



NEMIS

Quarterly update on

- Legislation and Jurisprudence
- on EU Migration and Borders Law

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Editorial

Welcome to the First edition of NEMIS in 2016.

In this issue we would like to draw your attention to the following.

Borders

The Schengen Borders Code will soon have new rules on checking everyone who crosses the external border in databases. The proposal on a new Border and Coast Agency to replace Frontex has been fast-tracked, and an agreement is promised for June 2016. The Commission is also planning to propose that Member States should insert all national entry bans in the Schengen Information System.

Stand still

The CJEU decided in the **Dogan** case (C-138/13) that “a restriction, whose purpose or effect is to make the exercise by a Turkish national of the freedom of establishment in national territory subject to conditions more restrictive than those applicable at the date of entry into force of the Additional Protocol, is prohibited, **unless** it is justified by an overriding reason in the public interest, is suitable to achieve the legitimate objective pursued and does not go beyond what is necessary in order to attain it (see, by analogy, judgment in *Demir*, C-225/12)”.

The Court is asked in **Tekdemir** (C-652/15) whether this type of justification (compelling reason in the public interest) can be found in national reunification policies and whether the objective of ensuring effective preventive oversight of immigration is such a compelling reason.

CMR 20

Of course we would like to meet you at the Conference “Migration On the Move” on 4 March 2016 on the occasion of the 20th anniversary of the Centre for Migration Law, Radboud University Nijmegen (NL).

Nijmegen March 2016, 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. 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 Program 2015-2018.](#)

1 Regular Migration

1.1 Regular Migration: Adopted Measures case law sorted in chronological order

Directive 2009/50

On conditions of entry and residence of TCNs for the purposes of highly qualified employment

* OJ 2009 L 155/17

Blue Card

impl. date 19-06-2011

Directive 2003/86

On the right to Family Reunification

* OJ 2003 L 251/12

* COM(2014) 210, 3 Apr. 2014: Guidelines on the application

Family Reunification

impl. date 03-10-2005

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**

8 May 2013 Art. 3(3)

☞ CJEU C-356/11 **O. & S.**

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)

EFTA judgments

☞ EFTA E-4/11

26 July 2011 Art. 7(1)

See further: § 1.3

Council Decision 2007/435

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

Integration Fund

UK, IRL opt in

Directive 2014/66

On conditions of entry and residence of TCNs in the framework of an intra-corporate transfer

* OJ 2014 L 157/1

Intra-Corporate Transferees

impl. date 29-11-2016

Directive 2003/109

Concerning the status of TCNs who are long-term residents

* OJ 2004 L 16/44

* amended by Dir. 2011/51

Long-Term Resident

impl. date 23-01-2006

CJEU judgments

☞ CJEU C-309/14 **CGIL**

2 Sep. 2015

☞ CJEU C-579/13 **P. & S.**

4 June 2015 Art. 5 + 11

☞ CJEU C-176/14 **Van Hauthem**

16 Mar. 2015 Art. 14 - deleted

☞ CJEU C-311/13 **Tümer**

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-508/10 **Comm. v. Netherlands**

26 Apr. 2012

☞ CJEU C-571/10 **Servet Kamberaj**

24 Apr. 2012 Art. 11(1)(d)

See further: § 1.3

Directive 2011/51

Long-Term Resident status for refugees and persons with subsidiary protection

* OJ 2011 L 132/1 (April 2011)

* extending Dir. 2003/109 on LTR

Long-Term Resident ext.

impl. date 20-05-2013

Council Decision 2006/688

On the establishment of a mutual information mechanism in the areas of asylum and immigration

* OJ 2006 L 283/40

Mutual Information

UK, IRL opt in

Directive 2005/71

Researchers

1.1: Regular Migration: Adopted Measures

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

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

UK opt in

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

UK, IRL opt in

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

* Replacing Reg. 859/2003 on Social Security TCN

impl. date 1-01-2011

IRL opt in

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-15/11 **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

CJEU pending cases

New ☞ CJEU C-544/15 **Fahimian** pending Art. 6(1)(d)

See further: § 1.3

ECHR

Family - Marriage - Discrimination

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

Art. 8 Family Life

Art. 12 Right to Marry

Art. 14 Prohibition of Discrimination

* ETS 005 (4-11-50)

impl. date 31-08-1954

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

1.1: Regular Migration: Adopted Measures

☞ ECtHR Ap.no. 38590/10 <i>Biao</i>	25 Mar. 2014	Art. 8
☞ ECtHR Ap.no. 52166/09 <i>Hasanbasic</i>	11 June 2013	Art. 8
☞ ECtHR Ap.no. 12020/09 <i>Udeh</i>	16 Apr. 2013	Art. 8
☞ ECtHR Ap.no. 22689/07 <i>De Souza Ribeiro</i>	13 Dec. 2012	Art. 8 + 13
☞ ECtHR Ap.no. 47017/09 <i>Butt</i>	4 Dec. 2012	Art. 8
☞ ECtHR Ap.no. 22341/09 <i>Hode and Abdi</i>	6 Nov. 2012	Art. 8 + 14
☞ ECtHR Ap.no. 26940/10 <i>Antwi</i>	14 Feb. 2012	Art. 8
☞ ECtHR Ap.no. 22251/07 <i>G.R.</i>	10 Jan. 2012	Art. 8 + 13
☞ ECtHR Ap.no. 8000/08 <i>A.A.</i>	20 Sep. 2011	Art. 8
☞ ECtHR Ap.no. 55597/09 <i>Nunez</i>	28 June 2011	Art. 8
☞ ECtHR Ap.no. 38058/09 <i>Osman</i>	14 June 2011	Art. 8
☞ ECtHR Ap.no. 34848/07 <i>O'Donoghue</i>	14 Dec. 2010	Art. 12 + 14
☞ ECtHR Ap.no. 41615/07 <i>Neulinger</i>	6 July 2010	Art. 8
☞ ECtHR Ap.no. 1638/03 <i>Maslov</i>	22 Mar. 2007	Art. 8
☞ ECtHR Ap.no. 46410/99 <i>Üner</i>	18 Oct. 2006	Art. 8
☞ ECtHR Ap.no. 54273/00 <i>Boultif</i>	2 Aug. 2001	Art. 8

See further: § 1.3

1.2 Regular Migration: Proposed Measures

Directive

Researchers and Students (recast)

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.

* COM (2013) 151, 25 March 2013

* This directive will replace both Dir 2005/71 on Researchers and Dir 2004/114 on Students Council and EP agreed, Nov 2015

1.3 Regular Migration: Jurisprudence

case law sorted in alphabetical order

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*** 22 Nov. 2011
- * incor. appl. of Dir. 2004/114 **Students** Art. 17(1) - deleted
- * *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** 10 June 2011
- * interpr. of Dir. 2003/86 **Family Reunification** Art. 7(2) - no adj.
- * *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.*

- ☞ [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** 14 Nov. 2013
- * interpr. of Dir. 2003/109 **Long-Term Resident** Art. 11(1)(d) - inadmiss.
- * *Case (on equal treatment) was inadmissible*

- ☞ [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.*

- ☞ [CJEU C-356/11](#) **O. & S.** 6 Dec. 2012

- * 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.*
- ☞ [CJEU C-527/14](#) **Oruche** 2 Sep. 2015
- * interpr. of Dir. 2003/86 **Family Reunification** Art. 7(2) - deleted
- * *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)
- * *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”.*
- ☞ [CJEU C-176/14](#) **Van Hautem** 16 Mar. 2015
- * interpr. of Dir. 2003/109 **Long-Term Resident** Art. 14 - deleted
- * *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., par. 58).*

1.3.2 CJEU pending cases on Regular Migration

New

- ☞ [CJEU C-544/15](#) **Fahimian**
- * interpr. of Dir. 2004/114 **Students** Art. 6(1)(d)
- * *Is Art. 6(1)(d) to be interpreted as meaning that the Member States are thereby empowered, in a case such as the present, in which a TCN from Iran, who obtained her university degree from the Sharif University of Technology (Tehran) in Iran, which specialises in technology, engineering and physics, seeks entry for the purpose of taking up doctoral studies in the area of IT-security research within the framework of the 'Trusted Embedded and Mobile Systems' project, in particular the development of effective security mechanisms for smartphones, to deny entry to their territory, stating as grounds for this refusal that it could not be ruled out that the skills acquired in connection with the research project might be misused in Iran, for instance for the acquisition of sensitive information in Western countries, for the purpose of internal repression or more generally in connection with human rights violations?*
- ☞ [CJEU C-558/14](#) **Kachab**
- * interpr. of Dir. 2003/86 **Family Reunification** Art. 7(1)(c)
- * AG: 23 dec. 2015
- * ref. from 'Tribunal Superior de Justicia del Pais Vasco' (Spain)
- * *Does the Dir. preclude 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 & Rothwangl**
- * interpr. of Reg. 859/2003 **Social Security TCN** Art. 1
- * AG: 4 Feb. 2016
- * 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

- ☞ [ECtHR Ap.no. 8000/08](#) **A.A. v. UK** 20 Sep. 2011
- * 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.** 14 Feb. 2012
- * no violation of **ECHR** Art. 8
- * *A case similar to Nunez (ECtHR 28 June 2011) except that the 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 "attachement 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.
- ☞ [ECtHR Ap.no. 47017/09](#) **Butt v. NO** 4 Dec. 2012
 * 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 and 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 would entail a violation of art. 8.*
- ☞ [ECtHR Ap.no. 22689/07](#) **De Souza Ribeiro v. UK** 13 Dec. 2012
 * 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.*
- ☞ [ECtHR Ap.no. 22251/07](#) **G.R. v. NL** 10 Jan. 2012

- * 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.*
- ☞ [ECtHR Ap.no. 38030/12](#) **Khan v. GER** 14 Sep. 2015
- * interpr. of **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 2015 the Grand Chamber panel of five judges accepted the applicant's request to refer the case to the Grand Chamber.*
- ☞ [ECtHR Ap.no. 1638/03](#) **Maslov v. AU** 22 Mar. 2007
- * violation of **ECHR** Art. 8
 * *In addition to the criteria set out in **Boultif** and **Ünerte** the ECtHR 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.*
- ☞ [ECtHR Ap.no. 52701/09](#) **Mugenzi v. FR** 10 July 2014
- * violation of **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.*
- ☞ [ECtHR Ap.no. 41615/07](#) **Neulinger v. CH** 6 July 2010
- * violation of **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.*

☞ [ECtHR Ap.no. 55597/09](#) **Nunez v. NO** 28 June 2011
 * violation of **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 Ms Nunez's need to remain in Norway in order to continue to have contact with her children.*

☞ [ECtHR Ap.no. 34848/07](#) **O'Donoghue v. UK** 14 Dec. 2010
 * violation of **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).*

☞ [ECtHR Ap.no. 38058/09](#) **Osman v. DK** 14 June 2011
 * violation of **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 (54273/00) 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.

2 Borders and Visas

2.1 Borders and Visas: Adopted Measures case law sorted in chronological order

Regulation 515/2014

Borders and Visa Fund

Borders and Visa Fund

* OJ 2014 L 150/143

Regulation 562/2006

Borders Code

Establishing a Community Code on the rules governing the movement of persons across borders

* OJ 2006 L 105/1

amd by Reg. 296/2008 (OJ 2008 L 97/60)

amd by Reg. 81/2009 (OJ 2009 L 35/56): *Regarding the use of the VIS*

amd by Reg. 610/2013 (OJ 2013 L 182/1)

amd by Reg. 1051/2013 (OJ 2013 L 295/1)

CJEU judgments

☞	CJEU C-575/12 <i>Air Baltic</i>	4 Sep. 2014	Art. 5
☞	CJEU C-23/12 <i>Zakaria</i>	17 Jan. 2013	Art. 13(3)
☞	CJEU C-88/12 <i>Jaoo</i>	14 Sep. 2012	Art. 20 + 21 - deleted
☞	CJEU C-355/10 <i>EP v. Council</i>	5 Sep. 2012	
☞	CJEU C-278/12 (PPU) <i>Adil</i>	19 July 2012	Art. 20 + 21
☞	CJEU C-606/10 <i>ANAFE</i>	14 June 2012	Art. 13 + 5(4)(a)
☞	CJEU C-430/10 <i>Gaydarov</i>	17 Nov. 2011	
☞	CJEU C-188/10 & C-189/10 <i>Melki & Abdeli</i>	22 June 2010	Art. 20 + 21
☞	CJEU C-261/08 & C-348/08 <i>Garcia & Cabrera</i>	22 Oct. 2009	Art. 5, 11 + 13

CJEU pending cases

New	☞	CJEU C-17/16 <i>El Dakkak</i>	pending	Art. 4
New	☞	CJEU C-9/16 <i>A</i>	pending	Art. 23

See further: § 2.3

New Regulation

Borders Code (codified)

Codification of all previous amendments of the Borders Code

* Com (2015) 8

* not yet published

Decision 574/2007

Borders Fund

Establishing 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

☞	CJEU C-44/14 <i>Spain v. EP & Council</i>	8 Sep. 2015	
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See further: § 2.3

Regulation 2007/2004

Frontex

Establishing External Borders Agency

* OJ 2004 L 349/1

amd by Reg. 863/2007 (OJ 2007 L 199/30): *Border guard teams*
 amd 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
- amd by Reg. 1342/2011 (OJ 2011 L 347/41)

CJEU judgments

- ☞ CJEU C-254/11 *Shomodi* 21 Mar. 2013 Art. 2(a) + 3(3)
- See further: § 2.3

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

Regulation 2252/2004

Passports

On standards for security features and biometrics in passports and travel documents

- * OJ 2004 L 385/1
- amd 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

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. 871/2004 (OJ 2004 L 162/29)
 - Reg. 2424/2001 (OJ 2001 L 328/4)
 - Reg. 1988/2006 (OJ 2006 L 411/1)
- Ending validity of:
 - Dec. 2001/886; 2005/451; 2005/728; 2006/628

Decision 565/2014

Transit Bulgaria a.o. countries

Transit through Bulgaria, Croatia, Cyprus and Romania

- * OJ 2014 L 157/23
- * repealing Dec. 895/2006 and Dec. 582/2008 (OJ 2008 L 161/30)

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 through Switzerland and Liechtenstein

- * OJ 2008 L 162/27
- * amending Dec. 896/2006 (OJ 2006 L 167)

Transit Switzerland

Decision 1105/2011

On the list of travel documents which entitle the holder to cross the external borders

- * OJ 2011 L 287/9

Travel Documents

Decision 512/2004

Establishing Visa Information System (VIS)

- * OJ 2004 L 213/5

VIS

Regulation 767/2008

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)

VIS

Regulation 1077/2011

Establishing an Agency to manage VIS, SIS & Eurodac

- * OJ 2011 L 286/1

VIS Management Agency

Regulation 810/2009

Establishing a Community Code on Visas

- * OJ 2009 L 243/1
- amd by Reg. 154/2012 (OJ 2012 L 58/3)

Visa Code

CJEU judgments

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

Regulation 1683/95

Uniform format for visas

- * OJ 1995 L 164/1
- amd by Reg. 334/2002 (OJ 2002 L 53/7)
- amd by Reg. 856/2008 (OJ 2008 L 235/1)

Visa Format

UK opt in

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. 453/2003 (OJ 2003 L 69/10): *Moving Ecuador to 'black list'*
- amd by Reg. 851/2005 (OJ 2005 L 141/3): *On reciprocity for visas*
- amd by Reg. 1932/2006 (OJ 2006 L 405/23)
- amd by Reg. 1244/2009 (OJ 2009 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)
- amd by Reg. 259/2014 (OJ 2014 L 105/9): *lifting visa req. for Moldova*
- amd by Reg. 509/2014 (OJ 2014 L 149/67): *Lifting visa req. for Pacific nations*

Visa List

CJEU judgments

- ☞ CJEU C-88/14 *Comm. v. EP*
- See further: § 2.3

16 July 2015

Regulation 333/2002

Uniform format for forms for affixing the visa

- * OJ 2002 L 53/4

Visa Stickers

UK opt in

ECHR

Anti-torture

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

Art. 3 Prohibition of Torture, Degrading Treatment

- * ETS 005 (4-11-50)

impl. date 1950

2.1: Borders and Visas: Adopted Measures

ECtHR 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

New	Regulation	Borders and Coast Guard Agency
	<i>Creating a Borders and Coast Guard Agency</i>	
	* Com (2015) 668, 15 Dec 2015	
	* under discussion	
	Regulation	EES
	<i>Establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders</i>	
	* COM (2013) 95, 27 Feb. 2013	
	* under discussion in Council	
	Regulation amending Regulation 562/2006	EES usage
	<i>On the use of the EES</i>	
	* COM (2013) 96, 27 Feb. 2013	
	* under discussion in Council	
New	Regulation	SBC
	<i>amending Schengen Borders Code</i>	
	* Com (2015) 670, 15 Dec 2015	
	* agreed by Council, Feb 2016	
	Regulation	Touring Visa
	<i>Establishing Touring Visa</i>	
	* Com (2014) 163	
	* under discussion in Council April 2014	
	amending:	
	Reg. 562/2006 Borders Code	
	Reg. 767/2008 VIS	
	Regulation	Travellers
	<i>Establishing a Registered Traveller Programme (RTP)</i>	
	* COM (2013) 97, 27 Feb. 2013	
	* under discussion in Council	
	Regulation amending Regulation 810/2009	Visa Code II
	<i>Recast of the Visa Code</i>	
	* Com (2014) 164	
	* under discussion in Council April 2014	

2.3 Borders and Visas: Jurisprudence

case law sorted in alphabetical order

2.3.1 CJEU Judgments on Borders and Visas

☞ CJEU C-278/12 (PPU)	Adil	19 July 2012
* interpr. of Reg. 562/2006	Borders Code	Art. 20 + 21
* <i>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.</i>		
☞ CJEU C-575/12	Air Baltic	4 Sep. 2014
* interpr. of Reg. 562/2006	Borders Code	Art. 5

- * *The Borders 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.*
- ☞ [CJEU C-575/12](#) **Air Baltic** 4 Sep. 2014
- * interpr. of Reg. 810/2009 **Visa Code** Art. 24(1) + 34
- * *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.*
- ☞ [CJEU C-606/10](#) **ANAFE** 14 June 2012
- * interpr. of Reg. 562/2006 **Borders Code** Art. 13 + 5(4)(a)
- * annulment of national legislation on visa
- * *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)*
- ☞ [CJEU C-241/05](#) **Bot** 4 Oct. 2006
- * 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’.*
- ☞ [CJEU C-139/13](#) **Comm. v. Belgium** 13 Feb. 2014
- * 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
- * validity of **Visa Applications**
- * challenge to Regs. 789/2001 and 790/2001
- * upholding validity of Regs.
- ☞ [CJEU C-88/14](#) **Comm. v. EP** 16 July 2015
- * validity of Reg. 539/2001 **Visa List**
- * *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** 18 June 2012
- * interpr. of Reg. 810/2009 **Visa Code** Art. 21 + 34 - deleted
- * *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.*
- ☞ [CJEU C-355/10](#) **EP v. Council** 5 Sep. 2012
- * 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
- * interpr. of Reg. 562/2006 **Borders Code** Art. 5, 11 + 13
- * 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
 * **Borders Code**
 * *interpr. of Reg. 562/2006*
 * *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](#) **Jaao** 14 Sep. 2012
 * **Borders Code** Art. 20 + 21 - deleted
 * *interpr. of Reg. 562/2006*
 * *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
 * **Visa Code** Art. 23(4) + 32(1)
 * *interpr. of Reg. 810/2009*
 * *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
 * **Transit Switzerland** Art. 1 + 2
 * *interpr. of Dec. 896/2006*
 * *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
 * **Borders Code** Art. 20 + 21
 * *interpr. of Reg. 562/2006*
 * *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
 * **Passports** Art. 1(2)
 * *interpr. of Reg. 2252/2004*
 * *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
 * **Local Border traffic** Art. 2(a) + 3(3)
 * *interpr. of Reg. 1931/2006*
 * *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 such an interruption of stay upon the crossing of the border irrespective of the frequency of such crossings, even if they occur several times daily.*

- ☞ [CJEU C-44/14](#) **Spain v. EP & Council** 8 Sep. 2015
 * **EUROSUR**
 * *non-transp. of Reg. 1052/2013*
 * *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
 * **Passports**
 * *interpr. of Reg. 2252/2004*
 * *About the recording and spelling of names, surnames and family names in passports. Where a MS*

2.3: Borders and Visas: Jurisprudence: CJEU Judgments

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.*
- ☞ [CJEU C-446/12](#) **Willems a.o.** 16 Apr. 2015
 - * 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](#) **Zakaria** 17 Jan. 2013
 - * 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 CJEU pending cases on Borders and Visas

- New** ☞ [CJEU C-9/16](#) **A**
 - * interpr. of Reg. 562/2006 **Borders Code** Art. 23
 - * *On border control on the internal borders without a formal temporary reintroduction of border control according to art. 23 and 24 SBC.*
- New** ☞ [CJEU C-17/16](#) **El Dakkak**
 - * interpr. of Reg. 562/2006 **Borders Code** Art. 4
 - * *On the question whether a TCN has crossed an external border of the Union if this TCN is in the (international) transitzone of an airport.*

2.3.3 ECtHR Judgments on Borders and Visas

- ☞ [ECtHR Ap.no. 55352/12](#) **Aden Ahmed v. MAL** 23 July 2013
 - * 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** 19 Dec. 2013
 - * 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** 21 Feb. 2012
- * 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** 28 Feb. 2012
- * 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.*

3 Irregular Migration

3.1 Irregular Migration: Adopted Measures case law sorted in chronological order

- [Directive 2001/51](#)** **Carrier sanctions**
Obligation of carriers to return TCNs when entry is refused
 * OJ 2001 L 187/45 impl. date 11-02-2003 UK opt in

- [Decision 267/2005](#)** **Early Warning System**
Establishing a secure web-based Information and Coordination Network for MS' Migration Management Services
 * OJ 2005 L 83/48 UK opt in

- [Directive 2009/52](#)** **Employers Sanctions**
Minimum standards on sanctions and measures against employers of illegally staying TCNs
 * OJ 2009 L 168/24 impl. date 20-07-2011

- [Directive 2003/110](#)** **Expulsion by Air**
Assistance with transit for expulsion by air
 * OJ 2003 L 321/26

- [Decision 191/2004](#)** **Expulsion Costs**
On the compensation of the financial imbalances resulting from the mutual recognition of decisions on the expulsion of TCNs
 * OJ 2004 L 60/55 UK opt in

- [Directive 2001/40](#)** **Expulsion Decisions**
Mutual recognition of expulsion decisions of TCNs
 * OJ 2001 L 149/34 impl. date 2-10-2002 UK opt in
[CJEU judgments](#)
 ☞ CJEU C-456/14 **Orrego Arias** 3 Sep. 2015 Art. 3(1)(a) - inadmissible
 See further: § 3.3

- [Decision 573/2004](#)** **Expulsion Joint Flights**
On the organisation of joint flights for removals from the territory of two or more MSs, of TCNs
 * OJ 2004 L 261/28 UK opt in

- [Conclusion 2003/](#)** **Expulsion via Land**
Transit via land for expulsion
 * adopted 22 Dec. 2003 by Council UK opt in

- [Directive & Framework Decision 2002/90](#)** **Illegal Entry**
Facilitation of unauthorised entry, transit and residence
 * OJ 2002 L 328 UK opt in

- [Regulation 377/2004](#)** **Immigration Liaison Officers**
On the creation of an immigration liaison officers network
 * OJ 2004 L 64/1 UK opt in
 amd by Reg 493/2011 (OJ 2011 L 141/13)

Directive 2008/115

On common standards and procedures in MSs for returning illegally staying TCNs

* OJ 2008 L 348/98

CJEU judgments

☞ CJEU C-290/14 <i>Celaj</i>	1 Oct. 2015	
☞ CJEU C-554/13 <i>Zh. & O.</i>	11 June 2015	Art. 7(4)
☞ CJEU C-390/14 <i>Mehrabipari</i>	5 June 2015	Art. 15 + 16 - deleted
☞ CJEU C-38/14 <i>Zaizoune</i>	23 Apr. 2015	Art. 4(2) + 6(1)
☞ CJEU C-562/13 <i>Abdida</i>	18 Dec. 2014	Art. 5+13
☞ CJEU C-249/13 <i>Boudjlida</i>	11 Dec. 2014	
☞ CJEU C-166/13 <i>Mukarubega</i>	5 Nov. 2014	Art. 3 + 7
☞ CJEU C-473/13 & C-514/13 <i>Bero & Bouzalmate</i>	17 July 2014	Art. 16(1)
☞ CJEU C-474/13 <i>Pham</i>	17 July 2014	Art. 16(1)
☞ CJEU C-189/13 <i>Da Silva</i>	3 July 2014	inadmissible
☞ CJEU C-146/14 (PPU) <i>Mahdi</i>	5 June 2014	Art. 15
☞ CJEU C-297/12 <i>Filev & Osmani</i>	19 Sep. 2013	Art. 2(2)(b) + 11
☞ CJEU C-383/13 (PPU) <i>G. & R.</i>	10 Sep. 2013	Art. 15(2) + 6
☞ CJEU C-534/11 <i>Arslan</i>	30 May 2013	Art. 2(1)
☞ CJEU C-522/11 <i>Mbaye</i>	21 Mar. 2013	Art. 2(2)(b) + 7(4)
☞ CJEU C-51/12 <i>Zhu</i>	16 Feb. 2013	Art. 2-8, 15 + 16 - deleted
☞ CJEU C-430/11 <i>Sagor</i>	6 Dec. 2012	Art. 2, 15 + 16
☞ CJEU C-73/12 <i>Ettaghi</i>	4 July 2012	Art. 2-8, 15 + 16 - deleted
☞ CJEU C-329/11 <i>Achughbabian</i>	6 Dec. 2011	
☞ CJEU C-61/11 (PPU) <i>El Dridi</i>	28 Apr. 2011	Art. 15 + 16
☞ CJEU C-357/09 (PPU) <i>Kadzoev</i>	30 Nov. 2009	Art. 15(4), (5) + (6)
<i>CJEU pending cases</i>		
☞ CJEU C-161/15 <i>Bensada Benallal</i>	pending	
☞ CJEU C-47/15 <i>Affum</i>	pending	
See further: § 3.3		

Return Directive

impl. date 24-12-2010

Decision 575/2007

Establishing the European Return Fund as part of the General Programme Solidarity and Management of Migration Flows

* OJ 2007 L 144

UK opt in

Return Programme

Directive 2011/36

On preventing and combating trafficking in human beings and protecting its victims

* OJ 2011 L 101/1 (Mar. 2011)

Trafficking Persons

impl. date 6-04-2013

UK opt in

* 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

Trafficking Victims

CJEU judgments

☞ CJEU C-266/08 <i>Comm. v. Spain</i>	14 May 2009	
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See further: § 3.3

ECHR

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

ECtHR Judgments

☞ ECtHR Ap.no. 55352/12 <i>Aden Ahmed</i>	23 July 2013	Art. 3 + 5
☞ ECtHR Ap.no. 53709/11 <i>A.F.</i>	13 June 2013	Art. 5
☞ ECtHR Ap.no. 13058/11 <i>Abdelhakim</i>	23 Oct. 2012	Art. 5
☞ ECtHR Ap.no. 13457/11 <i>Ali Said</i>	23 Oct. 2012	Art. 5
☞ ECtHR Ap.no. 50520/09 <i>Ahmade</i>	25 Sep. 2012	Art. 5
☞ ECtHR Ap.no. 14902/10 <i>Mahmundi</i>	31 July 2012	Art. 5
☞ ECtHR Ap.no. 27765/09 <i>Hirsi</i>	21 Feb. 2012	Prot. 4 Art. 4
☞ ECtHR Ap.no. 10816/10 <i>Lokpo & Touré</i>	20 Sep. 2011	Art. 5

3.1: Irregular Migration: Adopted Measures

See further: § 3.3

3.2 Irregular Migration: Proposed Measures

- * The Commission is planning to propose soon that MS should insert all national entry bans in SIS

3.3 Irregular Migration: Jurisprudence

case law sorted in alphabetical order

3.3.1 CJEU Judgments on Irregular Migration

- ☞ [CJEU C-562/13](#) **Abdida** 18 Dec. 2014
 * 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.
- ☞ [CJEU C-329/11](#) **Achughbajian** 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.*
- ☞ [CJEU 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.*
- ☞ [CJEU 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.*
- ☞ [CJEU C-249/13](#) **Boudjlida** 11 Dec. 2014
 * 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.*
- ☞ [CJEU C-290/14](#) **Celaj** 1 Oct. 2015
 * interpr. of Dir. 2008/115 **Return Directive**
 * *The Directive must be interpreted as not, in principle, precluding legislation of a MS which provides for the imposition of a prison sentence on an illegally staying third-country national who, after having been returned to his country of origin in the context of an earlier return procedure, unlawfully re-enters the territory of that State in breach of an entry ban, at least in cases of re-entry in breach of an entry ban.*
See also: <http://eulawanalysis.blogspot.nl/2015/10/the-cjeus-ruling-in-celaj-criminal.html>
- ☞ [CJEU 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*
- ☞ [CJEU C-189/13](#) **Da Silva** 3 July 2014
 * interpr. of Dir. 2008/115 **Return Directive** inadmissible

3.3: Irregular Migration: Jurisprudence: CJEU Judgments

- * *On the permissibility of national legislation imposing a custodial sentence for the offence of illegal entry prior to the institution of deportation proceedings.*
- ☞ [CJEU 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.*
- ☞ [CJEU C-73/12](#) **Ettaghi** 4 July 2012
- * interpr. of Dir. 2008/115 **Return Directive** Art. 2-8, 15 + 16 - deleted
- ☞ [CJEU C-297/12](#) **Filev & Osmani** 19 Sep. 2013
- * interpr. of Dir. 2008/115 **Return Directive** Art. 2(2)(b) + 11
- * *Directive must be interpreted as precluding a MS from providing that an expulsion or removal order which predates 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 \(PPU\)](#) **Kadzoev** 30 Nov. 2009
- * interpr. of Dir. 2008/115 **Return Directive** Art. 15(4), (5) + (6)
- * *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.*
- ☞ [CJEU C-390/14](#) **Mehrabipari** 5 June 2015
- * interpr. of Dir. 2008/115 **Return Directive** Art. 15 + 16 - deleted
- * *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** 3 Sep. 2015
- * interpr. of Dir. 2001/40 **Expulsion Decisions** Art. 3(1)(a) - inadmissible
- * *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](#) **Sagor** 6 Dec. 2012
- * *interpr. of Dir. 2008/115* **Return Directive** Art. 2, 15 + 16
- * *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](#) **Zaizoune** 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** 16 Feb. 2013
- * *interpr. of Dir. 2008/115* **Return Directive** Art. 2-8, 15 + 16 - deleted
- * *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**
- * AG: 2 Feb. 2016
- * 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 (Achughbalian, 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](#) **Bensada Benallal**
- * *interpr. of Dir. 2008/115* **Return Directive**
- * AG: 13 Jan 2016
- * 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?

3.3.3 ECtHR Judgments on Irregular Migration

- ☞ [ECtHR 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 Commission – the ECtHR 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.*
- ☞ [ECtHR Ap.no. 13058/11](#) **Abdelhakim v. HU** 23 Oct. 2012
 * 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.*
- ☞ [ECtHR Ap.no. 50520/09](#) **Ahmade v. GR** 25 Sep. 2012
 * 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.*
- ☞ [ECtHR Ap.no. 13457/11](#) **Ali Said v. HU** 23 Oct. 2012
 * 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.*
- ☞ [ECtHR Ap.no. 27765/09](#) **Hirsi 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 against the alleged violations.*
- ☞ [ECtHR 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.

- ☞ [ECtHR Ap.no. 14902/10](#) **Mahmundi v. GR** 31 July 2012
 * violation of **ECHR** Art. 5
 * *The conditions of 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.*

4 External Treaties

4.1 External Treaties: Association Agreements *case law sorted in chronological order*

EC-Turkey Association Agreement

- * into force 23 Dec. 1963

EC-Turkey Association Agreement Additional Protocol

- * into force 1 Jan. 1973

CJEU judgments

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

CJEU pending cases

- | | | |
|--------------------------------|---------|------------|
| ☞ C-1/15 <i>EC v. Austria</i> | pending | Art. 41(1) |
| ☞ C-561/14 <i>Genc (Caner)</i> | pending | Art. 41(1) |

See further: § 4.4

EC-Turkey Association Agreement Decision 1/80

- * Dec. 1/80 of 19 Sept. 1980 on the Development of the Association

CJEU judgments

- | | | |
|---|--------------|----------------------|
| ☞ C-176/14 <i>Van Hauthem</i> | 16 Mar. 2015 | Art. 6 + 7 - deleted |
| ☞ C-91/13 <i>Essent</i> | 11 Sep. 2014 | Art. 13 |
| ☞ C-225/12 <i>Demir</i> | 7 Nov. 2013 | Art. 13 |
| ☞ C-268/11 <i>Gühlbahce</i> | 8 Nov. 2012 | Art. 6(1) + 10 |
| ☞ C-451/11 <i>Dülger</i> | 19 July 2012 | Art. 7 |
| ☞ C-7/10 & C-9/10 <i>Kahveci & Inan</i> | 29 Mar. 2012 | Art. 7 |
| ☞ C-436/09 <i>Belkiran</i> | 13 Jan. 2012 | deleted |
| ☞ C-371/08 <i>Ziebell or Örnek</i> | 8 Dec. 2011 | Art. 14(1) |
| ☞ C-256/11 <i>Dereci et al.</i> | 15 Nov. 2011 | Art. 13 |
| ☞ C-187/10 <i>Unal</i> | 29 Sep. 2011 | Art. 6(1) |
| ☞ C-484/07 <i>Pehlivan</i> | 16 June 2011 | Art. 7 |
| ☞ C-303/08 <i>Metin Bozkurt</i> | 22 Dec. 2010 | Art. 7 + 14(1) |
| ☞ C-300/09 & C-301/09 <i>Toprak/Oguz</i> | 9 Dec. 2010 | Art. 13 |
| ☞ C-92/07 <i>Comm. v. Netherlands</i> | 29 Apr. 2010 | Art. 10(1) + 13 |
| ☞ C-14/09 <i>Genc</i> | 4 Feb. 2010 | Art. 6(1) |
| ☞ C-462/08 <i>Bekleyen</i> | 21 Jan. 2010 | Art. 7(2) |
| ☞ C-242/06 <i>Sahin</i> | 17 Sep. 2009 | Art. 13 |
| ☞ C-337/07 <i>Altun</i> | 18 Dec. 2008 | Art. 7 |
| ☞ C-453/07 <i>Er</i> | 25 Sep. 2008 | Art. 7 |
| ☞ C-294/06 <i>Payir</i> | 24 Jan. 2008 | Art. 6(1) |
| ☞ C-349/06 <i>Polat</i> | 4 Oct. 2007 | Art. 7 + 14 |
| ☞ C-325/05 <i>Derin</i> | 18 July 2007 | Art. 6, 7 and 14 |

4.1: External Treaties: Association Agreements

☞ C-4/05 <i>Güzeli</i>	26 Oct. 2006	Art. 10(1)
☞ C-502/04 <i>Torun</i>	16 Feb. 2006	Art. 7
☞ C-230/03 <i>Sedef</i>	10 Jan. 2006	Art. 6
☞ C-373/03 <i>Aydinli</i>	7 July 2005	Art. 6 + 7
☞ C-374/03 <i>Gürol</i>	7 July 2005	Art. 9
☞ C-383/03 <i>Dogan (Ergül)</i>	7 July 2005	Art. 6(1) + (2)
☞ C-136/03 <i>Dörr & Unal</i>	2 June 2005	Art. 6(1) + 14(1)
☞ C-467/02 <i>Cetinkaya</i>	11 Nov. 2004	Art. 7 + 14(1)
☞ C-275/02 <i>Ayaz</i>	30 Sep. 2004	Art. 7
☞ C-465/01 <i>Comm. v. Austria</i>	16 Sep. 2004	
☞ C-317/01 & C-369/01 <i>Abatay/Sahin</i>	21 Oct. 2003	Art. 13 + 41(1)
☞ C-171/01 <i>Birlikte</i>	8 May 2003	Art. 10(1)
☞ C-188/00 <i>Kurz (Yuze)</i>	19 Nov. 2002	Art. 6(1) + 7
☞ C-89/00 <i>Bicakci</i>	19 Sep. 2000	
☞ C-65/98 <i>Eyüp</i>	22 June 2000	Art. 7
☞ C-329/97 <i>Ergat</i>	16 Mar. 2000	Art. 7
☞ C-340/97 <i>Nazli</i>	10 Feb. 2000	Art. 6(1) + 14(1)
☞ C-1/97 <i>Birden</i>	26 Nov. 1998	Art. 6(1)
☞ C-210/97 <i>Akman</i>	19 Nov. 1998	Art. 7
☞ C-36/96 <i>Günaydin</i>	30 Sep. 1997	Art. 6(1)
☞ C-98/96 <i>Ertanir</i>	30 Sep. 1997	Art. 6(1) + 6(3)
☞ C-285/95 <i>Kol</i>	5 June 1997	Art. 6(1)
☞ C-386/95 <i>Eker</i>	29 May 1997	Art. 6(1)
☞ C-351/95 <i>Kadiman</i>	17 Apr. 1997	Art. 7
☞ C-171/95 <i>Tetik</i>	23 Jan. 1997	Art. 6(1)
☞ C-434/93 <i>Ahmet Bozkurt</i>	6 June 1995	Art. 6(1)
☞ C-355/93 <i>Eroglu</i>	5 Oct. 1994	Art. 6(1)
☞ C-237/91 <i>Kus</i>	16 Dec. 1992	Art. 6(1) + 6(3)
☞ C-192/89 <i>Sevince</i>	20 Sep. 1990	Art. 6(1) + 13
☞ C-12/86 <i>Demirel</i>	30 Sep. 1987	Art. 7 + 12
<i>CJEU pending cases</i>		
New ☞ C-652/15 <i>Tekdemir</i>	pending	Art. 6, 13, 14, 16
See further: § 4.4		
EC-Turkey Association Agreement Decision 3/80		
* Dec. 3/80 of 19 Sept. 1980 on Social Security		
<i>CJEU judgments</i>		
☞ C-171/13 <i>Demirci a.o.</i>	14 Jan. 2015	Art. 6(1)
☞ C-485/07 <i>Akdas</i>	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

4.2: *External Treaties: Readmission*

Morocco, Algeria, and China

- * negotiation mandate approved by Council

Pakistan

- * OJ 2010 L 287/52 (into force 1 Dec. 2010)

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

- * Com (2012) 239 (into force 1 Oct. 2014)
- * Turkey due to extend readmission treaty to TCNs in spring 2016

Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova

- * OJ 2007 L 332 and 334 (into force 1 Jan. 2008 (TCN: Jan. 2010)) UK opt in

4.3 *External Treaties: Other* *case law sorted in alphabetical order*

Armenia: visa

- * OJ 2013 L 289 (into force 1 Jan. 2014)

Azerbaijan: visa

- * OJ 2013 L 320/7 (into force 1 Sep. 2014)

Brazil: short-stay visa waiver for holders of diplomatic or official passports

- * OJ 2011 L 66/1 (into force 24 Feb. 2011)

Brazil: short-stay visa waiver for holders of ordinary passports

- * OJ 2012 L 255/3 (into force 1 Oct. 2012)

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)

Colombia: Visa waiver agreement

(into force 3 Dec 2015)

***New* Columbia: Short-stay visa waiver agreement**

- * OJ 2015 L 333/1 (into force 26 Oct. 2015)

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

(into force, May 2009)

Morocco: visa

- * 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

***New* Palau: visa**

- * OJ 2015 L 332/11 (into force 26 Oct. 2015)

Peru: visa

- * Initial of bilateral visa waiver agreement

Russia, Ukraine, Moldova

- * Council mandate to renegotiate visa facilitation treaties, April 2011

Russia: Visa facilitation agreement

- * OJ 2007 L 129 (into force 1 June 2007)

4.3: External Treaties: Other

St Lucia; Dominica; Grenada; St Vincent; Vanuatu; Samoa; Trinidad & Tobago: Short-stay Visa Waiver Agreement

(into force on 28 May 2015)

Switzerland: Free Movement of Persons

* concl. 28 Feb. 2002 (OJ 2002 L 114) (into force 1 June 2002)

Switzerland: Implementation of Schengen, Dublin

* OJ 2008 L 83/37 (applied from Dec. 2008)

Tonga: short-stay visa waiver

* OJ 2015 L 317/1 (into force 26 Oct. 2015)

Ukraine, Serbia, Montenegro, Bosnia, Macedonia, Albania and Moldova: Visa facilitation agreements

* OJ 2007 L 332 and 334 (into force 1 Jan. 2008)

4.4 External Treaties: Jurisprudence

4.4.1 CJEU Judgments on EEC-Turkey Association Agreement

☞ C-317/01 & C-369/01	<i>Abatay/Sahin</i>	21 Oct. 2003
* interpr. of	Dec. 1/80	Art. 13 + 41(1)
* <i>Direct effect and scope standstill obligation</i>		
☞ C-434/93	<i>Ahmet Bozkurt</i>	6 June 1995
* interpr. of	Dec. 1/80	Art. 6(1)
* <i>Belonging to labour market</i>		
☞ C-485/07	<i>Akdas</i>	26 May 2011
* interpr. of	Dec. 3/80	Art. 6(1)
* <i>Supplements to social security can not be withdrawn solely on the ground that the beneficiary has moved out of the Member State.</i>		
☞ C-210/97	<i>Akman</i>	19 Nov. 1998
* interpr. of	Dec. 1/80	Art. 7
* <i>Turkish worker has left labour market</i>		
☞ C-337/07	<i>Altun</i>	18 Dec. 2008
* interpr. of	Dec. 1/80	Art. 7
* <i>On the rights of family members of an unemployed Turkish worker or fraud by a Turkish worker</i>		
☞ C-275/02	<i>Ayaz</i>	30 Sep. 2004
* interpr. of	Dec. 1/80	Art. 7
* <i>A stepchild is a family member</i>		
☞ C-373/03	<i>Aydinli</i>	7 July 2005
* interpr. of	Dec. 1/80	Art. 6 + 7
* <i>A long detention is no justification for loss of residence permit</i>		
☞ C-462/08	<i>Bekleyen</i>	21 Jan. 2010
* interpr. of	Dec. 1/80	Art. 7(2)
* <i>The child of a Turkish worker has free access to labour and an independent right to stay in Germany, if this child is graduated in Germany and its parents have worked at least three years in Germany.</i>		
☞ C-436/09	<i>Belkiran</i>	13 Jan. 2012
* interpr. of	Dec. 1/80	deleted
* <i>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.</i>		
☞ C-89/00	<i>Bicakci</i>	19 Sep. 2000
* interpr. of	Dec. 1/80	
* <i>Art 14 does not refer to a preventive expulsion measure</i>		
☞ C-1/97	<i>Birden</i>	26 Nov. 1998
* interpr. of	Dec. 1/80	Art. 6(1)
* <i>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</i>		

intended to facilitate their integration into working life and was financed by public funds.

- ☞ [C-171/01](#) **Birlikte** 8 May 2003
- * interpr. of **Dec. 1/80** Art. 10(1)
- * *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.*

- ☞ [C-467/02](#) **Cetinkaya** 11 Nov. 2004
- * interpr. of **Dec. 1/80** Art. 7 + 14(1)
- * *The meaning of a “family member” is analogous to its meaning in the Free Movement Regulation*

- ☞ [C-465/01](#) **Comm. v. Austria** 16 Sep. 2004
- * interpr. of **Dec. 1/80**

- ☞ [C-92/07](#) **Comm. v. Netherlands** 29 Apr. 2010
- * interpr. of **Dec. 1/80** Art. 10(1) + 13
- * *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 clauses of Articles 10(1) and 13 of Decision No 1/80 of the Association.*

- ☞ [C-225/12](#) **Demir** 7 Nov. 2013
- * 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](#) **Demirci a.o.** 14 Jan. 2015
- * 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 within the meaning of Article 4(2) of Reg. 1408/71 on social security .*

- ☞ [C-12/86](#) **Demirel** 30 Sep. 1987
- * interpr. of **Dec. 1/80** Art. 7 + 12
- * *No right to family reunification.*

- ☞ [C-221/11](#) **Demirkan** 24 Sep. 2013
- * 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.** 15 Nov. 2011
- * 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** 18 July 2007
- * 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)** 7 July 2005
- * interpr. of **Dec. 1/80** Art. 6(1) + (2)
- * *Return to labour market: no loss due to detention*

- ☞ [C-138/13](#) **Dogan (Naime)** 10 July 2014
- * 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** 2 June 2005
- * interpr. of **Dec. 1/80** Art. 6(1) + 14(1)

* <i>The procedural guarantees set out in the Dir on Free Movement also apply to Turkish workers.</i>		
☞ C-451/11	Dülger	19 July 2012
* interpr. of	Dec. 1/80	Art. 7
* <i>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.</i>		
☞ C-386/95	Eker	29 May 1997
* interpr. of	Dec. 1/80	Art. 6(1)
* <i>About the meaning of "same employer".</i>		
☞ C-453/07	Er	25 Sep. 2008
* interpr. of	Dec. 1/80	Art. 7
* <i>On the consequences of having no paid employment.</i>		
☞ C-329/97	Ergat	16 Mar. 2000
* interpr. of	Dec. 1/80	Art. 7
* <i>No loss of residence right in case of application for renewal residence permit after expiration date.</i>		
☞ C-355/93	Eroglu	5 Oct. 1994
* interpr. of	Dec. 1/80	Art. 6(1)
* <i>On the meaning of "same employer".</i>		
☞ C-98/96	Ertanir	30 Sep. 1997
* interpr. of	Dec. 1/80	Art. 6(1) + 6(3)
* <i>On interpretation of Art 45 TFEU</i>		
☞ C-91/13	Essent	11 Sep. 2014
* interpr. of	Dec. 1/80	Art. 13
* <i>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.</i>		
☞ C-65/98	Eyüp	22 June 2000
* interpr. of	Dec. 1/80	Art. 7
* <i>On the obligation to co-habit as a family.</i>		
☞ C-14/09	Genc	4 Feb. 2010
* interpr. of	Dec. 1/80	Art. 6(1)
* <i>On the determining criteria of the concept worker and the applicability of these criteria on both EU and Turkish workers.</i>		
☞ C-268/11	Gühlbahce	8 Nov. 2012
* interpr. of	Dec. 1/80	Art. 6(1) + 10
* <i>A MS cannot withdraw the residence permit of a Turkish employee with retroactive effect.</i>		
☞ C-36/96	Günaydin	30 Sep. 1997
* interpr. of	Dec. 1/80	Art. 6(1)
* <i>On interpretation of Art 45 TFEU</i>		
☞ C-374/03	Gürol	7 July 2005
* interpr. of	Dec. 1/80	Art. 9
* <i>On the right to an education grant for study in Turkey</i>		
☞ C-4/05	Güzeli	26 Oct. 2006
* interpr. of	Dec. 1/80	Art. 10(1)
* <i>The rights of the Ass. Agr. apply only after one year with same employer.</i>		
☞ C-351/95	Kadiman	17 Apr. 1997
* interpr. of	Dec. 1/80	Art. 7
* <i>On the calculation of the period of cohabitation as a family</i>		
☞ C-7/10 & C-9/10	Kahveci & Inan	29 Mar. 2012
* interpr. of	Dec. 1/80	Art. 7
* <i>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.</i>		
☞ C-285/95	Kol	5 June 1997
* interpr. of	Dec. 1/80	Art. 6(1)

* <i>On the consequences of conviction for fraud</i>		
☞ C-188/00	Kurz (Yuze)	19 Nov. 2002
* interpr. of	Dec. 1/80	Art. 6(1) + 7
* <i>On the rights following an unjustified expulsion measure</i>		
☞ C-237/91	Kus	16 Dec. 1992
* interpr. of	Dec. 1/80	Art. 6(1) + 6(3)
* <i>On stable position on the labour market</i>		
☞ C-303/08	Metin Bozkurt	22 Dec. 2010
* interpr. of	Dec. 1/80	Art. 7 + 14(1)
* <i>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.</i>		
☞ C-340/97	Nazli	10 Feb. 2000
* interpr. of	Dec. 1/80	Art. 6(1) + 14(1)
* <i>On the effects of detention on residence rights</i>		
☞ C-294/06	Payir	24 Jan. 2008
* interpr. of	Dec. 1/80	Art. 6(1)
* <i>Residence rights do not depend on the reason for admission</i>		
☞ C-484/07	Pehlivan	16 June 2011
* interpr. of	Dec. 1/80	Art. 7
* <i>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.</i>		
☞ C-349/06	Polat	4 Oct. 2007
* interpr. of	Dec. 1/80	Art. 7 + 14
* <i>Multiple convictions for small crimes do not lead to expulsion</i>		
☞ C-242/06	Sahin	17 Sep. 2009
* interpr. of	Dec. 1/80	Art. 13
* <i>On the fees for a residence permit</i>		
☞ C-37/98	Savas	11 May 2000
* interpr. of	Protocol	Art. 41(1)
* <i>On the scope of the standstill obligation</i>		
☞ C-230/03	Sedef	10 Jan. 2006
* interpr. of	Dec. 1/80	Art. 6
* <i>On the meaning of "same employer"</i>		
☞ C-192/89	Sevince	20 Sep. 1990
* interpr. of	Dec. 1/80	Art. 6(1) + 13
* <i>On the meaning of stable position and the labour market</i>		
☞ C-228/06	Soysal	19 Feb. 2009
* interpr. of	Protocol	Art. 41(1)
* <i>On the standstill obligation and secondary law</i>		
☞ C-171/95	Tetik	23 Jan. 1997
* interpr. of	Dec. 1/80	Art. 6(1)
* <i>On the meaning of voluntary unemployment after 4 years</i>		
☞ C-300/09 & C-301/09	Toprak/Oguz	9 Dec. 2010
* interpr. of	Dec. 1/80	Art. 13
* <i>On the reference date regarding the prohibition to introduce new restrictions for Turkish workers and their family members.</i>		
☞ 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.*
- ☞ [C-176/14](#) **Van Hauthem** 16 Mar. 2015
- * interpr. of **Dec. 1/80** Art. 6 + 7 - deleted
- * *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.*
- ☞ [C-561/14](#) **Genc (Caner)**
- * interpr. of **Protocol** Art. 41(1)
- * AG: 20 Jan 2016
- * ref. from 'Ostre Landsret' (Denmark)
- * *Standstill clause in relation to the new and more stringent conditions on family reunification for family members who are not economically active, including minor children of economically active Turkish nationals who are resident and have a residence permit in a MS.*
- New ☞ [C-652/15](#) **Tekdemir**
- * interpr. of **Dec. 1/80** Art. 6, 13, 14, 16
- * ref. from 'Verwaltungsgericht Darmstadt' (Germany)
- * *On the meaning of standstill in the context of family reunification policy. The CJEU decided in the Dogan case (C-138/13) that “a restriction, whose purpose or effect is to make the exercise by a Turkish national of the freedom of establishment in national territory subject to conditions more restrictive than those applicable at the date of entry into force of the Additional Protocol, is prohibited, unless it is justified by an overriding reason in the public interest, is suitable to achieve the legitimate objective pursued and does not go beyond what is necessary in order to attain it (see, by analogy, judgment in Demir, C- 225/12)”. The Court is asked in Tekdemir (C-652/15) whether this type of justification (compelling reason in the public interest) can be found in national reunification policies and whether the objective of ensuring effective preventive oversight of immigration is such a compelling reason.*

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 on Migration

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

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