
This book focuses on three European asylum procedures and the evidentiary assessment carried out in these. The interrelationship between these procedures and legal systems influencing them is explored and questions in relation to the harmonizing strivings of EU are posed. The central concern of this book is to find answers to fundamental questions about the British asylum system and how it operates. Based on ethnographic research over a two-year period, the work follows and analyses numerous asylum appeals through the British courts. It draws on myriad interviews with individuals and a thorough examination of many state and non-state organizations to understand how the system works. While the organization of the book reflects the formal asylum process, a focus on specific legal appeals reveals the ‘political’ factors at play as different institutions and actors seek to influence judicial decision-making and overturn/uphold official asylum policy. The final chapter draws on the author’s ethnographic findings of the UK’s ‘asylum field’ to re-examine research on the Refugee Determination System in the UK, Canada and Australia which has narrowly focused on judicial decision-making. It argues that analysis of Refugee Determination Systems must be situated and studied as part of a wider, political, semi-autonomous ‘asylum field’ which needs to be better understood. Providing an in-depth ethnographic study of a national asylum system and of immigration law and practice, the book will be an invaluable resource for academics, researchers and policy-makers in the UK and beyond working in this highly topical area.

Adequate and fair asylum procedures are a precondition for the effective exercise of rights granted to asylum seekers. In particular the prohibition of refoulement. In 1999 the EU Member States decided to work towards a Common European Asylum System. In this context the Procedures Directive was adopted in 2005 and recast in 2013. This directive provides for important procedural guarantees for asylum applicants, but also leaves much discretion to the EU Member States to design their own asylum procedures. This book examines the meaning of the EU right to an effective remedy in terms of the legality and interpretation of the Procedures Directive in regard to several key aspects of asylum procedure: the right to remain on the territory of the Member State, the right to be heard, the standard and burden of proof and evidentiary assessment, judicial review and the use of secret evidence. An examination of the emergence of the legal regime in the United Kingdom addressing refugees and asylum seekers. The essays that comprise this collection focus on the impact and future developments of judicial review in a number of social welfare situations that include homelessness, housing benefit, immigration and social security, to name but a few. Adequate and fair asylum procedures are a precondition for the effective exercise of rights granted to asylum seekers, in particular the prohibition of refoulement. In 1999 the EU Member States decided to work towards a Common European Asylum System. In this context the Procedures Directive was adopted in 2005 and recast in 2013. This directive provides for important procedural guarantees for asylum applicants, but also leaves much discretion to the EU Member States to design their own asylum procedures. This book examines the meaning of the EU right to an effective remedy in terms of the legality and interpretation of the Procedures Directive in regard to several key aspects of asylum procedure: the right to remain on the territory of the Member State, the right to be heard, the standard and burden of proof and evidentiary assessment, judicial review and the use of secret evidence. Adequate and fair asylum procedures are a precondition for the effective exercise of rights granted to asylum applicants, in particular the prohibition of refoulement. Immigrants and shows how attempts to dore liberal societies can create unwanted persons who are denied fundamental rights. To conclude, he proposes a set of standards to ensure that efforts to control migration, including the use of detention, conform to principles of law and uphold basic rights regardless of immigration status. This book analyses how the system of immigration judicial review works in practice, as an area which has, for decades, constituted the majority of judicial review cases and is politically controversial. Drawing upon extensive empirical research and unprecedented research access, it explores who brings judicial review challenges against immigration decisions and why. The type of immigration decisions that are challenged, how cases proceed through the judicial review process, how cases are settled out of court, and how judicial review interacts with other legal and non-legal remedies. It also examines the quality of immigration judicial review claims and the quality of the initial administrative decisions being challenged. Through developing a novel account of the operation of the immigration judicial review system in practice and the lived experience of it by judges, representatives, and claimants, this book adds a significant new perspective to the wider understanding of judicial review. International law provides states with a common definition of a “refugee” as well as guidelines outlining how asylum claims should be decided. Yet even across nations with many commonalities, the processes of determining refugee status look strikingly different. This book compares the refugee status determination (RSD) regimes of three popular asylum seeker destinations: the United States, Canada, and Australia. Though they exhibit similarly high levels of political resistance to accepting asylum seekers, refugees access three very different systems none of which are totally restrictive or expansive once across their borders. These differences are significant both in terms of asylum seekers’ experience of the process and in terms of their likelihood of being designated as refugees. Based on a multi-method analysis of all three countries, including a year of fieldwork with in-depth interviews of policy-makers and asylum-seeker advocates, this book analyses how refugees status determination hearings, and a large-scale case analysis, Rebecca Hamlin finds that cross-national differences have less to do with political debates over admission and border control policy than with how insulated administrative decision-making is from either political interference or judicial review. Administrative justice is conceptualized and organized differently in every state, and so states vary in every way that they draw the line between refugee and non-refugee. This ability to remove foreign nationals (aliens) who violate U.S.
immigration law is central to the immigration enforcement system. Some lawful migrants violate the terms of their admittance, and some aliens enter the United States illegally, despite U.S. immigration laws and enforcement. In 2012, there were an estimated 11.4 million resident unauthorized aliens, estimates of other removable aliens, such as lawful permanent residents who commit crimes, are elusive. With total repatriations of over 600,000 people in FY2013—including about 440,000 formal removals—the removal and return of such aliens have become important policy issues for Congress, and key issues in recent debates about immigration reform. The Immigration and Nationality Act (INA) provides broad authority to the Department of Homeland Security (DHS) and the Department of Justice (DOJ) to remove certain foreign nationals from the United States, including unauthorized aliens (i.e., foreign nationals who enter without inspection, aliens who enter with fraudulent documents, and aliens who enter legally but overstay the terms of their temporary visas) and lawfully present foreign nationals who commit certain acts that make them removable. Any foreign national found to be inadmissible or deportable under the grounds specified in the INA may be ordered removed. The INA describes procedures for making and reviewing such a determination, and specifies conditions under which certain grounds of removal may be waived. DHS officials may exercise certain forms of discretion in pursuing removal orders, and certain removable aliens may be eligible for permanent or temporary relief from removal. Certain grounds for removal (e.g., criminal grounds, terrorist grounds) render foreign nationals ineligible for most forms of relief and may make them eligible for more streamlined (expedited) removal processes. The “standard” removal process is a civil judicial proceeding in which an immigration judge from DOJ’s Executive Office for Immigration Review (EOIR) determines whether an alien is removable. Immigration judges may grant certain forms of relief during the removal process (e.g., asylum, cancellation of removal), and the judge’s removal decision is subject to administrative and judicial review. The INA also describes different types of streamlined removal procedures, which generally include more limited opportunities for relief and grounds for review. In addition, two alternative forms of removal exempt aliens from certain penalties associated with formal removals: voluntary departure (return) and withdrawal of permission for admission. These are often called “returns.” Following an order of removal, an alien is inadmissible for a minimum of five years after the date of the removal, and therefore is generally ineligible to return to the United States during this time period. The period of inadmissibility is determined by the reason for and type of removal. For example, a foreign national ordered removed based on removal proceedings initiated upon the foreign national’s arrival is inadmissible for five years, while a foreign national ordered removed after being apprehended within the United States is inadmissible for 10 years. The length of inadmissibility increases to 20 years for an alien’s second or subsequent removal order, and is indefinite for a foreign national convicted of an aggravated felony. Absent additional factors, unlawful presence in the United States is a civil violation, not a criminal offense, and removal and its associated administrative processes are civil proceedings. As such, aliens in removal proceedings generally have no right to counsel (though they may be represented by counsel at their own expense). In addition, removal proceedings are not considered a criminal proceeding by the courts. Congress may impose immigration consequences retroactively. There were a record number of removals between FY2009 and FY2013, including 436,421 removals in FY2013. This title explores the procedural and substantive principles of administration law. It uses case studies and comparative studies of procedural fairness and propriety in courts to find the similarities and differences among various legal systems. Along with several European countries, it also covers Latin America and China. Immigration detention is considered by many states to be an essential tool in the execution of immigration policy. Despite the apparently key role it plays in immigration enforcement, the law on immigration detention is often vague, especially in relation to determining the circumstances under which prolonged detention remains lawful. As a result, the courts are frequently called upon to adjudicate these matters, with scant legal tools at their disposal. There have been some significant judgments on the legality of detention at the constitutional level, the extent to which these judgments have had an impact at the lower end of the judiciary is unclear. Indeed, it is the lower courts which are tasked with judging the legality of detention through habeas corpus or judicial review proceedings. This book examines how this has occurred in the lower courts of two jurisdictions, the UK and the US, and contrasts this practice not only in those jurisdictions, but with judgments rendered by the Court of Justice of the European Union, a constitutional court at the other end of the spectrum whose judgments are applied in the EU Member States. Although these three jurisdictions use similar tests to evaluate the legality of detention, case outcomes significantly differ. Many factors contribute to this divergence, but key among them is the role that fundamental rights protection plays in each jurisdiction. Through a forensic evaluation of 191 judgments, this book compares the laws on detention in the UK, US and EU, and makes recommendations to these jurisdictions for improvement. This judicial analysis is the product of a project between IARLJ-Europe and EASO and it forms part of the EASO professional development series for members of courts and tribunals. The analysis is primarily intended for use by members of courts and tribunals of EU Member States concerned with hearing appeals or conducting reviews of decisions on applications for international protection. It aims to provide a judicial analysis on asylum procedures and non-refoulement as primarily dealt with under the Asylum Procedures Directive 2013/32/EU (APD (recast)). It is intended to be of use both to those with little or no prior experience of adjudication in the field of international protection within the framework of the CEAS as well as to those who are experienced or specialist judges in the field. As such, it aims to be a useful point of reference for all members of courts and tribunals concerned with issues related to asylum procedures and non-refoulement. The structure, format and content have, therefore, been developed with this broad audience in mind. Moreover, it is hoped that it will contribute to horizontal judicial dialogue. This title was first published in 2001. Taking a multi-level perspective on the Europeanization of refugee policies, this innovative work highlights the entanglement between domestic asylum reforms. Essential reading for scholars of European integration, asylum and refugee policy. The statement is made with regard to H.R. 2643, a bill to amend title 18 of the US Code regarding extradition. The discussion focuses on the ‘political offence’ exception in the bill as part of the traditional exception to the granting of extradition. This text discusses several US court decisions which specify the criteria for granting and denying extradition requests. The judiciary determines whether an offence at issue is in connection with an organized and ongoing political uprising or disturbance, is reasonably related to furthering that cause, and creates disproportionate harm. Acts motivated substantially by personal motives or of a terrorist nature, designed primarily to create chaos in society, do not qualify for the political offence exception. The statement stresses that the ‘political offence’ exception in the area of extradition should coincide with the standard utilized in the context of refugees. Asylum can be denied if there are serious reasons for considering that an alien has committed a serious non-political crime. The author quotes extracts from the UNHCR handbook of 1979 to prime a guide for what constitutes a ‘political offence’. He argues that the US government and its courts should provide the same standards and procedure in both refugee and extradition determinations. Judicial review is available in the asylum context, including the resolution of the question of whether an offence is ‘political’ in character. The Department of State plays only an advisory role in asylum adjudications. The author warns that giving the Secretary of State an exclusive role in the extradition context would introduce the risk that decisions would be made as a matter of political convenience rather than based upon neutral principles. He concludes that judicial review should be maintained in the extradition context to protect against these potential abuses.
lodged by foreign nationals who claim that they will be at risk of persecution or ill-treatment on return to their country of origin. Over recent years, the asylum appeal process has become a major area of judicial decision-making and the most frequently restructured tribunal system. Asylum adjudication is also one of the most difficult areas of decision-making in the modern legal system. Integrating empirical research with legal analysis, this book provides an in-depth study of the development and operation of this tribunal system and of asylum decision-making. The book examines how this particular appeal process seeks to mediate the tension between the competing values under which it operates. There are chapters examining the organisation of the tribunal system, its procedures, the nature of fact-finding in asylum cases and the operation of onward rights of challenge. An examination as to how the tensions inherent in the idea of administrative justice are manifested in the context of a tribunal system responsible for making potentially life-or-death decisions, this book fills a gap in the literature and will be of value to those interested in administrative law and asylum adjudication. A collection of essays which focus on the relationship between judicial review and bureaucratic behaviour; ‘Asylum remains a hugely important area of law, deeply affecting the lives of very many people: the nation’s approach to it is a touchstone of our humanity.’ – from the foreword to the second edition by The Rt Hon The Lord Brown of Eaton-under-Haywood. This is the leading practitioner textbook dealing solely with the law and practice pertaining to all aspects of asylum in the UK. It is a decade since the last edition published, when much has happened in this area, with the most significant being Brexit. The third edition will be the first post-Brexit refugee practitioner work. The legal regime should be clearer by early 2022, either because a new regime of Rules and Regulations is in place, or because the first judicial decisions on the new constitutional arrangements and the treatment of EU Retained Law are giving insight. The third edition covers: - Credibility assessment: UNHCR and Beyond Proof, language analysis, family tracing, assessing belief and sexuality - Assessing risk: assurances, shifting burdens of proof and duties of enquiry, the relevance of inability to return - Persecution: conscientious objection, future expression of fundamental rights - Developments in the understanding of vulnerability: the interaction of refugee law with trafficking, statelessness and gender preference issues - Exclusion for wrongdoing, for access to rights akin to nationality, and for non-UNHCR protection - Cessation of status: family members, change of circumstances, and relevance of internal relocation - Third country cases: returns under and beyond Dublin 3, third country returns post-Brexit - Procedures: asylum claims in detention, delays in determining claims, family reunion - Vertical Judicial Dialogues in Asylum Cases attempts to answer the question what international and EU law require from the national asylum judge with regard to the intensity of judicial scrutiny and issues of evidence. Through the Refugee Act of 1980, the United States offers the prospect of safety to people who flee to America to escape rape, torture, and even death in their native countries. In order to be granted asylum, however, an applicant must prove to an asylum officer or immigration judge that she has a well-founded fear of persecution in her homeland. The chance of winning asylum should have little if anything to do with the personality of the official to whom a case is assigned, but in a ground-breaking and shocking study, Jaya Ramji-Nogales, Andrew I. Schenholz, and Philip G. Schrag learned that life or death asylum decisions are too frequently influenced by random factors relating to the decision maker. In many cases, the most important moment in an asylum case is the instant in which a clerk randomly assigns the application to an adjudicator. The system, in its current state, is like a game of chance. Refugee Roulette is the first analysis of decisions at all four levels of the asylum adjudication process: the Department of Homeland Security, the immigration courts, the Board of Immigration Appeals, and the United States Courts of Appeals. The data reveal tremendous disparities in asylum approval rates, even when different adjudicators in the same office each considered large numbers of applications from nationals of the same country. After providing a thorough empirical analysis, the authors make recommendations for future reform. Original essays by eight scholars and policy makers then discuss the authors’ research and recommendations. Contributors: Bruce Einhorn, Steven Legomsky, Audrey Macklin, M. Margaret McKeown, Allegra McLeod, Carrie Menkel-Meadow, Margaret Taylor, and Robert Thomas. The leading textbook dealing solely with the law and practice pertaining to all aspects of immigration appeals, and with administrative law and judicial review. The most significant development for this edition is that of remote hearings, which the current Covid-19 situation has moved forward very speedily, along with a myriad of other issues including - The Online Reform Procedure and the era of remote hearings - Developments in human rights appeals including ‘new matters’, ‘not in accordance with the law’ and challenging refusals to consider human rights claims - Bringing settled status appeals - The scope of nationality appeals - Issues in trafficking appeals - Litigation friends, vulnerable witnesses and capacity - Judicial review procedures and costs - The relationship between Cart JR s (a challenge by way of judicial review against a decision made by the Upper Tribunal (UT), Immigration and Asylum Chamber, to refuse permission) and statutory appeals The second edition includes checklists and bullet points. This book explores what international and EU law require from the national asylum judge with regard to the required intensity of the judicial scrutiny to be applied, and with regard to evidentiary issues, such as the standard and burden of proof, the assessment of credibility, the required level of individualisation, the admission and evaluation of evidence, opportunities for presenting evidence and time limits for submitting evidence. To that end, an analysis is made of the provisions on national (judicial) proceedings contained in the Refugee Convention, the Charter of Fundamental Rights of the EU and a number of secondary EU law instruments, such as the EU Qualification Directive and the EU Asylum Procedures Directive, with a particular focus on issues of evidence and judicial scrutiny. This book brings together contributions from some of the leading authorities in the field of EU immigration and asylum law to reflect upon developments since the Amsterdam Treaty and, particularly, the Tampere European Council in 1999. At Tampere, Heads of State and Government met to set guidelines for the implementation of the powers and competences introduced by the Amsterdam Treaty and make the development of the Union as an area of freedom, security and justice a reality. Since 1999, a substantial body of law and policy has developed, but the process has been lengthy and the results are still open to critique. This book presents a series of analyses and reflections on the major legal instruments and policy themes, with the underlying question, to what extent the ideals held out of ‘freedom, security and justice accessible to all’, are in fact reflected in these legislative and policy developments. Has freedom from terrorism and the spectre of illegal or irregular migration, and increasingly strict border securitisation and surveillance overshadowed the freedom of the migrant to seek entry or residence for legitimate touristic, work, study, or family reasons, a secure refuge from persecution, and effective access to justice? In 2004, the Heads of State and Government presented a programme for the next stage of development in these areas, the Hague Programme, and the Directives and Regulations that have been agreed are now being transposed and applied in Member States legal systems. What are the main challenges in the years ahead as the Hague Programme and the existing legislative acquis are implemented? The 2007 Supplement covers the vital developments in immigration and refugee law and policy since the publication of the Fourth Edition’s new cases, legislative action, regulations, scholarly advances, and political debate. Among the highlights: Developments on material support for terrorist organizations - The Supreme Court’s decision in Lopez v. Gonzales on drug crimes as aggravated felonies - Judicial criticism of the removal process, immigration judges and the BIA Developments on judicial review of removal orders - New requirements for establishing social group asylum claims - Recent developments on asylum claims based on coercive population controls - Welfare entitlements for legal and illegal immigrants - Impact of the new legislation on migrant farmworkers - Due process and other constitutional issues - Asylum procedures - New grounds for exclusion and deportation - Naturalization - Future Perspectives.