

# CROSS-BORDER WELFARE STATE

Immigration, social security  
and integration

*Edited by*

Gijsbert VONK

*With contributions by:*

Gijsbert VONK & Sarah VAN WALSUM

Paul SCHOUKENS & Danny PIETERS

Klaus KAPUY

Lieneke SLINGENBERG

Eva HILBRINK

Jeanine KLAVER & Arend ODÉ

Karin DE VRIES

Will TINNEMANS, Saskia MOERBEEK & Dilek KARAAĞAÇLI

Daan BELTMAN



intersentia

Cambridge – Antwerp – Portland

Intersentia Publishing Ltd.  
Trinity House | Cambridge Business Park | Cowley Road  
Cambridge | CB4 0WZ | United Kingdom  
Tel.: +44 1223 393 753 | Email: mail@intersentia.co.uk

*Distribution for the UK:*  
Hart Publishing Ltd.  
16C Worcester Place  
Oxford OX1 2JW  
UK  
Tel.: +44 1865 517 530  
Email: mail@hartpub.co.uk

*Distribution for the USA and Canada:*  
International Specialized Book Services  
920 NE 58th Ave. Suite 300  
Portland, OR 97213  
USA  
Tel.: +1 800 944 6190 (toll free)  
Email: info@isbs.com

*Distribution for Austria:*  
Neuer Wissenschaftlicher Verlag  
Argentinierstraße 42/6  
1040 Wien  
Austria  
Tel.: +43 1 535 61 03 24  
Email: office@nww.at

*Distribution for other countries:*  
Intersentia Publishing nv  
Groenstraat 31  
2640 Mortsel  
Belgium  
Tel.: +32 3 680 15 50  
Email: mail@intersentia.be

Cross-Border Welfare State. Immigration, social security and integration  
Gijsbert Vonk (ed.)

© 2012 Intersentia  
Cambridge – Antwerp – Portland  
www.intersentia.com | www.intersentia.co.uk

ISBN 978-1-78068-096-5  
NUR 825

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.

## PREFACE

This book contains the findings of the Cross-Border Welfare State research programme. This programme started in 2006 and created a liaison between the law faculties of the Vrije Universiteit Amsterdam, the University of Groningen and University of Leuven. *Regioplan* and the *Bureau Maatschappelijke Participatie* offered contributions. All the researchers who were involved (and some supervisors), have presented their work by means of a short chapter. The first chapter, written by Sarah van Walsum and myself, is longer and contains a overall analysis of the research findings.

The book has been prepared specifically for the *Access Denied Conference* which took place in Amsterdam on 13 and 14 March 2012. The conference commemorated the closing of the Cross-Border Welfare State research project and launched a new international research network centring around the development of alternative policies for the social protection of irregular migrant workers, with the moral support of a number of international organisations and NGOs ([www.rechten.vu.nl/accessdenied](http://www.rechten.vu.nl/accessdenied)).

I am indebted to the Stichting Institute Gak for its unfailing financial support, trust and patience.

I also thank Daan Beltman for his assistance in editing this book.

On behalf of the authors

Gijsbert Vonk (programme leader)

# CONTENTS

<i>Preface</i> .....	v
<i>List of abbreviations</i> .....	xv

## PART A.

### OVERALL ANALYSIS OF THE RESEARCH FINDINGS

Access denied. Towards a new approach to social protection for formally excluded migrants

Gijsbert VONK and Sarah VAN WALSUM .....	3
1. Introduction .....	3
1.1. Background to the study .....	3
1.2. Object, purpose and structure .....	5
1.2.1. Object and central question .....	5
1.2.2. Purpose .....	5
1.2.3. Structure .....	6
1.3. Some limitations and definitions .....	7
1.3.1. The Netherlands as a fixed point of reference .....	7
1.3.2. Defining irregular immigrants .....	7
1.3.3. Defining social protection and social inclusion .....	8
1.3.4. Defining civic integration .....	8
2. The exclusion of migrants from formal social security .....	9
2.1. General lay out .....	9
2.2. The logics of inclusion and exclusion in the original position .....	11
2.2.1. The social security perspective .....	11
2.2.2. The perspective of immigration law .....	18
2.2.3. The perspective of civic integration .....	19
2.3. The dynamics of inclusion and exclusion of migrants in social security .....	19
2.3.1. Sphere convergence: general remarks .....	19
2.3.2. Immigration policy and social security: the legal residence test .....	21
2.3.3. Immigration policies and civic integration: the consequence of failure to meet civic integration obligations .....	23

2.3.4.	Civic integration policies and social security: retrenchment to the national border . . . . .	25
2.4.	The impact of human rights on the exclusion of irregular immigrants from basic social rights . . . . .	27
2.5.	Final observations . . . . .	31
3.	The position of migrants in informal social security . . . . .	33
3.1.	Preliminary remarks . . . . .	33
3.1.1.	'Formal' and 'informal' social security . . . . .	33
3.1.2.	Insights from the informal perspective . . . . .	33
3.1.3.	Composition of paragraph 3 . . . . .	35
3.1.4.	Irregular immigrants and regular immigrants . . . . .	36
3.2.	Informal social security arrangements: three examples . . . . .	36
3.2.1.	Transnational effects of including migrants into national health care benefits . . . . .	37
3.2.2.	Transnational arrangements for housing and (paid) care . . .	38
3.2.3.	Financial provisions for retirement in the country of origin	40
3.3.	The outcome of the case studies: general discussion . . . . .	42
3.3.1.	Interaction between formal and informal social security arrangements . . . . .	42
3.3.2.	Modern communication technology . . . . .	42
3.3.3.	Varying structures of informal support . . . . .	43
3.3.4.	Varying dynamics of dependency . . . . .	45
3.4.	Final observations . . . . .	47
4.	Towards a new approach to social protection for formally excluded migrants . . . . .	48
4.1.	The need for an alternative approach? . . . . .	48
4.2.	Building blocks for an alternative approach . . . . .	50
4.2.1.	Respecting basic human rights . . . . .	50
4.2.2.	Extra-territorial responsibility for emigrants . . . . .	50
4.2.3.	International co-operation in the event of return . . . . .	51
4.3.	Respecting basic human rights . . . . .	51
4.3.1.	Providing support in individual cases of exceptional vulnerability and need . . . . .	51
4.3.2.	Respecting and protecting informal and private social security arrangements . . . . .	52
4.4.	Extra-territorial responsibility for emigrants . . . . .	54
4.5.	International co-operation in the event of return . . . . .	56
5.	Summary and final conclusions . . . . .	58
5.1.	Summary . . . . .	58
5.2.	Access denied: the road ahead . . . . .	59

## PART B.

## ESSAYS ON MIGRATION AND SOCIAL SECURITY

## Irregular labour migrants and access to social protection

Paul SCHOUKENS and Danny PIETERS . . . . . 63

1. Introduction and conceptual framework . . . . . 63
2. The irregular labour migrant and international law . . . . . 66
  - 2.1. Instruments of principle and human rights instruments. . . . . 67
    - 2.1.1. UN and ILO. . . . . 67
    - 2.1.2. Council of Europe. . . . . 67
  - 2.2. Instruments relating to the minimum standards of social protection . . . . . 70
    - 2.2.1. UN and ILO. . . . . 70
    - 2.2.2. Council of Europe. . . . . 71
  - 2.3. Non-discrimination provisions . . . . . 72
    - 2.3.1. UN and ILO. . . . . 72
    - 2.3.2. Council of Europe. . . . . 73
  - 2.4. Instruments relating to the social protection of migrant workers . . 73
    - 2.4.1. UN and ILO. . . . . 73
    - 2.4.2. Council of Europe. . . . . 76
3. Some national approaches . . . . . 76
  - 3.1. Right to health care. . . . . 77
  - 3.2. Access to social assistance . . . . . 78
  - 3.3. Right to social insurance benefits. . . . . 79
4. Which social protection to grant to irregular labour migrants? . . . . . 79
  - 4.1. The sovereignty of states to regulate access to the country . . . . . 81
  - 4.2. The sovereignty of states to regulate work in the country . . . . . 82
  - 4.3. The equilibrium between rights and duties of the people under social protection . . . . . 82
  - 4.4. The respect for human rights and the respect for the special needs of migrants . . . . . 84
  - 4.5. Coming to a balanced approach of access to social protection . . . . 84

## Irregular migrant workers and social security

Klaus KAPUY . . . . . 91

1. Background . . . . . 91
2. International legal framework . . . . . 94
3. National social security law. . . . . 96
4. Proposal . . . . . 98
  - 4.1. Personal scope of application . . . . . 99
  - 4.2. Entitlement criterion: qualifying periods and waiting periods. . . . 102

4.3.	Entitlement criterion: payment of social insurance contributions .	102
4.4.	Entitlement criteria related to the national labour market. . . . .	103
4.5.	Workers compensation and similar schemes . . . . .	105
4.6.	Medical treatment. . . . .	105
4.7.	Children and social security protection . . . . .	107
4.8.	Practical issues. . . . .	107
4.9.	Relationship with immigration law . . . . .	108
4.10.	Compliance with international obligations . . . . .	110
5.	Concluding remarks. . . . .	111

The EU Directive on reception conditions for asylum seekers in relation to international law

	Lieneke SLINGENBERG. . . . .	113
1.	Introduction. . . . .	113
2.	Separation and convergence . . . . .	115
3.	EU Directive on Reception Conditions for Asylum Seekers . . . . .	117
4.	Equal treatment? . . . . .	119
5.	Basic minimum rights? . . . . .	123
5.1.	Introduction. . . . .	123
5.2.	International Covenant on Economic, Social and Cultural Rights	123
5.3.	European Convention on Human Rights . . . . .	126
5.4.	Concluding remarks . . . . .	129
6.	Relevance of being an asylum seeker . . . . .	129
7.	Assessment of EU Reception Conditions Directive in relation to international law . . . . .	130
7.1.	Introduction. . . . .	130
7.2.	Material benefits . . . . .	131
7.3.	Health care . . . . .	133
7.4.	Reduction and withdrawal of reception benefits . . . . .	134
7.5.	State obligations not addressed by the EU Reception Conditions Directive . . . . .	136
8.	Concluding remarks. . . . .	136

The approach of the ECJ and the ECtHR to income requirements in immigration law. How the immigration clause affects judicial means-end scrutiny

	Eva HILBRINK . . . . .	139
1.	Introduction: the inevitable arbitrariness of income requirements . . . . .	139
2.	The ECtHR approach . . . . .	140
3.	The ECJ on income requirements regarding European Union citizens and their family members . . . . .	143

4.	The ECJ on income requirements in the Directive on Family Reunification . . . . .	146
5.	The main difference between the ECJ and the ECtHR explained . . . . .	148
6.	Summary . . . . .	152

## PART C.

## ESSAYS ON MIGRATION AND INTEGRATION

Civic integration in the Netherlands. A new approach towards citizenship		
	Jeanine KLAVER and Arend ODÉ . . . . .	155
1.	Introduction. . . . .	155
2.	Notions concerning citizenship and integration . . . . .	155
2.1.	Active citizenship: active participation and individual responsibility . . . . .	156
2.2.	Shared citizenship: common values and institutions . . . . .	157
2.3.	Moral citizenship: loyalty and identification . . . . .	159
3.	Civic integration policies: an overview . . . . .	160
3.1.	Civic integration in the Netherlands . . . . .	160
3.2.	Overseas civic integration . . . . .	162
3.3.	Civic integration and nationality acquisition. . . . .	163
4.	Civic integration and modern citizenship . . . . .	164
4.1.	Civic integration and citizenship as status . . . . .	164
4.2.	Civic integration and citizenship as rights . . . . .	165
4.2.1.	Civic integration and family rights . . . . .	165
4.2.2.	Civic integration and residence rights. . . . .	167
4.2.3.	Civic integration and social rights. . . . .	167
4.3.	Civic integration and citizenship as engagement. . . . .	169
4.4.	Dutch civic integration policies and citizenship as identity. . . . .	170
5.	Beyond civic integration? Concluding remarks. . . . .	172
Drawing the border of the nation. Integration as a condition for admission		
	Karin DE VRIES . . . . .	175
1.	Integration testing abroad: connecting integration and access. . . . .	175
2.	Integration requirements as an instrument of citizenship. . . . .	176
2.1.	Changing notions of integration and citizenship in the Netherlands: 1979–2010. . . . .	176
2.1.1.	From ethnic minorities to ‘active citizens’: equality and socio-economic integration . . . . .	176
2.1.2.	Towards ‘shared citizenship’: ‘Dutch culture’ as a standard for integration . . . . .	178



2.1.3.	The Act on Integration Abroad: integration as a ground for exclusion. . . . .	180
2.1.4.	After 2007: a return to ‘active citizenship’? . . . . .	181
2.1.5.	Changes to the integration exam abroad . . . . .	182
2.2.	Objections to the Dutch conceptualisation of citizenship and integration . . . . .	184
2.2.1.	‘Shared citizenship’ as a cultural norm: one-sided adjustment to ‘the Dutch identity’? . . . . .	184
2.2.2.	Integration as a ground for exclusion: a fair balance of interests? . . . . .	186
3.	Integration requirements in immigration law . . . . .	187
3.1.	Integration versus admission . . . . .	187
3.2.	Integration versus equality . . . . .	191
3.3.	The content of integration requirements. . . . .	192
4.	Compatibility of the Dutch integration exam abroad with immigration law standards . . . . .	194
5.	Conclusions . . . . .	197

PART D.  
 INFORMAL SOCIAL SECURITY FOR FORMALLY EXCLUDED  
 MIGRANTS

Across the border. A study into undocumented migrants and transnational forms of social security		
	Will TINNEMANS, Saskia MOERBEEK and Dilek KARAAĞAÇLI . . . . .	201
1.	Introduction. . . . .	201
2.	Changes in the group of excluded migrants . . . . .	202
3.	World citizens . . . . .	203
4.	Different forms of solidarity and Turkish Bulgarians. . . . .	204
5.	Social and ethnic solidarity. . . . .	205
6.	Transnationalisation of migration and Filipino domestic workers . . . . .	208
7.	Migration and development and the Latitude Care Network . . . . .	210
8.	Follow-up questions . . . . .	214
9.	New forms of insurance? . . . . .	214

PART E.  
SOCIAL PROTECTION AND VOLUNTARY RETURN

Voluntary return facilities for foreign nationals without residence permits  
in comparative perspective

Daan BELTMAN .....	219
1. Introduction. ....	219
2. Voluntary return: definition and target group. ....	220
3. Voluntary return facilities in the Netherlands. ....	221
4. Voluntary return facilities in Belgium. ....	225
5. Voluntary return facilities in Germany. ....	226
6. Voluntary return facilities in France. ....	228
7. Voluntary return facilities in the UK. ....	230
8. Rationale behind return facilities. ....	233
9. Concluding observations. ....	234
<i>Bibliography</i> .....	239
<i>Other sources of reference</i> .....	249
<i>List of case-law</i> .....	253
<i>About the authors</i> .....	257

## LIST OF ABBREVIATIONS

AGEF	Arbeitsgruppe Entwicklung und Fachkräfte
AME	Association Malienne des Expulsés
ARH	Aide au Retour Humanitaire
ARV	Aide au Retour Volontaire
AVRFC	Assisted Voluntary Returns for Families and Children
AVRIM	Assisted Voluntary Return for Irregular Migrants
BAMF	Bundesamt für Migration und Flüchtlinge
BMP	Bevordering Maatschappelijke Participatie
CEFR	Common European Framework of Reference
CESCR	Committee of Economic, Social and Cultural Rights
CFMW	Commission for Filipino Migrant Workers
CoE	Council of Europe
COS	Centra voor Ontwikkelingssamenwerking
CTHB	Convention on Action against Trafficking in Human Beings
DG	Directorate General
DT&V	Dienst Terugkeer & Vertrek
EC	European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECMW	European Convention on the Legal Status of Migrant Workers
ECSMA	European Convention on Social and Medical Assistance
ECtHR	European Court of Human Rights
EEA	European Economic Area
EEC	European Economic Community
EMN	European Migration Network
ERSO	European Reintegration Support Organisations
ESC	European Social Charter
FRS	Facilitated Return Scheme
GARP	Government Assisted Repatriation Programme
HRT	Herintegratieregeling Terugkeer
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant of Economic, Social and Cultural Rights
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ILO	International Labour Organization

IMO	International Maritime Organization
IOM	International Organization for Migration
ISSA	International Social Security Association
LCN	Latitude Care Network
MBT	Maatwerk bij Terugkeer
NGO	Non-Governmental Organisation
OCMW	Openbare Centra voor Maatschappelijk Welzijn
OFII	Office Français de l'Immigration et de l'Intégration
OWWA	Overseas Workers Welfare Administration
REAB	Return and Emigration of Asylum-Seekers ex-Belgium
REAG	Reintegration and Emigration Programme for Asylum-Seekers in Germany
REAN	Return and Emigration of Aliens from the Netherlands
SSAE	Service Social d'aide aux Emigrants
UKBA	United Kingdom Border Agency
UN	United Nations
URA	Urban Redevelopment Authority
VARRP	Voluntary Assisted Return and Reintegration Programme
VVD	Volkspartij voor Vrijheid en Democratie
WVC	Werkgelegenheid Volksgezondheid en Cultuur