

Education through migration: the relevance of the right to education in the European Convention of Human Rights in migration issues.

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It is a common given that some people immigrate because they need to and some immigrate in search of a new living, new experiences and exposure to life beyond their nation's boundaries. An important part of that is the part people who cross their nation's boundaries in search of better opportunities in education and career. The right to education has a considerable meaning in the legal field, considering the many human rights treaties that secure this right. But up until now there is no such thing as a "right to immigrate", meaning the right to *enter* another country of one's choosing. How should the connection between the right to education and immigration be construed then? There is another hurdle that comes up when discussing the meaning of the right to education in the legal field. The right to education has been included under the category of social and economic rights. In the legal field there is a general assumption that social and economic rights (such as the right to adequate housing, the right to health and the right to an adequate standard of living¹) have little meaning in the context of migration issues, as opposed to civil and political rights (such as the right to freedom of expression, the right to freedom of religion, the right to vote²). For, it is said, social and economic rights haven't even proved their position in domestic cases (yet), let alone that they could be of valuable use in migration context. In this paper I try to question this allegation, noting that these rights, the right to education in particular, might not constitute any additional rights in migration context on themselves, but that they could, and indeed already do, play an important role in defining and underpinning other rights that are regarded as fundamental in the European Convention of Human Rights (ECHR) and preclude deportation to a certain country, such as the right to be free from an inhuman or degrading treatment³ and the right to respect for one's private life⁴.

The central question of this paper is: does the right to education imply entitlement to enjoy education in a state where the person concerned would not otherwise be entitled to reside? This question is twofold. First of all, does violation of the right to education bring about a right to claim the enjoyment of that right in another state? Secondly, does the scope of the right to education entail a right to stay in a certain country? For this purpose I will first indicate some developments in the ECHR-case law regarding social and economic rights in general (2) and their role in migration cases (3). In light of these developments, I will subsequently address the right to education in the ECHR, starting with some general principles in the European Court of Human Rights' (hereafter: the Court) case law (4.1), after which I will look at the possibilities the right to education constitutes in migration issues, first as an independent source (4.2). And subsequently by looking at the extent in which a deprivation of the right to education constitutes an inhuman and degrading treatment or a breach of private life (4.3& 4.4).

¹ See for other examples the International Covenant on Economic, Social and Cultural Rights.

² See for other examples the International Covenant on Civil and Political Rights.

³ Article 3 ECHR.

⁴ Article 8 ECHR.