act) (The Netherlands)
W.W.R.	Western Weekly Reports (Canada)
ZVW	Zorgverzekeringswet (Health Care Insurance Act) (The Netherlands)
ZW	Ziektewet (Sickness Benefits Act) (The Netherlands)

## TRANSLATIONS

(most relevant ones)

### Belgium

Aliens' Appeal Council	Raad voor Vreemdelingenbetwistingen
Belgian State Gazette	Belgisch Staatsblad
Chamber	Kamer
Circular Letter	Omzendbrief
Constitutional Court	Grondwettelijk Hof
Council of State	Raad van State
Court of Arbitration	Arbitragehof
Court of Cassation	Hof van Cassatie
Crossroads Bank for Social Security	Kruispuntbank van de Sociale Zekerheid
Crossroads Bank Number	Kruispuntbanknummer, bisnummer
Crossroads Bank Registers	Kruispuntbankregisters
Disabled Person's Allowance	Tegemoetkomingen aan personen met een handicap
Federal Agency for the Reception of Asylum-Seekers	Federaal Agentschap voor de opvang van asielzoekers
Federal Public Service (federal ministry)	Federale Overheidsdienst
FPS Employment, Labour and Social Dialogue	FOD Werkgelegenheid, Arbeid en Sociaal Overleg
FPS Home Affairs	FOD Binnenlandse Zaken
FPS Social Integration, anti-Poverty Policy, Social Economy and Federal Urban Policy	POD Maatschappelijke Integratie, Armoedebestrijding, Sociale Economie en Grootstedenbeleid
FPS Social Security	FOD Sociale Zekerheid
Guaranteed Family Allowance	Gewaarborgde gezinsbijslag
Immigration Service	Dienst Vreemdelingenzaken
Instruction	Instructie
Integration Income	Leefloon
Labour Accident Fund	Fonds voor Arbeidsongevallen

Labour Court of Appeal	Arbeidshof / Cour du Travail
Labour Court of First Instance	Arbeidsrechtbank / Tribunal du travail
Maximum Wage Threshold	Maximum basisjaarloon
Minimum Income for the Elderly	Inkomensgarantie voor ouderen
Minimum Income Schemes	Minimumsvoorzieningen
National Employment Office	Rijksdienst voor Arbeidsvoorziening
National Office for Family Allowances for Employees	Rijksdienst voor Kinderbijslag voor werknemers
National Office for Pensions	Rijksdienst voor Pensioenen
National Register Number	Rijksregisternummer
National Sickness and Invalidity Insurance Institute	Rijksinstituut voor ziekte- en invaliditeitsverzekering
National Social Security Office	Rijksdienst voor Sociale Zekerheid
Notice	Bericht
Occupational Diseases Fund	Fonds voor de Beroepsziekten
Parliamentary documents	Parlementaire stukken
Public Centres for Social Welfare	Openbare Centra voor Maatschappelijk Welzijn
Public Prosecutor	Procureur des Konings van het Openbaar Ministerie
Regulation	Verordening
Relief Fund for Sickness and Invalidity Insurance	Hulpkas voor ziekte- en invaliditeitsverzekering
Report to the king	Verslaag aan de koning
Royal Decree	Koninklijk Besluit
Senate	Senaat
Social Integration	Maatschappelijke integratie
Social Security Card	Sociale identiteitskaart, SIS-kaart
Social Security Number	Identificatienummer van de Belgische sociale zekerheid, INSZ-nummer
Social Welfare Services	Maatschappelijke dienstverlening
Specifications	Precisering

## The Netherlands

Attachment to Proceedings	Aanhangsel van de Handelingen
Central Agency for the Reception of Asylum-Seekers	Centraal Orgaan opvang asielzoekers
Central Appeals Tribunal	Centrale Raad van Beroep
Citizen Service Number	Burgerservicenummer
Council of State	Raad van State
Court of Appeal	Gerechtshof
Decree	Besluit

District Judge	Kantonrechter
Dutch Healthcare Authority	Nederlandse Zorgautoriteit
Employee Insurance Administration Institution	Uitvoeringsinstituut Werknemersverzekeringen
Employee insurance schemes	Werknemersverzekeringen
Explanatory Memorandum	Memorie van Toelichting
Explanatory Note	Nota van Toelichting
General insurance schemes	Volksverzekeringen
General Public Prosecutor	Procureur-Generaal
Guidelines	Circulaire
Health Care Insurance Board	College voor Zorgverzekeringen
Immigration and Naturalisation Service	Immigratie- en Naturalisatiedienst
Inspection Service for Work and Income	Inspectie Werk en Inkomen
Local executives	Colleges van Burgemeesters en Wethouders
Ministry of Finance	Ministerie van Financiën
Ministry of Health, Welfare and Sport	Ministerie van Volksgezondheid, Welzijn en Sport
Ministry of Security and Justice	Ministerie van Veiligheid en Justitie
Ministry of Social Affairs and Employment	Ministerie van Sociale Zaken en Werkgelegenheid
Municipal database	Gemeentelijke basisadministratie
National case law number	Landelijk Jurisprudentie Nummer
National Office for Documents of the Royal Constabulary	Nationaal Bureau Document van de Koninklijke Marechaussee
Order in Council	Algemene maatregel van bestuur
Parliamentary Papers	Kamerstukken
Regional Court	Rechtbank
Regulation	Regeling
Secretary of State	Staatssecretaris
Social Fiscal Number	Sociaal-fiscaal nummer
Social Insurance Agency	Sociale Verzekeringsbank
State Gazette	Staatsblad
Supreme Court of the Netherlands	Hoge Raad der Nederlanden
Tax Administration	Belastingdienst