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Editorial

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

Borders and Visa
On 14th September the European Parliament and Council adopted the Regulation on the European Border and Coast Guard, which replaces the regulations on the Frontex Agency. The European Border and Coast Guard is the name of a new border control and management system for the whole Schengen Area, reforming the Frontex agency into the European Border and Coast Guard Agency.
In comparison to the Frontex agency, the European Border and Coast Guard Agency has a stronger mandate and more competences and responsibilities. In case of deficiencies in external border controls, the new agency is allowed to intervene without a request of the Member State concerned. The regulation provides for a mandatory pooling of human resources by establishing a rapid reserve pool of at least 1500 border guards. The regulation has also enhanced the role of the agency in return operations and co-operation with third countries. Furthermore, a first step is made towards an individual complaint mechanism.

ECtHR
The Court has ruled on two for NEMIS relevant cases. One of these is the judgment of the Grand Chamber in Khan in which a woman in a state of mental incapacity had committed manslaughter.
Following the Court’s initial ruling that an expulsion would not give rise to a violation of Art. 8, the case was referred to the Grand Chamber. Subsequently the German government provided guarantees not to expel the woman and thus the case was stricken.

Legislation
A polish administrative court has asked a prejudicial question (C-403/16) on Art. 32(3) VISA code, which contains an provision of appeal. The question is about the interpretation of this concept and whether this (implicitly) means that an effective remedy has to be guaranteed. Apparently, Polish legislation has no formal remedy against a denial of a visa; an appeal is qualified as inadmissible.

Nijmegen September 2016, Carolus Grütters & Tineke Strik
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Subscribe email to c.grutters@jur.ru.nl
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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

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

**Directive 2003/86**
*On the right to Family Reunification*
- *OJ 2003 L 251/12*
-_impl. date 03-10-2005*

**CASE LAW**

**CJEU judgements**
- CJEU C-558/14 *Kachab* 21 Apr. 2016 Art. 7(1)(c)
- 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-155/11 *Imran* 10 June 2011 Art. 7(2) - no adj.
- CJEU C-579/13 *P. & S.* 4 June 2015 Art. 7(2)
- CJEU C-356/11 *O. & S.* 6 Dec. 2012 Art. 7(1)(c)
- CJEU C-571/10 *Servet Kamberaj* 24 Apr. 2012 Art. 11(1)(d)
- CJEU C-309/14 *CGIL* 2 Sep. 2015 Art. 5 + 11
- CJEU C-579/13 *P. & S.* 4 June 2015 Art. 14 - deleted
- CJEU C-176/14 *Van Hauthem* 16 Mar. 2015 Art. 14
- CJEU C-311/13 *Tümer* 5 Nov. 2014 Art. 7(1)
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- CJEU C-257/13 *Mlalali* 14 Nov. 2013 Art. 11(1)(d) - inadm.
- CJEU C-40/11 *Iida* 8 Nov. 2012 Art. 7(1)
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- CJEU C-502/10 *Singh* 18 Oct. 2012 Art. 3(2)(e)
- CJEU C-571/10 *Servet Kamberaj* 24 Apr. 2012 Art. 11(1)(d)
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- CJEU C-571/10 *Servet Kamberaj* 24 Apr. 2012 Art. 11(1)(d)

See further: § 1.3

**CJEU judgments**
- CJEU C-309/14 *CGIL* 2 Sep. 2015 Art. 5 + 11
- CJEU C-579/13 *P. & S.* 4 June 2015 Art. 14 - deleted
- CJEU C-176/14 *Van Hauthem* 16 Mar. 2015 Art. 14
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- CJEU C-40/11 *Iida* 8 Nov. 2012 Art. 7(1)
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- CJEU C-571/10 *Servet Kamberaj* 24 Apr. 2012 Art. 11(1)(d)

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*
-_impl. date 29-11-2016*

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

**Directive 2003/109**
*Concerning the status of TCNs who are long-term residents*
- *OJ 2004 L 16/44*
-_impl. date 23-01-2006*

**See further: § 1.3**

**Directive 2011/51**
*Extending Dir. 2003/109 on LTR*
- *OJ 2011 L 132/1 (April 2011)*
-_impl. date 20-05-2013*

**CJEU judgments**
- CJEU C-309/14 *CGIL* 2 Sep. 2015 Art. 5 + 11
- CJEU C-579/13 *P. & S.* 4 June 2015 Art. 14 - deleted
- CJEU C-176/14 *Van Hauthem* 16 Mar. 2015 Art. 14
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- CJEU C-40/11 *Iida* 8 Nov. 2012 Art. 7(1)
- CJEU C-502/10 *Singh* 18 Oct. 2012 Art. 3(2)(e)
- CJEU C-571/10 *Servet Kamberaj* 24 Apr. 2012 Art. 11(1)(d)

See further: § 1.3
### Council Decision 2006/688
*On the establishment of a mutual information mechanism in the areas of asylum and immigration*

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<tr>
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<td>UK, IRL opt in</td>
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### Directive 2005/71
*On a specific procedure for admitting TCNs for the purposes of scientific research*

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<td>OJ 2005 L 289/15</td>
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**CJEU judgments**
- CJEU C-523/08 *Com. v. Spain* 11 Feb. 2010

**Recommendation 762/2005**
*To facilitate the admission of TCNs to carry out scientific research*

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### Directive 2016/801
*On the conditions of entry and residence of Third-Country Nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes, educational projects and au pairing.*

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<th>Researchers and Students</th>
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<tr>
<td>OJ 2016 L 132/21 (11-05-2016)</td>
<td>impl. date 24-05-2018</td>
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<td>This directive replaces both Dir 2005/71 on Researchers and Dir 2004/114 on Students</td>
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### Regulation 1030/2002
*Laying down a uniform format for residence permits for TCNs*

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### Directive 2014/36
*On the conditions of entry and residence of TCNs for the purposes of seasonal employment*

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### Directive 2011/98
*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*

<table>
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<tr>
<th>Directive 2011/98</th>
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<td>OJ 2011 L 343/1 (Dec. 2011)</td>
<td>impl. date 25-12-2013</td>
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### Regulation 859/2003
*Third-Country Nationals’ Social Security extending Reg. 1408/71 and Reg. 574/72*

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**Regulation 1231/2010**
*Social Security for EU Citizens and TCNs who move within the EU*

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<tr>
<td>Replacing Reg. 859/2003 on Social Security TCN</td>
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### Directive 2004/114
*Admission of Third-Country Nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service*

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<td>OJ 2004 L 375/12</td>
<td>impl. date 12-01-2007</td>
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<tr>
<td>Directive is replaced by Dir. 2016/801 Researchers and Students</td>
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**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 *Com. v. Austria* 22 Nov. 2011 Art. 17(1) - deleted
- CJEU C-294/06 *Payir* 24 Nov. 2008
- CJEU pending cases
- CJEU C-544/15 *Fahimian* pending Art. 6(1)(d)

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

**ECtHR**

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

**New**

- ECHR Ap.no. 38030/12 *Khan* 23 Sep. 2016 Art. 8
- ECHR Ap.no. 76136/12 *Ramadan* 21 June 2016 Art. 8
- ECHR Ap.no. 38590/10 *Biao* 24 May 2016 Art. 8 + 14
- ECHR Ap.no. 12738/10 *Jeunesse* 3 Oct. 2014 Art. 8
- ECHR Ap.no. 32504/11 *Kaplan a.o.* 24 July 2014 Art. 8
- ECHR Ap.no. 52701/09 *Mugenzi* 10 July 2014 Art. 8
- ECHR Ap.no. 52166/09 *Hasanbasic* 11 June 2013 Art. 8
- ECHR Ap.no. 12020/09 *Udeh* 16 Apr. 2013 Art. 8
- ECHR Ap.no. 47017/09 *Butt* 4 Dec. 2012 Art. 8
- ECHR Ap.no. 22341/09 *Hode and Abdi* 6 Nov. 2012 Art. 8 + 14
- ECHR Ap.no. 26940/10 *Antwei* 14 Feb. 2012 Art. 8
- ECHR Ap.no. 22251/07 *G.R.* 10 Jan. 2012 Art. 8 + 13
- ECHR Ap.no. 8000/08 *A.A.* 20 Sep. 2011 Art. 8
- ECHR Ap.no. 55597/09 *Nunez* 28 June 2011 Art. 8
- ECHR Ap.no. 38058/09 *Osman* 14 June 2011 Art. 8
- ECHR Ap.no. 41615/07 *Neulinger* 6 July 2010 Art. 8
- ECHR Ap.no. 1638/03 *Maslov* 22 Mar. 2007 Art. 8
- ECHR Ap.no. 46410/99 *Üner* 18 Oct. 2006 Art. 8
- ECHR Ap.no. 54273/00 *Boulitif* 2 Aug. 2001 Art. 8

See further: § 1.3

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1.2 Regular Migration: Proposed Measures

**Directive**

On the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment.

* COM (2016) 378, 7 June 2016

**Blue Card (amended)**

Recast of Residence Permit Format (Reg. 1030/2002)

* COM (2016) 434, 30 June 2016

**Regulation amending Regulation**

Residence Permit Format (amended)

* New: Recast of Residence Permit Format (Reg. 1030/2002)

---

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 for study purposes, provided that the conditions for admission exhaustively listed in Art. 6 and 7 and 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
1.3: Regular Migration: Jurisprudence: CJEU Judgments

* interpr. of Dir. 2003/109
  **Long-Term Residents**
* 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**  
Interpr. of Dir. 2003/109  
Chakroun  
4 Mar. 2010

**CJEU C-508/10**  
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**  
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**  
Incor. appl. of Dir. 2003/109  
Long-Term Residents

* 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**  
Non-transp. of Dir. 2005/71  
Researchers

* 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**  
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**  
Interpr. of Dir. 2003/109  
Long-Term Residents  
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**  
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.
### 1.3: Regular Migration: Jurisprudence: CJEU Judgments

<table>
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<th>Date</th>
<th>Article/Rule</th>
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<td>CJEU C-153/14</td>
<td>Family Reunification</td>
<td>9 July 2015</td>
<td>Art. 7(2)</td>
</tr>
<tr>
<td>*interp. of Dir. 2003/86</td>
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<tr>
<td>*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.</td>
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<tr>
<td>CJEU C-527/14</td>
<td>Family Reunification</td>
<td>21 Apr. 2016</td>
<td>Art. 7(1)(c)</td>
</tr>
<tr>
<td>*interp. of Dir. 2003/86</td>
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<tr>
<td>*Art. 7(1)(c) must be interpreted as allowing the competent authorities of a MS to refuse an application for family reunification on the basis of a prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of that MS, in the year following the date of submission of that application, that assessment being based on the pattern of the sponsor’s income in the six months preceding that date.</td>
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<td>CJEU C-257/13</td>
<td>Long-Term Residents</td>
<td>14 Nov. 2013</td>
<td>Art. 11(1)(d) - inadm.</td>
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<tr>
<td>*interp. of Dir. 2003/109</td>
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<td>*Case (on equal treatment) was inadmissible</td>
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<tr>
<td>CJEU C-338/13</td>
<td>Family Reunification</td>
<td>17 July 2014</td>
<td>Art. 4(5)</td>
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<tr>
<td>*interp. of Dir. 2003/86</td>
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<tr>
<td>*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.</td>
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<tr>
<td>CJEU C-356/11</td>
<td>Family Reunification</td>
<td>6 Dec. 2012</td>
<td>Art. 7(1)(c)</td>
</tr>
<tr>
<td>*interp. of Dir. 2003/86</td>
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<td>*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.</td>
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<tr>
<td>CJEU C-527/14</td>
<td>Family Reunification</td>
<td>2 Sep. 2015</td>
<td>Art. 7(2) - deleted</td>
</tr>
<tr>
<td>*interp. of Dir. 2003/86</td>
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<tr>
<td>*Case is withdrawn since the question was answered in the judgment in the K&amp;A case (C-153/14).</td>
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<tr>
<td>CJEU C-579/13</td>
<td>Long-Term Residents</td>
<td>4 June 2015</td>
<td>Art. 5 + 11</td>
</tr>
<tr>
<td>*interp. of Dir. 2003/109</td>
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<tr>
<td>*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.</td>
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<tr>
<td>CJEU C-294/06</td>
<td>Students</td>
<td>24 Nov. 2008</td>
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<tr>
<td>*interp. of Dir. 2004/114</td>
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<tr>
<td>*On a working Turkish student.</td>
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<tr>
<td>CJEU C-571/10</td>
<td>Long-Term Residents</td>
<td>24 Apr. 2012</td>
<td>Art. 11(1)(d)</td>
</tr>
<tr>
<td>*interp. of Dir. 2003/109</td>
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<td>*EU Law precludes a distinction on the basis of ethnicity or linguistic groups in order to be eligible for housing benefit.</td>
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<tr>
<td>CJEU C-502/10</td>
<td>Long-Term Residents</td>
<td>18 Oct. 2012</td>
<td>Art. 3(2)(e)</td>
</tr>
<tr>
<td>*interp. of Dir. 2003/109</td>
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<tr>
<td>*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</td>
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</tbody>
</table>
1.3.3 EFTA judgments on Regular Migration

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**
* interpr. of Dir. 2004/114
* Sommer
* Students
* Art. 17(3)
* 21 June 2012
* 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**
* interpr. of Dir. 2003/109
* Tahir
* Long-Term Residents
* Art. 7(1) + 13
* 17 July 2014
* 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**
* interpr. of Dir. 2003/109
* Tümer
* Long-Term Residents
* Art. 14 - deleted
* 5 Nov. 2014
* Case was withdrawn by the Belgian court.

**CJEU C-247/09**
* interpr. of Reg. 859/2003
* Xhymshiti
* Social Security TCN
* 18 Nov. 2010
* 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**
* interpr. of Dir. 2003/86
* Ymeraga
* Family Reunification
* Art. 3(3)
* 8 May 2013
* 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

**CJEU C-544/15**
* interpr. of Dir. 2004/114
* Fahimian
* 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-465/14**
* interpr. of Reg. 859/2003
* Wieland & Rothwangl
* Social Security TCN
* Art. 1
* ref. from 'Centrale Raad van Beroep' (Netherlands)
* On the entitlement of a former seaman to a pension.

1.3.3 EFTA judgments on Regular Migration

**EFTA E-4/11**
* interpr. of Dir. 2003/86
* Clauder
* Family Reunification
* Art. 7(1)
* 26 July 2011
* On the entitlement of a former seaman to a pension.
1.3: Regular Migration: Jurisprudence: EFTA judgments

* 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.

** New **

<table>
<thead>
<tr>
<th>Case</th>
<th>Party</th>
<th>Date</th>
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<tbody>
<tr>
<td>* interpr. of Dir. 2004/38</td>
<td>Right of Residence</td>
<td>Art. 7(1)(b) + 7(2)</td>
</tr>
<tr>
<td>* ref. from 'District Court of Oslo' (Norway)</td>
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<tr>
<td>* Where an EEA national, pursuant to Article 7(1)(b) and Article 7(2) of Directive 2004/38/EC, has created or strengthened a family life with a third country national during genuine residence in an EEA State other than that of which he is a national, the provisions of that directive will apply by analogy where that EEA national returns with the family member to his home State.</td>
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</table>

1.3.4 ECtHR Judgments on Regular Migration

<table>
<thead>
<tr>
<th>Case</th>
<th>Party</th>
<th>Date</th>
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<tr>
<td>ECtHR Ap.no. 8000/08</td>
<td>A.A. v. UK</td>
<td>20 Sep. 2011</td>
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<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>* 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.</td>
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<tr>
<td>* no violation of</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>* 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.</td>
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<tr>
<td>ECtHR Ap.no. 38590/10</td>
<td>Biao v. DK</td>
<td>24 May 2016</td>
</tr>
<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 8 + 14</td>
</tr>
<tr>
<td>* Initially, the Second Section of the Court decided on 25 March 2014 that there was no violation of Art. 8 in the Danish case where the Danish statutory amendment requires that the spouses’ aggregate ties with Denmark has to be stronger than the spouses’ aggregate ties with another country. However, after referral, the Grand Chamber reviewed that decision and decided otherwise. The Court ruled that the the so-called attachment requirement (the requirement of both spouses having stronger ties with Denmark than to any other country) is unjustified and constitutes indirect discrimination and therefore a violation of Art. 8 and 14 ECHR.</td>
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<tr>
<td>ECtHR Ap.no. 54273/00</td>
<td>Boulitif v. CH</td>
<td>2 Aug. 2001</td>
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<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>* 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.</td>
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<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 8</td>
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<tr>
<td>* At the age of 3 and 4, the Butt children enter Norway with their mother from Pakistan in 1989. They</td>
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Butt v. NO
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
* violation of
De Souza Ribeiro v. UK

ECtHR Ap.no. 12738/10
* discrimination on the basis of date of marriage has no objective and reasonable justification.

ECtHR Ap.no. 52166/09
* violation of
Hasanbasic v. CH
11 June 2013

ECtHR Ap.no. 22341/09
* violation of
Hode and Abdı v. UK
6 Nov. 2012

ECtHR Ap.no. 32504/11
* violation of
Kaplan a.o. v. NO
24 July 2014

ECtHR Ap.no. 17120/09
* interpr. of
Dhabbi v. IT
8 Apr. 2014

ECtHR Ap.no. 22251/07
* violation of
G.R. v. NL
10 Jan. 2012

ECtHR Ap.no. 24335/10
* violation of
Jeunesse v. NL
3 Oct. 2014

ECtHR Ap.no. 24335/10
* violation of
Jeunesse v. NL
3 Oct. 2014

ECtHR Ap.no. 32504/11
* violation of
Kaplan a.o. v. NO
24 July 2014

ECtHR Ap.no. 22689/07
* violation of
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ECtHR Ap.no. 24335/10
* violation of
Jeunesse v. NL
3 Oct. 2014

ECtHR Ap.no. 32504/11
* violation of
Kaplan a.o. v. NO
24 July 2014
New

ECtHR Ap.no. 38030/12

Khan v. GER
23 Sep. 2016

* violation of

ECHR

Art. 8

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 23 April 2015 the Court ruled that the expulsion would not give rise to a violation of Art. 8. Subsequently the case was referred to the Grand Chamber.

The Grand Chamber was informed by the German Government that the applicant would not be expelled and granted a ‘Duldung’. These assurances made the Grand Chamber to strike the application.

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 ECHR considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.

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
eright to respect for private and family life’.

**ECtHR Ap.no. 76136/12**  
Ramadan v. MAL  
21 June 2016

* no violation of  
  ECHR  
  Art. 8

* Mr Ramadan, originally an Egyptian citizen, acquired Maltese citizenship after marrying a Maltese
  national. It was revoked by the Minister of Justice and Internal Affairs following a decision by a
domestic court to annul the marriage on the ground that Mr Ramadan’s only reason to marry had
been to remain in Malta and acquire Maltese citizenship. Meanwhile, the applicant remarried a
Russian national. The Court found that the decision depriving him of his citizenship, which had had
a clear legal basis under the relevant national law and had been accompanied by hearings and
remedies consistent with procedural fairness, had not been arbitrary.

**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 solidarity of social, cultural and family ties with the host country and with the country of
destination.

**Regulation 2016/1624**  
Creating a Borders and Coast Guard Agency

* OJ 2016 L 251/1

* Repealing: Reg. 2007/2004 and Reg. 1168/2011 (Frontex) and Reg. 863/2007 (Rapid Interventions
  Teams)
## 2 Borders and Visas

### 2.1 Borders and Visas: Adopted Measures

**Regulation 515/2014**

Borders and Visa Fund

* OJ 2014 L 150/143

**Regulation 562/2006**

* OJ 2006 L 105/1
* Regulation is replaced by Regulation 2016/399 Borders Code (codified)
  * and by Reg. 296/2008 (OJ 2008 L 97/60)
  * and by Reg. 81/2009 (OJ 2009 L 35/56): Regarding the use of the VIS
  * and by Reg. 610/2013 (OJ 2013 L 182/1)
  * and by Reg. 1051/2013 (OJ 2013 L 295/1)

**CJEU judgments**

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<td>17 Jan. 2013</td>
<td>Art. 13(3)</td>
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<td>CJEU C-88/12 <em>Jaoo</em></td>
<td>14 Sep. 2012</td>
<td>Art. 20 + 21 - deleted</td>
</tr>
<tr>
<td>CJEU C-278/12 <em>(PPU) Adil</em></td>
<td>19 July 2012</td>
<td>Art. 20 + 21</td>
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<td>CJEU C-606/10 <em>ANAFE</em></td>
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<td>CJEU C-430/10 <em>Gaydarov</em></td>
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<td>CJEU C-188/10 &amp; C-189/10 <em>Melki &amp; Abdeli</em></td>
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<td>CJEU C-261/08 &amp; C-348/08 <em>Garcia &amp; Cabrera</em></td>
<td>22 Oct. 2009</td>
<td>Art. 5, 11 + 13</td>
</tr>
</tbody>
</table>

**Regulation 2016/399**

Borders Code (codified)

On the rules governing the movement of persons across borders. Codification of all previous amendments of the (Schengen) Borders Code

* OJ 2016 L 77/1
* This Regulation replaces Regulation 562/2006 Borders Code

**Decision 574/2007**

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

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<td>CJEU C-44/14 <em>Spain v. EP &amp; Council</em></td>
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See further: § 2.3

**Regulation 2007/2004**

Establishing External Borders Agency

* OJ 2004 L 349/1
* Regulation is replaced by Regulation 2016/1624 Border and Coast Guard
  * and by Reg. 1168/2011 (OJ 2011 L 304/1)

**Regulation 1931/2006**

Local Border traffic

See further: § 2.3
2.1: Borders and Visas: Adopted Measures

Local border traffic within enlarged EU at external borders of EU

* OJ 2006 L 405/1

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☞ 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
  and by Reg. 444/2009 (OJ 2009 L 142/1)

CJEU judgments

☞ CJEU C-446/12 Willems a.o. 16 Apr. 2015 Art. 4(3)
☞ CJEU C-101/13 U. 2 Oct. 2014 Art. 6
☞ CJEU C-291/12 Schwarz 17 Oct. 2013
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. 2424/2001 (OJ 2001 L 328/4)
  * Ending validity of:

NewCouncil Decision 2016/268 SIS II Access
List of competent authorities which are authorised to search directly the data contained in the second generation Schengen information system
* OJ 2016 C 268/1

On the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II)
* OJ 2016 L 203/35

Decision 565/2014 Transit Bulgaria a.o. countries
Transit through Bulgaria, Croatia, Cyprus and Romania
* OJ 2014 L 157/23

Regulation 693/2003 Transit Documents
Establishing a specific Facilitated Transit Document (FTD) and a Facilitated Rail Transit Document (FRTD)
* OJ 2003 L 99/8
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<td>*</td>
<td>OJ 2003 L 99/15</td>
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<td><strong>Decision 586/2008</strong></td>
<td><strong>Transit Documents Format</strong></td>
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<td>*</td>
<td>*</td>
<td>OJ 2008 L 162/27</td>
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<td>*</td>
<td>amending Dec. 896/2006 (OJ 2006 L 167)</td>
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<td><strong>Decision 1105/2011</strong></td>
<td><strong>Travel Documents</strong></td>
<td>On the list of travel documents which entitle the holder to cross the external borders</td>
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<td>*</td>
<td>*</td>
<td>OJ 2011 L 287/9</td>
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<tr>
<td><strong>Decision 512/2004</strong></td>
<td><strong>VIS</strong></td>
<td>Establishing Visa Information System (VIS)</td>
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<tr>
<td>*</td>
<td>*</td>
<td>OJ 2004 L 213/5</td>
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<tr>
<td><strong>Regulation 767/2008</strong></td>
<td><strong>VIS Access</strong></td>
<td>Establishing Visa Information System (VIS) and the exchange of data between MS</td>
</tr>
<tr>
<td>*</td>
<td>*</td>
<td>OJ 2008 L 218/60</td>
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<td>*</td>
<td>*</td>
<td>Third-pillar VIS Decision (OJ 2008 L 218/129)</td>
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<td><strong>Council Decision 2008/633</strong></td>
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<td>Concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and Europol</td>
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<td>*</td>
<td>*</td>
<td>OJ 2008 L 218/129</td>
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<tr>
<td><strong>Regulation 1077/2011</strong></td>
<td><strong>VIS Management Agency</strong></td>
<td>Establishing an Agency to manage VIS, SIS &amp; Eurodac</td>
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<tr>
<td>*</td>
<td>*</td>
<td>OJ 2011 L 286/1</td>
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**Regulation 810/2009**

**Establishing a Community Code on Visas**

* OJ 2009 L 243/1

amended by Reg. 154/2012 (OJ 2012 L 58/3)

**CJEU judgments**

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

**CJEU pending cases**

- New CJEU C-403/16 *El Hassani* pending Art. 32

**Regulation 1683/95**

**Uniform format for visas**

* OJ 1995 L 164/1

amended by Reg. 334/2002 (OJ 2002 L 53/7)

amended by Reg. 856/2008 (OJ 2008 L 235/1)

**Regulation 539/2001**

**Visa List**

Listing the third countries whose nationals must be in possession of visas

* OJ 2001 L 81/1

amended by Reg. 2414/2001 (OJ 2001 L 327/1): *Moving Romania to ‘white list’*


amended by Reg. 1244/2009 (OJ 2009 L 336/1): *Lifting visa req. for some Western Balkan countries*

amended by Reg. 1091/2010 (OJ 2010 L 329/1): *Lifting visa req. for Albania and Bosnia*

amended by Reg. 1211/2010 (OJ 2010 L 339/6): *Lifting visa req. for Taiwan*

amended by Reg. 1289/2013 (OJ 2013 L 347/74)


**New** amended by C.Dec. 1197/2016 (OJ 2016 L 198/1): *Short-stay visa waiver for Kiribati*


**New** amended by C.Dec. 1342/2016 (OJ 2016 L 216/3): *Short-stay visa waiver for Tuvalu*

**CJEU judgments**

- New 15
2.1: Borders and Visas: Adopted Measures

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

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

**ECHR**
  - Art. 3 Prohibition of Torture, Degrading Treatment
    - ETS 005 (4-11-50)
    - Impl. date 1950

**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

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2.2 Borders and Visas: Proposed Measures

**Regulation amending Regulation**
* amending Schengen Borders Code
  - Council and EP negotiating

**Regulation**
* Establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders
  - Revised (COM (2016) 194, 6 April 2016) under discussion in Council

**Regulation amending Regulation 562/2006**
* On the use of the EES - amending Borders Code
  - Revised (COM (2016) 196, 6 April 2016) under discussion in Council

**New**
* Regulation amending Regulation 539/2001
  - Visa List amendment
  - COM (2016) 290, 4 May 2016

**Regulation**
* Establishing Touring Visa
  - COM (2014) 163
  - under discussion in Council April 2014

**New**
* Regulation
  - Establishing a Registered Traveller Programme (RTP)
  - withdrawn

**Regulation amending Regulation 810/2009**
* Recast of the Visa Code
  - COM (2014) 164
  - under discussion in Council April 2014

**New**
* Regulation amending Regulation 539/2001
  - Visa List amendment

**New**
* Regulation amending Regulation 539/2001
  - Visa List amendment
  - COM (2016) 279, 4 May 2016

**New**
* Regulation amending Regulation 539/2001
  - Visa List amendment
  - Visa waiver Georgia

**New**
* Regulation amending Regulation 539/2001
  - Visa List amendment
  - Visa waiver Kosovo

**New**
* Regulation amending Regulation 539/2001
  - Visa List amendment
  - Visa waiver Turkey
### 2.2: Borders and Visas: Proposed Measures

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<th>Regulation amending Regulation 539/2001</th>
<th>Visa waiver Ukraine</th>
</tr>
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<td></td>
<td>* COM (2016) 277, 4 May 2016</td>
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### 2.3 Borders and Visas: Jurisprudence

#### 2.3.1 CJEU Judgments on Borders and Visas

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<tr>
<th>Case</th>
<th>Description</th>
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<tbody>
<tr>
<td>CJEU C-278/12</td>
<td><a href="http://curia.europa.eu/juris/liste.jsf?language=en&amp;num=C-278/12">Adil</a></td>
<td>19 July 2012</td>
</tr>
<tr>
<td></td>
<td>interpr. of Reg. 562/2006 Borders Code Art. 20 + 21</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Schengen Borders Code must be interpreted as not precluding national legislation, which makes the entry of TCNs to the territory of the MS concerned subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.</td>
<td></td>
</tr>
<tr>
<td>CJEU C-575/12</td>
<td>Air Baltic Borders Code Art. 5</td>
<td>4 Sep. 2014</td>
</tr>
<tr>
<td></td>
<td>interpr. of Reg. 810/2009 Visa Code Art. 24(1) + 34</td>
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<tr>
<td></td>
<td>The cancellation of a travel document by an authority of a third country does not mean that the uniform visa affixed to that document is automatically invalidated.</td>
<td></td>
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<tr>
<td>CJEU C-606/10</td>
<td>ANAFE Borders Code Art. 13 + 5(4)(a)</td>
<td>14 June 2012</td>
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<tr>
<td></td>
<td>annulment of national legislation on visa</td>
<td></td>
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<td></td>
<td>Article 5(4)(a) must be interpreted as meaning that a MS which issues to a TCN a re-entry visa</td>
<td></td>
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<td></td>
<td>within the meaning of that provision cannot limit entry into the Schengen area solely to points of entry to its national territory.</td>
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<td></td>
<td>The principles of legal certainty and protection of legitimate expectations did not require the provision of transitional measures for the benefit of TCNs who had left the territory of a MS when they were holders of temporary residence permits issued pending examination of a first application for a residence permit or an application for asylum and wanted to return to that territory (after the entry into force of this Regulation)</td>
<td></td>
</tr>
<tr>
<td>CJEU C-241/05</td>
<td>Bot Schengen Agreement Art. 20(1)</td>
<td>4 Oct. 2006</td>
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<td>interpr. of</td>
<td></td>
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<td>on the conditions of movement of third-country nationals not subject to a visa requirement; on the meaning of ‘first entry’ and successive stays</td>
<td></td>
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<tr>
<td></td>
<td>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’.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>violation of Reg. 2252/2004</td>
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<tr>
<td></td>
<td>Failure to implement biometric passports containing digital fingerprints within the prescribed periods.</td>
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<tr>
<td></td>
<td>validity of</td>
<td></td>
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<tr>
<td></td>
<td>challenge to Regs. 789/2001 and 790/2001</td>
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<td></td>
<td>upholding validity of Regs.</td>
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### 2.3: Borders and Visas: Jurisprudence: CJEU Judgments

- **CJEU C-88/14**
  - **Com. v. EP**
  - Visa List
  - *validity of Reg. 539/2001*
  - *The Commission had requested an annulment of an amendment of the visa list by Regulation 1289/2013. The Court dismisses the action.*
  - 16 July 2015

- **CJEU C-39/12**
  - **Dang**
  - Visa Code
  - *interpr. of Reg. 810/2009*
  - *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.*
  - 18 June 2012

- **CJEU C-355/10**
  - **EP v. Council**
  - Borders Code
  - *violation of Reg. 562/2006*
  - *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.*
  - 5 Sep. 2012

- **CJEU C-261/08 & C-348/08**
  - **Garcia & Cabrera**
  - Borders Code
  - *interpr. of Reg. 562/2006*
  - *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 fulfill, or no longer fulfills, 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**
  - 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.*
  - 17 Nov. 2011

- **CJEU C-88/12**
  - **Jaoo**
  - Borders Code
  - *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*
  - 14 Sep. 2012

- **CJEU C-84/12**
  - **Koushkaki**
  - Visa Code
  - *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.*
  - 19 Dec. 2013

- **CJEU C-139/08**
  - **Kqiku**
  - Transit Switzerland
  - *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.*
  - 2 Apr. 2009

- **CJEU C-188/10 & C-189/10**
  - **Melki & Abdeli**
  - Borders Code
  - *consistency of national law and European Union law, abolition of border control and the area of 20 kilometres from the land border*
  - 22 June 2010
2.3: Borders and Visas: Jurisprudence: CJEU Judgments

* 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**  
  * interpr. of Reg. 2252/2004  
  * Schwarz  
  * Passports  
  * Art. 1(2)

- **CJEU C-254/11**  
  * interpr. of Reg. 1931/2006  
  * Shomodi  
  * Local Border traffic  
  * Art. 2(a) + 3(3)

- **CJEU C-44/14**  
  * non-transp. of Reg. 1052/2013  
  * Spain v. EP & Council  
  * EUROSUR  
  * 8 Sep. 2015

- **CJEU C-101/13**  
  * interpr. of Reg. 2252/2004  
  * U.  
  * Passports  
  * 2 Oct. 2014

- **CJEU C-77/05 & C-137/05**  
  * validity of Border Agency Regulation and Passport Regulation  
  * judgment against UK

- **CJEU C-482/08**  
  * annulment of decision on police access to VIS, due to UK non-participation  
  * judgment against UK

- **CJEU C-83/12**  
  * interpr. of Reg. 810/2009  
  * Visa Code  
  * Art. 21 + 34

- **CJEU C-446/12**  
  * interpr. of Reg. 2252/2004  
  * Willems a.o.  
  * Passports  
  * Art. 4(3)

- **CJEU C-23/12**  
  * interpr. of Reg. 562/2006  
  * Zakaria  
  * Borders Code  
  * Art. 13(3)

**2.3.2 CJEU pending cases on Borders and Visas**

- **CJEU C-9/16**  
  * interpr. of Reg. 562/2006  
  * A.  
  * Borders Code  
  * Art. 23

- **CJEU C-346/16**  
  * interpr. of Reg. 562/2006  
  * Borders Code  
  * Art. 20 + 21

**New**
New

2.3.3 ECtHR Judgments on Borders and Visas

The violation of Art. 3 had also been violated.

On the question whether a TCN has crossed an external border of the Union if this TCN is in the (international) transit zone of an airport.

On the question whether a MS has to guarantee an effective remedy.

2.3.3 ECtHR Judgments on Borders and Visas

* CJEU C-17/16 El Dakkak
  * interp. of Reg. 562/2006 Borders Code
  * On the question whether a TCN has crossed an external border of the Union if this TCN is in the (international) transit zone of an airport.

* CJEU C-403/16 El Hassani
  * interp. of Reg. 810/2009 Visa Code
  * On the question whether a MS has to guarantee an effective remedy.

ECHR

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 ECHR 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 ECHR 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 the applicant had been living for 14½ months were, taken as a whole, amounted to degrading treatment.

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 ECHR 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.

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).

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.

authorities of the Member State in question the power to search, within an area of up to 30 kilometres from the land border of that Member State with the States party to the Convention implementing the Schengen Agreement of 14 June 1985 (Convention implementing the Schengen Agreement), for an article, irrespective of the behaviour of the person carrying this article and of specific circumstances, with a view to impeding or stopping unlawful entry into the territory of that Member State or to preventing certain criminal acts directed against the security or protection of the border or committed in connection with the crossing of the border, in the absence of any temporary reintroduction of border controls at the relevant internal border pursuant to Article 23 et seq. of the Schengen Borders Code?
### 3.1 Irregular Migration: Adopted Measures

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<td><strong>Directive 2001/51</strong></td>
<td>Carrier sanctions - Obligation of carriers to return TCNs when entry is refused</td>
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<td></td>
<td>OJ 2001 L 187/45 impl. date 11-02-2003 UK opt in</td>
<td></td>
</tr>
<tr>
<td><strong>Decision 267/2005</strong></td>
<td>Early Warning System - Establishing a secure web-based Information and Coordination Network for MS' Migration Management Services</td>
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3.1: Irregular Migration: Adopted Measures

- CJEU C-249/13 **Boudjlida** 11 Dec. 2014
- CJEU C-166/13 **Mukarubega** 5 Nov. 2014 Art. 3 + 7
- CJEU C-473/13 & C-514/13 **Bero & Bouzalmate** 17 July 2014 Art. 16(1)
- CJEU C-474/13 **Pham** 17 July 2014 Art. 16(1)
- CJEU C-189/13 **Da Silva** 3 July 2014 inadmissable
- CJEU C-146/14 **Arslan** 5 June 2014 Art. 15
- CJEU C-522/11 **Mbaye** 21 Mar. 2013 Art. 2(2)(b) + 7(4)
- CJEU C-474/13 **Pham** 17 July 2014 Art. 16(1)
- CJEU C-383/13 (PPU) **G. & R.** 10 Sep. 2013 Art. 15(2) + 6
- CJEU C-430/11 **Sagor** 6 Dec. 2012 Art. 2, 15 + 16
- CJEU C-61/11 (PPU) **El Dridi** 28 Apr. 2011 Art. 15 + 16
- CJEU C-357/09 (PPU) **Kudzoev** 30 Nov. 2009 Art. 15(4), (5) + (6)
- CJEU C-181/16 **Gnandi** pending Art. 5
- CJEU C-184/16 **Petrea** pending Art. 6(1)
- CJEU C-199/16 **Niangga** pending Art. 5
- CJEU C-225/16 **Ouhrami** pending Art. 11(2)
- CJEU C-82/16 **K.** pending Art. 5, 11 + 13

See further: § 3.3

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

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

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

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

See further: § 3.3

### ECHR
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

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

See further: § 3.3

### 3.2 Irregular Migration: Proposed Measures

- Nothing to report
3.3.1 CJEU Judgments on Irregular Migration

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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-cjews-ruling-in-celaj-criminal.html

**CJEU C-266/08** *(Comm. v. Spain)*
* *non-transp. of Dir. 2004/81 Trafficking Victims*
* On the status of victims of trafficking and smuggling*
* *5 Nov. 2014*

**CJEU C-189/13** *(Da Silva)*
* interpr. of Dir. 2008/115 Return Directive*
* On the permissibility of national legislation imposing a custodial sentence for the offence of illegal entry prior to the institution of deportation proceedings*
* *14 May 2009*

**CJEU C-61/11 (PPU)** *(El Dridi)*
* interpr. of Dir. 2008/115 Return Directive*
* 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*
* *28 Apr. 2011*

**CJEU C-73/12** *(Ettaghi)*
* interpr. of Dir. 2008/115 Return Directive*
* 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*
* *4 July 2012*

**CJEU C-383/13 (PPU)** *(G. & R.)*
* interpr. of Dir. 2008/115 Return Directive*
* 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*
* *10 Sep. 2013*

**CJEU C-357/09 (PPU)** *(Kadzoev)*
* interpr. of Dir. 2008/115 Return Directive*
* 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*
* *30 Nov. 2009*

**CJEU C-146/14 (PPU)** *(Mahdi)*
* interpr. of Dir. 2008/115 Return Directive*
* 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*
* *5 June 2014*

**CJEU C-522/11** *(Mbaye)*
* interpr. of Dir. 2008/115 Return Directive*
* 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*
* *21 Mar. 2013*

**CJEU C-390/14** *(Mehrabipari)*
* interpr. of Dir. 2008/115 Return Directive*
* Prejudicial question on refusal to cooperate on expulsion was withdrawn*
* *5 June 2015*

**CJEU C-166/13** *(Mukarubega)*
* interpr. of Dir. 2008/115 Return Directive*
* 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 the 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

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 TCNs consents thereto.

CJEU C-430/11 Suger 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-181/16 Gnandi  * interpr. of Dir. 2008/115
* Return Directive
* Art. 5
* ref. from ‘Conseil d’Etat’ (Belgium)
* Must Art. 5 be interpreted as precluding the adoption of a return decision, as provided for under Art. 6 and national law after the rejection of the asylum application by the (Belgian) Commissioner General for Refugees and Stateless Persons and therefore before the legal remedies available
against that rejection decision can be exhausted and before the asylum procedure can be definitively concluded?

**CJEU C-82/16**  
* interpr. of Dir. 2008/115 Return Directive Art. 5, 11 + 13  
* ref. from 'Raad voor Vreemdelingenbetwistingen' (Belgium)  
* Should Union law, in particular Art. 20 TFEU, Art. 5 and 11 of Returns Directive together with Art. 7 and 24 of the Charter, be interpreted as precluding in certain circumstances a national practice whereby a residence application, lodged by a family member/third-country national in the context of family reunification with a Union citizen in the MS where the Union citizen concerned lives and of which he is a national and who has not made use of his right of freedom of movement and establishment ('static Union citizen'), is not considered — whether or not accompanied by a removal decision — for the sole reason that the family member concerned is a TCN subject to a valid entry ban with a European dimension?

**CJEU C-199/16**  
* interpr. of Dir. 2008/115 Return Directive Art. 5  
* ref. from 'Conseil d'Etat' (Belgium)  
* Is Art. 5 read in conjunction with Art 47 of the Charter and having regard to the right to be heard in any proceedings, which forms an integral part of respect for the rights of the defence, a general principle of EU law, to be interpreted as requiring national authorities to take account of the best interests of the child, family life and the state of health of the TCN concerned when issuing a return decision, referred to in Art. 3(4) and Art. 6(1), or a removal decision, as provided for in Art. 3(5) and Art. 8?

**CJEU C-225/16**  
* interpr. of Dir. 2008/115 Return Directive Art. 11(2)  
* ref. from 'Hoge Raad' (Netherlands)  
* On the start of the entry ban term.

**CJEU C-184/16**  
* interpr. of Dir. 2008/115 Return Directive Art. 6(1)  
* ref. from 'Raad voor Vreemdelingenbetwistingen' (Belgium)  
* Are circumstances in which a certificate of registration as a European Union citizen is withdrawn to be treated in the same way as circumstances where a European Union citizen is staying illegally in the territory of the host MS, so that it is permissible, pursuant to Art. 6(1) for the body which is competent to withdraw the certificate of registration as a Union citizen to issue a return order, given that (i) the registration certificate does not constitute, as is well established, evidence of a right of legal residence in Greece, and (ii) only third county nationals fall within the scope ratiorne personae of the Returns Directive?

### 3.3.3 ECtHR Judgments on Irregular Migration

**ECtHR Ap.no. 53709/11**  
* A.F. v. GR  
* 13 June 2013  
* violation of 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. IIU  
* violation of 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 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  
* 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  
* 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  
* 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  
* 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

**EC-Turkey Association Agreement**  
* into force 23 Dec. 1963

**EC-Turkey Association Agreement Additional Protocol**  
* into force 1 Jan. 1973

*Case law sorted in chronological order*

#### CJEU judgments

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**CJEU pending cases**

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

See further: § 4.4

#### EC-Turkey Association Agreement Decision 1/80


**CJEU judgments**

- CJEU C-176/14 Van Hauthem | 16 Mar. 2015 | Art. 6 + 7 - deleted |
- CJEU C-225/12 Demir | 7 Nov. 2013 | Art. 13 |
- CJEU C-268/11 Gülhbahce | 8 Nov. 2012 | Art. 6(1) + 10 |
- CJEU C-451/11 Dülger | 19 July 2012 | Art. 7 |
- CJEU C-7/10 & C-9/10 Kahveci & Inan | 29 Mar. 2012 | Art. 7 |
- CJEU C-436/09 Belkiran | 13 Jan. 2012 | deleted |
- CJEU C-371/08 Ziebell or Örnek | 8 Dec. 2011 | Art. 14(1) |
- CJEU C-256/11 Dereci et al. | 15 Nov. 2011 | Art. 13 |
- CJEU C-187/10 Unal | 29 Sep. 2011 | Art. 6(1) |
- CJEU C-484/07 Pehlivan | 16 June 2011 | Art. 7 |
- CJEU C-303/08 Metin Bozkurt | 22 Dec. 2010 | Art. 7 + 14(1) |
- CJEU C-92/07 Comm. v. Netherlands | 29 Apr. 2010 | Art. 10(1) + 13 |
- CJEU C-14/09 Genc (Hava) | 4 Feb. 2010 | Art. 6(1) |
- CJEU C-462/08 Bekleyen | 21 Jan. 2010 | Art. 7(2) |
- CJEU C-242/06 Sahin | 17 Sep. 2009 | Art. 13 |
- CJEU C-337/07 Altun | 18 Dec. 2008 | Art. 7 |
- CJEU C-453/07 Er | 25 Sep. 2008 | Art. 7 |
- CJEU C-294/06 Payir | 24 Jan. 2008 | Art. 6(1) |
- CJEU C-349/06 Polat | 4 Oct. 2007 | Art. 7 + 14 |
- CJEU C-325/05 Derin | 18 July 2007 | Art. 6, 7 and 14 |
- CJEU C-4/05 Güzel | 26 Oct. 2006 | Art. 10(1) |
- CJEU C-502/04 Torun | 16 Feb. 2006 | Art. 7 |
- CJEU C-230/03 Sedef | 10 Jan. 2006 | Art. 6 |
- CJEU C-373/03 Aydini | 7 July 2005 | Art. 6 + 7 |
- CJEU C-374/03 Gürul | 7 July 2005 | Art. 9 |
- CJEU C-383/03 Dogan (Ergül) | 7 July 2005 | Art. 6(1) + (2) |
- CJEU C-136/03 Dörö & Unal | 2 June 2005 | Art. 6(1) + 14(1) |
- CJEU C-467/02 Cetinkaya | 11 Nov. 2004 | Art. 7 + 14(1) |
4.1: External Treaties: Association Agreements

- CJEU C-275/02 Ayaz; 30 Sep. 2004 Art. 7
- CJEU C-465/01 Comm. v. Austria; 16 Sep. 2004
- CJEU C-317/01 & C-369/01 Abatay/Sahin; 21 Oct. 2003 Art. 13 + 41(1)
- CJEU C-171/01 Birlikte; 8 May 2003 Art. 10(1)
- CJEU C-188/00 Kurz (Yuce); 19 Nov. 2002 Art. 6(1) + 7
- CJEU C-89/00 Bicakci; 19 Sep. 2000
- CJEU C-65/98 Eyüp; 22 June 2000 Art. 7
- CJEU C-329/97 Ergat; 16 Mar. 2000 Art. 7
- CJEU C-340/97 Nazlı; 10 Feb. 2000 Art. 6(1) + 14(1)
- CJEU C-1/97 Birden; 26 Nov. 1998 Art. 6(1)
- CJEU C-210/97 Akman; 19 Nov. 1998 Art. 7
- CJEU C-36/96 Gümaydın; 30 Sep. 1997 Art. 6(1)
- CJEU C-98/96 Ertanır; 30 Sep. 1997 Art. 6(1) + 6(3)
- CJEU C-285/95 Kol; 5 June 1997 Art. 6(1)
- CJEU C-386/95 Eker; 29 May 1997 Art. 6(1)
- CJEU C-351/95 Kadıman; 17 Apr. 1997 Art. 7
- CJEU C-171/95 Tetik; 23 Jan. 1997 Art. 6(1)
- CJEU C-434/93 Ahmet Bozkurt; 6 June 1995 Art. 6(1)
- CJEU C-355/93 Eroğlu; 5 Oct. 1994 Art. 6(1)
- CJEU C-237/91 Kus; 16 Dec. 1992 Art. 6(1) + 6(3)
- CJEU C-192/89 Servinçe; 20 Sep. 1990 Art. 6(1) + 13
- CJEU C-12/86 Demirsel; 30 Sep. 1987 Art. 7 + 12

CJEU pending cases

CJEU C-652/15 Tekdemir; 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

CJEU judgments

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

See further: § 4.4

4.2 External Treaties: Readmission

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

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

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

Belarus
  * negotiation mandate approved by Council, Feb. 2011

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

Georgia
  * OJ 2011 L 52/47 (into force 1 March 2011)
  EC proposes to lift visa requirements, March 2016

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

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

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

Pakistan
  * OJ 2010 L 287/52 (into force 1 Dec. 2010)
## 4.2: External Treaties: Readmission

<table>
<thead>
<tr>
<th>Country</th>
<th>Treaty Details</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russia</td>
<td>OJ 2007 L 129 (into force 1 June 2007)</td>
<td>UK opt in</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>OJ 2005 L 124/43 (into force 1 May 2005)</td>
<td>UK opt in</td>
</tr>
<tr>
<td>Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova</td>
<td>OJ 2007 L 332 and 334 (into force 1 Jan. 2008)</td>
<td>UK opt in</td>
</tr>
</tbody>
</table>

### Turkey (Statement)

- Not published in OJ - only Press Release (18 March 2016)

#### CJEU pending cases

- CJEU T-192/16 NF pending
- CJEU T-193/16 NG pending
- CJEU T-257/16 NM pending

See further: § 4.4

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## 4.3: External Treaties: Other

### 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


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


### Cape Verde: Visa facilitation agreement

- OJ 2013 L 282/3 (into force 1 Dec. 2014)

### China: Approved Destination Status treaty

- OJ 2004 L 83/12 (into force 1 May 2004)

### Columbia: Short-stay visa waiver agreement


### 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

### Palau: Short-stay visa waiver agreement


### Peru: short-stay visa waiver agreement


### Russia, Ukraine, Moldova

- Council mandate to renegotiate visa facilitation treaties, April 2011
4.3: External Treaties: Other

Russia: Visa facilitation agreement
* OJ 2007 L 129 (into force 1 June 2007)

St Lucia; Dominica; Grenada; St Vincent; Vanuatu; Samoa; Trinidad & Tobago: Short-stay Visa Waiver agreement
(into force on 28 May 2015)

Switzerland: Free Movement of Persons

Switzerland: Implementation of Schengen, Dublin
* OJ 2008 L 83/37 (applied from Dec. 2008)

Switzerland: Implementation of Schengen, Dublin

Tonga: short-stay visa waiver agreement

New

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

4.4 External Treaties: Jurisprudence

4.4.1 CJEU Judgments on EEC-Turkey Association Agreement

<table>
<thead>
<tr>
<th>Case</th>
<th>Jurisdiction</th>
<th>Date</th>
<th>Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ahmet Bozkurt</td>
<td>OJ 2002 L 114</td>
<td>6 June 1995</td>
<td>(1)</td>
</tr>
<tr>
<td>Akdas</td>
<td>OJ 2002 L 114</td>
<td>26 May 2011</td>
<td>6(1)</td>
</tr>
<tr>
<td>Akman</td>
<td>OJ 2002 L 114</td>
<td>19 Nov. 1998</td>
<td>7</td>
</tr>
<tr>
<td>Ayaz</td>
<td>OJ 2002 L 114</td>
<td>30 Sep. 2004</td>
<td>7</td>
</tr>
<tr>
<td>Aysinli</td>
<td>OJ 2002 L 114</td>
<td>7 July 2005</td>
<td>6 + 7</td>
</tr>
<tr>
<td>Bekleyen</td>
<td>OJ 2002 L 114</td>
<td>21 Jan. 2010</td>
<td>7(2)</td>
</tr>
<tr>
<td>Belkiran</td>
<td>OJ 2002 L 114</td>
<td>13 Jan. 2012</td>
<td>deleted</td>
</tr>
</tbody>
</table>

* 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.

Belonging to labour market

Supplements to social security can not be withdrawn solely on the ground that the beneficiary has moved out of the Member State.

A Turkish worker has left labour market

On the rights of family members of an unemployed Turkish worker or fraud by a Turkish worker

A stepchild is a family member

A long detention is no justification for loss of residence permit

A stepchild is a family member

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.
<table>
<thead>
<tr>
<th>Case</th>
<th>Decision</th>
<th>Date</th>
<th>Article(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU C-1/97</td>
<td>Birden</td>
<td>26 Nov. 1998</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* In so far as he has available a job with the same employer, a Turkish national in that situation is entitled to demand the renewal of his residence permit in the host MS even if, pursuant to the legislation of that MS, the activity pursued by him was restricted to a limited group of persons, was intended to facilitate their integration into working life and was financed by public funds.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-171/01</td>
<td>Birlikte</td>
<td>8 May 2003</td>
<td>Art. 10(1)</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* Art 10 precludes the application of national legislation which excludes Turkish workers duly registered as belonging to the labour force of the host MS from eligibility for election to organisations such as trade unions.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-467/02</td>
<td>Cetinkaya</td>
<td>11 Nov. 2004</td>
<td>Art. 7 + 14(1)</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* The meaning of a ‘family member’ is analogous to its meaning in the Free Movement Regulation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-465/01</td>
<td>Comm. v. Austria</td>
<td>16 Sep. 2004</td>
<td></td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-92/07</td>
<td>Comm. v. Netherlands</td>
<td>29 Apr. 2010</td>
<td>Art. 10(1) + 13</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* The obligation to pay charges in order to obtain or extend a residence permit, which are disproportionate compared to charges paid by citizens of the Union is in breach with the standstill clauses of Articles 10(1) and 13 of Decision No 1/80 of the Association.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-225/12</td>
<td>Demir</td>
<td>7 Nov. 2013</td>
<td>Art. 13</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* 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’.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-171/13</td>
<td>Demirci a.o.</td>
<td>14 Jan. 2015</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 3/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-12/86</td>
<td>Demirel</td>
<td>30 Sep. 1987</td>
<td>Art. 7 + 12</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* No right to family reunification.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-221/11</td>
<td>Demirkan</td>
<td>24 Sep. 2013</td>
<td>Art. 41(1)</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Protocol</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* The freedom to ‘provide services’ does not encompass the freedom to ‘receive’ services in other EU Member States.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-256/11</td>
<td>Dereci et al.</td>
<td>15 Nov. 2011</td>
<td>Art. 13</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-325/05</td>
<td>Derin</td>
<td>18 July 2007</td>
<td>Art. 6, 7 and 14</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-383/03</td>
<td>Dogan (Ergül)</td>
<td>7 July 2005</td>
<td>Art. 6(1) + (2)</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* Return to labour market: no loss due to detention</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-138/13</td>
<td>Dogan (Naime)</td>
<td>10 July 2014</td>
<td>Art. 41(1)</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Protocol</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* The language requirement abroad is not in compliance with the standstill clauses of the Association</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey

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.

<table>
<thead>
<tr>
<th>CJEU C-136/03</th>
<th>Dörr &amp; Unal</th>
<th>2 June 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1) + 14(1)</td>
</tr>
<tr>
<td>* The procedural guarantees set out in the Dir on Free Movement also apply to Turkish workers.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-451/11</th>
<th>Dülger</th>
<th>19 July 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-386/95</th>
<th>Eker</th>
<th>29 May 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>* About the meaning of “same employer”.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-453/07</th>
<th>Er</th>
<th>25 Sep. 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
</tr>
<tr>
<td>* On the consequences of having no paid employment.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-329/97</th>
<th>Ergat</th>
<th>16 Mar. 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
</tr>
<tr>
<td>* No loss of residence right in case of application for renewal residence permit after expiration date.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-355/93</th>
<th>Eroglu</th>
<th>5 Oct. 1994</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>* On the meaning of “same employer”.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-98/96</th>
<th>Ertanir</th>
<th>30 Sep. 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1) + 6(3)</td>
</tr>
<tr>
<td>* On interpretation of Art 45 TFEU</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-91/13</th>
<th>Essent</th>
<th>11 Sep. 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 13</td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-65/98</th>
<th>Eyyü</th>
<th>22 June 2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
</tr>
<tr>
<td>* On the obligation to co-habit as a family.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-561/14</th>
<th>Genc (Caner)</th>
<th>12 Apr. 2016</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Protocol</td>
<td>Art. 41(1)</td>
</tr>
<tr>
<td>* AG: 20 Jan 2016</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* A national measure, making family reunification between a Turkish worker residing lawfully in the MS concerned and his minor child subject to the condition that the latter have, or have the possibility of establishing, sufficient ties with Denmark to enable him successfully to integrate, when the child concerned and his other parent reside in the State of origin or in another State, and the application for family reunification is made more than two years from the date on which the parent residing in the MS concerned obtained a permanent residence permit or a residence permit with a possibility of permanent residence constitutes a ‘new restriction’, within the meaning of Art. 13 of Decision 1/80. Such a restriction is not justified.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-14/09</th>
<th>Genc (Hava)</th>
<th>4 Feb. 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>* On the determining criteria of the concept worker and the applicability of these criteria on both EU and Turkish workers.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-268/11</th>
<th>Gülbahece</th>
<th>8 Nov. 2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1) + 10</td>
</tr>
<tr>
<td>* A MS cannot withdraw the residence permit of a Turkish employee with retroactive effect.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-36/96</th>
<th>Günaydin</th>
<th>30 Sep. 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>* On interpretation of Art 45 TFEU</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CJEU C-374/03</th>
<th>Gürol</th>
<th>7 July 2005</th>
</tr>
</thead>
<tbody>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 9</td>
</tr>
<tr>
<td>* On the right to an education grant for study in Turkey</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey

<table>
<thead>
<tr>
<th>CJEU Case</th>
<th>Decision</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-4/05</td>
<td>Gülzeli</td>
<td>26 Oct. 2006</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 10(1)</td>
</tr>
<tr>
<td>* The rights of the Ass. Agr. apply only after one year with same employer.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C-351/95</td>
<td>Kadman</td>
<td>17 Apr. 1997</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
</tr>
<tr>
<td>* On the calculation of the period of cohabitation as a family</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C-7/10 &amp; C-9/10</td>
<td>Kahveci &amp; Inan</td>
<td>29 Mar. 2012</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C-285/95</td>
<td>Kol</td>
<td>5 June 1997</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>* On the consequences of conviction for fraud</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C-188/00</td>
<td>Kurz (Yuze)</td>
<td>19 Nov. 2002</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1) + 7</td>
</tr>
<tr>
<td>* On the rights following an unjustified expulsion measure</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C-237/91</td>
<td>Kus</td>
<td>16 Dec. 1992</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1) + 6(3)</td>
</tr>
<tr>
<td>* On stable position on the labour market</td>
<td></td>
<td></td>
</tr>
<tr>
<td>C-303/08</td>
<td>Metin Bozkurt</td>
<td>22 Dec. 2010</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7 + 14(1)</td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1) + 14(1)</td>
</tr>
<tr>
<td>* On the effects of detention on residence rights</td>
<td></td>
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<tr>
<td>C-294/06</td>
<td>Payir</td>
<td>24 Jan. 2008</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>* Residence rights do not depend on the reason for admission</td>
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<tr>
<td>C-484/07</td>
<td>Pehlivan</td>
<td>16 June 2011</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
</tr>
<tr>
<td>* 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.</td>
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<tr>
<td>C-349/06</td>
<td>Polat</td>
<td>4 Oct. 2007</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7 + 14</td>
</tr>
<tr>
<td>* Multiple convictions for small crimes do not lead to expulsion</td>
<td></td>
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<tr>
<td>C-242/06</td>
<td>Sahin</td>
<td>17 Sep. 2009</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 13</td>
</tr>
<tr>
<td>* On the fees for a residence permit</td>
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<tr>
<td>C-37/98</td>
<td>Savas</td>
<td>11 May 2000</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Protocoll</td>
<td>Art. 4(1)</td>
</tr>
<tr>
<td>* On the scope of the standstill obligation</td>
<td></td>
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<tr>
<td>C-230/03</td>
<td>Sedef</td>
<td>10 Jan. 2006</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6</td>
</tr>
<tr>
<td>* On the meaning of “same employer”</td>
<td></td>
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<tr>
<td>C-192/89</td>
<td>Sevince</td>
<td>20 Sep. 1990</td>
</tr>
<tr>
<td>* interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1) + 13</td>
</tr>
<tr>
<td>* On the meaning of stable position and the labour market</td>
<td></td>
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</table>
### 4.4 CJEU pending cases on EEC-Turkey Association Agreement

<table>
<thead>
<tr>
<th>Case Number</th>
<th>Decision Date</th>
<th>Relevant Article</th>
</tr>
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<tbody>
<tr>
<td>CJEU C-228/06</td>
<td>19 Feb. 2009</td>
<td>Art. 41(1)</td>
</tr>
<tr>
<td>interpr. of Soysal Protocol</td>
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<td></td>
<td>On the standstill obligation and secondary law</td>
<td></td>
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<tr>
<td>CJEU C-171/95</td>
<td>23 Jan. 1997</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>interpr. of Tetik</td>
<td>Dec. 1/80</td>
<td></td>
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<tr>
<td></td>
<td>On the meaning of voluntary unemployment after 4 years</td>
<td></td>
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<tr>
<td>CJEU C-300/09 &amp; C-301/09</td>
<td>9 Dec. 2010</td>
<td>Art. 13</td>
</tr>
<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
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<tr>
<td></td>
<td>On the reference date regarding the prohibition to introduce new restrictions for Turkish workers and their family members</td>
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<tr>
<td>CJEU C-502/04</td>
<td>16 Feb. 2006</td>
<td>Art. 7</td>
</tr>
<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td></td>
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<td></td>
<td>On possible reasons for loss of residence right</td>
<td></td>
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<tr>
<td>CJEU C-16/05</td>
<td>20 Sep. 2007</td>
<td>Art. 41(1)</td>
</tr>
<tr>
<td>interpr. of</td>
<td>Protocool</td>
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<td></td>
<td>On the scope of the standstill obligation</td>
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<tr>
<td>CJEU C-186/10</td>
<td>21 July 2011</td>
<td></td>
</tr>
<tr>
<td>interpr. of</td>
<td>Tural Oguz Protocol</td>
<td></td>
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<tr>
<td></td>
<td>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</td>
<td></td>
</tr>
<tr>
<td>CJEU C-187/10</td>
<td>29 Sep. 2011</td>
<td>Art. 6(1)</td>
</tr>
<tr>
<td>interpr. of</td>
<td>Unal</td>
<td></td>
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<td></td>
<td>Dec. 1/80</td>
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<tr>
<td></td>
<td>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</td>
<td></td>
</tr>
<tr>
<td>CJEU C-176/14</td>
<td>16 Mar. 2015</td>
<td>Art. 6 + 7 - deleted</td>
</tr>
<tr>
<td>interpr. of</td>
<td>Van Hauthen</td>
<td></td>
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<td></td>
<td>Dec. 1/80</td>
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<td></td>
<td>Case (on the access to jobs in public service) was withdrawn by the Belgian court</td>
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<tr>
<td>CJEU C-371/08</td>
<td>8 Dec. 2011</td>
<td>Art. 14(1)</td>
</tr>
<tr>
<td>interpr. of</td>
<td>Ziebell or Örnek</td>
<td></td>
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<td></td>
<td>Dec. 1/80</td>
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<td></td>
<td>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</td>
<td></td>
</tr>
</tbody>
</table>

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

- **CJEU C-1/15**
  - *non-transp. of Protocol*
  - *Incorrect way of implementation by means of adjusting policy guidelines instead of adjusting legislation*  
  - *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.

4.4.3 CJEU pending cases on Readmission Treaties

**CJEU T-192/16**  
* validity of  
* Applicant claims that the EU-Turkey Statement constitutes an agreement that produces legal effects adversely affecting applicants rights and interests as they risk refoulement to Turkey and subsequently to Pakistan.**

**CJEU T-193/16**  
* validity of  
* Applicant claims that the EU-Turkey Statement constitutes an agreement that produces legal effects adversely affecting applicants rights and interests as they risk refoulement to Turkey and subsequently to Afghanistan.**

**CJEU T-257/16**  
* validity of  
* Applicant claims that the EU-Turkey Statement constitutes an agreement that produces legal effects adversely affecting applicants rights and interests as they risk refoulement to Turkey and subsequently to Pakistan.**

5 Miscellaneous

**French Newsletter**  
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