

The Legal Management of Migration in Germany and Europe

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이 논문은 최근 유럽대륙으로의 이주에 적용되는 수많은 규제들 때문에 독일과 그 외의 유럽 연합 국가들이 처한 이주에 관련된 법적규제에의 주요 난제들을 설명하고 있다. 그렇게 함으로써 우리 삶속에서 실제로 존중되고 시행되는 법규들이 결코 자명하게 동의가 되게끔 설계되지 않는다는 것을 보여준다. 더불어, 이민법의 다른 영역들이 구분되어야 할 것이다. 이는 특정부문을 구별 짓는 해법이 요구될 것이다.

주제어 : 이주, 유럽 연합, 독일, 정신 병원, 불법 이주, 반환, 가족 재회, 인권

It is not an easy task to describe the state of German and European migration new on a few pages. Migration is a diverse phenomenon and there are plenty legal issues involved. I have decided, therefore, to focus on a general theme –migration management– and to discuss it under recourse to five examples, which provide a representative overview of core developments and problem areas in Germany and Europe.

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I . General Theme: Migration Management

My general theme is laid down in the founding Treaty of the European Union, more precisely in Article 79(1), which establish a basic objective: ‘The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows...’¹⁾ Along similar lines, Section 1 of the German Residence Act states: ‘This Act serves to manage and restrict the influx of foreigners into the Federal Republic of Germany.’²⁾

This double objective expresses a paradigm shift. Although European states have always played an active role in managing migration,³⁾ they realised in recent years that policies had limited impact in practice. States often reacted ‘passively’ to external events instead of ‘proactively’ shaping social realities.⁴⁾ States adopted policies only to find out a few years later that they did not work; they had unintended consequences.

The prime example are the so-called guest worker programmes of the 1960s, when Germany and other states invited people from Turkey and elsewhere to work temporarily. This was never intended to be permanent immigration, both the host state and the workers themselves expected that they would return after a few years. Yet, many ‘guest workers’ settled and brought families along.⁵⁾ Thus, Germany became a country of immigration without a conscious decision that this should be the case.

This perception of impotence explains why states strive for regulatory leverage and promote

1) Art. 79,1 Treaty on the Functioning of the European Union of 13 Dec 2007 (OJ 2008 C 115/47), as amended by the Treaty of Nice.

2) Section 1,1, 1st sentence of the Residence Act (Aufenthaltsgesetz), online at http://bundesrecht.juris.de/aufenthg_2004; as amended by the immigration code in 2004.

3) Especially in comparison to the US, see S. Castles, “The Factors that Make and Unmake Migration Policies”, *38 International Migration Review*, 2004, p.852, pp.855–6.

4) cf also the (in)famous aspiration of ‘immigration choisie, non subie’ by the French President Nicolas Sarkozy in 2003 as minister of the interior.

5) One may describe immigration policy in Western Europe as a sequence of state failures to achieve the declared policy objective with regard to ‘guest workers’, family reunification and asylum; for various domestic and external reasons, many guestworkers settled; ‘zero immigration’ policies did not stop family reunification; and asylum procedures functioned as de facto immigration policies (moreover, illegal immigration persists); see J. Hollifield, “The Emerging Migration State”, *38 IM Rev.*, 2006, p.885, pp.894–9.

migration management as an end in itself. Immigration is not meant to occur ‘outside the law’ – like in the US⁶⁾ or in many emerging economies⁷⁾ – but rather, as far as possible, under the control of public authorities. It is not the economy or the society, which primarily define the movement of people, but the law. Of course, the management objective remains counter-factual. Also in Europe, the state is not in full control. Yet, the management paradigm indicates that it aspires to adopt rules, which have an impact in practice.

The Treaty’s choice of terminology is not beyond doubt, since the term ‘management’ can be (mis-)understood to signal a depoliticised treatment of human beings akin to objects; a sort of modern ‘biopower’ in a Foucaultian sense.⁸⁾ In my academic writing, I use the neutral term ‘migration governance’ instead in order to emphasise that the management perspective of state authorities must be accommodated with legitimate interests of migrants in line with human rights.⁹⁾

For academic analysis, this entails a methodological shift, which is very popular in German administrative law these days. It contends, rightly in my view, that the traditional focus on doctrinal interpretation has to be complemented with a governance perspective, which considers how laws are being applied and what can be done to render them more effective.¹⁰⁾ I will explain the implications of this approach with regard to five areas.

II. EU Citizens

In order to understand the legal situation in Germany, a basic distinction needs to be drawn.

6) See H. Motomura, “Immigration Outside the Law”, *108 Columbia Law Review*, 2008, pp. 2037–2097.

7) It should be noted that app. 60 % of all international migrants live outside developed countries in the Northern hemisphere.

8) See also R. Cholewinski, “The Criminalisation of Migration in EU Law and Policy” in Toner et al. (Ed.), *Whose Freedom, Security and Justice?* Hart, 2007, pp.301–336.

9) See D. Thym, “EU Migration Policy and its Constitutional Rationale”, *50 Common Market Law Review*, 2013, p.709, pp.721–723.

10) See, by way of introduction, A. Voßkuhle, “Neue Verwaltungsrechtswissenschaft” in Hoffmann–Riem/Schmidt–Aßmann/ibid. (Ed.), *Grundlagen des Verwaltungsrechts*. Band 1, C.H. Beck, 2006, § 1.

We must distinguish the status of EU citizens from rules for so-called third-country nationals – ‘third-country national’ is the term in EU law for those who do not hold the passport of an EU Member State. If you consider the statistics, you learn that almost 50% of foreigners in Germany come from the European Union – and with regard to this group the state has little management capabilities. The reason is simple. Within the European Union, borders have lost their relevance both physically through the abolition of border controls in the Schengen area and legally.

As you may know, the EU Treaties lay down an individual right to free movement. It has constitutional status and can be invoked directly in national courts, which stand ready to enforce European law. This is the famous supranational character of European Union law, which – unlike public international law – takes precedence over national laws in cases of conflict.¹¹⁾ That situation is most evident for workers. Ever since 1957, they have been guaranteed the right to take up any job across the continent. Even an unemployment rate of 25% would not allow Germany to refuse entry.¹²⁾ These rules have been interpreted generously by the Court of Justice (hereinafter ECJ).¹³⁾ Part-time workers may work abroad, for instance, even if they depend upon additional social assistance.¹⁴⁾

That is not to say that the free movement does not cause any problems. To the contrary, there is a lively debate both in Germany and other Member States about European mobility at the moment – and the reason is simple: numbers have risen by almost one million in recent years in Germany – and we will probably have another big increase this year.

It is important to understand that the political frictions about intra-European mobility are not primarily about workers. As indicated a minute ago, there is an almost unconditional right to work anywhere in Europe. Instead, the political and legal debate, which we have in Germany, the United Kingdom and other European states now, is about those who do

11) For further reading, see any EU law textbook, such as P. Craig and G. de Búrca, *EU Law. Text, Cases and Materials*, 5th ed., OUP, 2011.

12) Transitional periods for new Member States elapse automatically after the time period specified in the Treaty of Accession.

13) For an overview see S. O’Leary, “Free Movement of Persons and Services”, in Craig and de Búrca (Eds.), *The Evolution of EU Law*, 2nd edn, OUP, 2011, p.499, pp.528–533.

14) cf CJEU, Case 139/85, Kempf [1986] ECR 1741.

not work – and who claim social assistance after having moved to Germany. In this respect, many issues remain unclear, since the EU Treaty and EU legislation are ambiguous under which conditions such a generic right to free movement exists – and I spend quite a lot of my time at the moment to explore corresponding limits.¹⁵⁾

In a nutshell: Empirically, the free movement of EU citizens is very important, since around 50% of all foreigners living in Germany have a European passport. Yet, states have little power left to manage mobility within Europe. It is based upon individual rights enshrined in the EU Treaties, which effectively reject statist claims to migration management.

III. Asylum

For a simple reason, asylum is a core area of European migration law: the numbers are high (compared to East Asia) and they have increased substantially in recent years. In 2013, there were 435 thousand asylum applications in the European Union, more than twice as much as seven years ago.¹⁶⁾ That is equivalent to more than 40,000 asylum seekers per year in South Korea. Moreover, asylum is an excellent example to illustrate three core problems of European migration law.

Firstly, there is the federal problem. Europe needs to find a fair division of labour between Member States. At present, this is not the case. The number of asylum seekers differs greatly between Member States.¹⁷⁾ Moreover, some countries are accused of not having established functioning asylum systems – although they are obliged to do so under EU law.¹⁸⁾ Given that the federal problem is quite specific to the European context, I will not elaborate on

15) For details, see D. Thym, “Sozialleistungen für und Aufenthalt von nichterwerbstätigen Unionsbürgern”, *Neue Zeitschrift für Sozialrecht*, 2014, pp.81–90.

16) See, Eurostat, March 2014 (online data codes: migr_asyappctza and migr_asyappctzm – for 2013)

17) Under the so-called ‘Dublin system’, the country of first entry shall, as a matter of principle be responsible for examining the asylum claim. Yet, in practice, most asylum seekers file their application in Germany, the United Kingdom, France, Sweden or Belgium (often after having moved on irregularly to Germany).

18) See the debate of corresponding decisions of the European Court of Human Rights and the Court of Justice by P. Boeles et al., *European Migration Law*, Intersentia, 2009, pp.323–331.

it any further.

Secondly, migration law is not only about management and state control. One core feature, if you want to understand the European perspective, are human rights. EU Member States are not only bound by the Geneva Convention, which they interpret generously in line with EU legislation,¹⁹⁾ but also by the European Convention on Human Rights, an international regional human rights catalogue. Unlike the Geneva Convention, the European Convention has a judicial body, which ensures compliance. The European Court of Human Rights in Strasbourg has repeatedly interpreted the human rights generously, thereby establishing a human rights-based asylum system, which goes beyond the Geneva Convention.²⁰⁾ An American colleague of mine remarked at a conference recently: Europe has 7% of the world population, 20% of global GDP, 50% of social spending and about 70% per cent of legally enforceable human rights.

It is important to understand that this commitment to human rights is not ethic, but an everyday legal practice. There is hardly any political or legal debate about migration, in which human rights do not play a prominent role. Lawyers are crucial actors in German and European migration policy. Their opinion is regularly being heard, when new rules are being drafted; Court judgments have a direct bearing upon policy choices.

Some judgments concern what is probably the darkest side of the European asylum system: the death of hundreds, if not thousands, of migrants per year, which perish, when they try to cross the Mediterranean. You may remember last October, when more than 300 migrants drowned in a shipwreck near the Italian island of Lampedusa. Notwithstanding this catastrophe, human rights influence border controls. The European Court of Human Rights found in 2012 that the human rights-based asylum system under the European Convention extends to extra-territorial border controls on the high seas.²¹⁾

19) See the ‘Asylum Qualification’ Directive 2011/95/EU of the European Parliament and of the Council 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 (OJ 2011 L 337/9).

20) For an overview, see Boeles et al., *supra* note 18, pp.291–314.

21) On the Hirsi judgment, see M. Den Heijer, “Reflections on Refoulement and Collective Expulsion in the Hirsi Case”, *25 International Journal of Refugee Law*, 2013, pp.265–290.

Thirdly, politicians decided after the tragedy near Lampedusa that search and rescue should become a priority for border controls. Ever since, the Italian coast guard has, in cooperation with the EU borders agency Frontex, changed operational plans in order to minimise the loss of life. Crucially, this extends to the high seas. Whenever the coast guard identifies a ship in difficulties, it goes there and saves people proactively. This is the obvious thing to do from a humanitarian perspective – and yet it relates directly to our topic. Why? The enhanced rescue operations seem to have the consequence that more and more people venture the dangerous journey, often in boats, which are not fit for long-distance travel.

German media reports that in some cases migrants had received a satellite phone from the human traffickers, which arrange the journey for about 3-5 thousand euro per person. This satellite telephone allows the migrant ship to call the Italian authorities, once they are on the high seas. They inform the coast guard of their precise location and, if the boat is unfit for travel, the coast guard is obliged to save them.²²⁾ The migrants are then brought back to Italy, since case law of the European Court, mentioned a minute ago, does not allow Italy to send them back to Libya before having examined asylum applications.²³⁾ Recent data shows that some 18,000 boat people have reached Italy on this route during the first quarter of 2014.

Of course, not all of them have a well-founded fear of prosecution and will therefore be granted refugee status. Many leave their home countries for economic reasons. If you look at statistics, you will see that we have a ‘protection rate’ of roughly 25% in Germany, which includes those, which get an asylum status under the Geneva Convention, broader human rights guarantees or on humanitarian grounds. Almost three quarters are rejected – and the numbers differ greatly between countries of origin.²⁴⁾ For Syrians and Eritreans, the protection quota stands above 90%, while it is close to zero for Russia and Serbia.

In short: asylum seekers in Europe are a prime example of mixed flows. For some, the asylum system serves as a *de facto* route for economic migration. If we take the objective

22) See A. Bachstein, Exodus auf Ansage, *Süddeutsche Zeitung* online of 11 Apr. 2014, online at <http://www.sueddeutsche.de/panorama/fluechtlingsstrom-nach-europa-exodus-auf-ansage-1.1934930>.

23) See *supra* note 21.

24) For recent data, see <http://www.bamf.de/DE/Infothek/Statistiken/Asylzahlen/asylzahlen-node.html>.

seriously that the state should manage migration, the asylum procedure is a core instrument. Indeed, many debates about migration reform aim at preventing the asylum procedure from becoming a de facto channel for economic migration.

IV. Illegal Migration and Return

Not all migrants have a right to remain in the country. Some enter illegally from the beginning, while others loose their residence right, since they do not qualify for renewal or commit serious crime. As mentioned a minute ago, many asylum seekers do not qualify for protection and are under an obligation, as a result, to return home. In practice, however, most migrants, who are under an obligation to leave, stay in Europe. There is a discrepancy between return decisions and actual returns.²⁵⁾

In Germany, there are about 10,000 forced deportations each year.²⁶⁾ That is a lot in absolute numbers, but little, if you consider that there are more than six million foreigners living in Germany. Roughly 0.15% of them are deported each year. The remaining 99.8% stay in the country or leave voluntarily. Deportations exist, but they are not an everyday reality. They do not define the everyday reality of German and European migration law.

As a result, migration is a process with migrants having different statuses at different moments. From a legal perspective, a typical migration biography might look as follows: Someone comes to Europe as an asylum seeker, but his claim is rejected. He does not comply with the obligation to leave the country and Germany does not deport him either. For a couple of years, he has a precarious residence status, which we call ‘toleration’ in German, which gives access to social benefits, however, and may also embrace labour market access. Eventually, the person may either marry a partner and obtain a residence permit as a family member – or he achieves regularisation through one of the many ‘legalisation schemes’, which

25) For recent data, see Source: Eurostat (online data codes: migr_eiord and migr_eirtn).

26) See Antwort der Bundesregierung auf die Kleine Anfrage der Fraktion DIE LINKE: Abschiebungen im Jahr 2012, BT-Drs. 17/12442 vom 22. 02. 2013, available online at <<http://dip21.bundestag.de/dip21/btd/17/124/1712442.pdf>>.

exist across Europe.²⁷⁾ Thus, he finally obtains the residence permit, which he had aspired from the beginning, and which puts him on the pathway for permanent residence status and, potentially, citizenship.²⁸⁾

How can we explain the discrepancy between the number of return decisions and actual returns? Human rights are not the primary reason this time, since a return decision, by definition, can be issued under EU law, once it has been established that human rights are complied with.²⁹⁾

Instead, there are two alternative reasons.

Firstly, states are obliged, under customary international law, to readmit own nationals.³⁰⁾ Yet, this obligation fails to deliver, since states of origin do not collaborate in practice. The EU Commission therefore strives to improve cooperation by adopting so-called readmission agreements,³¹⁾ which establish practical procedures for transnational administrative cooperation.³²⁾ The Commission has indicated recently that such cooperation with countries of origin and transit, such as Turkey or Morocco, is a key priority for the future.³³⁾

In order to convince third states to cooperate, the European Union has developed various incentives. It offers, for instance, visa-free access to the Schengen area³⁴⁾ in return for the

27) On regularisation, see A. Kraler, "Adjusting, Regulating, Protecting Human Rights—The Shifting Uses of Regularisations in the European Union", *13 European Journal of Migration and Law*, 2011, pp.297–316.

28) After five years of legal residence, third-country nationals may obtain long-term (permanent) residence status under Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16/44).

29) See the 'Return' Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348/98).

30) See K. Hailbronner, "Readmission Agreements and the Obligation on States under Public International Law to Readmit their Own and Foreign Nationals" *57 Heidelberg Journal of International Law*, 1997, p.1, pp.11–15.

31) For an overview see N. Coleman, *European Readmission Policy* (Brill, 2008) 19–26 and C. Billet, "EC Readmission Agreements", *12 European Journal of Migration and Law*, 2010, p.45, pp.47–51.

32) Readmission agreements establish standards of proof, identify relevant documents and points of contact as well as modalities for return; for a representative example see the detailed provisions in the agreement with Serbia of 18 Sep 2007 [2007] OJ L 334/46.

33) See the Commission Communication on EU Return Policy, COM(2014) 199 of 28 Mar. 2014.

34) This visa-free access is laid down in so-called visa facilitation agreements, which, again,

conclusion of a readmission agreement, possibly within the context of so-called mobility partnerships.³⁵⁾ On this basis, the EU wants to overcome the practical deficits of the return policy.

Secondly, political scientist James Hollifield identified a ‘liberal paradox’ of European democracies, which aim at managing migration, while preventing, at the same time, the effective implementation on humanitarian grounds.³⁶⁾ If you interview immigration authorities in Germany, you learn that it is virtually impossible to deport anyone except for young and single men. Why? Whenever women or even children are to be deported, there is an outcry among the media and social support groups, which, in practice, means that immigration authorities will refrain from deportation³⁷⁾ – even if courts had decided beforehand that human rights would not be violated. The humanitarian impulse of European societies renders return policy ineffective.

This relative ineffectiveness of return policy explains why entry control mechanisms, such as border controls and streamlined asylum procedures, are so important. Ex post enforcement by means of deportation does not work. As a result, ex ante management by means of supervised entry procedures has to take centre stage, if we want European migration law to live up to the management objective.

V. Family Reunion

As you may know, family reunion is a core source of inward migration. As a matter of principle, spouses and children have an individual right under EU law to obtain a residence

support the practical functioning of EU migration policy by laying down technical standards on passport security.

35) For further comments see D. Thym, “Towards International Migration Governance? The European Contribution”, in Bart Van Vooren/Steven Blockmans/Jan Wouters (Eds.), *The Legal Dimension of Global Governance: What Role for the EU?* OUP, 2013, pp.289-305.

36) See J. Hollifield, *Immigrants, Markets and States*, Harvard College, 1992, pp.27-37.

37) See the practical account by a German interior ministry official C. Klos, “Aufenthaltsrecht vor dem Infarkt”, in Jochum/Fritzemeyer/Kau (Eds.), *Grenzüberschreitendes Recht - Crossing frontiers. Festschrift für Kay Hailbronner*, C.F. Müller, 2013, pp.123-136.

permit, if they fulfil a number of conditions.³⁸⁾ This brings us to one of the most controversial policy initiatives in recent years.

In accordance with the EU Family Reunion Directive, ‘Member States may require third country nationals to comply with integration measures.’³⁹⁾ In 2007, the German legislator amended the Residence Act in order to oblige candidates for family reunion to acquire basic language skills before entry. The underlying idea is evident: In order to support the harmonious integration of migrants into German society, spouses are expected to speak some basic German. They must pass a language test before they apply for a family reunion visa. Without basic language skills, family reunion will regularly be denied.⁴⁰⁾

It is widely acknowledged (and criticised) that, politically speaking, Muslim women are the primary target group of this measure. It is often feared that second-generation immigrants with a Turkish migration background, who often have German nationality, marry partners from abroad, thereby perpetuating what some people call ‘parallel societies.’⁴¹⁾

You will not be surprised to hear that the legality of the language requirements is currently being challenged in courts – and the legal issues involved are a prime example for the functioning of European migration law: While the starting point are national rules, the eventual decision will be taken by the Court of Justice of the European Union in Luxembourg and the European Court of Human Rights in Strasbourg, which are responsible for the interpretation of the Family Reunion Directive and the human right to family life.⁴²⁾

I do not have time to delve into details, but I chose the example of language skills to give you an idea that questions of social integration are discussed lively in Europe. That

38) For further reading, see A. Wiesbrock, *Legal Migration to the European Union*, Martinus Nijhoff, 2010, ch. 5.1.

39) See Art. 7.2 the ‘Family Reunion’ Council Directive 2003/86/EC on the Right to Family Reunification (OJ 2003 L 251/12).

40) Cf. Sect. 30 of the German Residence Act, *supra* note 2.

41) See T. Kingreen, “Verfassungsfragen des Ehegatten- und Familiennachzugs im Aufenthaltsrecht”, *Zeitschrift für Ausländerrecht*, 2007, pp. 13-20; and the overview of policies in different Member States in the contributions to Y. Pascouau and T. Strik (Eds.), *Which Integration Policies for Migrants?*, Wolf, 2012.

42) See K. Groenendijk, “Family Reunification as a Right under Community Law”, 8 *European Journal of Migration and Law* 215, 2006, at 223–225 and the counter-arguments by the German Federal Administrative Court (BVerwG), judgment of 30 March 2010, Case 1 C 8.09, paras 21–28.

may be a core lesson, which the recent history of migration law in Germany and Europe has to teach to countries who have not – unlike the US or Canada – perceived themselves as immigration societies.⁴³⁾

Do not expect that migration is a technical area of law. It is about much more than border controls, economic growth and security issues. It is about people; it influences who lives in the house next door and whom our kids play with at school. In short: it is about the composition of the population – and to change this composition has important cultural and social implications. Societies change in response to migration. That change is hardly noticeable at the beginning, but it is unstoppable in the long run.

VI. (Highly) Skilled Economic Migration

There is one similarity between many European and East Asian societies. Demographic projections indicate that the German population will decline quite dramatically in decades ahead.⁴⁴⁾ One challenge is to attract talented people. For that reason, we have seen a remarkable paradigm shift in recent years. While German politicians had maintained until fairly recently that Germany is no country of immigration, they now admit publicly that we have to create a ‘welcome culture.’ Authorities make efforts to render Germany attractive – both through legal reform and other initiatives, including partnership with business.

This brings me to the latest challenge for the migration management paradigm. German authorities had to learn in recent years that highly skilled economic migrants do not wait – unlike asylum seekers – desperately to enter Europe. Instead, German authorities and businesses have to make an effort to convince highly skilled migrants that Germany is a good place to live and work.

You may have heard of the Blue Card – Europe’s answer to the American Green Card,

43) For the German experience, see, in detail, D. Thym, *Migrationsverwaltungsrecht*, Mohr Siebeck, 2010, ch. 5.

44) See Bundesregierung, Demografiebericht, Bericht der Bundesregierung zur demografischen Lage und künftigen Entwicklung des Landes, 2011, online at https://www.bmi.bund.de/SharedDocs/Downloads/DE/Broschueren/2012/demografiebericht.pdf?__blob=publicationFile.

which aims at attracting highly qualified migrants. That policy is somewhat successful. More and more people come to Germany to work there.⁴⁵⁾ China, India, Russia, the Ukraine and Turkey are among the most important country of origin for highly skilled economic migrants. Still, numbers are much smaller than for asylum seekers and family reunion. You may say that for ten asylum seekers, Germany gets one highly qualified worker.

VII. Conclusion

By way of conclusion, let me remind you that there is an overarching theme: German and European migration law aims at managing migration flows effectively. Yet, the success of this venture is no foregone conclusion, since migration can be controlled by states only to some extent.

In doing so, states must learn that different categories of people require distinct rules. You cannot adopt the same policies for asylum seekers and highly skilled migrants. You need to distinguish and adapt policies in response to the changing environment. In this respect, effective migration management is a never-ending learning experience.

45) For details, see Thym, *supra* note 43, ch. 3.

References

1. Books

- A. Wiesbrock, *Legal Migration to the European Union*, Martinus Nijhoff, 2010.
- C. Klos, “Aufenthaltsrecht vor dem Infarkt”, in Jochum/Fritzemeyer/Kau (Eds.), *Grenzüberschreitendes Recht – Crossing frontiers. Festschrift für Kay Hailbronner*, C.F. Müller, 2013.
- D. Thym, *Migrationsverwaltungsrecht*, Mohr Siebeck, 2010.
- , “Towards International Migration Governance? The European Contribution”, in Bart Van Vooren/Steven Blockmans/Jan Wouters (Eds.), *The Legal Dimension of Global Governance: What Role for the EU?* OUP, 2013.
- EU law textbook, such as P. Craig and G. de Búrca, *EU Law. Text, Cases and Materials*, 5th ed., OUP, 2011.
- J. Hollifield, *Immigrants, Markets and States*, Harvard College, 1992.
- N. Coleman, *European Readmission Policy*, Brill, 2008.
- R. Cholewinski, “The Criminalisation of Migration in EU Law and Policy”, in Toner et al. (Ed.), *Whose Freedom, Security and Justice?*, Hart, 2007.
- S. O’Leary, “Free Movement of Persons and Services”, in Craig and de Búrca (Eds.), *The Evolution of EU Law*, 2nd edn, OUP, 2011.

2. Articles

- A. Voßkuhle, “Neue Verwaltungsrechtswissenschaft”, in Hoffmann-Riem/ Schmidt-Aßmann/ibid. (Ed.), *Grundlagen des Verwaltungsrechts*. Band 1, C.H. Beck, 2006, § 1.
- C. Billet, “EC Readmission Agreements”, *12 European Journal of Migration and Law* 45, 2010, 47-51.
- D. Thym, “EU Migration Policy and its Constitutional Rationale”, *50 Common Market Law Review* 709, 2013. 721-723.
- , “Sozialleistungen für und Aufenthalt von nichterwerbstätigen Unionsbürgern”, *Neue*

- Zeitschrift für Sozialrecht*, 2014, 81-90.
- H. Motomura, "Immigration Outside the Law", *108 Columbia Law Review*, 2008, 2037-2097.
- J. Hollifield, "The Emerging Migration State", *38 IM Rev.* 885, 2006, 894-9.
- K. Groenendijk, "Family Reunification as a Right under Community Law", *8 European Journal of Migration and Law* 215, 2006, 223-225.
- K. Hailbronner, "Readmission Agreements and the Obligation on States under Public International Law to Readmit their Own and Foreign Nationals", *57 Heidelberg Journal of International Law* 1, 1997, 11-15.
- M. Den Heijer, "Reflections on Refoulement and Collective Expulsion in the *Hirsi* Case", *25 International Journal of Refugee Law*, 2013, 265-290.
- S. Castles, "The Factors that Make and Unmake Migration Policies" (2004) *38 International Migration Review* 852, 2004, 855-6.
- T. Kingreen, "Verfassungsfragen des Ehegatten- und Familiennachzugs im Aufenthaltsrecht", *Zeitschrift für Ausländerrecht*, 2007, 13-20.

[Abstract]

The Legal Management of Migration in Germany and Europe

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This paper addresses the main challenges to the legal regulation of migration in Germany and the wider European Union, which has adopted numerous rules for migration to the continent. In doing so, it shows that the design of legal rules, which are applied and respected in practice effectively is no self-evident undertaking. Moreover, different areas of migration law should be distinguished, which require sector-specific solutions.

[Key Words] Migration, European Union, Germany, Asylum, Illegal Migration, Return, Family Reunion, Human Rights

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