

Contents

<i>Acknowledgements</i>	<i>page</i> xiii
<i>Table of Cases</i>	xv
European	xv
European Court of Human Rights	xv
European Committee of Social Rights	xviii
International	xix
UN Human Rights Treaty Bodies	xix
Other International Cases	xx
<i>List of Abbreviations</i>	xxi
Introduction	1
I.1 Preliminary Definitions: Irregular Migrants and the Right to Health	4
I.2 The Contours of This Human Rights Analysis: International Law and Public Health	7
I.3 The Plan of This Book	11
1 Sovereignty and the Human Rights of Irregular Migrants	15
1.1 Sovereignty and Human Rights Obligations	16
1.1.1 State Sovereignty in International Law	16
1.1.2 Human Rights Law	19
1.1.3 The Mutual Impact of Sovereignty and Human Rights	21
1.2 Migrants: Between Sovereignty and Human Rights	24
1.2.1 Migrants and Sovereignty	24
1.2.2 Migrant Rights or Human Rights?	27
1.2.2.1 International Law and the Standards of Civilisation	27
1.2.2.2 Human Rights for Migrants	29

1.3	Trends in the European and International Jurisprudence on the Human Rights of Migrants with Irregular or Precarious Status	34
1.3.1	Instances of Immigration Cases before the Strasbourg Court	34
1.3.1.1	The Prohibition of Refoulement and Collective Expulsions	36
1.3.1.2	The Right to Personal Liberty and to Fair and Decent Conditions of Detention and Living	40
1.3.1.3	The Protection of Family Life	42
1.3.2	A Glimpse at the UN Treaty Bodies' Jurisprudence Concerning Migrant Human Rights	45
1.3.2.1	Authoritative Interpretative Statements on the Rights of Migrants	45
1.3.2.2	Jurisprudential Trends from Treaty Bodies' Communication Procedures	47
1.3.3	The Different Approaches of European and International Case Law	51
1.4	Explicit Limitations on the Rights of Irregular Migrants in Human Rights Treaty Provisions	52
1.4.1	The Convention on Migrant Workers	52
1.4.2	The European Social Charter	53
1.5	Broadening Contextual Reflections on Migrant Rights	56
1.5.1	The Pro-migrant Approach of the Inter-American System of Human Rights	56
1.5.2	The Global Compact for Migration	57
1.6	Conclusions	59
2	The Normative Contours of a Vulnerability- and Equity-Oriented Right to Health	61
2.1	The Origins of Health as a Social Interest in the Last Two Centuries	62
2.2	Early Proclamations of the Right to Health, Sovereignty and the Universalisation of Social Rights as Human Rights	65
2.3	Philosophical Justifications for the Right to Health	70
2.4	The Right to the Highest Attainable Standard of Health in the Context of the ICESCR	75
2.4.1	A Textual Analysis of Article 12 ICESCR in the Light of Its <i>Travaux Préparatoires</i>	77

<i>Contents</i>		vii
2.4.2	The Normative Content of the International Right to Health and the Correlative State Obligations	80
2.4.2.1	The Complex Scope of the Right to Health	81
2.4.2.2	The ‘Tripartite Typology’	82
2.4.2.3	The AAAQ-AP Framework	83
2.4.2.4	The Core Framework	85
2.4.2.5	International Meta-legal Health Standards: Primary Health Care and Universal Health Coverage	89
2.5	International Monitoring and Accountability for Protecting the Right to Health	94
2.5.1	State Reporting before the CESCR	95
2.5.2	The Justiciability of Socioeconomic Rights and the Optional Protocol to the ICESCR	99
2.5.3	A Sample of the Health-Related Views of the CEDAW Committee	102
2.5.4	The Contribution of the UN Charter-Based Mechanisms	104
2.5.5	Preliminary Conclusions	106
2.6	European Human Rights Law and the Right to Health	107
2.6.1	The Strasbourg Court’s Case Law: Health System Deficiencies and Regulatory Obligations	108
2.6.2	The ESC: European ‘Averages’ and Socioeconomic Protection	112
2.7	The Principle of Non-discrimination, Vulnerable Groups and the Right to Health	115
2.7.1	Equality, Non-discrimination and Marginalisation	115
2.7.2	What Is Vulnerability in Human Rights?	118
2.7.3	Non-discrimination and Vulnerability for the CESCR, the ECtHR and the ECSR	120
2.7.4	Non-discrimination and Health	123
2.8	Conclusions	125
3	The Right to Health Care of Irregular Migrants: Between Primary Care and Emergency Treatment	128
3.1	Irregular Migrants: Between Exclusionary Measures and Vulnerability	129
3.1.1	A Brief Recapitulation of the State Sovereignty Approach to Irregular Migration	129
3.1.2	Irregular Migrants and Their Vulnerability to Human Rights Abuse	131

3.2	European Human Rights Approaches to Health Care for Irregular Migrants	135
3.2.1	The ECtHR: Stretching a Constrained Material Competence	135
3.2.2	The ECSR: Between Interpretative Courage and Limitations of Mandate	139
3.3	International Human Rights Law and Levels of Health Care for Migrants with Irregular Status as Vulnerable People	140
3.3.1	The Human Rights Committee: Urgent Care and the Right to Life	141
3.3.2	The Committee on Economic Social and Cultural Rights: Irregular Migrants and the Typologies on Right to Health Obligations	143
3.3.3	Non-discrimination in the Enjoyment of the Right to Health as a Core Obligation of Immediate Nature	146
3.3.3.1	Emergency Treatment, Non-discrimination and Rights Limitations	146
3.3.3.2	Core Obligations, Non-discrimination and the Levels of Accessible Care	150
3.3.3.3	What Is 'Essential' Primary Health Care?	154
3.4	Levelling-up Developments	156
3.4.1	Vulnerable Migrants and Their Protection in Economic and Health Crises	157
3.4.1.1	The CESCR's Approach vis-à-vis the Financial and Economic Crisis: Non-retrogression and Non-discrimination	158
3.4.1.2	The ECSR and Austerity in Europe	160
3.4.1.3	The COVID-19 Pandemic and Vulnerability-Targeted Measures	160
3.4.2	'Firewalls' to Guarantee the Effective Enjoyment of Health Services by Irregular Migrants	163
3.4.3	The Most Vulnerable Situations among Vulnerable Migrants	166
3.4.3.1	The Right to Health Care for All Migrant Children	167
3.4.3.2	Gender Equality and Sexual and Reproductive Health for Migrant Women and Girls	169
3.5	Conclusions	171

4	The Determinants of the Health of Irregular Migrants: Between Interrelatedness and Power	173
4.1	Conceptual Analysis of the Applicability of the Determinants of Health Approach for Irregular Migrants in Human Rights and Public Health	175
4.1.1	Enabling Arguments: (a) The Interdisciplinary Recognition of the Determinants of Health	175
4.1.2	Enabling Arguments: (b) Vulnerability and the Determinants of Health	178
4.1.3	Enabling Arguments: (c) Interrelated Rights and Intersectoral Measures	179
4.1.4	Conceptual Obstacles: (a) Immigration, Policy Models and Welfare Rights	180
4.1.5	Conceptual Obstacles: (b) The Effects of Power Constructs on the Rights of Irregular Migrants	184
4.1.6	Empowering Irregular Migrants with Indivisible Rights? From Theory to Human Rights Practice	187
4.2	European Human Rights Frameworks: From Constrained to Implicit Consideration of the Determinants of Health of Irregular Migrants	188
4.2.1	The Sovereignty-Constrained Case Law of the ECtHR	189
4.2.2	The Growing Jurisprudence of the ECSR	192
4.3	International Standards and UN Supervisory Bodies: Developing an Explicit Recognition of the Determinants of Health of Irregular Migrants as Human Rights	196
4.3.1	The Foundation of the Determinants of Health in Human Rights: The UDHR	196
4.3.2	Elaborating on UN Human Rights Treaties' Obligations	198
4.3.2.1	The Concluding Observations of the CESCR	198
4.3.2.2	The General Comments of the CESCR	201
4.3.2.3	Contributions of Other UN Treaty Bodies	204
4.3.2.4	The Special Procedures: An Endorsement for Healthy Living Environments as a Human Rights Issue	207
4.3.3	The Global Compact for Migration and the Determinants of Health	210
4.4	Conclusions	212

5	Mental Health, Irregular Migration and Human Rights: Synergising Vulnerability- and Disability-Sensitive Approaches	215
5.1	Approaching the Human Right to Mental Health in Theory and Practice	217
5.1.1	Definitional Challenges	217
5.1.2	Theoretical Grounding: The Concepts of Vulnerability and Disability as Tools of Substantive Equality	223
5.2	Mental Health and Human Rights Law	225
5.2.1	Mental Health Regulation on Human Rights	226
5.2.2	Human Rights Violations on Mental Health	227
5.2.3	Synergies between Public Health and Human Rights in Right to Mental Health	228
5.3	European Human Rights: Qualified Risks for Mental Health and Emergency Approaches	231
5.3.1	Deportation Measures and Mental Health	232
5.3.2	Immigration Detention and Psychological Suffering	238
5.3.3	Social Entitlements and Mental Health	241
5.4	International Human Rights Bodies: Emphasising Mental Health in Primary Care and Support Services	242
5.4.1	Mental Health Considerations in Human Rights Violations	242
5.4.2	Irregular Migrants' Right to Mental Health: Non-discrimination, Vulnerability and Disability Arguments	246
5.4.2.1	Mental Health in the PHC Model for Irregular Migrants	246
5.4.2.2	Age- and Gender-Related Considerations	251
5.4.2.3	The CRPD: A Transformative Tool for Combating Multiple Sources of Discrimination and Health-Related Rights Violations	254
5.5	Conclusions	259
	Conclusion	263
C.1	Main Findings: From Framework Limitations to Expansive Human Rights Standards	264
C.1.1	Chapter 1 – 'Sovereignty and the Human Rights of Irregular Migrants'	264
C.1.2	Chapter 2 – 'The Normative Contours of a Vulnerability- and Equity-Oriented Right to Health'	265

<i>Contents</i>		xi
C.1.3	Chapter 3 – ‘The Right to Health Care of Irregular Migrants: Between Primary Care and Emergency Treatment’	267
C.1.4	Chapter 4 – ‘The Determinants of the Health of Irregular Migrants: Between Interrelatedness and Power’	269
C.1.5	Chapter 5 – ‘Mental Health, Irregular Migration and Human Rights: Synergising Vulnerability- and Disability-Sensitive Approaches’	271
C.2	Taking a ‘Final’ Snapshot? Major Advances and Unaddressed Issues in Relation to Ensuring Comprehensive Protection of All Migrants’ Health Rights	272
	<i>Select Bibliography</i>	277
	<i>Index</i>	293