



Jürgen Bast, Giessen University

**Understanding the Role of Human Rights
in Migration Law and Policy:
A European Perspective**

Situating the talk

- diagnosis of our time; contemporary migration societies
- ‘human-rights-ization’ in law, politics and everyday practice
- no ‘bluwashing’ intended



Human Rights challenges to European migration policies

- Ensuring access to asylum
- Ensuring liberty and freedom of movement
- Rule of Law guarantees
- Preventing discrimination
- Preserving social and family ties
- Access to basic services
- Human Rights infrastructure

The advance of Human Rights

- The 1970s
 - challenging totalitarianism
 - transnational action
 - non-political mandate
 - moralization of politics

The advance of HR: expansion and transformation

- The 1970s
 - challenging totalitarianism
 - transnational action
 - non-political mandate
 - moralization of politics
- The 21st century
 - challenging policies of liberal democracies
 - domestic arena
 - politization of HR
 - legalization of politics

The European Court of Human Rights

- Art. 3 ECHR (No one shall be subjected to torture or to inhuman or degrading treatment or punishment.)
- Art. 8 ECHR (Everyone has the right to respect for his private and family life, ...)

The ECtHR on Art. 3

- Foundational case: *Soering v UK*, 7 Jul 1989
- In the course of the 1990s, development of case law the principle of non-refoulement
 - implies an unconditional right to stay
 - applies in cases of chain refoulement
 - entails a right to admission in border situations
 - implies strong procedural guarantees and minimum social rights of refugees
- High point: *Hirsi Jamaa v Italy*, 23 Feb 2012
- More recently, signs of partial retreat in border management cases (Hungary, Spain)
- Still: an enforceable right to asylum, including at the borders; HR as the foundation of refugee law

The ECtHR on Art. 8

- Foundational case: *Berrehab v The Netherlands*, 21 Jun 1988
- In the course of the 1990s, development of case law on
 - expulsion of criminal offenders
 - right to admission of family members
 - protection of social ties per se
 - right to regularization
- High point: *Jeunesse v. the Netherlands*, 3 Oct 2014
- More recently: trend towards a more deferential approach
- Still: a (conditional) human right to sojourn in all but name; HR as a source of citizenship beyond nationality

Research opportunities on HR-ization

- Various ‘sleeping beauties’ in the Convention (e.g., intra-territorial mobility; non-discrimination on ground of immigration status)
- Empirical studies on HR as a resource in migration-related conflicts
- Theory of the dynamic interplay of legalization, politization and everyday practice of HR
- Putting backlash into perspective (mobilizing norm-antipreneurs; countering HR from within)
- Comparative approaches: towards a global history of HR-ization

Thank you very much!

- **The REMAP study** is available on <https://doi.org/10.5771/9783748926740>
- **MeDiMi's research agenda** is available on <http://dx.doi.org/10.22029/jlupub-17716>
- **Contact:** MeDiMi@recht.uni-giessen.de
- **Save the date** of MeDiMi's **midterm conference** in Giessen: 18-20 September 2024 (CfP forthcoming)