



NEMIS

March 2011

Quarterly update on

- *Legislation and*
 - *Jurisprudence*
- on*
- *EU Migration and*
 - *Borders Law*

Coordinated by the

*Centre for Migration Law (CMR)
Radboud University Nijmegen (NL) and
Steve Peers of
University of Essex (UK)
register with: mrs Tineke Strik (CMR)*

Contents

1.	Legal Migration	3
	1.1 Adopted Measures	
	1.2 Proposed Measures	
	1.3 Jurisprudence	
2.	Borders and Visas	8
	2.1 Adopted Measures	
	2.2 Proposed Measures	
	2.3 Forthcoming	
	2.4 Jurisprudence	
3.	Irregular Migration	12
	3.1 Adopted Measures	
	3.2 Proposed Measures	
	3.3 Jurisprudence	
4.	External Measures	15
	4.1 Readmission	
	4.2 Other	
	4.3 Jurisprudence	
5.	Institutional Measures	23
6.	Miscellaneous	23

Editorial

Welcome to the second issue of NEMIS: a newsletter designed for judges who need to keep up to date on EU developments in immigration and borders law. NEMIS covers: (a) relevant legislation proposed and adopted at the EU level and (b) relevant judgements of the CJEU, the ECHR and decisions at the national level of Member States. NEMIS does not cover asylum, refugee or international protection issues: it solely concentrates on immigration and borders law. Our intention is to inform judges in Member States what problems and proposed solutions other judges are contending with. We therefore would like to invite you again to submit relevant decisions.

We would like to point out that every subsequent issue of NEMIS contains all the references present in the previous newsletter. Thus, no references will be lacking. Please bare in mind that all references are presented in a decreasing chronological order, i.e. any new reference will be put on top of the list under its corresponding header. In addition, the indication ‘New’ is put beside it in order to facilitate easy recognition at a glance.

A very important judgment was given by the CJEU in *de Zambrano* case (C-34/09). The CJEU interpreted the concept of ‘Union Citizenship’ (art. 20 TFEU) and ruled that third country national parents of EU citizen children, who are dependent minors, have two rights: (1) a right to residence in the Member State (of the nationality of the children) and (2) a right to a work permit in order to support their families.

Two national judgments in particular we would like to bring to your attention. Firstly, the decision of the Supreme Court (ZH (Tanzania) SC [2011]UKSC4 [2011]) in which the SC found that the indirect expulsion of a British national child because her mother who has care of her will be expelled can be contrary to the UN Convention on the Rights of the Child 1990. Although this case does not contain any reference to EU law there might be an interesting analogy with a similar interpretation of EU Directive 2003/86 on Family Reunion because the Directive refers to the Convention.

Secondly, the Bundessozialgericht (the highest Court in social security cases in Germany) delivered on 19 October 2010 a case (B 14 AS 23/10) concerning the entitlement to social assistance of a French citizen. In this case the question was whether a Frenchman who had worked in Germany was entitled to social assistance benefit (Arbeitslosengeld) after he got unemployed. With reference to art 24(2) of Dir. 2004/38 on Free Movement the German authorities stopped this benefit after 6 months. Although the Frenchman made the argument for the Court that the *Vatsouras* judgment (CJEU C-22/08) was applicable, the Court evaded this difficulty by stating that the Frenchman was already entitled to social assistance benefit under the European Convention on Social and Medical Assistance.

Although NEMIS does not deal with asylum cases, we would like to make some comments on the *MSS* case (ECtHR, 21 Jan. 2011). The ECtHR declared, amongst others, a violation by Greece of Art. 3 of the ECHR because of the applicant's conditions of detention and because of the applicant's living conditions. Since the ECtHR also referred to the Reception Directive (2003/9) one might conclude that the minimum standards formulated in this Reception Directive form a threshold for the interpretation of art 3 of the Convention, i.e. for those members of the CoE who are also a MS of the EU. Along this view it might be an interesting question to ask whether the Family Reunification Directive (2003/86) also holds minimum standards as to interpret art 8 of the Convention.

Carolus Grütters & Tineke Strik
Centre for Migration Law, Radboud University Nijmegen

1 Legal Migration

1.1 Legal Migration: Adopted Measures *(Unless stated otherwise, UK, DK & IRL opted out)*

New

Regulation 1231/2010

Social Security for EU Citizens and Third-Country Nationals who move within the EU

- * OJ 2010 L 344/1
- * implementation date 1 Jan. 2011
- * Extending Reg. 883/2004 on Social Security

Directive 2009/50

Blue Card directive: on conditions of entry and residence of third-country nationals for the purposes of highly qualified employment

- * OJ 2009 L 155/17
- * implementation date 19 June 2011

Decision 435/2007

Establishing European Integration Fund

- * OJ 2007 L 168/18 UK, IRL opt in

Decision 688/2006

Asylum and Immigration Information Exchange

- * OJ 2006 L 283/40 UK, IRL opt in

Recommendation 2005/762

Admission of Researchers

- * OJ 2005 L 289/26

Directive 2005/71

Admission of Researchers

- * OJ 2005 L 289/15
- * implementation date 12 Oct. 2007
- ☞ CJEU C-523/08 Commission v Spain [2010]

Directive 2004/114

Admission of Third-Country students, pupils, trainees & volunteers

- * OJ 2004 L 375/12
- * implementation date 12 Jan. 2007
- ☞ CJEU C-15/11 Sommer [pending]
- ☞ CJEU C-568/10 Commission vs Austria [pending]

Directive 2003/109

Long-Term Residents

- * OJ 2004 L 16/44
- * implementation date 23 Jan. 2006
- ☞ CJEU C-502/10 Singh [pending]
- ☞ CJEU C-508/10 Commission vs Netherlands [pending]
- ☞ CJEU C-571/10 Servet [pending]
- ☞ CJEU C-15/11 Sommer [pending]

Directive 2003/86

Family Reunification

- * OJ 2003 L 251/12
- * implementation date Oct. 2005
- ☞ CJEU C-540/03 EP v Council [2006]
- ☞ CJEU C-578/08 Chakroun [2010]
- ☞ Germany: BVerwG 1 C 8.09 [2010]
- ☞ UK: Supreme Court 2011.4 [2011]

Regulation 859/2003

Third-Country Nationals' Social Security

- * OJ 2003 L 124/1
- ☞ CJEU C-247/09 Xhymshiti [2010]

UK, IRL opt in

Regulation 1030/2002

Residence Permit Format

- * OJ 2002 L 157/1
- * amended by Reg. 330/2008 (OJ 2008 L 115/1)

UK opt in

1.2 Legal Migration: Proposed Measures

(Unless stated otherwise, UK, DK & IRL opted out)

Directive

Admission of Seasonal Workers

- * COM (2010) 379, 13 July 2010
- * Council working party began discussions, Sept. 2010

Directive

Admission of Intra-Corporate Transferees

- * COM (2010) 378, 13 July 2010
- * Council working party began discussions, Sept. 2010

Directive

Single Application Procedure: for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State

- * COM (2007) 638, 23 Oct. 2007
- * discussions restarted in EP, Feb. 2011
- * amendments discussed, March 2011

New EP voted in favour, March 2011

1.3 Legal Migration: Jurisprudence

CJEU Judgments

New

- ☞ CJEU C-34/09 **Zambrano** [8 Mar. 2011]
 - * interpr. of TFEU
 - * Art. 20: EU Citizenship
 - * *Citizenship of the Union entails a right of residence to a minor child on the territory of the Member State of which that child is a national, irrespective of the previous exercise by him of his right of free movement in the territory of the Member States. This also includes a derived right of residence and a right to work, to an ascendant relative, a third country national, upon whom the minor child is dependent. See also Q&A of EP :*
<http://cmr.jur.ru.nl/nemis/Zambrano.QA.pdf>
- ☞ CJEU C-247/09 **Xhymshiti** [18 Nov. 2010]
 - * interpr. of Reg. 859/2003 on **Third-Country Nationals' Social Security**
- ☞ CJEU C-578/08 **Chakroun** [4 Mar. 2010]
 - * interpr. of Dir. 2003/86 on **Family Reunion**
 - * Art. 7(1)(c) and 2(d)
 - * reference from 'Raad van State' (NL)
 - * *The concept of family reunification allows no distinction based on the time of marriage.*
- ☞ CJEU C-523/08 **Commission v Spain** [11 Feb. 2010]
 - * non-transp. of Dir. 2005/71 on **Admission of Researchers**
- ☞ CJEU C-540/03 **EP v Council** [27 June 2006]
 - * interpr. of Dir. 2003/86 on **Family Reunion**
 - * challenge to validity of parts of Directive
 - * decided in favour of the Council

CJEU pending cases

New

- ☞ CJEU C-15/11 **Sommer**
 - * interpr. of Dir. 2004/114 on **Admission of students**
 - * Art. 17(3)
 - * reference from 'Verwaltungsgerichtshof' (Austria)
 - * *Is it contrary to European Union law, that a permit (for students) to work is dependent on a fixed maximum number of foreign workers?*

New

- ☞ CJEU C-571/10 **Servet**
- * interpr. of Dir. 2003/109 on **Long-Term Residents**
- * reference from 'Tribunale di Bolzano' (Italy)
- * *Is it contrary to European Union law, to make a distinction on the basis of ethnicity or linguistic groups in order to be eligible for housing benefit?*

New

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

New

- ☞ CJEU C-508/10 **Commission vs Netherlands**
- * incor. appl. of Dir. 2003/109 on **Long-Term Residents**
- * *Charging € 201 to 830 for the processing of an application for LTR status is disproportionate if compared with the sum of EUR 30 which EU citizens are required to pay for a residence permit. Such a procedure cannot be regarded as 'fair'. Such high charges can be 'a means of hindering the exercise of the right of residence' within the meaning of recital 10 in the preamble to the directive, and thus have a deterrent effect on TCN.*
- ☞ CJEU C-502/10 **Singh**
- * interpr. of Dir. 2003/109 on **Long-Term Residents**
- * Art. 3(2)(e)
- * reference from 'Raad van State' (NL)
- * *Is the concept of formally limited residence permit within the meaning of [the LTR dir.] to be interpreted as including a fixed-period residence permit which, under Netherlands law, does not offer any prospect of a residence permit of indefinite duration, even if, under Netherlands law, the period of validity of the fixed-period residence permit can in principle be extended indefinitely and also if a particular group of people, such as spiritual leaders and religious teachers, are thereby excluded from the application of the Directive?*

National Judgments

New

- ☞ **UK:ZH (Tanzania) SC [2011]UKSC4 [1 Feb. 2011]**
- * UN Convention on the Rights of the Child
- * by analogy: interpr. of Dir. 2003/86 on Family Reunion
- * full text available at:
<http://cmr.jur.ru.nl/nemis/UK/ZH.Tanzania.SC.2011.UKSC4.pdf>
- * *The Supreme Court had to decide what the UK's obligation to respect the best interests of the child means in the context of British national children of a foreign mother who is subject to a deportation decision. The SC finds that the children's interest to live in their country of nationality, at least in this case, outweighs the public interest in the deportation of the mother. The SC does not refer to EU law but finds that expulsion can be contrary to the UN Convention on the Rights of the Child.*

New

- ☞ **UK:MH Morocco [2010] UKUT 439 IAC [28 Sep. 2010]**
- * interpr. of Dir. 2003/86 on **Family Reunification**
- * art. 8 ECHR
- * full text available at:
<http://cmr.jur.ru.nl/nemis/UK/MHMorocco.2010.UKUT439IAC.pdf>
- * *A refusal to adjourn proceedings before the Tribunal may have similar consequence as a decision to remove an applicant in the process of seeking a contact order: a violation of art. 8 ECHR.*

New

- ☞ **Germany: Bundessozialgericht B 14 AS 23/10 R [19 Oct. 2010]**
- * no interpr. of Dir. 2004/38 on **Free Movement**
- * European Convention on Social and Medical Assistance
- * full text available at:
<http://cmr.jur.ru.nl/nemis/Germany/BundessozialgerichtB14AS2310R.pdf>
- * *A Frenchman lawfully residing as a 'jobseeker' in Germany was entitled to social assistance benefit (Arbeitslosengeld: similar to CJEU C-22/08 Vatsouras) during the period he retained his right as a worker on the basis of art. 7(3)(c) of the Dir. on Free Movement. The question in this case was whether he was still entitled to this benefit after these 6 months as German citizens are. Such a limitation for non-nationals is an implementation of art. 24(2) of the Dir. on Free Movement. However, the German Court decided that the European Convention on Social and Medical Assistance [1953] does not allow such a limitation.*
- ☞ **Germany: BVerwG 1 C 8.09 [30 Mar. 2010]**
- * interpr. of Dir. 2003/86 on **Family Reunion**
- * Art. 7(2)
- * Art. 8 ECHR
- * appeal from Berlin Administrative Court, 17 Feb. 2009, VG 35 V 47.08
- * full text available at:
<http://cmr.jur.ru.nl/nemis/Germany/BVerwG1C809.pdf>
- * *This decision is about the validity of integration measures of family members before arrival in the host Member State. (This case involved an illiterate applicant.)*

ECHR Judgments

- ☞ Appl. No. 34848/07 *O'Donoghue and others v UK* [14 Dec. 2010]
- * Violation of Art. 9, 12 and 14 ECHR
- * Judgement of Fourth Section
- * *This decision is about whether third country nationals can be required to obtain permission to marry before marrying to control their immigration status.*

2 Borders and Visas

2.1 Borders and Visas: Adopted Measures (Unless stated otherwise, UK, DK & IRL opted out)

Regulation 265/2010

Long-Stay Visas Code

- * OJ 2010 L 85/1
- * applied 5 April 2010

Regulation 810/2009

Visa Code

- * OJ 2009 L 243/1
- * applied 5 April 2010

Regulation 767/2008

Establishing Visa Information System

- * OJ 2008 L 218/60
- * Third-pillar VIS Decision (OJ 2008 L 218/129)

Decision 586/2008

Transit through Switzerland

- * OJ 2008 L 162/27

Decision 582/2008

Transit through Romania and Bulgaria

- * OJ 2008 L 161/30

Decision 574/2007

Establishing European Borders Fund

- * OJ 2007 L 144

Regulation 1931/2006

Local border traffic within enlarged EU at external borders of EU

- * OJ 2006 L 405/1

Decision 896/2006

Transit through new Member States, Switzerland

- * OJ 2006 L 167
- * implementation date see: OJ 2006 C 251/20

Regulation 562/2006

Borders Code

- * OJ 2006 L 105/1
- * amended by Reg. 296/2008 (OJ 2008 L 97/60)
- amended by Reg. 81/2009 (OJ 2009 L 35/56)

Regarding the use of the VIS

- ☞ CJEU C-261/08 & C-348/08 Garcia/Cabrera [2000]
- ☞ CJEU C-188/10 & C-189/10 Melki/Abdeli [2010]
- ☞ CJEU C-355/10 EP v Council [pending]
- ☞ CJEU C-430/10 Gaydarov [pending]
- ☞ CJEU C-606/10 ANAFE [pending]

Recommendation 2005/761

Visa Issuing for Researchers

- * OJ 2005 L 289/23

Regulation 2252/2004

Biometric Passports

- * OJ 2004 L 385/1
- * amended by Reg. 444/2009 (OJ 2009 L 142/1)

Biometric Passports

Regulation 2007/2004

Establishing External Borders Agency

- * OJ 2004 L 349/1
 - * amended by Reg. 863/2007 (OJ 2007 L 199/30)
- ### *Border guard teams*

Decision 512/2004

Establishing Visa Information System (VIS)

- * OJ 2004 L 213/5

Regulation 694/2003

Format for FTD and FRTD

- * OJ 2003 L 99/15

Regulation 693/2003

FTD and FRTD

- * OJ 2003 L 99/8

Regulation 333/2002

Visa stickers for persons coming from unrecognised entities

- * OJ 2002 L 53/4

UK opt in

Regulation 539/2001

Establishing Visa List

- * OJ 2001 L 81/1
- * amended by Reg. 2414/2001 (OJ 2001 L 327/1)
Moving Romania to 'white list'
- amended by Reg. 453/2003 (OJ 2003 L 69/10)
Moving Ecuador to 'black list'
- amended by Reg. 851/2005 (OJ 2005 L 141/3)
On reciprocity for visas
- amended by Reg. 1932/2006 (OJ 2006 L 405/23)
- 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; in force 5 April 2010
- New** amended by Reg. 1211/2010 (OJ 2010 L 339/6)
Lifting visa req. for Taiwan

Regulation 1683/95

Common Visa Format

- * 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)

UK opt in

2.2 *Borders and Visas: Proposed Measures*

(Unless stated otherwise, UK, DK & IRL opted out)

New

Regulation

amending Schengen Borders Code

- * COM (2011) 624, 10 Mar. 2011
- * discussions underway in Council

UK, IRL opt in

New

Decision

Travel documents

- * COM (2010) 662, 12 Nov. 2010
- * discussions underway in Council

New

Regulation

Schengen evaluation

- * COM (2010) 624, 16 Nov. 2010
- * discussions underway in Council

UK opt in

Amendment

Visa List re Taiwan

- * COM (2010) 358, 5 July 2010
- * not yet formally adopted
- * agreed between Council and EP

Amendment

Frontex Regulation

- * COM (2010) 61, 24 Feb. 2010
- * discussions underway in Council and EP

Regulation

Establishing agency to manage VIS, SIS and Eurodac

- * COM (2009) 293, 24 June 2009
- * discussions underway in Council and EP

UK opt in

Regulation

Codifying Regulations establishing EC visa list

- * COM (2008) 761, 28 Nov. 2008
- * discussion terminated in Council working group

2.3 Borders and Visas: Forthcoming Topics

Borders Code

Entry-exit programme and registered traveller programme (2011)

2.4 Borders and Visas: Jurisprudence

CJEU Judgments - annulment actions

- ☞ CJEU C-482/08 *UK v Council* [26 Oct. 2010]
 - * annulment of decision on police access to VIS, due to UK non-participation
 - * judgment against UK
- ☞ CJEU C-77/05 & C-137/05 *UK v Council* [18 Dec. 2007]
 - * validity of Border Agency Regulation and passport Regulation
 - * judgment against UK
- ☞ CJEU C-257/01 *Commission v Council* [18 Jan. 2005]
 - * challenge to Regs. 789/2001 and 790/2001
 - * upholding validity of Regs.

CJEU Judgments - national court references

- ☞ CJEU C-188/10 & C-189/10 *Melki/Abdeli* [22 June 2010]
 - * interpr. of Reg. 562/2006 on *Borders Code*
 - * Art. 20 and 21
 - * consistency of national law and European Union law, abolition of border control and the area of 20 kilometres from the land border
 - * reference from 'Cour de Cassation ' (France)

- ☞ CJEU C-261/08 & C-348/08 **Garcia/Cabrera** [22 Oct. 2000]
 - * interpr. of Reg. 562/2006 on **Borders Code**
 - * Art. 5, 11 and 13
 - * Member States are not obliged to expel a third-country national who is unlawfully present on the territory of a Member State because the conditions of duration of stay are not or no longer fulfilled
 - * reference from 'Tribunal Superior de Justicia de Murcia' (Spain)
- ☞ CJEU C-139/08 **Kqiku** [2 Apr. 2009]
 - * interpr. of Dec. 896/2006 on **Transit through new Member States**,
 - * Art. 1 and 2
 - * on transit visa legislation for third-country nationals subject to a visa requirement
 - * reference from 'Oberlandesgericht Karlsruhe' (Germany)
- ☞ CJEU C-241/05 **Bot** [4 Oct. 2006]
 - * interpr. of Schengen
 - * Art. 20(1)
 - * on the conditions of movement of third-country nationals not subject to a visa requirement; on the meaning of 'first entry' and successive stays
 - * reference from 'Conseil d'Etat' (France)

CJEU pending cases

New

- ☞ CJEU C-606/10 **ANAFE**
 - * interpr. of Reg. 562/2006 on **Borders Code**
 - * Art. 13 and 5(4)(a)
 - * annulment of national legislation on visa
 - * *Is it allowed to issue temporary permits that prohibits entry into other Member States?*

New

- ☞ CJEU C-430/10 **Gaydarov**
 - * interpr. of Reg. 562/2006 on **Borders Code**
 - * *Is it allowed to restrict the movements of a convicted criminal during his rehabilitation period if this restriction is based on his criminal relevant behavior in an other State?*
- ☞ CJEU C-355/10 **EP v Council**
 - * interpr. of Reg. 562/2006 on **Borders Code**
 - * Art. 12(5)
 - * annulment of measure implementing Borders Code

3 Irregular Migration

3.1 Irregular Migration: Adopted Measures (Unless stated otherwise, UK, DK & IRL opted out)

New

- Directive replacing Framework Dec. Trafficking persons**
 - * adopted Mar. 2011, not yet published

New

Regulation amending Regulation

Immigration liaison officers

- * adopted Mar. 2011, not yet published

Directive 2009/52

Sanctions for employers of irregular migrants

- * OJ 2009 L 168/24

Directive 2008/115

Returns Directive

- * OJ 2008 L 348/98
- * implementation date 24 Dec. 2010
- ☞ CJEU C-357/09 Kadzoev [2009]

Decision

European Return Programme

- * OJ 2007 L 144

UK opt in

Regulation 1988/2006

SIS II, amending Reg. 2424/2001

- * OJ 2006 L 411/1

UK opt in

Regulation 1987/2006

Establishing SIS II

- * OJ 2006 L 381/4

Decision

Early warning system

- * OJ 2005 L 83/48

UK opt in

Decision

Joint flights for expulsion

- * OJ 2004 L 261/28

UK opt in

Directive 2004/82

Transmission of passenger data

- * OJ 2004 L 261/64

UK opt in

Regulation 871/2004

New functionalities for SIS

- * OJ 2004 L 162/29

Directive 2004/81

Res. permits for trafficking victims

- * OJ 2004 L 261/19

UK opt in

☞ CJEU C-266/08 Commission v Spain [2009]

Decision

Costs of expulsion

- * OJ 2004 L 60/55

UK opt in

Regulation 377/2004

ILO network

- * OJ 2004 L 64/1

UK opt in

Regulation 378/2004*Procedure for amendments to Sirene manual*

- * OJ 2004 L 64

UK opt in

Conclusions*Transit via land for expulsion*

- * adopted 22 Dec. 2003 by Council

UK opt in

Directive 2003/110*Assistance with transit for expulsion by air*

- * OJ 2003 L 321/26

Directive & Framework Decision*Facilitation of illegal entry and residence*

- * OJ 2002 L 328

UK opt in

Framework Decision*Trafficking in persons*

- * OJ 2002 L 203/1

UK opt in

Decision 886/JHA/2001*Funding SIS II*

- * OJ 2001 L 328/1

UK opt in

Regulation 2424/2001*Funding SIS II*

- * OJ 2001 L 328/4

UK opt in

Directive 2001/51*Carrier sanctions*

- * OJ 2001 L 187/45

- * implementation date 11 Feb. 2003

UK opt in

Directive 2001/40*Mutual recognition of expulsion decisions*

- * OJ 2001 L 149/34

- * implementation date 2 Oct. 2002

UK opt in

3.2 Irregular Migration: Proposed Measures*(Unless stated otherwise, UK, DK & IRL opted out)*

- * nothing to report

3.3 Irregular Migration: Jurisprudence**CJEU Judgments**

- ☞ CJEU C-357/09 **Kadzoev** [30 Nov. 2009]
 - * interpr. of Dir. 2008/115 on **Returns Directive**
 - * Art. 15(4), (5) and (6)
 - * the maximum duration of detention must include a period of detention completed in connection with a removal procedure commenced before the rules in the directive become applicable
 - * only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods
- ☞ CJEU C-266/08 **Commission v Spain** [14 May 2009]
 - * non-transp. of Dir. 2004/81 on **Res. permits for trafficking victims**
 - * on the status of victims of trafficking and smuggling

CJEU pending cases

New

- ☞ CJEU C-61/11 **El Dridi**
 - * interpr. of Dir. 2008/115 on **Returns Directive**
 - * Art. 15 and 16
 - * PPU: Urgency Procedure
 - * reference from 'Corte D'Appello Di Trento' (Italy)
 - * *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*

New

- ☞ CJEU C-60/11 **Mrad**
 - * interpr. of Dir. 2008/115 on **Returns Directive**
 - * Art. 15 and 16
 - * reference from 'Tribunale di Ragusa' (Italy)
 - * *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*

New

- ☞ CJEU C-50/11 **Emegor**
 - * interpr. of Dir. 2008/115 on **Returns Directive**
 - * Art. 15 and 16
 - * reference from 'Tribunale di Ivrea' (Italy)
 - * *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*

New

- ☞ CJEU C-43/11 **Samb**
 - * interpr. of Dir. 2008/115 on **Returns Directive**
 - * Art. 15 and 16
 - * reference from 'Tribunale Ordinario Di Milano' (Italy)
 - * *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*

4 External Treaties

4.1 *External Treaties: Readmission* *(Unless stated otherwise, UK, DK & IRL opted out)*

- New** **Russia, Ukraine, Moldova**
 * Council to approve mandate to renegotiate, Apr. 2011
- New** **Belarus**
 * negotiation mandate approved by Council, Feb. 2011
- Morocco, Algeria, Turkey and China**
 * negotiations approved, 2010
New agreed with Turkey, Jan. 2011
- Georgia**
 * Proposal to sign and conclude agreement:
 signed, (COM (2010) 199 and 200), 5 May 2010
New concluded Jan. 2011; entered into force 1 March 2011
- Pakistan**
 * concluded, Sep. 2010 (OJ 2010 L 287/50)
New into force 1 Dec. 2010
- Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova**
 * OJ 2007 L 332 and 334 UK opt in
 * into force 1 Jan. 2008 (for TCN: Jan. 2010)
- Russia**
 * OJ 2007 L 129 UK opt in
 * into force 1 June 2007 (for TCN: June 2010)
- Cape Verde**
 * agreement proposed Nov. 2008;
 negotiation mandate approved by Council June 2009
- Albania**
 * OJ 2005 L 124 UK opt in
 * into force 1 May 2006 (for TCN: May 2008)
- Sri Lanka**
 * OJ 2005 L 124/43 UK opt in
 * into force 1 May 2005
- Macao**
 * OJ 2004 L 143/97 UK opt in
 * into force 1 June 2004
- Hong Kong**
 * OJ 2004 L 17/23 UK opt in
 * into force 1 Mar. 2004 (OJ 2004 L 64/38)

4.2 *External Treaties: Other*

New**Belarus**

- * Council approved mandate to negotiate visa facilitation treaty, Feb. 2011

Brazil: Two visa waiver treaties

- * OJ 2011 L 66/1 & 2

New into force 24 Feb. 2011**Mauritius, Antigua/Barbuda, Barbados, Seychelles, St. Kitts and Nevis and Bahamas: Visa abolition treaties agreed**

- * proposals to sign and conclude treaties, (COM (2009) 48, 49, 50, 52, 53 and 55), 12 Feb. 2009
- * treaties signed and provisionally into force, May 2009
- * concluded Nov. 2009

Cape Verde: Visa facilitation agreement negotiations

- * proposed Nov. 2008
- * negotiation mandate approved by Council June 2009

Georgia: Visa facilitation agreement

- * proposal to sign and conclude, (COM (2010) 197 and 198), 5 May 2010
- * signed June 2010

New concluded, Jan. 2011; entered into force 1 March 2011**Ukraine, Serbia, Montenegro, Bosnia, Macedonia, Albania and Moldova: Visa facilitation agreements**

- * OJ 2007 L 332 and 334
- * in force 1 Jan. 2008

Russia: Visa facilitation agreement

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

Denmark: Dublin II treaty

- * OJ 2006 L 66/38
- * into force, 1 April 2006

China: Approved Destination Status treaty

- * OJ 2004 L 83/12
- * into force 1 May 2004

Switzerland: Schengen, Dublin

- * applied from Dec. 2008

Switzerland: Free Movement of Persons

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

Norway and Iceland: Dublin Convention

- * into force 1 March 2001
- * Protocol in force 1 May 2006

EC-Turkey Association Agreement

- * into force 23 Dec. 1963
- * Additional Protocol in force 1 Jan. 1973
- * Decision No 1/80 of the Association Council of 19 Sept. 1980 on the Development of the Association and Decision No 3/80 of the Association Council of 19 Sept. 1980 on Social Security

4.3 *External Treaties: Jurisprudence***CJEU Judgments on EEC-Turkey Association Agreement****New**

- ☞ C-303/08 **Metin Bozkurt** [22 Dec. 2010]
 - * interpr. of Dec. No 1/80
 - * Art. 7 and 14(1)
 - * reference from 'Bundesverwaltungsgericht' (Germany)
 - * *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.
- ☞ C-300/09 & C-301/09 **Toprak/Oguz** [9 Dec. 2010]
 - * interpr. of Dec. No 1/80
 - * Art. 13 (standstill clause)
 - * reference from 'Raad van State' (Netherlands)
 - * *on the reference date regarding the prohibition to introduce new restrictions for Turkish workers and their family members*
- ☞ C-92/07 **Comm. v The Netherlands** [29 Apr. 2010]
 - * interpr. of Dec. No 1/80
 - * Art. 10(1) and 13 (standstill clauses)
 - * *the obligation to pay charges in order to obtain or extend a residence permit, which are disproportionate compared to charges paid by citizens of the Union is in breach with the standstill clauses of Articles 10(1) and 13 of Decision No 1/80 of the Association*

- ☞ C-14/09 **Genc** [4 Feb. 2010]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1)
 - * *on the determining criteria of the concept worker and the applicability of these criteria on both EU and Turkish workers*

- ☞ C-462/08 **Bekleyen** [21 Jan. 2010]
 - * interpr. of Dec. No 1/80
 - * Art. 7 (2)
 - * *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*

- ☞ C-242/06 **Sahin** [17 Sep. 2009]
 - * interpr. of Dec. No 1/80
 - * Art. 13
 - * reference from 'Raad van State' (Netherlands)

- ☞ C-228/06 **Soysal** [19 Feb. 2009]
 - * interpr. of standstill provision
 - * Art. 41(1)

- ☞ C-337/07 **Altun** [18 Dec. 2008]
 - * interpr. of Dec. No 1/80
 - * Art. 7
 - * reference from 'Verwaltungsgericht Stuttgart' (Germany)

- ☞ C-453/07 **Er** [25 Sep. 2008]
 - * interpr. of Dec. No 1/80
 - * Art. 7
 - * reference from 'Verwaltungsgericht Gießen' (Germany)

- ☞ C-16/05 **Tum & Dari** [20 Sep. 2007]
 - * interpr. of standstill provision
 - * Art. 41(1)

- ☞ C-294/06 **Payir** [24 Jan. 2008]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1)
 - * reference from 'Court of Appeal' (United Kingdom)

- ☞ C-349/06 **Polat** [4 Oct. 2007]
 - * interpr. of Dec. No 1/80
 - * Art. 7 and 14
 - * reference from 'Verwaltungsgericht Darmstadt' (Germany)

- ☞ C-325/05 **Derin** [18 July 2007]
 - * interpr. of Dec. No 1/80
 - * Art. 6, 7 and 14
 - * reference from 'Verwaltungsgericht Darmstadt' (Germany)

- ☞ C-4/05 **Güzeli** [26 Oct. 2006]
 - * interpr. of Dec. No 1/80
 - * Art. 10(1)
 - * reference from 'Verwaltungsgericht Aachen' (Germany)

- ☞ C-502/04 **Torun** [16 Feb. 2006]
 - * interpr. of Dec. No 1/80
 - * Art. 7
 - * reference from 'Bundesverwaltungsgericht' (Germany)

- ☞ C-230/03 **Sedef** [10 Jan. 2006]
 - * interpr. of Dec. No 1/80
 - * Art. 6
 - * reference from 'Bundesverwaltungsgericht' (Germany)

- ☞ C-374/03 **Gürol** [7 July 2005]
 - * interpr. of Dec. No 1/80
 - * Art. 9
 - * reference from 'Verwaltungsgericht Sigmarinen' (Germany)

- ☞ C-383/03 **Dogan** [7 July 2005]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1) and (2)
 - * reference from 'Verwaltungsgerichtshof' (Austria)

- ☞ C-373/03 **Aydinli** [7 July 2005]
 - * interpr. of Dec. No 1/80
 - * Art. 6 and 7
 - * reference from 'Verwaltungsgericht Freiburg' (Germany)

- ☞ C-136/03 **Dörr & Unal** [2 June 2005]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1) and 14(1)
 - * reference from 'Verwaltungsgerichtshof' (Austria)

- ☞ C-467/02 **Cetinkaya** [11 Nov. 2004]
 - * interpr. of Dec. No 1/80
 - * Art. 7 and 14(1)
 - * reference from 'Verwaltungsgericht Stuttgart' (Germany)

- ☞ C-275/02 **Ayaz** [30 Sep. 2004]
 - * interpr. of Dec. No 1/80
 - * Art. 7
 - * reference from 'Verwaltungsgericht Stuttgart' (Germany)

- ☞ C-465/01 **Comm. v Austria** [16 Sep. 2004]
 - * interpr. of Dec. No 1/80

- ☞ C-317/01 & C-369/01 *Abatay/Sahin* [21 Oct. 2003]
 - * interpr. of Dec. No 1/80
 - * Art. 13 (standstill clause)
 - * reference from 'Bundessozialgericht' (Germany)

- ☞ C-317/01 & C-369/01 *Abatay/Sahin* [21 Oct. 2003]
 - * interpr. of standstill provision
 - * Art. 41(1)

- ☞ C-171/01 *Birlikte* [8 May 2003]
 - * interpr. of Dec. No 1/80
 - * Art. 10(1)
 - * reference from 'Verfassungsgerichtshof' (Austria)

- ☞ C-188/00 *Kurz (Yuze)* [19 Nov. 2002]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1) and 7
 - * reference from 'Verwaltungsgericht Karlsruhe' (Germany)

- ☞ C-89/00 *Bicakci* [19 Sep. 2000]
 - * interpr. of Dec. No 1/80

- ☞ C-65/98 *Eyüp* [22 June 2000]
 - * interpr. of Dec. No 1/80
 - * Art. 7
 - * reference from 'Verwaltungsgerichtshof' (Austria)

- ☞ C-37/98 *Savas* [11 May 2000]
 - * interpr. of standstill provision
 - * Art. 41(1)

- ☞ C-329/97 *Ergat* [16 Mar. 2000]
 - * interpr. of Dec. No 1/80
 - * Art. 7
 - * reference from 'Bundesverwaltungsgericht' (Germany)

- ☞ C-340/97 *Nazli* [10 Feb. 2000]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1) and 14(1)
 - * reference from 'Verwaltungsgericht Ansbach' (Germany)

- ☞ C-1/97 *Birden* [26 Nov. 1998]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1)
 - * reference from 'Verwaltungsgericht Bremen' (Germany)

- ☞ C-210/97 **Akman** [19 Nov. 1998]
 - * interpr. of Dec. No 1/80
 - * Art. 7
 - * reference from 'Verwaltungsgericht Köln' (Germany)

- ☞ C-98/96 **Ertanir** [30 Sep. 1997]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1) and (3)
 - * reference from 'Verwaltungsgericht Darmstadt' (Germany)

- ☞ C-36/96 **Günaydin** [30 Sep. 1997]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1)
 - * reference from 'Bundesverwaltungsgericht' (Germany)

- ☞ C-285/95 **Kol** [5 June 1997]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1)
 - * reference from 'Oberverwaltungsgericht Berlin' (Germany)

- ☞ C-386/95 **Eker** [29 May 1997]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1)
 - * reference from 'Bundesverwaltungsgericht' (Germany)

- ☞ C-351/95 **Kadiman** [17 Apr. 1997]
 - * interpr. of Dec. No 1/80
 - * Art. 7
 - * reference from 'Verwaltungsgericht München' (Germany)

- ☞ C-171/95 **Tetik** [23 Jan. 1997]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1)
 - * reference from 'Bundesverwaltungsgericht' (Germany)

- ☞ C-434/93 **Ahmet Bozkurt** [6 June 1995]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1)
 - * reference from 'Raad van State' (Netherlands)

- ☞ C-355/93 **Eroglu** [5 Oct. 1994]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1)
 - * reference from 'Verwaltungsgericht Karlsruhe' (Germany)

- ☞ C-237/91 **Kus** [16 Dec. 1992]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1) and (3)
 - * reference from 'Hessischer Verwaltungsgerichtshof' (Germany)

- ☞ C-192/89 **Sevince** [20 Sep. 1990]
 - * interpr. of Dec. No 1/80
 - * Art. 6 (1) and 13
 - * reference from 'Raad van State' (Netherlands)
- ☞ 12/86 **Demirel** [30 Sep. 1987]
 - * interpr. of Dec. No 1/80
 - * Art. 7 and 12
 - * reference from 'Verwaltungsgericht Stuttgart' (Germany)

CJEU pending cases on EEC-Turkey Association Agreement

- ☞ C-187/10 **Baris Unal**
 - * *on retroactive withdrawal of residence permit; no fraude; legal certainty*
- ☞ C-186/10 **Tural Oguz**
 - * interpr. of Add. Protocol
 - * Art. 41(1)
 - * *Residence permit granted under condition of no self-employment; can Turkish national rely on Art. 41 Protocol?*
- ☞ C-7/10 & C-9/10 **Kahveci & Inan**
 - * interpr. of Dec. No 1/80
 - * Art. 7
 - * *Is status of Art. 7 of Dec. 1/80 lost because worker acquires nationality of Member State of residence next to Turkish nationality?*
- ☞ C-420/08 **Erdil**
 - * interpr. of Dec. No 1/80
 - * *Does the protection of Art 28(3) of Free Movement Directive (2004/38) apply to Turkish national with status Art. 7 of 1/80 born in a Member State?*
- ☞ C-436/09 **Belkiran**
 - * interpr. of Dec. No 1/80
 - * *Should Art. 14(1) of 1/80 be interpreted as Art. 28(3) of the Free Movement Directive (2004/38/EC)?*
- ☞ C-371/08 **Örnek**
 - * interpr. of Dec. No 1/80
 - * Art. 14(1)
 - * *Should Art. 14(1) of 1/80 be interpreted as Art. 28(3) of the Free Movement Directive (2004/38/EC)?*

☞ C-485/07 *Akdas*

- * interpr. of Dec. No 3/80
- * Art. 6 (1)
- * *Does Art. 6(1) of Decision 3/80 have direct effect and is its effect subject to later changes in Reg. 1408/71? Art. 9 Ass Agreement and unequal treatment in social security*

☞ C-484/07 *Pehlivan*

- * interpr. of Dec. No 1/80 & 3/80
- * Art. 7 and 12
- * *Family member marries in first 3 years but continues to live with Turkish worker; retroactive withdrawal of permit after those 3 years?*

5 Institutional Measures**Amendments to Court of Justice Statute and rules of procedure**

Fast-track system for urgent JHA cases

- * OJ 2008 L 24
- * in effect 1 March 2008

6 Miscellaneous**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.

COE Rule 39

- * full text available at:
<http://cmr.jur.ru.nl/nemis//COERule39.pdf>