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Editorial

Welcome to the third edition of NEMIS in 2015.
In this issue we would like to draw your attention to the following.

Direct Links
In order to simplify the usage of this Newsletter, we have added direct links to each and every measure, judgment or pending case. This means that clicking on the link will open the appropriate page in your browser.

Language requirements
On 9th July 2015, the CJEU ruled for the first time on the admissibility of an integration requirement for the right to family reunification. In the case K&A (C-153/14), the Court ruled that an examination abroad is allowed, but only under certain conditions. The principles of proportionality and effectiveness require that the examination is suitable for achieving the objective of promoting integration and does not go beyond what is necessary to achieve that aim. It must not aim or have the effect of selecting spouses nor systematically prevent family reunification of spouses who have demonstrated their willingness and made efforts to pass the examination, but nevertheless failed.
Member States are therefore obliged to take specific individual circumstances into consideration, such as the age, illiteracy, level of education, economic situation or health of the spouse, if he or she is unable to take or pass the examination due to those circumstances. In the case of the Netherlands, the Court ruled that the very strict hardship clause (in which only a combination of very special circumstances could lead to an exemption) could form an obstacle for exercising the right to family reunification. The Court also ruled that also the costs for taking and preparing for the examination must not aim, nor have the effect of, making family reunification impossible or excessively difficult. In the case of the Netherlands, the Court ruled that the costs involved in taking the examination are too high.

Jean Monnet Centre of Excellence
It is with great pleasure that we can announce that our Centre for Migration Law has been selected as:
a Jean Monnet Centre of Excellence

Nijmegen Sep 2015, Carolus Grütters & Tineke Strik
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About
NEMIS is a newsletter designed for judges who need to keep up to date with EU developments in migration and borders law. This newsletter contains all European legislation and jurisprudence on access and residence rights of third country nationals, as well as relevant national judgments on the interpretation of this legislation. NEMIS does not include jurisprudence on free movement or asylum. We would like to refer to a separate Newsletter on that issue, the Newsletter on European Asylum Issues (NEAIS).
This Newsletter is part of the CMR, Jean Monnet Centre of Excellence Work Programme 2015-2018
1 Regular Migration

1.1 Directive 2009/50 Blue Card
- On conditions of entry and residence of TCNs for the purposes of highly qualified employment
  - OJ 2009 L 155/17
  - impl. date 19-06-2011

1.2 Directive 2003/86 Family Reunification
- On the right to Family Reunification
  - OJ 2003 L 251/12

1.3 Case Law

CJEU judgments
- CJEU C-527/14 Oruche: 2 Sep. 2015 - Art. 7(2) - deleted
- CJEU C-153/14 K. & A.: 9 July 2015 - Art. 7(2)
- CJEU C-338/13 Noorzia: 17 July 2014 - Art. 4(5)
- CJEU C-138/13 Dogan (Naime): 10 July 2014 - Art. 7(2)
- CJEU C-87/12 Ymeraga: 6 Dec. 2012 - Art. 7(1)(c)
- CJEU C-155/11 Imran: 10 June 2011 - Art. 7(2) - no adj.
- CJEU C-578/08 Chakroun: 4 Mar. 2010 - Art. 7(1)(c) + 2(d)
- CJEU C-540/03 EP v. Council: 27 June 2006 - Art. 8

CJEU pending cases
- CJEU C-558/14 Kachab: pending - Art. 7(1)(c)
- CJEU pending cases

EFTA judgments
- EFTA E-4/11: 26 July 2011 - Art. 7(1)

National Judgments
- NL: Rb Den Haag zp Den Bosch AWB 12/9408: 9 Oct. 2012 - Art. 7(2)
- Ger: BVerwG 10 C 12.12: 4 Sep. 2012 - Art. 8
- Ger: BVerwG 1 C 8.09: 30 Mar. 2010 - Art. 7(2)

Council Decision 2007/435 Integration Fund
- Establishing European Fund for the Integration of TCNs for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows
  - OJ 2007 L 168/18 - UK, IRL opt in

Directive 2014/66 Intra-Corporate Transferees
- On conditions of entry and residence of TCNs in the framework of an intra-corporate transfer
  - OJ 2014 L 157/1 - impl. date 29-11-2016

Directive 2003/109 Long-Term Resident
- Concerning the status of TCNs who are long-term residents
  - OJ 2004 L 16/44 - impl. date 23-01-2006
  - amended by Dir. 2011/51

CJEU judgments
- CJEU C-309/14 CGIL: 2 Sep. 2015 - Art. 5 + 11
- New CJEU C-176/14 Van Hauthem: 16 Mar. 2015 - Art. 14 - deleted
- CJEU C-311/13 Tahir: 5 Nov. 2014
- CJEU C-469/13 Tahir: 17 July 2014 - Art. 7(1) + 13
- CJEU C-257/13 Mlalali: 14 Nov. 2013 - Art. 11(1)(d) - inadm.
- CJEU C-40/11 Iida: 8 Nov. 2012 - Art. 7(1)
- CJEU C-502/10 Singh: 18 Oct. 2012 - Art. 3(2)(e)
- CJEU C-571/10 Servet Kamberaj: 24 Apr. 2012 - Art. 11(1)(d)

See further: § 1.3
1.1: Regular Migration: Adopted Measures

NL: Raad van State 201401261/1/V1

See further: § 1.3

**Directive 2011/51**

*Long-Term Resident ext.*

_Regular-Term status for refugees and persons with subsidiary protection_


* extending Dir. 2003/109 on LTR

**Council Decision 2006/688**

*Mutual Information*

_On the establishment of a mutual information mechanism in the areas of asylum and immigration_

* OJ 2006 L 283/40

UK, IRL opt in

**Directive 2005/71**

*Researchers*

_On a specific procedure for admitting TCNs for the purposes of scientific research_

* OJ 2005 L 289/15 impl. date 12-10-2007

_CJEU judgments_

* CJEU C-523/08 Comm. v. Spain 11 Feb. 2010

See further: § 1.3

**Recommendation 762/2005**

*Researchers*

_To facilitate the admission of TCNs to carry out scientific research_

* OJ 2005 L 289/26

**Regulation 1030/2002**

*Residence Permit Format*

_Laying down a uniform format for residence permits for TCNs_

* OJ 2002 L 157/1 UK opt in

_amd by Reg. 330/2008 (OJ 2008 L 115/1)

**Directive 2014/36**

*Seasonal Workers*

_On the conditions of entry and residence of TCNs for the purposes of seasonal employment_

* OJ 2014 L 94/375 impl. date 30-09-2016

**Directive 2011/98**

*Single Permit*

_Single Application Procedure: for a single permit for TCNs to reside and work in the territory of a MS and on a common set of rights for third-country workers legally residing in a MS_

* OJ 2011 L 343/1 (Dec. 2011) impl. date 25-12-2013

**Regulation 859/2003**

*Social Security TCN*

_Third-Country Nationals’ Social Security extending Reg. 1408/71 and Reg. 574/72_

* OJ 2003 L 124/1

* Replaced by Reg 1231/2010: Social Security TCN II

_CJEU judgments_

* CJEU C-247/09 Xhymshiti 18 Nov. 2010

_CJEU pending cases_

* CJEU C-465/14 Wieland & Rothwangl pending Art. 1

See further: § 1.3

**Regulation 1231/2010**

*Social Security TCN II*

_Social Security for EU Citizens and TCNs who move within the EU_

* OJ 2010 L 344/1 impl. date 1-01-2011 L opt in; UK opt out

* Replacing Reg. 859/2003 on Social Security TCN

**Directive 2004/114**

*Students*

_Admission of Third-Country Nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service_

* OJ 2004 L 375/12 impl. date 12-01-2007

_CJEU judgments_

* CJEU C-491/13 Ben Alaya 10 Sep. 2014 Art. 6 + 7

* CJEU C-151/11 Sommer 21 June 2012 Art. 17(3)

* CJEU C-568/10 Comm. v. Austria 22 Nov. 2011 Art. 17(1) - deleted

* CJEU C-294/06 Payir 24 Nov. 2008

See further: § 1.3
## 1.1: Regular Migration: Adopted Measures

### European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

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### ECtHR Judgments

- **ECtHR Ap.no. 38030/12 Khan**
  - 14 Sep. 2015
  - Art. 8

- **ECtHR Ap.no. 12738/10 Jeunesse**
  - 3 Oct. 2014
  - Art. 8

- **ECtHR Ap.no. 32504/11 Kaplan a.o.**
  - 24 July 2014
  - Art. 8

- **ECtHR Ap.no. 52701/09 Mugenzi**
  - 10 July 2014
  - Art. 8

- **ECtHR Ap.no. 38590/10 Biao**
  - 25 Mar. 2014
  - Art. 8

- **ECtHR Ap.no. 52166/09 Hasanbasic**
  - 11 June 2013
  - Art. 8

- **ECtHR Ap.no. 12020/09 Udeh**
  - 16 Apr. 2013
  - Art. 8

- **ECtHR Ap.no. 22689/07 De Souza Ribeiro**
  - Art. 8 + 13

- **ECtHR Ap.no. 47017/09 Butt**
  - 4 Dec. 2012
  - Art. 8

- **ECtHR Ap.no. 22341/09 Hode and Abdi**
  - 6 Nov. 2012
  - Art. 8 + 14

- **ECtHR Ap.no. 26940/10 Antwi**
  - 14 Feb. 2012
  - Art. 8

- **ECtHR Ap.no. 22251/07 G.R.**
  - 10 Jan. 2012
  - Art. 8 + 13

- **ECtHR Ap.no. 8000/08 A.A.**
  - 20 Sep. 2011
  - Art. 8

- **ECtHR Ap.no. 55957/09 Nunez**
  - 28 June 2011
  - Art. 8

- **ECtHR Ap.no. 38058/09 Osman**
  - 14 June 2011
  - Art. 8

- **ECtHR Ap.no. 34848/07 O’Donoghue**
  - 14 Dec. 2010
  - Art. 12 + 14

- **ECtHR Ap.no. 41615/07 Neulinger**
  - 6 July 2010
  - Art. 8

- **ECtHR Ap.no. 1638/03 Maslov**
  - 22 Mar. 2007
  - Art. 8

- **ECtHR Ap.no. 46410/99 Üner**
  - 18 Oct. 2006
  - Art. 8

- **ECtHR Ap.no. 54273/00 Boulitf**
  - 2 Aug. 2001
  - Art. 8

### National Judgments

- **UK: Quila SC [2011]UKSC45**
  - 12 Oct. 2011
  - Art. 8

- **UK: MH Morocco [2010] UKUT 439 IAC**
  - 28 Sep. 2010
  - Art. 8

### See further: § 1.3

## 1.2: Regular Migration: Proposed Measures

### Directive

*On the conditions of entry and residence of Third-Country Nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing.*


- This directive will replace both Dir 2005/71 on Researchers and Dir 2004/114 on Students

### Researchers and Students (recast)


## 1.3: CJEU Judgments on Regular Migration

### 1.3.1 CJEU Judgments on Regular Migration

- **CJEU C-491/13 Ben Alaya**
  - [10 Sep. 2014]
  - interpr. of Dir. 2004/114 Students [Art. 6 + 7]
  - The MS concerned is obliged to admit to its territory a third-country national who wishes to stay for more than three months in that territory for study purposes, where that national meets the conditions for admission exhaustively listed in Art. 6 and 7 and provided that that MS does not invoke against that person one of the grounds expressly listed by the directive as justification for refusing a residence permit.

- **CJEU C-309/14 CGIL**
  - [2 Sep. 2015]
  - interpr. of Dir. 2003/109 Long-Term Resident
  - Italian national legislation has set a minimum fee for a residence permit, which is around eight times the charge for the issue of a national identity card. Such a fee is disproportionate in the light...
of the objective pursued by the directive and is liable to create an obstacle to the exercise of the rights conferred by the directive.

- **CJEU C-578/08**
  - **Chakroun**
  - [4 Mar. 2010]
  - interpr. of Dir. 2003/86 Family Reunification [Art. 7(1)(c) + 2(d)]
  - The concept of family reunification allows no distinction based on the time of marriage. Furthermore, Member States may not require an income as a condition for family reunification, which is higher than the national minimum wage level. Admission conditions allowed by the directive, serve as indicators, but should not be applied rigidly, i.e. all individual circumstances should be taken into account.

- **CJEU C-568/10**
  - **Comm. v. Austria**
  - [deleted] [22 Nov. 2011]
  - incor. appl. of Dir. 2004/114 Students [Art. 17(1)]
  - Austrian law systematically denies TCN students access to the labour market. They are issued a work permit for a vacant position only if a check has been previously carried out as to whether the position cannot be filled by a person registered as unemployed.

- **CJEU C-508/10**
  - **Comm. v. Netherlands**
  - [26 Apr. 2012]
  - incor. appl. of Dir. 2003/109 Long-Term Resident
  - The Court rules that the Netherlands has failed to fulfil its obligations by applying excessive and disproportionate administrative fees which are liable to create an obstacle to the exercise of the rights conferred by the Long-Term Residents Directive: (1) to TCNs seeking long-term resident status in the Netherlands, (2) to those who, having acquired that status in a MS other than the Kingdom of the Netherlands, are seeking to exercise the right to reside in that MS, and (3) to members of their families seeking authorisation to accompany or join them.

- **CJEU C-523/08**
  - **Comm. v. Spain**
  - [11 Feb. 2010]
  - non-transp. of Dir. 2005/71 Researchers

- **CJEU C-138/13**
  - **Dogan (Naime)**
  - [10 July 2014]
  - interpr. of Dir. 2003/86 Family Reunification [Art. 7(2)]
  - The language requirement abroad is not in compliance with the standstill clauses of the Association Agreement. Although the question was also raised whether this requirement is in compliance with the Family Reunification Directive, the Court did not answer that question.

However, paragraph 38 of the judgment could also have implications for its forthcoming answer on the compatibility of the language test with the Family Reunification: “on the assumption that the grounds set out by the German Government, namely the prevention of forced marriages and the promotion of integration, can constitute overriding reasons in the public interest, it remains the case that a national provision such as that at issue in the main proceedings goes beyond what is necessary in order to attain the objective pursued, in so far as the absence of evidence of sufficient linguistic knowledge automatically leads to the dismissal of the application for family reunification, without account being taken of the specific circumstances of each case”.

In this context it is relevant that the European Commission has stressed in its Communication on guidance for the application of Dir 2003/86, “that the objective of such measures is to facilitate the integration of family members. Their admissibility depends on whether they serve this purpose and whether they respect the principle of proportionality” (COM (2014)210, § 4.5).

- **CJEU C-540/03**
  - **EP v. Council**
  - [27 June 2006]
  - interpr. of Dir. 2003/86 Family Reunification [Art. 8]
  - The derogation clauses (3 years waiting period and the age-limits for children) are not annulled, as they do not constitute a violation of article 8 ECHR. However, while applying these clauses and the directive as a whole, Member States are bound by the fundamental rights (including the rights of the child), the purpose of the directive and obligation to take all individual interests into account.

- **CJEU C-40/11**
  - **Iida**
  - [8 Nov. 2012]
  - interpr. of Dir. 2003/109 Long-Term Resident [Art. 7(1)]
  - In order to acquire long–term resident status, the third-country national concerned must lodge an application with the competent authorities of the Member State in which he resides. If this application is voluntarily withdrawn, a residence permit can not be granted.

- **CJEU C-155/11**
  - **Imran**
  - [no adj.] [10 June 2011]
  - interpr. of Dir. 2003/86 Family Reunification [Art. 7(2)]
  - The Commission took the position that Art. 7(2) does not allow MSs to deny a family member as meant in Art. 4(1)(a) of a lawfully residing TCN entry and admission on the sole ground of not having passed a civic integration examination abroad. However, as a residence permit was granted...
just before the hearing would take place, the Court decided it was not necessary to give a ruling.

**New**

* CJEU C-153/14  
  K. & A. [9 July 2015]
  * interpr. of Dir. 2003/86 Family Reunification [Art. 7(2)]
  * Member States may require TCNs to pass a civic integration examination, which consists in an assessment of basic knowledge both of the language of the Member State concerned and of its society and which entails the payment of various costs, before authorising that national’s entry into and residence in the territory of the Member State for the purposes of family reunification, provided that the conditions of application of such a requirement do not make it impossible or excessively difficult to exercise the right to family reunification.

In circumstances such as those of the cases in the main proceedings, in so far as they do not allow regard to be had to special circumstances objectively forming an obstacle to the applicants passing the examination and in so far as they set the fees relating to such an examination at too high a level, those conditions make the exercise of the right to family reunification impossible or excessively difficult.

* CJEU C-257/13 Mlalali (inadm.) [14 Nov. 2013]
  * interpr. of Dir. 2003/109 Long-Term Resident [Art. 11(1)(d)]
  * Case (on equal treatment) was inadmissable

* CJEU C-338/13 Noorzia [17 July 2014]
  * interpr. of Dir. 2003/86 Family Reunification [Art. 4(5)]
  * Art. 4(5) does not preclude a rule of national law requiring that spouses and registered partners must have reached the age of 21 by the date when the application seeking to be considered family members entitled to reunification is lodged.

  * interpr. of Dir. 2003/86 Family Reunification [Art. 7(1)(c)]
  * When examining an application for family reunification, a MS has to do so in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of the directive.

**New**

* CJEU C-527/14 Oruche (deleted) [2 Sep. 2015]
  * interpr. of Dir. 2003/86 Family Reunification [Art. 7(2)]
  * Case is withdrawn since the question was answered in the judgment in the K&A case (C-153/14).

* CJEU C-579/13 P. & S. [4 June 2015]
  * interpr. of Dir. 2003/109 Long-Term Resident [Art. 5 + 11]
  * Article 5(2) and Article 11(1) do not preclude national legislation, such as that at issue in the main proceedings, which imposes on TCNs who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive, which it is for the referring court to determine. Whether the long-term resident status was acquired before or after the obligation to pass a civic integration examination was imposed is irrelevant in that respect.

* CJEU C-294/06 Payir [24 Nov. 2008]
  * interpr. of Dir. 2004/114 Students
  * On a working Turkish student.

* CJEU C-571/10 Servet Kamberaj [24 Apr. 2012]
  * interpr. of Dir. 2003/109 Long-Term Resident [Art. 11(1)(d)]
  * EU Law precludes a distinction on the basis of ethnicity or linguistic groups in order to be eligible for housing benefit.

* CJEU C-502/10 Singh [18 Oct. 2012]
  * interpr. of Dir. 2003/109 Long-Term Resident [Art. 3(2)(e)]
  * The concept of ‘residence permit which has been formally limited’ as referred to in Art. 3(2)(e), does not include a fixed-period residence permit, granted to a specific group of persons, if the validity of their permit can be extended indefinitely without offering the prospect of permanent residence rights. The referring national court has to ascertain if a formal limitation does not prevent the long-term residence of the third-country national in the Member State concerned. If that is the case, this national cannot be excluded from the personal scope of Directive 2003/109.

* CJEU C-15/11 Sommer [21 June 2012]
  * interpr. of Dir. 2004/114 Students [Art. 17(3)]
1.3: Regular Migration: Jurisprudence: CJEU Judgments

* The conditions of access to the labour market by Bulgarian students, may not be more restrictive than those set out in the Directive

CJEU C-469/13 **Tahir** [17 July 2014]
* interpr. of Dir. 2003/109 Long-Term Resident [Art. 7(1) + 13]
* Family members of a person who has already acquired LTR status may not be exempted from the condition laid down in Article 4(1), under which, in order to obtain that status, a TCN must have resided legally and continuously in the MS concerned for five years immediately prior to the submission of the relevant application. Art. 13 of the LTR Directive does not allow a MS to issue family members, as defined in Article 2(e) of that directive, with LTR ‘EU residence permits on terms more favourable than those laid down by that directive.

CJEU C-311/13 **Tümer** [5 Nov. 2014]
* interpr. of Dir. 2003/109 Long-Term Resident
* While the LTR provided for equal treatment of long-term resident TCNs, this ‘in no way precludes other EU acts, such as’ the insolvent employers Directive, “from conferring, subject to different conditions, rights on TCNs with a view to achieving individual objectives of those acts”.

New
CJEU C-176/14 **Van Hauthem** (deleted) [16 Mar. 2015]
* interpr. of Dir. 2003/109 Long-Term Resident
* Case was withdrawn by the Belgian court.

CJEU C-247/09 **Xhymshiti** [18 Nov. 2010]
* interpr. of Reg. 859/2003 Social Security TCN
* In the case in which a national of a non-member country is lawfully resident in a MS of the EU and works in Switzerland, Reg. 859/2003 does not apply to that person in his MS of residence, in so far as that regulation is not among the Community acts mentioned in section A of Annex II to the EU-Switzerland Agreement which the parties to that agreement undertake to apply.

CJEU C-87/12 **Ymeraga** [8 May 2013]
* interpr. of Dir. 2003/86 Family Reunification [Art. 3(3)]
* Directives 2003/86 and 2004/38 are not applicable to third-country nationals who apply for the right of residence in order to join a family member who is a Union citizen and has never exercised his right of freedom of movement as a Union citizen, always having resided as such in the Member State of which he holds the nationality.
See, also, C-256/11 Dereci a.o., para 58.

1.3.2 CJEU pending cases on Regular Migration

CJEU C-558/14 **Kachab**
* interpr. of Dir. 2003/86 Family Reunification [Art. 7(1)(c)]
* ref. from 'Tribunal Superior de Justicia del Pais Vasco' (Spain)
* Does the Dir. precludes that national legislation, which allows an application for family reunification to be refused on the grounds that the sponsor does not have stable and regular resources sufficient to maintain himself and the members of his family, according to a prospective assessment by the national authorities of the likelihood of the economic resources in question being retained in the year following the date of submission of the application, taking into account the pattern of those resources in the six months preceding that date?

CJEU C-465/14 **Wieland & Rothwangel**
* interpr. of Reg. 859/2003 Social Security TCN [Art. 1]
* ref. from 'Centrale Raad van Beroep' (Netherlands)
* On the entitlement of a former seaman to a pension.

1.3.3 EFTA judgments on Regular Migration

EFTA E-4/11 **Clauder** [26 July 2011]
* interpr. of Dir. 2003/86 Family Reunification [Art. 7(1)]
* ref. from 'Verwaltungsgerichtshof' (Liechtenstein)
* An EEA national with a right of permanent residence, who is a pensioner and in receipt of social welfare benefits in the host EEA State, may claim the right to family reunification even if the family member will also be claiming social welfare benefits.

1.3.4 ECtHR Judgments on Regular Migration
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

* violation of ECHR [Art. 8]
* The applicant alleged, in particular, that his deportation to Nigeria would violate his right to respect for his family and private life and would deprive him of the right to education by terminating his university studies in the United Kingdom.

ECtHR Ap.no. 26940/10  Antwi v. NO  [14 Feb. 2012]
* no violation of ECHR [Art. 8]
* A case similar to Nunez (ECtHR 28 June 2011) except that de judgment is not unanimous (2 dissenting opinions). Mr Antwi from Ghana migrates in 1988 to Germany on a false Portuguese passport. In Germany he meets his future wife (also from Ghana) who lives in Norway and is naturalised to Norwegian nationality. Mr Antwi moves to Norway to live with her and their first child is born in 2001 in Norway. In 2005 the parents marry in Ghana and subsequently it is discovered that mr Antwi travels on a false passport. In Norway mr Antwi goes to trial and is expelled to Ghana with a five year re-entry ban. The Court does not find that the Norwegian authorities acted arbitrarily or otherwise transgressed the margin of appreciation which should be accorded to it in this area when seeking to strike a fair balance between its public interest in ensuring effective immigration control, on the one hand, and the applicants’ need that the first applicant be able to remain in Norway, on the other hand.

ECtHR Ap.no. 38590/10  Biao v. DK  [25 Mar. 2014]
* no violation of ECHR [Art. 8]
* Request for referral to the Grand Chamber on 9 Aug. 2014
* The Danish statutory amendment requires that the spouses’ aggregate ties with Denmark has to be stronger than the spouses’ aggregate ties with another country. Only in such cases a right of residence is granted. This Danish “attachment requirement” does not violate art. 8 or art. 14 ECHR.

ECtHR Ap.no. 54273/00  Boultif v. CH  [2 Aug. 2001]
* violation of ECHR [Art. 8]
* Expulsion of one of the spouses is a serious obstacle to family life for the remaining spouse and children in the context of article 8. In this case the ECtHR establishes guiding principles in order to examine whether such a measure is necessary in a democratic society. Relevant criteria are:
- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant’s stay in the country from which he is going to be expelled;
- the time elapsed since the offence was committed as well as the applicant’s conduct in that period;
- the nationalities of the various persons concerned;
- the applicant’s family situation, such as the length of the marriage;
- and other factors expressing the effectiveness of a couple’s family life;
- whether the spouse knew about the offence at the time when he or she entered into a family relationship;
- and whether there are children in the marriage, and if so, their age.
Not least, the Court will also consider the seriousness of the difficulties which the spouse is likely to encounter in the country of origin, though the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself exclude an expulsion.

* violation of ECHR [Art. 8]
* At the age of 3 and 4, the Butt children enter Norway with their mother from Pakistan in 1989. They receive a residence permit on humanitarian grounds. After a couple of years the mother returns with the children to Pakistan without knowledge of the Norwegian authorities. After a couple years the mother travels - again - back to Norway to continue living there. The children are 10 an 11 years old. When the father of the children wants to live also in Norway, a new investigation shows that the family has lived both in Norway and in Pakistan and their residence permit is withdrawn. However, the expulsion of the children is not carried out. Years later, their deportation is discussed again. The mother has already died and the adult children still do not have any contact with their father in Pakistan. Their ties with Pakistan are so weak and reversely with Norway so strong that their expulsion is would entail a violation of art. 8.

* violation of ECHR [Art. 8 + 13]
* A Brazilian in French Guiana was removed to Brazil within 50 minutes after an appeal had been lodged against his removal order. In this case the Court considers that the haste with which the
removal order was executed had the effect of rendering the available remedies ineffective in practice and therefore inaccessible. The brevity of that time lapse excludes any possibility that the court seriously examined the circumstances and legal arguments in favour of or against a violation of Article 8 of the Convention in the event of the removal order being enforced. Thus, while States are afforded some discretion as to the manner in which they conform to their obligations under Article 13 of the Convention, that discretion must not result, as in the present case, in an applicant being denied access in practice to the minimum procedural safeguards needed to protect him against arbitrary expulsion. Concerning the danger of overloading the courts and adversely affecting the proper administration of justice in French Guiana, the Court reiterates that, as with Article 6 of the Convention, Article 13 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet its requirements.

ECtHR Ap.no. 17120/09 Dhahbi v. IT [8 Apr. 2014]
* interpr. of ECHR [Art. 6, 8 and 14]
* The ECtHR ruled that art. 6(1) also means that a national judge has an obligation to decide on a question which requests for a preliminary ruling on the interpretation of Union law. Either the national judge explicitly argues why such a request is pointless (or already answered) or the national judge requests the CJEU for a preliminary ruling on the issue. In this case the Italian Supreme Court did not answer the question at all.

* violation of ECHR [Art. 8 + 13]
* The applicant did not have effective access to the administrative procedure by which he might, subject to fulfilling the conditions prescribed by domestic law, obtain a residence permit which would allow him to reside lawfully with his family in the Netherlands, due to the disproportion between the administrative charge in issue and the actual income of the applicant’s family. The Court finds that the extremely formalistic attitude of the Minister – which, endorsed by the Regional Court, also deprived the applicant of access to the competent administrative tribunal – unjustifiably hindered the applicant’s use of an otherwise effective domestic remedy. There has therefore been a violation of Article 8 and 13 of the Convention.

ECtHR Ap.no. 52166/09 Hasanbasic v. CH [11 June 2013]
* violation of ECHR [Art. 8]
* After living in Switzerland for 23 years with a residence permit, the applicant decides to go back to Bosnia. Soon after, he gets seriously ill and wants to get back to his wife who stayed in Switzerland. However, this (family reunification) request is denied mainly because of the fact that he has been on welfare and had been fined (a total of 350 euros) and convicted for several offences (a total of 17 days imprisonment). The court rules that this rejection, given the circumstances of the case, is disproportionate and a violation of article 8.

ECtHR Ap.no. 22341/09 Hode and Abdi v. UK [6 Nov. 2012]
* violation of ECHR [Art. 8 + 14]
* Discrimination on the basis of date of marriage has no objective and reasonable justification.

ECtHR Ap.no. 12738/10 Jeunesse v. NL [3 Oct. 2014]
* violation of ECHR [Art. 8]
* The central issue in this case is whether, bearing in mind the margin of appreciation afforded to States in immigration matters, a fair balance has been struck between the competing interests at stake, namely the personal interests of the applicant, her husband and their children in maintaining their family life in the Netherlands on the one hand and, on the other, the public order interests of the respondent Government in controlling immigration. In view of the particular circumstances of the case, it is questionable whether general immigration policy considerations of themselves can be regarded as sufficient justification for refusing the applicant residence in the Netherlands.

ECtHR Ap.no. 32504/11 Kaplan a.o. v. NO [24 July 2014]
* violation of ECHR [Art. 8]
* explicit reference to the Best interests of the Child
* A Turkish father’s application for asylum is denied in 1998. After a conviction for aggravated burglary in 1999 he gets an expulsion order and an indefinite entry ban. On appeal this entry ban is reduced to 5 years. Finally he is expelled in 2011. His wife and children arrived in Norway in 2003 and were granted citizenship in 2012. Given the youngest daughter special care needs (related to chronic and serious autism), the bond with the father and the long period of inactivity of the immigration authorities, the Court states that it is not convinced in the concrete and exceptional
circumstance of the case that sufficient weight was attached to the best interests of the child.

* Khan v. GER
  - ECtHR Ap.no. 38030/12 [14 Sep. 2015]
  - ECHR [Art. 8]
  - Referral to Grand Chamber
  - This case is about the applicant’s (Khan) imminent expulsion to Pakistan after she had committed manslaughter in Germany in a state of mental incapacity. On 14 September 2013 the Grand Chamber panel of five judges accepted the applicant’s request to refer the case to the Grand Chamber.

* Maslov v. AU
  - ECtHR Ap.no. 1638/03 [22 Mar. 2007]
  - ECHR [Art. 8]
  - In addition to the criteria set out in Boultif and Ünerte the ECHR considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.

* Mugenzi v. FR
  - ECtHR Ap.no. 52701/09 [10 July 2014]
  - ECHR [Art. 8]
  - The Court noted the particular difficulties the applicant encountered in their applications, namely the excessive delays and lack of reasons or explanations given throughout the process, despite the fact that he had already been through traumatic experiences.

* Neulinger v. CH
  - ECtHR Ap.no. 41615/07 [6 July 2010]
  - ECHR [Art. 8]
  - The child’s best interests, from a personal development perspective, will depend on a variety of individual circumstances, in particular his age and level of maturity, the presence or absence of his parents and his environment and experiences. For that reason, those best interests must be assessed in each individual case. To that end they enjoy a certain margin of appreciation, which remains subject, however, to a European supervision whereby the Court reviews under the Convention the decisions that those authorities have taken in the exercise of that power. In this case the Court notes that the child has Swiss nationality and that he arrived in the country in June 2005 at the age of two. He has been living there continuously ever since. He now goes to school in Switzerland and speaks French. Even though he is at an age where he still has a certain capacity for adaptation, the fact of being uprooted again from his habitual environment would probably have serious consequences for him, especially if he returns on his own, as indicated in the medical reports. His return to Israel cannot therefore be regarded as beneficial.

* Nunez v. NO
  - ECtHR Ap.no. 55597/09 [28 June 2011]
  - ECHR [Art. 8]
  - Although Ms Nunez was deported from Norway in 1996 with a two-year ban on her re-entry into Norway, she returned to Norway, got married and had two daughters born in 2002 and 2003. It takes until 2005 for the Norwegian authorities to revoke her permits and to decide that Mrs Nunez should be expelled. The Court rules that the authorities had not struck a fair balance between the public interest in ensuring effective immigration control and Mrs Nunez’s need to remain in Norway in order to continue to have contact with her children.

* O’Donoghue v. UK
  - ECHR [Art. 12 + 14]
  - Judgment of Fourth Section
  - The UK Certificate of Approval required foreigners, except those wishing to marry in the Church of England, to pay large fees to obtain the permission from the Home Office to marry. The Court found that the conditions violated the right to marry (Article 12 of the Convention), that it was discriminatory in its application (Article 14 of the Convention) and that it was discriminatory on the ground of religion (Articles 9 and 14 of the Convention).

* Osman v. DK
  - ECtHR Ap.no. 38058/09 [14 June 2011]
  - ECHR [Art. 8]
  - The Court concluded that the denial of admission of a 17 years old Somali girl to Denmark, where she had lived from the age of seven until the age of fifteen, violated Article 8. For a settled migrant who has lawfully spent all of the major part of his or her childhood and youth in a host country, very serious reasons are required to justify expulsion’. The Danish Government had argued that the refusal was justified because the applicant had been taken out of the country by her father, with her mother’s permission, in exercise of their rights of parental responsibility. The Court agreed ‘that
the exercise of parental rights constitutes a fundamental element of family life’, but concluded that ‘in respecting parental rights, the authorities cannot ignore the child’s interest including its own right to respect for private and family life’.

* **ECtHR Ap.no. 12020/09**  **Udeh v. CH**  [16 Apr. 2013]

* Violation of **ECHR** [Art. 8]

* In 2001 a Nigerian national, was sentenced to four months’ imprisonment for possession of a small quantity of cocaine. In 2003 he married a Swiss national who had just given birth to their twin daughters. By virtue of his marriage, he was granted a residence permit in Switzerland. In 2006 he was sentenced to forty-two months’ imprisonment in Germany for a drug-trafficking offence. The Swiss Office of Migration refused to renew his residence permit, stating that his criminal conviction and his family’s dependence on welfare benefits were grounds for his expulsion. An appeal was dismissed. In 2009 he was informed that he had to leave Switzerland. In 2011 he was made the subject of an order prohibiting him from entering Switzerland until 2020. Although he is divorced in the meantime and custody of the children has been awarded to the mother, he has been given contact rights. The court rules that deportation and exclusion orders would prevent the immigrant with two criminal convictions from seeing his minor children: deportation would constitute a violation of article 8.

* **ECtHR Ap.no. 46410/99**  **Üner v. NL**  [18 Oct. 2006]

* Violation of **ECHR** [Art. 8]

* The expulsion of an alien raises a problem within the context of art. 8 ECHR if that alien has a family whom he has to leave behind. In Boultif (34273/00) the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. These criteria are:
  - the nature and seriousness of the offence committed by the applicant;
  - the length of the applicant’s stay in the country from which he or she is to be expelled;
  - the time elapsed since the offence was committed and the applicant’s conduct during that period;
  - the nationalities of the various persons concerned;
  - the applicant’s family situation, such as the length of the marriage, and other factors expressing the effectiveness of a couple’s family life;
  - whether the spouse knew about the offence at the time when he or she entered into a family relationship;
  - whether there are children of the marriage, and if so, their age; and
  - the seriousness of the difficulties which the spouse is likely to encounter in the country to which the applicant is to be expelled.

The Court adds in this judgment two additional criteria:
  - the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
  - the solidity of social, cultural and family ties with the host country and with the country of destination.

**1.3.5 National Judgments on Regular Migration**

* **Germany:** BVerwG 10 C 4.12  [29 Dec. 2012]

* Interpretation of Dir. 2003/86: **Family Reunification** Art. 17

* In a family reunification case, the Federal Administrative Court decided that, following the Chakroun judgment of the CJEU, the level of income that can be required from the sponsor, also depends on the actual needs of the family as a whole. If the necessary income level is not fully ensured, Article 17 of the Family Reunification Directive requires a further individual assessment if there are reasons to derogate from the formal income requirement. This assessment is in any case subject of a full judicial scrutiny.

* **Germany:** BVerwG 10 C 12.12  [4 Sep. 2012]

* Interpretation of Dir. 2003/86: **Family Reunification** Art. 8

* Appeal from VG Berlin, 1 Aug. 2011, VG 22 K 340.09 V

* The German pre-entry language requirement is in compliance with art. 6 German Constitution and art. 8 ECHR, as long as the measure is proportional in the individual case. In case of a third country national with a German partner, this principle of proportionality is violated earlier than in case of both partners being third country nationals, because the German Constitution guarantees the right to residence to German citizens. Even if the German has also the Afghan nationality he
can’t be expected to live with his family life outside Germany. Therefore the spouse may enter Germany even without passing the language test if he or she has shown efforts to learn the language, but has not succeeded within a year’s time. This period of one year does not need to be fulfilled if there are no courses (or alternatives) available or if participation in a course implies a high security risk. A German citizen who did not use the EU right to free movement, cannot rely on art. 9 Charter of Fundamental Rights, as Union law is not applicable. In this regard the court referred to art. 3(3) Dir. 2003/86, which excludes Union citizens. According to the court, this explicit exclusion in the directive justifies a different interpretation of the personal scope than the scope of Decision 1/80, as interpreted by the CJEU in the case Kalvecci and Inan (C-7/10 and C-9/10).

**Germany:** BVerwG 1 C 9.10 [28 Oct. 2011]
* interpretation of Dir. 2003/86: **Family Reunification**
* appeal from Berlin-Brandenburg Higher Administrative Court, 25 Mar. 2010
* Regarding the position of the European Commission taken in the case Imran (see CJEU 155/11 in the previous section) that a certain language level as a condition for admission is not in compliance with the directive, a preliminary ruling of the Court of Justice would have been necessary in this case. However it was finished by granting the claimed residence permits and the decision was only on the costs. But the importance of the decision lies in the fact that German Court - in difference from its previous judgment of 30 March 2010 (BVerwG 1 C 8.09) - now regards it necessary to make a reference to the CJEU on the question whether the language requirement is in compliance with the Family Reunification Directive.

**Germany:** BVerwG 1 C 8.09 [30 Mar. 2010]
* interpretation of Dir. 2003/86: **Family Reunification** Art. 7(2) interpretation of **ECHR** Art. 8
* appeal from Berlin Administrative Court, 17 Feb. 2009, VG 35 V 47.08
* This decision is about the validity of integration measures of family members before arrival in the host Member State. (This case involved an illiterate applicant.) See also BVerG 1 C 9.10.

**Ireland:** Casha Digale [2013] IEHC 25 [22 Jan. 2013]
* interpretation of Dir. 2003/86: **Family Reunification** Art. 4+10
* A beneficiary of refugee status sought family reunification unsuccessfully for her niece and nephew who she referred to as her own children; who had been orphaned; and whom she was not capable of formally adopting owing to the absence of available procedures in Somalia or where they were living in Ethiopia. The children had attained the age of majority after the Application had been made, but prior to a decision. The Minister refused family reunification on the basis that they were not dependent.
  
  The Applicant was successful in her Judicial Review as the Court found that the Minister had erred in restricting the assessment of dependency to the narrow issue of being financially dependent. Dependency should take into account all relevant social, economic, personal, physical, emotional and cultural bonds between the refugee and family member being considered. Furthermore the Minister did not conduct a proper investigation as to what would be objectively required to amount to dependency, and appeared to carry out "no more than an arbitrary evaluation based on no identified criteria”.

**Netherlands:** Raad van State 201401261/1/V1 [17 June 2014]
* interpretation of Dir. 2003/109: **Long-Term Resident**
* The Dutch Council of State has decided that the level of fees for requiring the status of an EU Long-Term resident (€ 130), is not disproportionate for an individual applicant. However if a family, consisting of four persons, has to pay 4x € 130, the fees can constitute an obstacle to the exercise of the rights conferred by the Directive. The Council of State based its reasoning on the judgment of the CJEU (C-508/10 of April 2012), in which the Court decided that the Dutch fees were “excessive and disproportionate”. The fees had been lowered since then, but the question...
remained if they had been lowered sufficiently. As a result of the recent Council of State’s decision, the fees for minor children for acquiring an EU Long-Term residence status as well as for family reunification have been reduced to € 53.

**Netherlands:** Rb Den Haag zp Den Bosch AWB 12/9408 [23 Nov. 2012]
* interpretation of Dir. 2003/86: *Family Reunification* Art. 7(2)
* Dutch District Court fully endorses the position of the European Commission taken in the *Imran* case (C-155/11) that the denial of family reunification for the sole reason that the applicant has failed the integration test abroad, is not in compliance with Article 7(2) of the Directive. According to this court, a request for a preliminary ruling was not necessary as the interpretation of the Commission was crystal clear.

**Netherlands:** Raad van State 201008782/1/V1 [9 Oct. 2012]
* violation of Dir. 2003/86: *Family Reunification*
* The Dutch Council of State (highest administrative court) decided that the CJEU judgment on the Dutch fees for long term residents (26 April 2012, case C-508/10, Commission against the Netherlands), which the Court considered as ‘extraordinary high’, and therefore not in compliance with (the objective of) Directive 2003/109, also has repercussions for the level of fees for family reunification. According to the Council of State, the high level can also constitute an obstacle for the exercise of the right to family reunification and therefore violate Directive 2003/86, undermining its objective.

* interpretation of *ECHR* Art. 8*
* These two cases concern the application of Rule 277 of the Immigration Rules (HC 395) under which the spouse or civil partner of a British national or someone settled in the UK is prevented from entering and settling in the UK if either party is under the age of 21. A parallel rule applies to fiancés and unmarried same-sex partners. Although it was clear that the marriage was not a forced marriage, the applicants had to leave the UK in order to have a family life. The Supreme Court held that the rule was “rationally connected to the objective of deterring forced marriages (…) but the number of forced marriages which it deters is highly debatable. What seems clear is that the number of unforced marriages which it obstructs from their intended development for up to three years vastly exceeds the number of forced marriages which it deters”. The Court concluded that the Secretary of State had failed to establish that the interference with the rights of the respondents under Article 8, which protects the right to private life, that had been caused by the rule was justified.

**United Kingdom:** ZH (Tanzania) SC [2011]UKSC4 [1 Feb. 2011]
* interpretation of *UN Convention on the Rights of the Child*
* The Supreme Court had to decide what the UK’s obligation to respect the best interests of the child means in the context of British national children of a foreign mother who is subject to a deportation decision. The SC finds that the children’s interest to live in their country of nationality, at least in this case, outweighs the public interest in the deportation of the mother. The SC does not refer to EU law but finds that expulsion can be contrary to the UN Convention on the Rights of the Child.

**United Kingdom:** MH Morocco [2010] UKUT 439 IAC [28 Sep. 2010]
* interpretation of *ECHR* Art. 8*
* A refusal to adjourn proceedings before the Tribunal may have similar consequence as a decision to remove an applicant in the process of seeking a contact order: a violation of art. 8 ECHR.
2.1 Borders and Visas: Adopted Measures

### Case Law Sorted in Chronological Order

#### Regulation 515/2014
- **Borders and Visa Fund**
  - * OJ 2014 L 150/143

#### Regulation 562/2006
- **Borders and Visas**
  - Adopted Measures

#### Regulation 562/2006
- **Borders Code**
  - Establishing a Community Code on the rules governing the movement of persons across borders
  - * OJ 2006 L 105/1
  - and by Reg. 296/2008 (OJ 2008 L 97/60)
  - and by Reg. 81/2009 (OJ 2009 L 35/56): Regarding the use of the VIS
  - and by Reg. 610/2013 (OJ 2013 L 182/1)
  - and by Reg. 1051/2013 (OJ 2013 L 295/1)

#### CJEU Judgments
- **Air Baltic**
  - 4 Sep. 2014
  - Art. 5

- **Zakaria**
  - 17 Jan. 2013
  - Art. 13(3)

- **Jaoo**
  - 14 Sep. 2012
  - Art. 20 + 21 - deleted

- **EP v. Council**
  - 5 Sep. 2012

- **Adil**
  - 19 July 2012
  - Art. 20 + 21

- **ANAFe**
  - 14 June 2012
  - Art. 13 + 5(4)(a)

- **Gaydarov**
  - 17 Nov. 2011

- **Melki & Abdeli**
  - 22 June 2010
  - Art. 20 + 21

- **Garcia & Cabrera**
  - Art. 5, 11 + 13

#### Decision 574/2007
- **Borders Fund**
  - Established European External Borders Fund
  - * OJ 2007 L 144

#### Regulation 1052/2013
- **EUROSUR**
  - Establishing the European Border Surveillance System (Eurosur)
  - * OJ 2013 L 295/11

#### CJEU Judgments
- **Spain v. EP & Council**
  - 8 Sep. 2015
  - See further: § 2.3

#### Regulation 2007/2004
- **Frontex**
  - Establishing External Borders Agency
  - * OJ 2004 L 349/1
  - and by Reg. 1168/2011 (OJ 2011 L 304/1)

#### Regulation 1931/2006
- **Local Border Traffic**
  - Local border traffic within enlarged EU at external borders of EU
  - * OJ 2006 L 405/1

#### CJEU Judgments
- **Shomodi**
  - 21 Mar. 2013
  - Art. 2(a) + 3(3)

#### Regulation 265/2010
- **Long Stay Visa Code**
  - On movement of persons with a long-stay Visa
  - * OJ 2010 L 85/1

#### Regulation 656/2014
- **Maritime Surveillance**
  - Establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex
  - * OJ 2014 L 189/93

#### Directive 2004/82
- **Passenger Data**
  - On the obligation of carriers to communicate passenger data
  - * OJ 2004 L 261/64
  - UK opt in
2.1: Borders and Visas: Adopted Measures

**Regulation 2252/2004**

*Passports*

* On standards for security features and biometrics in passports and travel documents
  * OJ 2004 L 385/1
  * and by Reg. 444/2009 (OJ 2009 L 142/1)

**CJEU judgments**

* CJEU C-446/12 *Willems a.o.* 16 Apr. 2015 Art. 4(3)
* CJEU C-101/13 *U.* 2 Oct. 2014
* CJEU C-139/13 *Comm. v. Belgium* 13 Feb. 2014 Art. 6
* CJEU C-291/12 *Schwarz* 17 Oct. 2013 Art. 1(2)

See further: § 2.3

**Recommendation 761/2005**

*Researchers*

* On uniform short-stay visas for researchers from third countries
  * OJ 2005 L 289/23

**Regulation 1053/2013**

*Schengen Evaluation*

* OJ 2013 L 295/27

**Regulation 1987/2006**

*SIS II*

* Establishing second generation Schengen Information System
  * OJ 2006 L 381/4
  * Replacing:
    * Reg. 378/2004 (OJ 2004 L 64)
    * Reg. 2424/2001 (OJ 2001 L 328/4)
  * Ending validity of:

**Decision 565/2014**

*Transit Bulgaria a.o. countries*

* Transit through Bulgaria, Croatia, Cyprus and Romania
  * OJ 2014 L 157/23

**Regulation 693/2003**

*Transit Documents*

* Establishing a specific Facilitated Transit Document (FTD) and a Facilitated Rail Transit Document (FRTD)
  * OJ 2003 L 99/8

**Regulation 694/2003**

*Transit Documents Format*

* Format for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD)
  * OJ 2003 L 99/15

**Decision 586/2008**

*Transit Switzerland*

* Transit through Switzerland and Liechtenstein
  * OJ 2008 L 162/27

**Decision 1105/2011**

*Travel Documents*

* On the list of travel documents which entitle the holder to cross the external borders
  * OJ 2011 L 287/9

**Decision 512/2004**

*VIS*

* Establishing Visa Information System (VIS)
  * OJ 2004 L 213/5

**Regulation 767/2008**

*VIS*

* Establishing Visa Information System (VIS) and the exchange of data between MS
  * OJ 2008 L 218/60
  * Third-pillar VIS Decision (OJ 2008 L 218/129)

**Regulation 1077/2011**

*VIS Management Agency*

* Establishing an Agency to manage VIS, SIS & Eurodac
  * OJ 2011 L 286/1
2.1: Borders and Visas: Adopted Measures

**Regulation 810/2009**
Establishing a Community Code on Visas
- OJ 2009 L 243/1
  - amd by Reg. 154/2012 (OJ 2012 L 58/3)

**CJEU judgments**
- CJEU C-575/12 *Air Baltic* 4 Sep. 2014  Art. 24(1) + 34
- CJEU C-84/12 *Koushkaki* 19 Dec. 2013  Art. 23(4) + 32(1)
- CJEU C-39/12 *Dang* 18 June 2012  Art. 21 + 34 - deleted
- CJEU C-83/12 *Vo* 10 Apr. 2012  Art. 21 + 34
  - See further: § 2.3

**Regulation 1683/95**
Uniform format for visas
- OJ 1995 L 164/1
  - UK opt in
  - amd by Reg. 334/2002 (OJ 2002 L 53/7)
  - amd by Reg. 856/2008 (OJ 2008 L 235/1)

**Regulation 539/2001**
Listing the third countries whose nationals must be in possession of visas
- OJ 2001 L 81/1
  - amd by Reg. 2414/2001 (OJ 2001 L 327/1): Moving Romania to ‘white list’
  - amd by Reg. 1244/2006 (OJ 2006 L 336/1): Lifting visa req. for some Western Balkan countries
  - amd by Reg. 1091/2010 (OJ 2010 L 329/1): Lifting visa req. for Albania and Bosnia
  - amd by Reg. 1211/2010 (OJ 2010 L 339/6): Lifting visa req. for Taiwan
  - amd by Reg. 1289/2013 (OJ 2013 L 347/74)

**CJEU judgments**
  - See further: § 2.3

**Regulation 333/2002**
Uniform format for forms for affixing the visa
- OJ 2002 L 53/4
  - UK opt in

**ECHR**
Anti-torture
European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols
- Art. 3 Prohibition of Turtture, Degrading Treatment
- ETS 005 (4-11-50)  impl. date 1950

**ECHR Judgments**
- ECtHR Ap.no. 53608/11 *B.M.* 19 Dec. 2013  Art. 3 + 13
- ECtHR Ap.no. 55352/12 *Aden Ahmed* 23 July 2013  Art. 3 + 5
- ECtHR Ap.no. 11463/09 *Samaras* 28 Feb. 2012  Art. 3
- ECtHR Ap.no. 27765/09 *Hirsi* 21 Feb. 2012  Art. 3 + 13
  - See further: § 2.3

2.2 Borders and Visas: Proposed Measures

**Regulation amending Regulation 562/2006**
Borders Code II
On the temporary reintroduction of border control at internal borders in exceptional circumstances
  - under discussion in Council

**Regulation**
Establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders
  - under discussion in Council
### 2.3 Borders and Visas: Proposal Measures

#### 2.3.1 CJEU Judgments on Borders and Visas

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Touring Visa</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Establishing Touring Visa</td>
<td>Adil</td>
<td></td>
</tr>
<tr>
<td>*</td>
<td>under discussion in Council April 2014</td>
<td></td>
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<tr>
<td>*</td>
<td>under discussion in Council</td>
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<tr>
<td>Regulation amending Regulation</td>
<td>Travellers</td>
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<tr>
<td>Establishing a Registered Traveller Programme (RTP)</td>
<td></td>
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<tr>
<td>*</td>
<td>under discussion in Council</td>
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</tr>
<tr>
<td>Regulation</td>
<td>Visa Code II</td>
<td></td>
</tr>
<tr>
<td>Recast of the Visa Code</td>
<td></td>
<td></td>
</tr>
<tr>
<td>*</td>
<td>under discussion in Council April 2014</td>
<td></td>
</tr>
<tr>
<td>Regulation</td>
<td>Visa List II</td>
<td></td>
</tr>
<tr>
<td>Codifying Regulations establishing EU visa list</td>
<td></td>
<td></td>
</tr>
<tr>
<td>*</td>
<td>replacing Reg. 539/2001: Withdrawn Mar 2015</td>
<td></td>
</tr>
</tbody>
</table>

**2.3 Borders and Visas: Jurisprudence**

**Codifying Regulations establishing EU visa list**

- **Regulation**
- **Visa Code II**
- **Visa List II**

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU C-278/12 (PPU)</td>
<td>Adil</td>
<td>19 July 2012</td>
</tr>
<tr>
<td>*</td>
<td>The Schengen Borders Code must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which enables officials responsible for border surveillance and the monitoring of foreign nationals to carry out checks, in a geographic area 20 kilometres from the land border between a MS and the State parties to the CISA, with a view to establishing whether the persons stopped satisfy the requirements for lawful residence applicable in the MS concerned, when those checks are based on general information and experience regarding the illegal residence of persons at the places where the checks are to be made, when they may also be carried out to a limited extent in order to obtain such general information and experience-based data in that regard, and when the carrying out of those checks is subject to certain limitations concerning, inter alia, their intensity and frequency.</td>
<td></td>
</tr>
</tbody>
</table>

- **Regulation**
- **Visa Code II**
- **Visa List II**

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision</th>
<th>Date</th>
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<tbody>
<tr>
<td>CJEU C-575/12</td>
<td>Air Baltic</td>
<td>4 Sep. 2014</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Reg. 562/2006 Borders Code [Art. 5]</td>
<td></td>
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<tr>
<td>*</td>
<td>The Borers Code precludes national legislation, which makes the entry of TCNs to the territory of the MS concerned subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.</td>
<td></td>
</tr>
</tbody>
</table>

- **Regulation**
- **Visa Code II**
- **Visa List II**

<table>
<thead>
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<td>*</td>
<td>interpr. of Reg. 810/2009 Visa Code [Art. 24(1) + 34]</td>
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<tr>
<td>*</td>
<td>The cancellation of a travel document by an authority of a third country does not mean that the uniform visa affixed to that document is automatically invalidated.</td>
<td></td>
</tr>
</tbody>
</table>

- **Regulation**
- **Visa Code II**
- **Visa List II**

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision</th>
<th>Date</th>
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<tr>
<td>CJEU C-606/10</td>
<td>ANAFE</td>
<td>14 June 2012</td>
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<tr>
<td>*</td>
<td>interpr. of Reg. 562/2006 Borders Code [Art. 13 + 5(4)(a)]</td>
<td></td>
</tr>
<tr>
<td>*</td>
<td>annulment of national legislation on visa</td>
<td></td>
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<tr>
<td>*</td>
<td>Article 5(4)(a) must be interpreted as meaning that a MS which issues to a TCN a re-entry visa within the meaning of that provision cannot limit entry into the Schengen area solely to points of entry to its national territory. The principles of legal certainty and protection of legitimate expectations did not require the provision of transitional measures for the benefit of TCNs who had left the territory of a MS when they were holders of temporary residence permits issued pending examination of a first application for a residence permit or an application for asylum and wanted to return to that territory (after the entry into force of this Regulation)</td>
<td></td>
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</tbody>
</table>

- **Regulation**
- **Visa Code II**
- **Visa List II**

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision</th>
<th>Date</th>
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<tbody>
<tr>
<td>CJEU C-241/05</td>
<td>Bot</td>
<td>4 Oct. 2006</td>
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</tbody>
</table>
2.3: Borders and Visas: Jurisprudence: CJEU Judgments

* interpr. of Schengen Agreement [Art. 20(1)]
* on the conditions of movement of third-country nationals not subject to a visa requirement; on the meaning of ‘first entry’ and successive stays
* This provision allows TCNs not subject to a visa requirement to stay in the Schengen Area for a maximum period of three months during successive periods of six months, provided that each of those periods commences with a ‘first entry’.  

* violation of Reg. 2252/2004 Passports [Art. 6]
* Failure to implement biometric passports containing digital fingerprints within the prescribed periods.

** CJEU C-257/01 Comm. v. Council [18 Jan. 2005]
* challenge to Regs. 789/2001 and 790/2001
* upholding validity of Regs.

* The Commission had requested an annulment of an amendment of the visa list by Regulation 1289/2013. The Court dismisses the action.

** CJEU C-39/12 Dang (deleted) [18 June 2012]
* interpr. of Reg. 810/2009 Visa Code [Art. 21 + 34]
* Whether penalties can be applied in the case of foreign nationals in possession of a visa which was obtained by deception from a competent authority of another Member State but has not yet been annulled pursuant to the regulation.

* violation of Reg. 562/2006 Borders Code
* annulment of measure supplementing Borders Code
* The CJEU decided to annul Council Decision 2010/252 of 26 April 2010 supplementing the Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. According to the Court, this decision contains essential elements of the surveillance of the sea external borders of the Member States which go beyond the scope of the additional measures within the meaning of Art. 12(5) of the Borders Code. As only the European Union legislature was entitled to adopt such a decision, this could not have been decided by comitology. Furthermore the Court ruled that the effects of decision 2010/252 maintain until the entry into force of new rules within a reasonable time.

** CJEU C-261/08 & C-348/08 Garcia & Cabrera [22 Oct. 2009]
* Member States are not obliged to expel a third-country national who is unlawfully present on the territory of a Member State because the conditions of duration of stay are not or no longer fulfilled
* Where a TCN is unlawfully present on the territory of a MS because he or she does not fulfil, or no longer fulfils, the conditions of duration of stay applicable there, that MS is not obliged to adopt a decision to expel that person.

** CJEU C-430/10 Gaydarov [17 Nov. 2011]
* interpr. of Reg. 562/2006 Borders Code
* Reg. does not preclude national legislation that permits the restriction of the right of a national of a MS to travel to another MS in particular on the ground that he has been convicted of a criminal offence of narcotic drug trafficking in another State, provided that (i) the personal conduct of that national constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, (ii) the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it and (iii) that measure is subject to effective judicial review permitting a determination of its legality as regards matters of fact and law in the light of the requirements of European Union law.

** CJEU C-88/12 Jao (deleted) [14 Sep. 2012]
* On statutory provision authorising, in the context of countering illegal residence after borders have been crossed, police checks in the area between the land border of the Netherlands with Belgium or Germany and a line situated within 20 kilometres of that border

** CJEU C-84/12 Koushkaki [19 Dec. 2013]
interpr. of Reg. 810/2009 Visa Code [Art. 23(4) + 32(1)]
* Art. 23(4), 32(1) and 35(6) must be interpreted as meaning that the competent authorities of a MS cannot refuse a visa to an applicant unless one of the grounds for refusal of a visa listed in those provisions can be applied to that applicant. In the examinations of those conditions and the relevant facts, authorities have a wide discretion. The obligation to issue a uniform visa is subject to the condition that there is no reasonable doubt that the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.

**CJEU C-139/08**  [Kqiku] [2 Apr. 2009]
* interpr. of Dec. 896/2006 Transit Switzerland [Art. 1 + 2]
* on transit visa legislation for third-country nationals subject to a visa requirement
* Residence permits issued by the Swiss Confederation or the Principality of Liechtenstein to TCNs subject to a visa requirement, are considered to be equivalent to a transit visa only.

**CJEU C-188/10 & C-189/10**  [Melki & Abdeli] [22 June 2010]
* consistency of national law and European Union law, abolition of border control and the area of 20 kilometres from the land border
* The French ‘stop and search’ law, which allowed for controls behind the internal border, is in violation of article 20 and 21 of the Borders code, due to the lack of requirement of “behaviour and of specific circumstances giving rise to a risk of breach of public order”. According to the Court, controls may not have an effect equivalent to border checks.

**CJEU C-291/12**  [Schwarz] [17 Oct. 2013]
* interpr. of Reg. 2252/2004 Passports [Art. 1(2)]
* Although the taking and storing of fingerprints in passports constitutes an infringement of the rights to respect for private life and the protection of personal data, such measures are nonetheless justified for the purpose of preventing any fraudulent use of passports.

**CJEU C-254/11**  [Shomodi] [21 Mar. 2013]
* interpr. of Reg. 1931/2006 Local Border traffic [Art. 2(a) + 3(3)]
* The holder of a local border traffic permit must be able to move freely within the border area for a period of three months if his stay is uninterrupted and to have a new right to a three-month stay each time that his stay is interrupted. There is thus an uninterrupted stay upon the crossing of the border irrespective of the frequency of such crossings, even if they occur several times daily.

**New**

**CJEU C-44/14**  [Spain v. EP & Council] [8 Sep. 2015]
* non-transp. of Reg. 1052/2013 EUROSUR
* Limited forms of cooperation do not constitute a form of taking part within the meaning of Article 4 of the Schengen Protocol. Consequently, Article 19 of the Eurosur Regulation cannot be regarded as giving the Member States the option of concluding agreements which allow Ireland or the United Kingdom to take part in the provisions in force of the Schengen acquis in the area of the crossing of the external borders.

**CJEU C-101/13**  [U.] [2 Oct. 2014]
* interpr. of Reg. 2252/2004 Passports
* About the recording and spelling of names, surnames and family names in passports. Where a MS whose law provides that a person’s name comprises his forenames and surname chooses nevertheless to include (also) the birth name of the passport holder in the machine readable personal data page of the passport, that State is required to state clearly in the caption of those fields that the birth name is entered there.

**CJEU C-77/05 & C-137/05**  [UK v. Council] [18 Dec. 2007]
* validity of Border Agency Regulation and Passport Regulation
* judgment against UK

**CJEU C-482/08**  [UK v. Council] [26 Oct. 2010]
* annulment of decision on police access to VIS, due to UK non-participation
* judgment against UK

**CJEU C-83/12**  [Vo] [10 Apr. 2012]
* interpr. of Reg. 810/2009 Visa Code [Art. 21 + 34]
* First substantive decision on Visa Code. The Court rules that the Visa Code does not preclude that national legislation of one MS penalises migration-related identity fraud with genuine visa issued by another MS.
### 2.3: Borders and Visas: Jurisprudence: CJEU Judgments

#### 2.3.3 National Judgments on Borders and Visas

**CJEU C-446/12**  
* Willems a.o.  
* interpr. of Reg. 2252/2004 **Passports** [Art. 4(3)]  
* Article 4(3) does not require the Member States to guarantee, in their legislation, that biometric data collected and stored in accordance with that regulation will not be collected, processed and used for purposes other than the issue of the passport or travel document, since that is not a matter which falls within the scope of that regulation.

**CJEU C-23/12**  
* **Zukaria**  
* interpr. of Reg. 562/2006 **Borders Code** [Art. 13(3)]  
* MSs are obliged to establish a means of obtaining redress only against decisions to refuse entry.

### 2.3.2 ECtHR Judgments on Borders and Visas

**ECtHR Ap.no. 55352/12**  
* **Aden Ahmed v. MAL**  
* violation of **ECHR** [Art. 3 + 5]  
* The case concerns a migrant who had entered Malta in an irregular manner by boat. The ECtHR found a violation of art. 5(1), mainly due to the failure of the Maltese authorities to pursue deportation or to do so with due diligence, and of art. 5(4) due to absence of an effective and speedy domestic remedy to challenge the lawfulness of their detention. Also, the ECtHR requested the Maltese authorities (Art. 46) to establish a mechanism allowing a determination of the lawfulness of immigration detention within a reasonable time-limit. In this case the Court for the first time found Malta in violation of art. 3 because of the immigration detention conditions. Those conditions in which the applicant had been living for 14½ months were, taken as a whole, amounted to degrading treatment.

**ECtHR Ap.no. 53608/11**  
* **B.M. v. GR**  
* violation of **ECHR** [Art. 3 + 13]  
* The applicant was an Iranian journalist who alleged to have been arrested and tortured due to his involvement in protests against the government. After his arrival in Greece a decision had been taken to return him to Turkey, and he had been held in custody in a police station and in various detention centres. His application for asylum was first not registered by the Greek authorities, and later they dismissed the application. The application mainly concerned the conditions of detention, in particular overcrowding, unhygienic conditions, lack of external contact, and lack of access to telephone, translators and any kind of information. Referring to its previous case law, the ECtHR held these conditions to be in violation of Art. 3. As there had been no effective domestic remedy against that situation, Art. 13 in combination with art. 3 had also been violated.

**ECtHR Ap.no. 27765/09**  
* **Hirsi v. IT**  
* violation of **ECHR** [Art. 3 + 13]  
* The Court concluded that the decision of the Italian authorities to send TCNs - who were intercepted outside the territorial waters of Italy - back to Libya, had exposed them to the risk of ill-treatment there, as well as to the risk of ill-treatment if they were sent back to their countries of origin (Somalia and Eritrea). For the first time the Court applied Article 4 of Protocol no. 4 (prohibition of collective expulsion) in the circumstance of aliens who were not physically present on the territory of the State, but in the high seas. Italy was also held responsible for exposing the aliens to a treatment in violation with Article 3 ECHR, as it transferred them to Libya ‘in full knowledge of the facts’ and circumstances in Libya. The Court also concluded that they had had no effective remedy in Italy against the alleged violations (Art. 13).

**ECtHR Ap.no. 11463/09**  
* **Samaras v. GR**  
* violation of **ECHR** [Art. 3]  
* The conditions of detention of the applicants – one Somali and twelve Greek nationals – at Ioannina prison were held to constitute degrading treatment in violation of ECHR art. 3.

### 2.3.3 National Judgments on Borders and Visas

**Germany: BVerwG 1 C 1.10**  
* interpretation of **Reg. 810/2009 on Visa Code** interpretation of **ECHR** Art. 8  
* appeal from Berlin-Brandenburg Higher Administrative Court, 18 Dec. 2009
A Moroccan national seeks a Schengen visa to visit her two minor children living with her father in Germany. The visa is denied, primarily based on the assumption that there is no specific credible prospect of return. Although the court states that the child’s personal contact and continuity of emotional bonds with both parents serve as a general rule toward developing the child’s personality, the court does not find the denial of the visa disproportionate because the maintenance of family ties can be realised through other means and visits outside Germany.

3 Irregular Migration

3.1 Irregular Migration: Adopted Measures

<table>
<thead>
<tr>
<th>Directive</th>
<th>Case Law</th>
<th>Field</th>
<th>Jurisdiction</th>
<th>Date</th>
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<tbody>
<tr>
<td>Directive 2001/51</td>
<td>Carrier sanctions</td>
<td>Obligation of carriers to return TCNs when entry is refused</td>
<td>OJ 2001 L 187/45</td>
<td>impl. date 11-02-2003</td>
<td>UK opt in</td>
</tr>
<tr>
<td>Decision 267/2005</td>
<td>Early Warning System</td>
<td>Establishing a secure web-based Information and Coordination Network for MS’ Migration Management Services</td>
<td>OJ 2005 L 83/48</td>
<td>UK opt in</td>
<td></td>
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<tr>
<td>Decision 191/2004</td>
<td>Expulsion Costs</td>
<td>On the compensation of the financial imbalances resulting from the mutual recognition of decisions on the expulsion of TCNs</td>
<td>OJ 2004 L 60/55</td>
<td>UK opt in</td>
<td></td>
</tr>
<tr>
<td>CJEU judgments</td>
<td>C-456/14 Orrego Arias</td>
<td>3 Sep. 2015</td>
<td>Art. 3(1)(a) - inadmissable</td>
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<td></td>
</tr>
<tr>
<td>Decision 573/2004</td>
<td>Expulsion Joint Flights</td>
<td>On the organisation of joint flights for removals from the territory of two or more MSs, of TCNs</td>
<td>OJ 2004 L 261/28</td>
<td>UK opt in</td>
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<tr>
<td>Conclusion</td>
<td>Expulsion via Land</td>
<td>Transit via land for expulsion</td>
<td>adopted 22 Dec. 2003 by Council</td>
<td>UK opt in</td>
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<tr>
<td>Directive &amp; Framework Decision 2002/90</td>
<td>Illegal Entry</td>
<td>Facilitation of unauthorised entry, transit and residence</td>
<td>OJ 2002 L 328</td>
<td>UK opt in</td>
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<td>Regulation 377/2004</td>
<td>Immigration Liaison Officers</td>
<td>On the creation of an immigration liaison officers network</td>
<td>OJ 2004 L 64/1</td>
<td>amd by Reg 493/2011 (OJ 2011 L 141/13)</td>
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</tr>
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<td>Directive 2008/115</td>
<td>Return Directive</td>
<td>On common standards and procedures in MSs for returning illegally staying TCNs</td>
<td>OJ 2008 L 348/98</td>
<td>impl. date 24-12-2010</td>
<td>UK opt in</td>
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<td>C-554/13 Zh. &amp; O.</td>
<td>11 June 2015</td>
<td>Art. 7(4)</td>
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<td>New</td>
<td>C-390/14 Mehrabipari</td>
<td>5 June 2015</td>
<td>Art. 15 + 16 - deleted</td>
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<td>C-38/14 Zaizoune</td>
<td>23 Apr. 2015</td>
<td>Art. 4(2) + 6(1)</td>
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<td>C-562/13 Abdida</td>
<td>18 Dec. 2014</td>
<td>Art. 5+13</td>
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<td>C-249/13 Boudjila</td>
<td>11 Dec. 2014</td>
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</tbody>
</table>
3.1: Irregular Migration: Adopted Measures

- CJEU C-166/13 Mukarubega 5 Nov. 2014 Art. 3 + 7
- CJEU C-473/13 & C-514/13 Bero & Bouzalmate 17 July 2014 Art. 16(1)
- CJEU C-474/13 Pham 17 July 2014 Art. 16(1)
- CJEU C-189/13 Da Silva 3 July 2014 inadmissable
- CJEU C-146/14 (PPU) Mahdi 5 June 2014 Art. 15
- CJEU C-297/12 Filev & Osmani 19 Sep. 2013 Art. 2(2)(b) + 11
- CJEU C-383/13 (PPU) G. & R. 10 Sep. 2013 Art. 15(2) + 6
- CJEU C-534/11 Arslan 3 July 2013 inadmissable
- CJEU C-189/13 Da Silva 3 July 2013 inadmissable
- CJEU C-146/14 (PPU) Mahdi 5 June 2013 Art. 15
- CJEU C-297/12 Filev & Osmani 19 Sep. 2013 Art. 2(2)(b) + 11
- CJEU C-383/13 (PPU) G. & R. 10 Sep. 2013 Art. 15(2) + 6
- CJEU C-534/11 Arslan 30 May 2013 Art. 2(1)
- CJEU C-522/11 Mbaye 21 Mar. 2013 Art. 2(2)(b) + 7(4)
- CJEU C-51/12 Zhu 16 Feb. 2013 Art. 2-8, 15 + 16 - deleted
- CJEU C-430/11 Sagor 6 Dec. 2012 Art. 2-8, 15 + 16 - deleted
- CJEU C-51/12 Zhu 16 Feb. 2012 Art. 2-8, 15 + 16 - deleted
- CJEU C-357/09 (PPU) Kadzoev 30 Nov. 2009 Art. 15(4), (5) + (6)
- CJEU pending cases
- CJEU C-161/15 Bensada Benallal pending
- CJEU C-290/14 Celaj pending
- CJEU C-47/15 Affum pending

National Judgments
- Ger: BVerwG 1 C 18.14 25 Mar. 2015 Art. 2(1), 11(2)
- Ger: BVerwG 1 C 19.11 10 July 2012

Decision 575/2007
Establishing the European Return Fund as part of the General Programme Solidarity and Management of Migration Flows
* OJ 2007 L 144

Directive 2011/36
On preventing and combating trafficking in human beings and protecting its victims
* OJ 2011 L 101/1 (Mar. 2011) impl. date 6-04-2013
* Replacing Framework Decision 2002/629 (OJ 2002 L 203/1)

Directive 2004/81
Residence permits for TCNs who are victims of trafficking
* OJ 2004 L 261/19

CJEU judgments
- CJEU C-266/08 Comm. v. Spain 14 May 2009

See further: § 3.3

ECCHR Detention - Collective Expulsion
European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols
Art. 5 Detention
Prot. 4 Art. 4 Collective Expulsion
* ETS 005 (4-11-50) impl. date 1950

ECCHR Judgments
- ECtHR Ap.no. 55352/12 Aden Ahmed 23 July 2013 Art. 3 + 5
- ECtHR Ap.no. 53709/11 A.F. 13 June 2013 Art. 5
- ECtHR Ap.no. 14902/10 Mahmoudi 31 July 2012 Art. 5
- ECtHR Ap.no. 27765/09 Hirsi 21 Feb. 2012 Prot. 4 Art. 4
- ECtHR Ap.no. 10816/10 Lokpo & Touré 20 Sep. 2011 Art. 5

See further: § 3.3

3.2 Irregular Migration: Proposed Measures
* nothing to report
3.3: Irregular Migration: Jurisprudence: CJEU Judgments

3.3.1 CJEU Judgments on Irregular Migration

Irregular Migration: Jurisprudence

* F of interpr. of Dir. 2008/115 Return Directive [Art. 5+13]
* Although the Belgium court had asked a preliminary ruling on the interpretation of the Qualification Dir., the CJEU re-interpreted the question of an issue of Art. 5 and 13 of the Returns Directive. These articles are to be interpreted as precluding national legislation which: (1) does not endow with suspensive effect an appeal against a decision ordering a third country national suffering from a serious illness to leave the territory of a Member State, where the enforcement of that decision may expose that third country national to a serious risk of grave and irreversible deterioration in his state of health, and (2) does not make provision, in so far as possible, for the basic needs of such a third country national to be met, in order to ensure that that person may in fact avail himself of emergency health care and essential treatment of illness during the period in which that Member State is required to postpone removal of the third country national following the lodging of the appeal.

* C-61/11 (PPU) Abdida [18 Dec. 2014]
* interpr. of Dir. 2008/115 Return Directive [Art. 5+13]
* The directive precludes national legislation permitting the imprisonment of an illegally staying third-country national who has not (yet) been subject to the coercive measures provided for in the directive and has not, if detained with a view to be returned, reached the expiry of the maximum duration of that detention. The directive does not preclude penal sanctions being imposed after full application of the return procedure established by that directive.

* C-329/11 Achughbian [6 Dec. 2011]
* interpr. of Dir. 2008/115 Return Directive
* The directive precludes national legislation permitting the imprisonment of an illegally staying third-country national who has not (yet) been subject to the coercive measures provided for in the directive and has not, if detained with a view to be returned, reached the expiry of the maximum duration of that detention. The directive does not preclude penal sanctions being imposed after full application of the return procedure established by that directive.

* C-534/11 Arslan [30 May 2013]
* interpr. of Dir. 2008/115 Return Directive [Art. 2(1)]
* The Return Dir. does not apply during the period from the making of the (asylum) application to the adoption of the decision at first instance on that application or, as the case may be, until the outcome of any action brought against that decision is known.

* C-473/13 & C-514/13 Bero & Bouzalmate [17 July 2014]
* interpr. of Dir. 2008/115 Return Directive [Art. 16(1)]
* As a rule, a MS is required to detain illegally staying TCNs for the purpose of removal in a specialised detention facility of that State even if the MS has a federal structure and the federated state competent to decide upon and carry out such detention under national law does not have such a detention facility.

* interpr. of Dir. 2008/115 Return Directive
* The right to be heard in all proceedings (in particular, Art 6), must be interpreted as extending to the right of an illegally staying third-country national to express, before the adoption of a return decision concerning him, his point of view on the legality of his stay, on the possible application of Art 5 and 6(2) to (5) and on the detailed arrangements for his return.

* C-266/08 Comm. v. Spain [14 May 2009]
* non-transp. of Dir. 2004/81 Trafficking Victims
* On the status of victims of trafficking and smuggling

* C-189/13 Da Silva (inadmissible) [3 July 2014]
* interpr. of Dir. 2008/115 Return Directive
* On the permissibility of national legislation imposing a custodial sentence for the offence of illegal entry prior to the institution of deportation proceedings.

* C-61/11 (PPU) El Dridi [28 Apr. 2011]
* interpr. of Dir. 2008/115 Return Directive [Art. 15 + 16]
* The Return Directive precludes that a Member State has legislation which provides for a sentence of imprisonment to be imposed on an illegally staying TCN on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.

* C-73/12 Ettaghi (deleted) [4 July 2012]
* interpr. of Dir. 2008/115 Return Directive [Art. 2-8, 15 + 16]
  
  ** CJEU C-297/12 Filev & Osmani [19 Sep. 2013]
  * Directive must be interpreted as precluding a MS from providing that an expulsion or removal order which predated by five years or more the period between the date on which that directive should have been implemented and the date on which it was implemented, may subsequently be used as a basis for criminal proceedings, where that order was based on a criminal law sanction (within the meaning of Article 2(2)(b)) and where that MS exercised the discretion provided for under that provision.
  
  ** CJEU C-383/13 (PPU) G. & R. [10 Sep. 2013]
  * interpr. of Dir. 2008/115 Return Directive [Art. 15(2) + 6]
  * If the extension of a detention measure has been decided in an administrative procedure in breach of the right to be heard, the national court responsible for assessing the lawfulness of that extension decision may order the lifting of the detention measure only if it considers, in the light of all of the factual and legal circumstances of each case, that the infringement at issue actually deprived the party relying thereon of the possibility of arguing his defence better, to the extent that the outcome of that administrative procedure could have been different.
  
  ** CJEU C-357/09 (PPU) Kadzoe [30 Nov. 2009]
  * The maximum duration of detention must include a period of detention completed in connection with a removal procedure commenced before the rules in the directive become applicable. Only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.
  
  ** CJEU C-146/14 (PPU) Mahdi [5 June 2014]
  * interpr. of Dir. 2008/115 Return Directive [Art. 15]
  * Any decision adopted by a competent authority, on expiry of the maximum period allowed for the initial detention of a TCN, on the further course to take concerning the detention must be in the form of a written measure that includes the reasons in fact and in law for that decision. The Dir. precludes that an initial six-month period of detention may be extended solely because the third-country national concerned has no identity documents.
  
  ** CJEU C-522/11 Mbaye [21 Mar. 2013]
  * interpr. of Dir. 2008/115 Return Directive [Art. 2(2)(b) + 7(4)]
  * The directive does not preclude that a fine because of illegal stay of a TCN in a MS is replaced by expulsion if there is a risk of absconding.
  
  ** New CJEU C-390/14 Mehrabipari (deleted) [5 June 2015]
  * interpr. of Dir. 2008/115 Return Directive [Art. 15 + 16]
  * Prejudicial question on refusal to cooperate on expulsion was withdrawn.
  
  ** CJEU C-166/13 Mukarubega [5 Nov. 2014]
  * interpr. of Dir. 2008/115 Return Directive [Art. 3 + 7]
  * A national authority is not precluded from failing to hear a TCN specifically on the subject of a return decision where, after that authority has determined that the TCN is staying illegally in the national territory on the conclusion of a procedure which fully respected that person’s right to be heard, it is contemplating the adoption of such a decision in respect of that person, whether or not that return decision is the result of refusal of a residence permit.
  
  ** CJEU C-456/14 Orrego Arias (inadmissible) [3 Sep. 2015]
  * interpr. of Dir. 2001/40 Expulsion Decisions [Art. 3(1)(a)]
  * This case concerns the exact meaning of the term ‘offence punishable by a penalty involving deprivation of liberty of at least one year’, set out in Art 3(1)(a). However, the question was incorrectly formulated. Consequently, the Court ordered that the case was inadmissible.
  
  ** CJEU C-474/13 Pham [17 July 2014]
  * interpr. of Dir. 2008/115 Return Directive [Art. 16(1)]
  * The Dir. does not permit a MS to detain a TCN for the purpose of removal in prison accommodation together with ordinary prisoners even if the TCN consents thereto.
  
  ** CJEU C-430/11 Sagog [6 Dec. 2012]
3.3: Irregular Migration: Jurisprudence: CJEU Judgments

3.3.2 CJEU pending cases on Irregular Migration

  * An illegal stay by a TCN in a MS:
    1. can be penalised by means of a fine, which may be replaced by an expulsion order;
    2. can not be penalised by means of a home detention order unless that order is terminated as soon as the physical transportation of the TCN out of that MS is possible.

CJEU C-38/14 Ziaoune [23 Apr. 2015]
* interpr. of Dir. 2008/115 Return Directive [Art. 4(2) + 6(1)]
* Articles 6(1) and 8(1), read in conjunction with Article 4(2) and 4(3), must be interpreted as precluding legislation of a MS, which provides, in the event of TCNs illegally staying in the territory of that Member State, depending on the circumstances, for either a fine or removal, since the two measures are mutually exclusive.

CJEU C-554/13 Zh. & O. [11 June 2015]
* interpr. of Dir. 2008/115 Return Directive [Art. 7(4)]
  * (1) Article 7(4) must be interpreted as precluding a national practice whereby a third-country national, who is staying illegally within the territory of a Member State, is deemed to pose a risk to public policy within the meaning of that provision on the sole ground that that national is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law;
  * (2) Article 7(4) must be interpreted to the effect that, in the case of a TCN who is staying illegally within the territory of a MS and is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law, other factors, such as the nature and seriousness of that act, the time which has elapsed since it was committed and the fact that that national was in the process of leaving the territory of that MS when he was detained by the national authorities, may be relevant in the assessment of whether he poses a risk to public policy within the meaning of that provision. Any matter which relates to the reliability of the suspicion that the third-country national concerned committed the alleged criminal offence, as the case may be, is also relevant to that assessment.
  * (3) Article 7(4) must be interpreted as meaning that it is not necessary, in order to make use of the option offered by that provision to refrain from granting a period for voluntary departure when the third-country national poses a risk to public policy, to conduct a fresh examination of the matters which have already been examined in order to establish the existence of that risk. Any legislation or practice of a MS on this issue must nevertheless ensure that a case-by-case assessment is conducted of whether the refusal to grant such a period is compatible with that person’s fundamental rights.

CJEU C-51/12 Zhu (deleted) [16 Feb. 2013]
* interpr. of Dir. 2008/115 Return Directive [Art. 2-8, 15 + 16]
  * Whether it is possible to substitute for the fine (for entering national territory illegally or staying there illegally) an order for immediate expulsion for a period of at least five years or a measure restricting freedom (‘permanenza domiciliare’).

3.3.2 CJEU pending cases on Irregular Migration

CJEU C-47/15 Affum
* interpr. of Dir. 2008/115 Return Directive
  * ref. from 'Cour de Cassation ' (France)
  * Does the Return Directive preclude national legislation under which a TCN who entered the territory of a MS illegally is liable to a term of imprisonment under the same conditions as those laid down by the CJEU (Achughbabian, C-329/11) in so far as concerns illegal stay, which are contingent on the person concerned not having been previously subject to the coercive measures referred to in Article 8 of the directive and the duration of that person’s detention?

CJEU C-161/15 Bensaida Benallal
* interpr. of Dir. 2008/115 Return Directive
  * ref. from 'Conseil d’Etat' (Belgium)
  * Does the general principle of EU Law upholding the rights of the defence, including the right of an individual to be heard by a national authority before any decision is taken by that authority likely adversely to affect that individual’s interests such as a decision ending that individual’s residence authorisation, carry in the legal system of the European Union an equivalent importance to that held by the rules of public policy in the Belgian legal system, and does the principle of equivalence require that a plea can be raised for the first time before the Conseil d’État hearing an appeal in cassation based on breach of the general principle of EU law?
of the right to a fair hearing as is permitted in the national law for pleas based on public policy?

**CJEU C-290/14 Cela**

* interpr. of Dir. 2008/115 **Return Directive**
* AG: 28 Aprl 2015
* Does the Dir. precludes a MS’s legislation which provides for the imposition of a sentence of imprisonment of up to four years on an illegally staying TCN who, having been returned to his country of origin neither as a criminal law sanction nor as a consequence of a criminal law sanction, has re-entered the territory of the State in breach of a lawful re-entry ban but has not been the subject of the coercive measures provided for by Art. 8 with a view to his swift and effective removal?

### 3.3.3 ECHR Judgments on Irregular Migration

**ECHR Ap.no. 53709/11 A.F. v. GR** [13 June 2013]
* violation of ECHR [Art. 5]
* An Iranian entering Greece from Turkey had initially not been registered as an asylum seeker by the Greek authorities, which ordered his return to Turkey. However, the Turkish authorities refused to readmit him into Turkey, and he was then detained by the Greek police.

Against the background of reports from Greek and international organisations, having visited the relevant police detention facilities either during the applicant’s detention or shortly after his release – including the European Committee for the Prevention of Torture, the UN Special Rapporteur on Torture, the German NGO ProAsyl and the Greek National Human Rights Committee – the ECHR found a violation of art. 3 due to the serious lack of space available to the applicant, also taking the duration of his detention into account. It was thus unnecessary for the Court to examine the applicant’s other allegations concerning the detention conditions (art 5 ECHR) which the Government disputed. Yet, the Court noted that the Government’s statements in this regard were not in accordance with the findings of the abovementioned organisations.

* violation of ECHR [Art. 5]
* This case concerns unlawful detention, without effective judicial review, of an asylum seeker during the examination of his asylum application. The applicant was a Palestinian who had been stopped at the Hungarian border control for using a forged passport.

* violation of ECHR [Art. 5]
* The conditions of detention of the applicant Afghan asylum seeker in two police stations in Athens were found to constitute degrading treatment in breach of ECHR art. 3. Since Greek law did not allow the courts to examine the conditions of detention in centres for irregular immigrants, the applicant did not have an effective remedy in that regard, in violation of ECHR art. 13 taken together with art. 3.

The Court found an additional violation of ECHR art. 13 taken together with art. 3, resulting from the structural deficiencies of the Greek asylum system, as evidenced by the period during which the applicant had been awaiting the outcome of his appeal against the refusal of asylum, and the risk that he might be deported before his asylum appeal had been examined. ECHR art. 5 para. 4 was violated due to the lack of judicial competence to review the lawfulness of the deportation constituting the legal basis of detention.

* violation of ECHR [Art. 5]
* This case concerns unlawful detention, without effective judicial review, of an asylum seeker during the examination of his asylum application. The applicants were Iraqi nationals who illegally entered Hungary, applied for asylum and then travelled illegally to the Netherlands from where they were transferred back to Hungary under the Dublin Regulation.

**ECHR Ap.no. 27765/09 Hirs v. IT** [21 Feb. 2012]
* violation of ECHR [Prot. 4 Art. 4]
* The Court concluded that the decision of the Italian authorities to send TCNs - who were intercepted outside the territorial waters of Italy - back to Libya, had exposed them to the risk of ill-treatment there, as well as to the risk of ill-treatment if they were sent back to their countries of origin (Somalia and Eritrea). They also had been subjected to collective expulsion prohibited by Art. 4 of Protocol No. 4. The Court also concluded that they had had no effective remedy in Italy.
3.3: Irregular Migration: Jurisprudence: ECtHR Judgments

against the alleged violations.

* ECHR Ap.no. 10816/10 Lokpo & Touré v. HU [20 Sep. 2011]
  * violation of ECHR [Art. 5]
  * The applicants entered Hungary illegally. After their arrest and during subsequent detention they applied for asylum. They were kept however in detention.
    The Court ruled that Article 5 § 1 (right to liberty and security) was violated, stating that the absence of elaborate reasoning for an applicant’s deprivation of liberty renders that measure incompatible with the requirement of lawfulness.

* ECHR Ap.no. 14902/10 Mahmudi v. GR [31 July 2012]
  * violation of ECHR [Art. 5]
  * The conditions of the detention of the applicants – Afghan nationals, subsequently seeking asylum in Norway, who had been detained in the Pagani detention centre upon being rescued from a sinking boat by the maritime police – were held to be in violation of ECHR art. 3. In the specific circumstances of this case the treatment during 18 days of detention was considered not only degrading, but also inhuman, mainly due to the fact that the applicants’ children had also been detained, some of them separated from their parents. In addition, a female applicant had been in the final stages of pregnancy and had received insufficient medical assistance and no information about the place of her giving birth and what would happen to her and her child.
    ECHR art. 13, taken together with art. 3, had been violated by the impossibility for the applicants to take any action before the courts to complain of their conditions of detention. ECHR art. 5 para. 4 was violated due to the lack of judicial competence to review the lawfulness of the deportation that constitutes the legal basis for detention.

3.3.4 National Judgments on Irregular Migration

New

  * interpretation of Dir. 2008/115: Return Directive Art. 2(1), 11(2)
  * The legal exclusion effects linked to the ‘pre-existing expulsion’ of a man who is now a Union citizen persist even after the accession to the European Union of the country of which he is a national (here: Poland on 1 May 2004), the entry into force of the EU Citizens Freedom of Movement Act on 1 January 2005 and the expiry of the transposition period for the Return Directive. The time limit decision under sec. 7 (2) of the EU Citizens Freedom of Movement Act must be made on the basis of a current prediction of danger and review of proportionality; there is no maximum time limit beginning at the time of leaving the country.

* Germany: BVerwG 1 C 19.11 [10 July 2012]
  * interpretation of Dir. 2008/115: Return Directive
  * appeal from North Rhine-Westphalia Higher Administrative Court, 5 Sep. 2008
  * Foreigners are entitled to have the immigration authority, simultaneously with the issuance of an expulsion, set a time limit for the effects of the expulsion as mentioned in Section 11(1) first and second sentence of the German Residence Act.
4 External Treaties

4.1 External Treaties: Association Agreements

case law sorted in chronological order

EC-Turkey Association Agreement

* into force 23 Dec. 1963

National Judgments
NL: Centrale Raad van Beroep, LJN: BR4959 16 Aug. 2011
See further: § 4.4

EC-Turkey Association Agreement Additional Protocol

* into force 1 Jan. 1973

CJEU judgments

C-138/13 Dogan (Naime) 10 July 2014 Art. 41(1)
C-221/11 Demirkan 24 Sep. 2013 Art. 41(1)
C-186/10 Tural Oguz 21 July 2011 Art. 41(1)
C-228/06 Soysal 19 Feb. 2009 Art. 41(1)
C-16/05 Tun & Dari 20 Sep. 2007 Art. 41(1)
C-37/98 Savas 11 May 2000 Art. 41(1)

CJEU pending cases

C-1/15 EC v. Austria pending Art. 41(1)

National Judgments

NL: Raad van State 201102803/1/V3 14 Mar. 2012 Art. 41
See further: § 4.4

EC-Turkey Association Agreement Decision 1/80


CJEU judgments

New C-176/14 Van Hauthem 16 Mar. 2015 Art. 6 + 7 - deleted
C-91/13 Essent 11 Sep. 2014 Art. 13
C-225/11 Demir 7 Nov. 2013 Art. 13
C-268/11 Gülbahce 8 Nov. 2012 Art. (6(1) + 10
C-451/11 Dilger 19 July 2012 Art. 7
C-7/10 & C-9/10 Kahveci & Inan 29 Mar. 2012 Art. 7
C-436/09 Belkiran 13 Jan. 2012 deleted
C-371/08 Ziebell or Örnek 8 Dec. 2011 Art. 14(1)
C-256/11 Dereci et al. 15 Nov. 2011 Art. 13
C-187/10 Unal 29 Sep. 2011 Art. 6(1)
C-484/07 Pehlivan 16 June 2011 Art. 7
C-303/08 Metin Bozkurt 22 Dec. 2010 Art. 7 + 14(1)
C-300/09 & C-301/09 Toprak/Oguz 9 Dec. 2010 Art. 13
C-92/07 Comm. v. Netherlands 29 Apr. 2010 Art. 10(1) + 13
C-14/09 Genc 4 Feb. 2010 Art. 6(1)
C-462/08 Bekleyen 21 Jan. 2010 Art. 7(2)
C-242/06 Sahin 17 Sep. 2009 Art. 13
C-337/07 Altun 18 Dec. 2008 Art. 7
C-453/07 Er 25 Sep. 2008 Art. 7
C-294/06 Payir 24 Jan. 2008 Art. 6(1)
C-349/06 Polat 4 Oct. 2007 Art. 7 + 14
C-325/05 Derin 18 July 2007 Art. 6, 7 and 14
C-4/05 Güzeli 26 Oct. 2006 Art. 10(1)
C-502/04 Torun 16 Feb. 2006 Art. 7
C-230/03 Sedef 10 Jan. 2006 Art. 6
C-373/03 Aydinli 7 July 2005 Art. 6 + 7
C-374/03 Gürol 7 July 2005 Art. 9
C-383/03 Dogan (Ergül) 7 July 2005 Art. 6(1) + (2)
C-136/03 Dörr & Unal 2 June 2005 Art. 6(1) + 14(1)
C-467/02 Cetinkaya 11 Nov. 2004 Art. 7 + 14(1)
C-275/02 Ayaz 30 Sep. 2004 Art. 7
C-465/01 Comm. v. Austria 16 Sep. 2004
4.1: External Treaties: Association Agreements

- C-171/01 Birlıkte 8 May 2003 Art. 10(1)
- C-188/00 Kurz (Yuze) 19 Nov. 2002 Art. 6(1) + 7
- C-89/00 Bıçakcı 19 Sep. 2000
- C-65/98 Eyüp 22 June 2000 Art. 7
- C-329/97 Ergat 16 Mar. 2000 Art. 7
- C-340/97 Nazlı 10 Feb. 2000 Art. 6(1) + 14(1)
- C-1/97 Birden 26 Nov. 1998 Art. 6(1)
- C-210/97 Akman 19 Nov. 1998 Art. 7
- C-36/96 Günyaydın 30 Sep. 1997 Art. 6(1)
- C-98/96 Ertanır 30 Sep. 1997 Art. 6(1) + 6(3)
- C-285/95 Kol 5 June 1997 Art. 6(1)
- C-386/95 Eker 29 May 1997 Art. 6(1)
- C-351/95 Kadıman 17 Apr. 1997 Art. 7
- C-171/95 Tetik 23 Jan. 1997 Art. 6(1)
- C-434/93 Ahmet Bozkurt 6 June 1995 Art. 6(1)
- C-355/93 Ergölu 5 Oct. 1994 Art. 6(1)
- C-237/91 Kus 16 Dec. 1992 Art. 6(1) + 6(3)
- C-192/89 Sevinc 20 Sep. 1990 Art. 6(1) + 13
- C-12/86 Demirel 30 Sep. 1987 Art. 7 + 12

National Judgments

See further: § 4.4

EC-Turkey Association Agreement Decision 3/80
- Dec. 3/80 of 19 Sept. 1980 on Social Security

CJEU judgments
- C-171/13 Demirci a.o. 14 Jan. 2015 Art. 6(1)
- C-485/07 Akdas 26 May 2011 Art. 6(1)

See further: § 4.4

4.2 External Treaties: Readmission

Albania
- OJ 2005 L 124 (into force 1 May 2006 (TCN: May 2008)) UK opt in

Armenia
- OJ 2013 L 289/13 (into force 1 Jan. 2014)

Azerbaijan
- COM (2013) 745 (into force 1 Sept. 2014)

Belarus
- negotiation mandate approved by Council, Feb. 2011

Cape Verde
- OJ 2013 L 281 (into force 1 Dec. 2014)

Georgia
- OJ 2011 L 52/47 (into force 1 March 2011)

Hong Kong
- OJ 2004 L 17/23 (into force 1 Mar. 2004) UK opt in

Macao
- OJ 2004 L 143/97 (into force 1 June 2004 ) UK opt in

Morocco, Algeria, and China
- negotiation mandate approved by Council

Pakistan

Russia
- OJ 2007 L 129 (into force 1 June 2007 (TCN: June 2010)) UK opt in

Sri Lanka
- OJ 2005 L 124/43 (into force 1 May 2005 ) UK opt in

Turkey
4.2: External Treaties: Readmission

- **Com (2012) 239** (into force 1 Oct. 2014)
- **Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova**
  - UK opt in

4.3 External Treaties: Other

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  - **OJ 2011 L 66/1** (into force 24 Feb. 2011)
| **Brazil** | short-stay visa waiver for holders of ordinary passports |
| **Cape Verde** | Visa facilitation agreement |
  - **OJ 2013 L 282/3** (into force 1 Dec. 2014)
| **China** | Approved Destination Status treaty |
  - **OJ 2004 L 83/12** (into force 1 May 2004)
| **Denmark** | Dublin II treaty |
  - **OJ 2006 L 66/38** (into force 1 April 2006)
| **Georgia** | Visa facilitation agreement |
  - **OJ 2010 L 308/1** (into force 1 March 2011)
| **Mauritius, Antigua/Barbuda, Barbados, Seychelles, St. Kitts and Nevis and Bahamas** | Visa abolition treaties agreed |
| **Morocco** | proposals to negotiate - approved by council Dec. 2013 |
| **Norway and Iceland** | Dublin Convention |
  - **OJ 1999 L 176/36** (into force 1 March 2001)
  - Protocol into force 1 May 2006
| **Peru and Colombia** | Initial of bilateral visa waiver agreement |
| **Russia, Ukraine, Moldova** | Council mandate to renegotiate visa facilitation treaties, April 2011 |
| **Russia, Ukraine, Moldova** | proposals to sign and conclude new treaty with Ukraine, July 2012; new treaty with Moldova signed, June 2012 |
| **Russia** | Visa facilitation agreement |
  - **OJ 2007 L 129** (into force 1 June 2007)
| **St Lucia; Dominica; Grenada; St Vincent; Vanuatu; Samoa; Trinidad & Tobago** | Short-stay Visa Waiver Agreement |
| **Switzerland** | Free Movement of Persons |
| **Switzerland** | Implementation of Schengen, Dublin |
  - **OJ 2008 L 83/37** (applied from Dec. 2008)
| **Ukraine, Serbia, Montenegro, Bosnia, Macedonia, Albania and Moldova** | Visa facilitation agreements |

4.4 External Treaties: Jurisprudence

4.4.1 CJEU Judgments on EEC-Turkey Association Agreement
### 4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey

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<tr>
<td>C-436/09</td>
<td>Belkiran</td>
<td>(deleted) [13 Jan. 2012]</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dec. 1/80</td>
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<td>*</td>
<td>Case withdrawn because of judgment C-371/08 (Ziebell). Art. 14(1) of Dec. 1/80 does not have the same scope as art. 28(3)(a) of the Directive on Free Movement.</td>
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<tr>
<td>C-89/00</td>
<td>Bicakci</td>
<td>[19 Sep. 2000]</td>
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<tr>
<td>*</td>
<td>interpr. of Dec. 1/80</td>
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<td>*</td>
<td>Art 14 does not refer to a preventive expulsion measure</td>
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<tr>
<td>C-1/97</td>
<td>Birden</td>
<td>[26 Nov. 1998]</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dec. 1/80 [Art. 6(1)]</td>
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<td>*</td>
<td>In so far as he has available a job with the same employer, a Turkish national in that situation is entitled to demand the renewal of his residence permit in the host MS, even if, pursuant to the legislation of that MS, the activity pursued by him was restricted to a limited group of persons, was intended to facilitate their integration into working life and was financed by public funds.</td>
<td></td>
</tr>
<tr>
<td>C-171/01</td>
<td>Birlikte</td>
<td>[8 May 2003]</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dec. 1/80 [Art. 10(1)]</td>
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<tr>
<td>*</td>
<td>Art 10 precludes the application of national legislation which excludes Turkish workers duly registered as belonging to the labour force of the host MS from eligibility for election to organisations such as trade unions.</td>
<td></td>
</tr>
<tr>
<td>C-467/02</td>
<td>Cetinkaya</td>
<td>[11 Nov. 2004]</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dec. 1/80 [Art. 7 + 14(1)]</td>
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<tr>
<td>*</td>
<td>The meaning of a “family member” is analogous to its meaning in the Free Movement Regulation</td>
<td></td>
</tr>
<tr>
<td>C-465/01</td>
<td>Comm. v. Austria</td>
<td>[16 Sep. 2004]</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dec. 1/80</td>
<td></td>
</tr>
<tr>
<td>C-92/07</td>
<td>Comm. v. Netherlands</td>
<td>[29 Apr. 2010]</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dec. 1/80 [Art. 10(1) + 13]</td>
<td></td>
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<tr>
<td>*</td>
<td>The obligation to pay charges in order to obtain or extend a residence permit, which are disproportionate compared to charges paid by citizens of the Union is in breach with the standstill</td>
<td></td>
</tr>
</tbody>
</table>
clauses of Articles 10(1) and 13 of Decision No 1/80 of the Association.

- **C-225/12** Demir
  * interpr. of Dec. 1/80 [Art. 13]
  * Judgment due: 7 Nov. 2013
  * Holding a temporary residence permit, which is valid only pending a final decision on the right of residence, does not fall within the meaning of ‘legally resident’.

- **C-171/13** Demirici a.o.
  * interpr. of Dec. 3/80 [Art. 6(1)]
  * Art. 6(1) must be interpreted as meaning that nationals of a MS who have been duly registered as belonging to the labour force of that MS as Turkish workers cannot, on the ground that they have retained Turkish nationality, rely on Article 6 of Dec. 3/80 to object to a residence requirement provided for by the legislation of that MS in order to receive a special non-contributory benefit provided within the meaning of Article 4(2) of Reg. 1408/71 on social security.

- **C-12/86** Demirel
  * interpr. of Dec. 1/80 [Art. 7 + 12]
  * No right to family reunification.

- **C-221/11** Demirkan
  * interpr. of Protocol [Art. 41(1)]
  * The freedom to ‘provide services’ does not encompass the freedom to ‘receive’ services in other EU Member States.

- **C-256/11** Dereci et al.
  * interpr. of Dec. 1/80 [Art. 13]
  * Right of residence of nationals of third countries who are family members of Union citizens - Refusal based on the citizen’s failure to exercise the right to freedom of movement - Possible difference in treatment compared with EU citizens who have exercised their right to freedom of movement - EEC-Turkey Association Agreement - Article 13 of Decision No 1/80 of the Association Council - Article 41 of the Additional Protocol - ‘Standstill’ clauses.

- **C-325/05** Derin
  * interpr. of Dec. 1/80 [Art. 6, 7 and 14]
  * There are two different reasons for loss of rights: (a) a serious threat (Art 14(1) of Dec 1/80), or (b) if he leaves the territory of the MS concerned for a significant length of time without legitimate reason.

- **C-383/03** Dogan (Ergül)
  * interpr. of Dec. 1/80 [Art. 6(1) + (2)]
  * Return to labour market: no loss due to detention

- **C-138/13** Dogan (Naime)
  * interpr. of Protocol [Art. 41(1)]
  * The language requirement abroad is not in compliance with the standstill clauses of the Association Agreement. Although the question was also raised whether this requirement is in compliance with the Family Reunification Dir., the Court did not answer that question.

- **C-136/03** Dörr & Unal
  * interpr. of Dec. 1/80 [Art. 6(1) + 14(1)]
  * The procedural guarantees set out in the Dir on Free Movement also apply to Turkish workers.

- **C-451/11** Dülger
  * interpr. of Dec. 1/80 [Art. 7]
  * Art. 7 is also applicable to family members of Turkish nationals who can rely on the Regulation, who don’t have the Turkish nationality themselves, but instead a nationality from a third country.

- **C-386/95** Eker
  * interpr. of Dec. 1/80 [Art. 6(1)]
  * About the meaning of “same employer”.

- **C-453/07** Er
  * interpr. of Dec. 1/80 [Art. 7]
  * On the consequences of having no paid employment.

- **C-329/97** Ergat
  * interpr. of Dec. 1/80 [Art. 7]
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey

- No loss of residence right in case of application for renewal residence permit after expiration date.
  - interpr. of Dec. 1/80 [Art. 6(1)]
  - On the meaning of “same employer”.
  - C-98/96 Ertanir [30 Sep. 1997]
  - interpr. of Dec. 1/80 [Art. 6(1) + 6(3)]
  - On interpretation of Art 45 TFEU
  - interpr. of Dec. 1/80 [Art. 13]
  - The posting by a German company of Turkish workers in the Netherlands to work in the Netherlands is not affected by the standstill-clauses. However, this situation falls within the scope of art. 56 and 57 TFEU precluding such making available is subject to the condition that those workers have been issued with work permits.
  - C-65/98 Eyüp [22 June 2000]
  - interpr. of Dec. 1/80 [Art. 7]
  - On the obligation to co-habit as a family.
  - C-14/09 Genc [4 Feb. 2010]
  - interpr. of Dec. 1/80 [Art. 6(1)]
  - On the determining criteria of the concept worker and the applicability of these criteria on both EU and Turkish workers.
  - C-268/11 Gühlbahce [8 Nov. 2012]
  - interpr. of Dec. 1/80 [Art. 6(1) + 10]
  - A MS cannot withdraw the residence permit of a Turkish employee with retroactive effect.
  - C-36/96 Günaydın [30 Sep. 1997]
  - interpr. of Dec. 1/80 [Art. 6(1)]
  - On interpretation of Art 45 TFEU
  - C-374/03 Gürol [7 July 2005]
  - interpr. of Dec. 1/80 [Art. 9]
  - On the right to an education grant for study in Turkey
  - C-4/05 Güzeli [26 Oct. 2006]
  - interpr. of Dec. 1/80 [Art. 10(1)]
  - The rights of the Ass. Agr. apply only after one year with same employer.
  - C-351/95 Kadiman [17 Apr. 1997]
  - interpr. of Dec. 1/80 [Art. 7]
  - On the calculation of the period of cohabitation as a family
  - C-7/10 & C-9/10 Kahveci & Inan [29 Mar. 2012]
  - interpr. of Dec. 1/80 [Art. 7]
  - The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.
  - C-285/95 Kol [5 June 1997]
  - interpr. of Dec. 1/80 [Art. 6(1)]
  - On the consequences of conviction for fraud
  - C-188/00 Kurz (Yuze) [19 Nov. 2002]
  - interpr. of Dec. 1/80 [Art. 6(1) + 7]
  - On the rights following an unjustified expulsion measure
  - interpr. of Dec. 1/80 [Art. 6(1) + 6(3)]
  - On stable position on the labour market
  - C-303/08 Metin Bozkurt [22 Dec. 2010]
  - interpr. of Dec. 1/80 [Art. 7 + 14(1)]
  - Art. 7 means that a Turkish national who enjoys certain rights, does not lose those rights on account of his divorce, which took place after those rights were acquired. By contrast, Art. 14(1) does not preclude a measure ordering the expulsion of a Turkish national
who has been convicted of criminal offences, provided that his personal conduct constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society. It is for the competent national court to assess whether that is the case in the main proceedings.

  * interpr. of Dec. 1/80 [Art. 6(1) + 14(1)]
  * On the effects of detention on residence rights

- C-294/06 Payir [24 Jan. 2008]
  * interpr. of Dec. 1/80 [Art. 6(1)]
  * Residence rights do not depend on the reason for admission

- C-484/07 Pehlivan [16 June 2011]
  * interpr. of Dec. 1/80 [Art. 7]
  * Family member marries in first 3 years but continues to live with Turkish worker. Art. 7 precludes legislation under which a family member properly authorised to join a Turkish migrant worker who is already duly registered as belonging to the labour force of that State loses the enjoyment of the rights based on family reunification under that provision for the reason only that, having attained majority, he or she gets married, even where he or she continues to live with that worker during the first three years of his or her residence in the host Member State.

- C-349/06 Polat [4 Oct. 2007]
  * interpr. of Dec. 1/80 [Art. 7 + 14]
  * Multiple convictions for small crimes do not lead to expulsion

- C-242/06 Sahin [17 Sep. 2009]
  * interpr. of Dec. 1/80 [Art. 13]
  * On the fees for a residence permit

- C-37/98 Savas [11 May 2000]
  * interpr. of Protocol [Art. 41(1)]
  * On the scope of the standstill obligation

- C-230/03 Sedef [10 Jan. 2006]
  * interpr. of Dec. 1/80 [Art. 6]
  * On the meaning of “same employer”

- C-192/89 Sevinc [20 Sep. 1990]
  * interpr. of Dec. 1/80 [Art. 6(1) + 13]
  * On the meaning of stable position and the labour market

- C-228/06 Soysal [19 Feb. 2009]
  * interpr. of Protocol [Art. 41(1)]
  * On the standstill obligation and secondary law

- C-171/95 Tetik [23 Jan. 1997]
  * interpr. of Dec. 1/80 [Art. 6(1)]
  * On the meaning of voluntary unemployment after 4 years

- C-300/09 & C-301/09 Toprak/Oguz [9 Dec. 2010]
  * interpr. of Dec. 1/80 [Art. 13]
  * On the reference date regarding the prohibition to introduce new restrictions for Turkish workers and their family members.

- C-502/04 Torun [16 Feb. 2006]
  * interpr. of Dec. 1/80 [Art. 7]
  * On possible reasons for loss of residence right

- C-16/05 Tum & Dari [20 Sep. 2007]
  * interpr. of Protocol [Art. 41(1)]
  * On the scope of the standstill obligation

- C-186/10 Tural Oguz [21 July 2011]
  * interpr. of Protocol [Art. 41(1)]
  * Article 41(1) must be interpreted as meaning that it may be relied on by a Turkish national who, having leave to remain in a Member State on condition that he does not engage in any business or profession, nevertheless enters into self-employment in breach of that condition and later applies to the national authorities for further leave to remain on the basis of the business which he has
meanwhile established.

**C-187/10 Unal** [29 Sep. 2011]
- interpr. of Dec. 1/80 [Art. 6(1)]
- Art. 6(1) must be interpreted as precluding the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the point in time at which there was no longer compliance with the ground on the basis of which his residence permit had been issued under national law if there is no question of fraudulent conduct on the part of that worker and that withdrawal occurs after the expiry of the one-year period of legal employment.

**New**

**C-176/14 Van Hauthem** (deleted) [16 Mar. 2015]
- interpr. of Dec. 1/80 [Art. 6 + 7]
- Case (on the access to jobs in public service) was withdrawn by the Belgian court.

**C-371/08 Ziebell or Örnek** [8 Dec. 2011]
- interpr. of Dec. 1/80 [Art. 14(1)]
- Decision No 1/80 does not preclude an expulsion measure based on grounds of public policy from being taken against a Turkish national whose legal status derives from the second indent of the first paragraph of Article 7 of that decision, in so far as the personal conduct of the individual concerned constitutes at present a genuine and sufficiently serious threat affecting a fundamental interest of the society of the host Member State and that measure is indispensable in order to safeguard that interest. It is for the national court to determine, in the light of all the relevant factors relating to the situation of the Turkish national concerned, whether such a measure is lawfully justified in the main proceedings.

### 4.4.2 CJEU pending cases on EEC-Turkey Association Agreement

**C-1/15 EC v. Austria**
- non-transp. of Protocol [Art. 41(1)]
- Incorrect way of implementation by means of adjusting policy guidelines instead of adjusting legislation.

### 4.4.3 National Judgments on External Treaties

**Germany:** BVerwG 1C4.14 [6 Nov. 2014]
- This case is about the suspension of the exemption from the residence permit obligation for those under the age of 16. According to the case law of the CJEU a restriction in national law that is in breach with the standstill clause, may be justified by an overriding reason in the public interest (as mentioned in C-183/13, Dogan). The Bundesverwaltungsgericht rules that this suspension is justified for “it alone establishes the basic conditions for being able to pursue with sufficient efficacy the high-priority public-interest goal of controlling immigration under conditions of quantitatively and qualitatively changing migration movements”. So, effective control of migration flows is a legitimate purpose under Union law and proves to be an overriding reason in the public interest.

**Netherlands:** Raad van State 201102803/1/V3 [14 Mar. 2012]
- The Standstill clauses preclude a visa requirement for Turkish nationals for a short (less than 3 months) stay. It also precludes visa requirements for self-employed Turkish national or Turkish service providers. The Dutch court refers to several CJEU judgments: C-92/07, Cie. v. Netherlands; C-228/06, Soysal; C-101/05, Skatteverket.

**Netherlands:** Centrale Raad van Beroep, LNJ: BR4959 [16 Aug. 2011]
- interpretation of EC-Turkey Assn. Agr.
- The Dutch Court decided that the recently introduced “civic integration examinations” is in breach with the standstill clauses and therefore do not apply to Turkish nationals.


5 Miscellaneous

Newsletter (French)
* The Université catholique de Louvain (UCL) publishes a Newsletter: EDEM, Equipe Droits Européens et migrations, French. To be found at: <www.uclouvain.be/edem.html>.

Website
* The site <europeanmigrationlaw.eu> provides legislation and case law on asylum and immigration in Europe.

Lives Lost Report of Parliamentary Assembly of COE
* On 29 Mar. 2012, the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe, adopted Resolution 1872 (2012), based on the report: “Lives lost in the Mediterranean Sea: who is responsible?” This report was presented on 29 March 2012 by rapporteur Tineke Strik as a member of the Committee on Migration, Refugees and Population of the Assembly.

The starting point for the resolution and of the report is that at least 1500 people are known to have lost their lives attempting to cross the Mediterranean in 2011. This report however focuses on one particularly harrowing case in which a small boat left Tripoli with 72 people on board and after two weeks at sea drifted back to Libya with only nine survivors. No one went to the aid of this boat, despite a distress call logged by the Italian Maritime Rescue Coordination Centre, which pinpointed the boat’s position.

Inquiry started by European Ombudsman on the implementation by Frontex of its fundamental rights decisions
* Letter, 6 March 2012

Information Note on references from national courts for a preliminary ruling
* OJ 2011 C 160/01

COE Report on Rule 39
* On 9 Nov. 2010, the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe, published a report on Rule 39. Preventing Harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights.

Amendments to Court of Justice Statute and rules of procedure
* OJ 2008 L 24
* in effect 1 March 2008
* Fast-track system for urgent JHA cases