

TABLE OF CONTENTS

SERIES PREFACE	v
AUTHORS' PREFACE	ix
TABLE OF CONTENTS – SUMMARY	xi
LIST OF ABBREVIATIONS	xv
CONVERSION TABLE EC TREATY – TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION	xvii
<i>PART I. INTRODUCTION</i>	1
1.1. STRUCTURE OF THE BOOK	3
1.1.1. Introductory Remarks	3
1.1.2. Voluntary and Forced Migration	3
1.1.3. Structure of the Book	4
1.2. EUROPEAN MIGRATION: A BRIEF HISTORIC SURVEY	7
1.2.1. A Concise History of European Migration	7
1.2.2. The Formation of European Migration Law	11
1.3. BASIC CONCEPTS OF MIGRATION LAW	13
1.3.1. What is Migration?	13
1.3.2. State, Territory and Borders	14
1.3.3. Nationality	17
1.3.4. Statelessness	20
1.3.5. State Sovereignty and Immigration Control	23
1.3.6. The Position of Individuals Under International Law	25
1.3.7. Jurisdiction and Extraterritorial State Responsibility	27
1.3.8. Discrimination and Distinction According to Nationality in Migration Law	31

1.4. THE MULTI-LEVEL STRUCTURE OF EUROPEAN MIGRATION LAW	35
1.4.1. Sources of European Migration Law	35
1.4.2. The Relation Between National Law and Human Rights Treaties.	36
1.4.3. The Relation Between National Law and European Community Law – EU Law After Lisbon.	37
1.5. EU CITIZENS AND THIRD COUNTRY NATIONALS: THE DEVELOPMENT OF MOVEMENT OF PERSONS IN THE EU	39
1.5.1. Movement of Persons in the EU: An Ongoing Development with Ups and Downs	39
1.5.2. Free Movement of the Market Citizen	39
1.5.3. Intergovernmental Cooperation Relating to Immigrants from Third Countries: Schengen and Dublin	41
1.5.4. The Treaties of Maastricht and Amsterdam	43
1.5.5. EU Citizens and Third Country Nationals: Refining the Distinction ..	44
1.5.6. The Treaty of Lisbon	46
PART II. VOLUNTARY MIGRATION	49
2.1. FREE MOVEMENT OF EU CITIZENS AND MEMBERS OF THEIR FAMILY	51
2.1.1. Introduction	51
2.1.2. Right of Residence Under Directive 2004/38	52
2.1.3. Family Members	53
2.1.4. Equal Treatment	54
2.1.5. Administrative Formalities	56
2.1.6. Termination of Residence	57
2.1.7. Expulsion	58
2.1.8. Exclusion	59
2.1.9. Procedural Safeguards	60
2.1.10. Abuse of Rights	61
2.1.11. Development of Free Movement Rights in the Case Law of the ECJ ...	63
2.1.12. General Approach of the ECJ	63
2.1.13. Free Movement of Workers	65
2.1.14. Freedom of Establishment	67
2.1.15. Freedom to Provide and Receive Services	68
2.1.16. Posting of Workers Directive and Services Directive	69

2.1.17. Prohibition of Discrimination on Grounds of Nationality	70
2.1.18. Rights of Family Members	72
2.1.19. Strictly Internal Situations	75
2.1.20. The ‘Akrich’ Enigma: A Historic Discussion on Lawful Residence as an Alleged Precondition	76
2.1.21. A General Right for Union Citizens to Move and Reside Freely Within the Territory of the Member States	82
2.1.22. Right to Social Assistance as a Corollary of Article 18 TEC	84
2.1.23. Some Conclusions on the Impact of Article 18 TEC	86
2.1.24. Residence Rights of Students	87
2.1.25. Final Remarks	88
2.2. RESIDENCE RIGHTS OF TURKISH NATIONALS UNDER THE ASSOCIATION AGREEMENT	91
2.2.1. Introduction	91
2.2.2. Migration Aspects of Association and Cooperation Treaties	91
2.2.3. The European Economic Area and the Association with Switzerland	92
2.2.4. Cooperation with Mediterranean Countries	93
2.2.5. Europe Agreements	94
2.2.6. The Association Treaty with Turkey – An Outline	95
2.2.7. Gradual Access of Turkish Workers to the Labour Market	97
2.2.8. ‘Worker’	98
2.2.9. ‘Being Duly Registered as Belonging to the Labour Force’	99
2.2.10. ‘Legal Employment’	99
2.2.11. Termination of the Residence Right of a Worker	102
2.2.12. Ceasing to Belong to the Labour Force	102
2.2.13. Exceptions of Public Policy, Public Security and Public Health	104
2.2.14. Rights of Family Members	105
2.2.15. Independent Rights to Residence for Family Members	106
2.2.16. Period of Legal Residence with a Turkish Worker	107
2.2.17. Vocational Training	107
2.2.18. Termination of Residence Rights of Family Members	108
2.2.19. Self-Employed Turkish Nationals	110
2.2.20. Final remarks	113
2.3. FREE MOVEMENT OF THIRD COUNTRY NATIONALS UNDER EU LAW AND THE ECHR	115
2.3.1. Introduction	115
2.3.2. Characteristics of Freedom of Movement	117

2.3.3. Freedom of Movement Under the ECHR	118
2.3.4. Freedom to Leave One's Country	118
2.3.5. Freedom to Enter One's Own Country and to Remain There	122
2.3.6. Liberty of Movement Within the Territory.	125
2.3.7. Freedom to Enter a Foreign Country and to Remain There.	127
2.3.8. Freedom of Movement Under the ECHR: Concluding Remarks	133
2.3.9. Freedom of Movement of Third Country Nationals Under the EC Treaty – Internal and External Movement	134
2.3.10. Internal Free Movement of Third Country Nationals.	136
2.3.11. External Free Movement of Third Country Nationals	137
2.3.12. Free Movement of Third Country Nationals: Summary.	139
2.4. FAMILY REUNIFICATION AND PROTECTION OF SETTLED MIGRANTS UNDER ARTICLE 8 ECHR.	141
2.4.1. Introduction.	141
2.4.2. Other Relevant Human Rights Sources.	142
2.4.3. Respect for Family Life Under Article 8 ECHR – Positive and Negative Obligations.	144
2.4.4. Family Life	145
2.4.5. Private Life	148
2.4.6. Interferences and Justifications.	149
2.4.7. Termination of Lawful Residence After Divorce or Separation when a Child Is Involved	151
2.4.8. Termination of Lawful Residence on Grounds of Public Order	153
2.4.9. State Obligations to Accept New Immigrants to Reside for Reasons of Family Life	161
2.4.10. Is There a Nationality-Linked Right to Live with One's Family in One's Own Country?	167
2.4.11. Sufficient Means of Subsistence.	168
2.4.12. Article 8 ECHR: Concluding Remarks	170
2.4.13. Family Life According to the ICCPR.	171
2.4.14. The Convention on the Rights of the Child	174
2.4.15. The Best Interests of the Child	175
2.4.16. Family Reunification Under the CRC	176
2.4.17. Conclusion	178
2.5. THE FAMILY REUNIFICATION DIRECTIVE	179
2.5.1. Introduction.	179
2.5.2. History	180

2.5.3. Scope and Definitions	181
2.5.4. The Impact of General Principles of Community Law According to the Court of Justice.	183
2.5.5. The Sponsor	187
2.5.6. Optional Conditions Relating to the Sponsor	188
2.5.7. Family Members Eligible for Family Reunification.	189
2.5.8. Optional Derogations Relating to Children	190
2.5.9. Optional Categories of Eligible Family Members	191
2.5.10. Conditions for the Exercise of the Right to Family Reunification	193
2.5.11. Public Policy, Public Security and Public Health.	193
2.5.12. Housing, Health Insurance, Means of Subsistence	194
2.5.13. Integration Measures	195
2.5.14. Grounds for Refusal, Non-Extension and Withdrawal.	197
2.5.15. Submission and Examination of the Application	198
2.5.16. Access to Work and Education	200
2.5.17. Autonomous Right of Residence.	201
2.5.18. Family Reunification of Refugees.	202
2.5.19. Final Remarks	204
2.6. THE DIRECTIVE ON LONG-TERM RESIDENTS	205
2.6.1. Introduction	205
2.6.2. History	205
2.6.3. Scope	206
2.6.4. Requirements for Long-Term Resident Status in the First Member State	209
2.6.5. Equal Treatment in the First Member State	211
2.6.6. Protection Against Expulsion in the First Member State: Questions on the Nature of the LTR Status	213
2.6.7. Withdrawal and Loss of the Status in the First Member State.	216
2.6.8. Residence Rights in Other Member States	217
2.6.9. Requirements for Residence in the Other Member State	218
2.6.10. Protection Against Expulsion for Reasons of Public Order and Security in the Other Member State.	220
2.6.11. Withdrawal and Loss of Residence Permit in the Other Member State	220
2.6.12. Family Members	221
2.6.13. The Rights of the Long-Term Resident Under the Directive Put in Perspective	222
2.6.14. Conclusion	224

2.7. WORKERS, STUDENTS AND RESEARCHERS FROM THIRD COUNTRIES.....	225
2.7.1. Introduction.....	225
2.7.2. Harmonising Labour Migration Law: A History of Attempts.....	228
2.7.3. The Blue Card Directive 2009/50	230
2.7.4. Conditions, Procedure for Blue Card Applicants.....	233
2.7.5. Rights of Blue Card Holders	236
2.7.6. Family Members of Blue Card Holders	239
2.7.7. The Employers' Sanctions Directive 2009/52	239
2.7.8. The Researchers Directive 2005/71.....	244
2.7.9. Rights of Researchers Apart from the Right to Residence	246
2.7.10. The Students Directive 2004/114.....	247
2.7.11. Mobility and Economic Activity of Students	249
2.7.12. Final Remarks	250
PART III. FORCED MIGRATION	251
3.1. INTERNATIONAL REFUGEE PROTECTION.....	253
3.1.1. Asylum in International Law.....	253
3.1.2. Refugee Protection by UNHCR	254
3.1.3. Protection as a Refugee in Accordance with the Refugee Convention.....	255
3.1.4. Sources for Interpreting the Refugee Convention	257
3.1.5. Structure and Content of the Refugee Convention	259
3.1.6. The Definition of a Refugee, Declaratory Character of Recognition ..	262
3.1.7. Well-Founded Fear	263
3.1.8. Individualisation and a <i>Prima Facie</i> Claim for Protection.....	264
3.1.9. Refugee ' <i>Sur Place</i> '.....	264
3.1.10. Persecution.....	266
3.1.11. Actors of Persecution	267
3.1.12. Reasons for Persecution	268
3.1.13. Nexus Between Persecution and the Persecution Reasons.....	271
3.1.14. Being Unable or Unwilling to Avail of State Protection	272
3.1.15. Prosecution Amounting to Persecution	274
3.1.16. Sexual Violence and Female Genital Mutilation	275
3.1.17. Exclusion from Refugee Protection Under Article 1F.....	276
3.1.18. Serious Reasons for Considering	277
3.1.19. Article 1F(a) Crimes Against Peace, War Crimes and Crimes Against Humanity.....	277

3.1.20. Article 1F(b): Serious Non-Political Crimes	280
3.1.21. Article 1F (c): Acts Contrary to the Purposes and Principles of the United Nations	282
3.1.22. Individual Responsibility of the Excluded Person	283
3.1.23. Grounds for Rejecting Individual Responsibility for Excludable Acts	284
3.1.24. Proportionality Considerations in Applying Exclusion	285
3.1.25. Protection Against Refoulement Under the Refugee Convention.	286
3.1.26. Concluding Remarks	288
3.2. ASYLUM PROTECTION UNDER THE ECHR	291
3.2.1. Introduction	291
3.2.2. The Role of the European Court of Human Rights in Securing Protection Under Article 3 ECHR	292
3.2.3. The Prohibition of Refoulement Under Article 3 ECHR	297
3.2.4. Risk Assessment, Special Distinguishing Features, Situations of General Violence	298
3.2.5. Internal Protection Alternative	303
3.2.6. Diplomatic Assurances to Guarantee Safety.	305
3.2.7. Assessing the Facts	309
3.2.8. Concluding Remarks	313
3.3. THE COMMON EU ASYLUM SYSTEM	315
3.3.1. Introduction	315
3.3.2. Towards Harmonisation of Asylum Policies.	316
3.3.3. The Legal Basis of the Common European Asylum System.	318
3.3.4. Personal Scope	319
3.3.5. Secondary Asylum Legislation Adopted so Far	321
3.3.6. The Interrelated Character of the Regulation and the Directives	322
3.3.7. Dublin Regulation.	323
3.3.8. The Sovereignty Clause and the Humanitarian Clause.	325
3.3.9. The Obligation to Be a Safe State.	326
3.3.10. Procedural and Administrative Principles: Taking Charge and Taking Back	328
3.3.11. Eurodac: Fingerprints for Dublin.	328
3.3.12. Notes on the Dublin System	329
3.3.13. Reception Conditions Directive	331
3.3.14. Minimum Reception Standards of the Reception Conditions Directive	332

3.3.15. Reduction and Withdrawal of Reception Conditions	334
3.3.16. Notes on the Reception Conditions Directive	335
3.3.17. Qualification Directive.	336
3.3.18. Qualification of Persons as ‘Refugees’ or as ‘Persons Eligible for Subsidiary Protection’: Common Provisions	338
3.3.19. Refugee Status	340
3.3.20. Subsidiary Protection Status	341
3.3.21. Content of Protection Under the Qualification Directive: Rights and Benefits Attached to Status of ‘Refugee’ and ‘Beneficiary of Subsidiary Protection’	343
3.3.22. Notes on the Qualification Directive	346
3.3.23. The Procedures Directive.	347
3.3.24. Procedural Standards of the Procedures Directive	348
3.3.25. Normal and Special Procedures	349
3.3.26. Accelerated Procedures	349
3.3.27. Inadmissible Applications – Countries of First Asylum and Safe Third Countries	350
3.3.28. Unfounded Applications – Safe Countries of Origin	351
3.3.29. Special Procedures: Border Procedures, Subsequent Applications and European Safe Third Countries.	352
3.3.30. Withdrawal and Appeals Procedures.	353
3.3.31. Notes on the Procedures Directive.	354
3.3.32. The Temporary Protection Directive	355
3.3.33. Notes on the Temporary Protection Directive	357
3.3.34. Financial Burden-Sharing Between Member States	357
3.3.35. Concluding Remarks	358
3.4. VICTIMS OF HUMAN TRAFFICKING	363
3.4.1. Introduction.	363
3.4.2. International Protection of Victims of Trafficking	364
3.4.3. Rights of Residence Under Directive 2004/81	365
3.4.4. Treatment of Victims Under Directive 2004/81.	368
3.4.5. Final Remarks	369
PART IV. IMMIGRATION CONTROL	373
4.1. LIMITS OF CONTROLLING POWERS OF STATES UNDER THE ECHR	375
4.1.1. Introduction.	375
4.1.2. Prohibition of Expulsion and Deportation	376

4.1.3. Good Administration in Cases of Expulsion and Deportation	377
4.1.4. Effective Remedies in Cases of Expulsion and Deportation	380
4.1.5. Prohibition of Deprivation of Liberty	384
4.1.6. Good Administration in Cases of Deprivation of Liberty	387
4.1.7. Effective Remedies in Cases of Deprivation of Liberty	389
4.1.8. Prohibitions Relating to Exclusion Orders	390
4.1.9. Good Administration Relating to Exclusion Orders	391
4.1.10. Effective Remedies Relating to Exclusion Orders	391
4.1.11. Prohibitions of Data Storage and Data Exchange	392
4.1.12. Good Administration Relating to Data Storage and Data Exchange . .	393
4.1.13. Effective Remedies Relating to Data Storage and Data Exchange	394
4.1.14. Final Remarks	394
4.2. EXTERNAL BORDER CONTROLS, EXPULSION MEASURES AND VISAS UNDER EU LAW	397
4.2.1. Introduction	397
4.2.2. History	397
4.2.3. Structure of the Chapter	401
4.2.4. Entry: The Schengen Borders Code	402
4.2.5. Entry Conditions Under the SBC	402
4.2.6. Entry: Procedural Guarantees Under the SBC	404
4.2.7. Visas: Short-Term and Long-Term Visas	405
4.2.8. Visas: The Schengen Visa	406
4.2.9. Conditions for Obtaining a Schengen Visa	407
4.2.10. Visas: Short-Term Stay	408
4.2.11. Return and Removal: The Returns Directive	411
4.2.12. Voluntary Return and Removal	413
4.2.13. Detention: The Returns Directive	414
4.2.14. Detention Conditions Under the Returns Directive	415
4.2.15. Detention: Unforeseen Situations	416
4.2.16. Exclusion: Listing in the SIS, Entry Ban Under the Returns Directive and Other Exclusion Measures	417
4.2.17. Conditions for Entering an Alert in the SIS II and for Issuing an Entry Ban Under the Returns Directive	419
4.2.18. Good Administration and Remedies Concerning Return and Entry Ban Decisions Under the Returns Directive	421
4.2.19. Data Storage	422
4.2.20. Operational Cooperation	425
4.2.21. Concluding Remarks	427

PART V. CONCLUDING REMARKS..... 431

BIBLIOGRAPHY 439

LIST OF CASES..... 447

INDEX..... 457

ABOUT THE AUTHORS 467