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Summary

Progressive Inclusion: Migrant citizenship and transnational migration in Germany

This book explores two principles governing migrant citizenship in Germany: the principle of progressive inclusion and the principle of static attribution. It develops both the structural and the legal dimensions of both principles and proposes a model for the legal empowerment of migrants.

The first chapter introduces the concept of transnational migration. Transnational migration forms a specific type of migration mainly characterized by multiple ties to several countries, a phenomenon which has been largely disregarded by current migration law so far. Transnational migrants regularly cross borders in different directions, have family in their residence country as well as in other countries, are economically active in two or more countries simultaneously or during their lifetime, and finally they have a political interest in more than just one country. The concept of transnational migration is exemplified by three fictional migrant families from Italy, Turkey, and Ukraine, who are introduced in this chapter and whose situation is traced in each of the following chapters.

The second chapter suggests that migrant citizenship is governed by two principles which are in potential tension with one another. The *principle of progressive inclusion* says that migrants are to be included in the host society by approximating their rights progressively to the rights of the citizens of that country. This aim shall be reached by progressively equipping migrants with ever more rights with regard to their host state, corresponding to the growing duration of their stay or their increasing social and economic ties to the host society. Moreover, these rights should be progressively deepened, so that they can no longer be easily withdrawn. According to the principle of progressive inclusion, citizenship is no prerequisite for societal and democratic participation. To the contrary, migrants shall be empowered by rights to enable participation so that becoming a citizen is only the consequence of their legal inclusion. The *principle of static attribution*, on the other hand, argues that citizenship remains the essential prerequisite for full participation in social, economic and political life. Granting citizenship means rewarding successful integration, according to this principle.

Consequently, the principle of static attribution argues for exclusive attribution and loyalty of a person to one state, meaning that multiple citizenships need to be avoided. Tracing the historic emergence of both principles, this chapter shows how the principle of static attribution developed together with the rise of the modern territorial state, while the principle of progressive inclusion mainly evolved along with the idea of universal human rights after World War II.

Chapter 3 explains why principles are a useful instrument for the study of the legal regime governing migrant citizenship: As *structuring* principles, their function is to organize and systematize the existing legal material. As *legal* principles, they allow for a normative evaluation of existing legal norms.

The structuring function of principles is illustrated in the fourth chapter analyzing four legal complexes governing transnational migration: residence law, nationality law, social security law and political rights of migrants. Each of these areas of law can be structured by the principle of progressive inclusion on the one hand and by the principle of static attribution on the other hand. While the older principle of static attribution is still prevalent in most of these four fields, the principle of progressive inclusion is increasingly gaining ground. This chapter also reveals that the sample case of transnational migration highlights not only legal difficulties faced by transnational migrants but also by 'traditional' migrants who finally settle in their host country.

Chapter 5 argues that both principles are also legal principles and can be understood as general principles of law in the sense of Article 38 of the ICJ Statute. Elements of both principles are reflected in numerous international treaties, general comments, ILO Conventions, in the jurisprudence of the European Court of Human Rights (ECHR) and in the EU Charter of Fundamental Rights.

Finally, chapter 6 argues that both principles, in their legal dimension, imply minimum requirements in relation to the legal situation of both transnational and settled migrants. In analyzing the current legal situation in Germany in light of these requirements, the chapter discovers shortcomings particularly with respect to the so-called 'option model' in German nationality law, the lack of diplomatic and consular protection for resident migrants, the political participation of migrants and the protection against expulsion of second-generation migrants. The chapter concludes by proposing a model for enhancing the effectiveness of the principle of progressive inclusion in migration law. This model includes a minimum set of rights for all migrants, an entitlement to equal rights based on duration of residence or social ties, the acceptance of

multiple citizenship, a permanent residence status with privileged rights, and a fast track to citizenship.