



**NEMIS**

Quarterly update on

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

Editorial Board

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Published by the Centre for Migration Law (CMR), Jean Monnet Centre of Excellence, Radboud University Nijmegen (NL) in close co-operation with University of Essex (UK) and Aarhus University (DK)

New in this Issue of NEMIS

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§ 1.3.1	CJEU C-544/15, <i>Fahimian</i>	4 Apr. 2017	Students	Art. 6(1)(d)
§ 1.3.1	CJEU C-449/16, <i>Martinez Silva</i>	21 June 2017	Single Permit	Art. 12(1)(e)
§ 1.3.2	CJEU C-123/17, <i>Yön</i>	pending	Family Reunification	Art. 7
§ 1.3.5	ECtHR 41697/12, <i>Krasniqi v. AUS</i>	25 Apr. 2017	ECHR	Art. 8

§ 2 Borders and Visas

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§ 3.3.5	ECtHR 23707/15, <i>Muzamba Oyaw v. BEL</i>	4 Apr. 2017	ECHR	Art. 5 - inadmissible
§ 3.3.5	ECtHR 39061/11, <i>Thimothawes v. BEL</i>	4 Apr. 2017	ECHR	Art. 5

§ 4 External Treaties

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§ 4.4.2	CJEU C-123/17, <i>Yön</i>	pending	Dec. 1/80 EC-Turkey Assn. Agr.	Art. 13

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.

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 ISSN 2212 - 9154



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## Editorial

**Welcome** to the **Second** issue of NEMIS in 2017. In this issue we would like to draw your attention to the following.

**First**, we hope that you will appreciate the slightly changed layout of the Newsletter. The main change is that we have put at the very first page of the Newsletter a concise list of the new items, which are marked as ‘*New*’ throughout this Newsletter.

### Security and Students

The CJEU ruled (in C-544/15 *Fahimian*) that national authorities have a wide discretion in ascertaining, whether a TCN student represents a threat, if only potential, to public security.

### Family Life

The German Bundesverwaltungsgericht has (again after C-138/13, *Dogan*) asked the CJEU a preliminary question (in C-123/17, *Yön*) on the meaning of the standstill clauses in Dec. 1/80 and Dec. 2/76 in relation to the language requirement in the context of family reunification. The CJEU has already ruled (in *Demir, Dogan, Cner Genc* and recently C-652/15, *Tekdemir*) what the exact meaning is of both standstill clauses and that these clauses also apply to national rules on family reunification of Turkish employees and their family members. The CJEU also reaffirms that there is, apart from the derogations mentioned in Article 14 Dec 1/80, only one ‘overriding’ reason in the public interest to disregard these standstill clauses. However, such a threshold is very high. The ECtHR ruled (in 41697/12, *Krasniqi*) that in that specific case there is no violation of art 8 ECHR when a person is expelled because he has been convicted in a period of less than 10 years to (a total of) 29 months imprisonment.

The Dutch Council of State has asked two preliminary rulings on family reunification. The first one (10 May) concerns the question if Article 15(1) and (4) allow Member States to require the passing of an integration examination before an autonomous residence permit is granted. The second request (21 June) concerns the question whether Article 12 allows Member States to reject an application submitted by family members of refugees, if the application time-limit of three months is exceeded, without an individual assessment as required by Article 5(5) and 17, if this individual assessment will take place after a subsequent application is made. Both cases are not yet registered under a C-number.

### Visa

A very important decision was made by the CJEU (in C-638/16, *X. & X.*) on the issue whether an asylum seeker can apply for a humanitarian visa at the embassy of a MS outside the territory of the EU, with the intention to file an asylum request after arrival in that MS. The AG Mengozzi argued that MS had to issue such a humanitarian visa with reference to the very meaning of the Charter. The CJEU, however, took a completely different position and decided that the Visa Code does not apply to applications for visa with the purpose of a long stay, which was indicated by the intention of filing an asylum request. As the case fell outside the scope of the Visa Code, the Court ruled that Union law was not applicable.

### Borders

The CJEU ruled (in C-9/16 *A.*) that the Borders Code does not allow police authorities to check the identity of **any** person, within an area of 30 kilometres from that Member State’s internal (Schengen) land border. The court adds that this is irrespective of the behaviour of the person concerned and of the existence of specific circumstances. Ratio behind this is that the Schengen Borders Code precludes that national legislation having an effect equivalent to that of (internal) border checks.

Nijmegen June 2017, Carolus Grütters & Tineke Strik

# 1 Regular Migration

## 1.1 Regular Migration: Adopted Measures

case law sorted in chronological order

### Directive 2009/50

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

- \* OJ 2009 L 155/17

### **Blue Card I**

impl. date 19 June 2011

### Directive 2003/86

*On the right to Family Reunification*

- \* OJ 2003 L 251/12
- \* COM(2014) 210, 3 Apr. 2014: Guidelines on the application

### **Family Reunification**

impl. date 3 Oct. 2005

#### *CJEU judgments*

☞	CJEU C-558/14 <i>Kachab</i>	21 Apr. 2016	Art. 7(1)(e)
☞	CJEU C-527/14 <i>Oruche</i>	2 Sep. 2015	Art. 7(2) - deleted
☞	CJEU C-153/14 <i>K. &amp; A.</i>	9 July 2015	Art. 7(2)
☞	CJEU C-338/13 <i>Noorzia</i>	17 July 2014	Art. 4(5)
☞	CJEU C-138/13 <i>Dogan (Naime)</i>	10 July 2014	Art. 7(2)
☞	CJEU C-87/12 <i>Ymeraga</i>	8 May 2013	Art. 3(3)
☞	CJEU C-356/11 <i>O. &amp; S.</i>	6 Dec. 2012	Art. 7(1)(e)
☞	CJEU C-155/11 <i>Imran</i>	10 June 2011	Art. 7(2) - no adj.
☞	CJEU C-578/08 <i>Chakroun</i>	4 Mar. 2010	Art. 7(1)(e) + 2(d)
☞	CJEU C-540/03 <i>EP v. Council</i>	27 June 2006	Art. 8

#### *CJEU pending cases*

New ☞	CJEU C-123/17 <i>Yön</i>	pending	Art. 7
☞	CJEU C-550/16 <i>A. &amp; S.</i>	pending	Art. 2(f)

#### *EFTA judgments*

☞	EFTA E-4/11 <i>Clauder</i>	26 July 2011	Art. 7(1)
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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

UK, IRL opt in

### **Integration Fund**

### Directive 2014/66

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

- \* OJ 2014 L 157/1

### **Intra-Corporate Transferees**

impl. date 29 Nov. 2016

### Directive 2003/109

*Concerning the status of TCNs who are long-term residents*

- \* OJ 2004 L 16/44
- \* amended by Dir. 2011/51

### **Long-Term Residents**

impl. date 23 Jan. 2006

#### *CJEU judgments*

☞	CJEU C-309/14 <i>CGIL</i>	2 Sep. 2015	
☞	CJEU C-579/13 <i>P. &amp; S.</i>	4 June 2015	Art. 5 + 11
☞	CJEU C-311/13 <i>Tümer</i>	5 Nov. 2014	
☞	CJEU C-469/13 <i>Tahir</i>	17 July 2014	Art. 7(1) + 13
☞	CJEU C-40/11 <i>Iida</i>	8 Nov. 2012	Art. 7(1)
☞	CJEU C-502/10 <i>Singh</i>	18 Oct. 2012	Art. 3(2)(e)
☞	CJEU C-508/10 <i>Com. v. Netherlands</i>	26 Apr. 2012	
☞	CJEU C-571/10 <i>Servet Kamberaj</i>	24 Apr. 2012	Art. 11(1)(d)

#### *CJEU pending cases*

☞	CJEU C-636/16 <i>Lopez Pastuzano</i>	pending	Art. 12
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See further: § 1.3

### Directive 2011/51

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

- \* OJ 2011 L 132/1 (April 2011)
- \* extending Dir. 2003/109 on LTR

### **Long-Term Residents ext.**

impl. date 20 May 2013

**Council Decision 2006/688**

*On the establishment of a mutual information mechanism in the areas of asylum and immigration*  
 \* OJ 2006 L 283/40

**Mutual Information**

UK, IRL opt in

**Directive 2005/71**

*On a specific procedure for admitting TCNs for the purposes of scientific research*  
 \* OJ 2005 L 289/15 impl. date 12 Oct. 2007  
 \* Directive is replaced by Dir. 2016/801 Researchers and Students

**Researchers**

*CJEU judgments*

☞ CJEU C-523/08 *Com. v. Spain* 11 Feb. 2010  
 See further: § 1.3

**Recommendation 762/2005**

*To facilitate the admission of TCNs to carry out scientific research*  
 \* OJ 2005 L 289/26

**Researchers**

**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.*  
 \* OJ 2016 L 132/21 (11-05-2016) impl. date 24 May 2018  
 \* This directive replaces both Dir 2005/71 on Researchers and Dir 2004/114 on Students

**Researchers and Students**

**Regulation 1030/2002**

*Laying down a uniform format for residence permits for TCNs*  
 \* OJ 2002 L 157/1  
 amd by Reg. 330/2008 (OJ 2008 L 115/1)

**Residence Permit Format**

UK opt in

**Directive 2014/36**

*On the conditions of entry and residence of TCNs for the purposes of seasonal employment*  
 \* OJ 2014 L 94/375 impl. date 30 Sep. 2016

**Seasonal Workers**

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

**Single Permit**

*CJEU judgments*

New ☞ CJEU C-449/16 *Martinez Silva* 21 June 2017 Art. 12(1)(e)  
 See further: § 1.3

**Regulation 859/2003**

*Third-Country Nationals' Social Security extending Reg. 1408/71 and Reg. 574/72*  
 \* OJ 2003 L 124/1  
 \* Replaced by Reg 1231/2010: Social Security TCN II

**Social Security TCN**

UK, IRL opt in

*CJEU judgments*

☞ CJEU C-465/14 *Wieland & Rothwangl* 27 Oct. 2016 Art. 1  
 ☞ CJEU C-247/09 *Xhymshiti* 18 Nov. 2010  
 See further: § 1.3

**Regulation 1231/2010**

*Social Security for EU Citizens and TCNs who move within the EU*  
 \* OJ 2010 L 344/1 impl. date 1 Jan. 2011  
 \* Replacing Reg. 859/2003 on Social Security TCN

**Social Security TCN II**

IRL opt in

**Directive 2004/114**

*Admission of Third-Country Nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service*  
 \* OJ 2004 L 375/12 impl. date 12 Jan. 2007  
 \* Directive is replaced by Dir. 2016/801 Researchers and Students

**Students**

*CJEU judgments*

☞ CJEU C-491/13 *Ben Alaya* 10 Sep. 2014 Art. 6 + 7  
 New ☞ CJEU C-544/15 *Fahimian* 4 Apr. 2017 Art. 6(1)(d)  
 ☞ CJEU C-15/11 *Sommer* 21 June 2012 Art. 17(3)  
 ☞ CJEU C-294/06 *Payir* 24 Nov. 2008  
 See further: § 1.3

**ECHR**

**Family - Marriage - Discrimination**

*European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols*  
 Art. 8 Family Life  
 Art. 12 Right to Marry  
 Art. 14 Prohibition of Discrimination  
 \* ETS 005 (4 November 1950) impl. date 31 Aug. 1954

<i>ECtHR Judgments</i>			
New	☞ ECtHR 41697/12 <i>Krasniqi</i>	25 Apr. 2017	Art. 8
	☞ ECtHR 31183/13 <i>Abuhmaid</i>	12 Jan. 2017	Art. 8 + 13
	☞ ECtHR 77063/11 <i>Salem</i>	1 Dec. 2016	Art. 8
	☞ ECtHR 56971/10 <i>El Ghatet</i>	8 Nov. 2016	Art. 8
	☞ ECtHR 7994/14 <i>Ustinova</i>	8 Nov. 2016	Art. 8
	☞ ECtHR 38030/12 <i>Khan</i>	23 Sep. 2016	Art. 8
	☞ ECtHR 76136/12 <i>Ramadan</i>	21 June 2016	Art. 8
	☞ ECtHR 38590/10 <i>Biao</i>	24 May 2016	Art. 8 + 14
	☞ ECtHR 12738/10 <i>Jeunesse</i>	3 Oct. 2014	Art. 8
	☞ ECtHR 32504/11 <i>Kaplan a.o.</i>	24 July 2014	Art. 8
	☞ ECtHR 52701/09 <i>Mugenzi</i>	10 July 2014	Art. 8
	☞ ECtHR 17120/09 <i>Dhahbi</i>	8 Apr. 2014	Art. 6, 8 + 14
	☞ ECtHR 52166/09 <i>Hasanbasic</i>	11 June 2013	Art. 8
	☞ ECtHR 12020/09 <i>Udeh</i>	16 Apr. 2013	Art. 8
	☞ ECtHR 22689/07 <i>De Souza Ribeiro</i>	13 Dec. 2012	Art. 8 + 13
	☞ ECtHR 47017/09 <i>Butt</i>	4 Dec. 2012	Art. 8
	☞ ECtHR 22341/09 <i>Hode and Abdi</i>	6 Nov. 2012	Art. 8 + 14
	☞ ECtHR 26940/10 <i>Antwi</i>	14 Feb. 2012	Art. 8
	☞ ECtHR 22251/07 <i>G.R.</i>	10 Jan. 2012	Art. 8 + 13
	☞ ECtHR 8000/08 <i>A.A.</i>	20 Sep. 2011	Art. 8
	☞ ECtHR 55597/09 <i>Nunez</i>	28 June 2011	Art. 8
	☞ ECtHR 38058/09 <i>Osman</i>	14 June 2011	Art. 8
	☞ ECtHR 34848/07 <i>O'Donoghue</i>	14 Dec. 2010	Art. 12 + 14
	☞ ECtHR 41615/07 <i>Neulinger</i>	6 July 2010	Art. 8
	☞ ECtHR 1638/03 <i>Maslov</i>	22 Mar. 2007	Art. 8
	☞ ECtHR 46410/99 <i>Üner</i>	18 Oct. 2006	Art. 8
	☞ ECtHR 54273/00 <i>Boultif</i>	2 Aug. 2001	Art. 8
	See further: § 1.3		

## 1.2 Regular Migration: Proposed Measures

### Directive

### Blue Card (amended)

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

- \* COM (2016) 378, 7 June 2016
- \* Recast of Blue Card I (2009/50). Proposal of the Commission

### Regulation amending Regulation

### Residence Permit Format (amended)

*On a uniform format for residence permits for third-country nationals*

- \* COM (2016) 434, 30 June 2016
- \* Recast of Residence Permit Format (Reg. 1030/2002). Council and EP negotiating.

## 1.3 Regular Migration: Jurisprudence

*case law sorted in alphabetical order*

### 1.3.1 CJEU Judgments on Regular Migration

☞	<a href="#">CJEU C-491/13</a>	<i>Ben Alaya</i>	10 Sep. 2014
*	interpr. of Dir. 2004/114	Students	Art. 6 + 7
*	<i>The MS concerned is obliged to admit to its territory a third-country national who wishes to stay for more than three months in that territory for study purposes, where that national meets the conditions for admission exhaustively listed in Art. 6 and 7 and provided that that MS does not invoke against that person one of the grounds expressly listed by the directive as justification for refusing a residence permit.</i>		
☞	<a href="#">CJEU C-309/14</a>	<i>CGIL</i>	2 Sep. 2015
*	interpr. of Dir. 2003/109	Long-Term Residents	
*	<i>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.</i>		
☞	<a href="#">CJEU C-578/08</a>	<i>Chakroun</i>	4 Mar. 2010
*	interpr. of Dir. 2003/86	Family Reunification	Art. 7(1)(c) + 2(d)

\* *The concept of family reunification allows no distinction based on the time of marriage. Furthermore, Member States may not require an income as a condition for family reunification, which is higher than the national minimum wage level. Admission conditions allowed by the directive, serve as indicators, but should not be applied rigidly, i.e. all individual circumstances should be taken into account.*

☞ [CJEU C-508/10](#) *Com. v. Netherlands* 26 Apr. 2012  
 \* 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](#) *Com. v. Spain* 11 Feb. 2010  
 \* non-transp. of Dir. 2005/71 Researchers

☞ [CJEU C-138/13](#) *Dogan (Naime)* 10 July 2014  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 7(2)

\* *The language requirement abroad is not in compliance with the standstill clauses of the Association Agreement. Although the question was also raised whether this requirement is in compliance with the Family Reunification Directive, the Court did not answer that question.*

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

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

☞ [CJEU C-540/03](#) *EP v. Council* 27 June 2006  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 8

\* *The derogation clauses (3 years waiting period and the age-limits for children) are not annulled, as they do not constitute a violation of article 8 ECHR. However, while applying these clauses and the directive as a whole, Member States are bound by the fundamental rights (including the rights of the child), the purpose of the directive and obligation to take all individual interests into account.*

New ☞ [CJEU C-544/15](#) *Fahimian* 4 Apr. 2017  
 \* interpr. of Dir. 2004/114 Students Art. 6(1)(d)

\* *Art. 6(1)(d) is to be interpreted as meaning that the competent national authorities, where a third country national has applied to them for a visa for study purposes, have a wide discretion in ascertaining, in the light of all the relevant elements of the situation of that national, whether he represents a threat, if only potential, to public security. That provision must also be interpreted as not precluding the competent national authorities from refusing to admit to the territory of the Member State concerned, for study purposes, a third country national who holds a degree from a university which is the subject of EU restrictive measures because of its large scale involvement with the Iranian Government in military or related fields, and who plans to carry out research in that Member State in a field that is sensitive for public security, if the elements available to those authorities give reason to fear that the knowledge acquired by that person during his research may subsequently be used for purposes contrary to public security. It is for the national court hearing an action brought against the decision of the competent national authorities to refuse to grant the visa sought to ascertain whether that decision is based on sufficient grounds and a sufficiently solid factual basis.*

☞ [CJEU C-40/11](#) *Iida* 8 Nov. 2012  
 \* 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](#) *Imran* 10 June 2011  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 7(2) - no adj.

\* *The Commission took the position that Art. 7(2) does not allow MSs to deny a family member as meant in Art. 4(1)(a) of a lawfully residing TCN entry and admission on the sole ground of not having passed a civic integration examination abroad. However, as a residence permit was granted just before the hearing would take place, the Court decided it was not necessary to give a ruling.*

☞ [CJEU C-153/14](#) *K. & A.* 9 July 2015  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 7(2)

\* *Member States may require TCNs to pass a civic integration examination, which consists in an assessment of basic knowledge both of the language of the Member State concerned and of its society and which entails the payment of various costs, before authorising that national’s entry into and residence in the territory of the Member State for the purposes of family reunification, provided that the conditions of application of such a requirement do not make it*

*impossible or excessively difficult to exercise the right to family reunification.*

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

- ☞ [CJEU C-558/14](#) **Kachab** 21 Apr. 2016  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 7(1)(c)  
 \* *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.*
- New ☞ [CJEU C-449/16](#) **Martinez Silva** 21 June 2017  
 \* interpr. of Dir. 2011/98 Single Permit Art. 12(1)(e)  
 \* *Article 12 must be interpreted as precluding national legislation, under which a TCN holding a Single Permit cannot receive a benefit such as the benefit for households having at least three minor children as established by Legge n. 448 (national Italian legislation).*
- ☞ [CJEU C-338/13](#) **Noorzia** 17 July 2014  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 4(5)  
 \* *Art. 4(5) does not preclude a rule of national law requiring that spouses and registered partners must have reached the age of 21 by the date when the application seeking to be considered family members entitled to reunification is lodged.*
- ☞ [CJEU C-356/11](#) **O. & S.** 6 Dec. 2012  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 7(1)(c)  
 \* *When examining an application for family reunification, a MS has to do so in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of the directive.*
- ☞ [CJEU C-527/14](#) **Oruche** 2 Sep. 2015  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 7(2) - deleted  
 \* *Case is withdrawn since the question was answered in the judgment in the K&A case (C-153/14).*
- ☞ [CJEU C-579/13](#) **P. & S.** 4 June 2015  
 \* interpr. of Dir. 2003/109 Long-Term Residents Art. 5 + 11  
 \* *Article 5(2) and Article 11(1) do not preclude national legislation, such as that at issue in the main proceedings, which imposes on TCNs who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive, which it is for the referring court to determine. Whether the long-term resident status was acquired before or after the obligation to pass a civic integration examination was imposed is irrelevant in that respect.*
- ☞ [CJEU C-294/06](#) **Payir** 24 Nov. 2008  
 \* interpr. of Dir. 2004/114 Students  
 \* *On a working Turkish student.*
- ☞ [CJEU C-571/10](#) **Servet Kamberaj** 24 Apr. 2012  
 \* interpr. of Dir. 2003/109 Long-Term Residents Art. 11(1)(d)  
 \* *EU Law precludes a distinction on the basis of ethnicity or linguistic groups in order to be eligible for housing benefit.*
- ☞ [CJEU C-502/10](#) **Singh** 18 Oct. 2012  
 \* interpr. of Dir. 2003/109 Long-Term Residents Art. 3(2)(e)  
 \* *The concept of 'residence permit which has been formally limited' as referred to in Art. 3(2)(e), does not include a fixed-period residence permit, granted to a specific group of persons, if the validity of their permit can be extended indefinitely without offering the prospect of permanent residence rights. The referring national court has to ascertain if a formal limitation does not prevent the long-term residence of the third-country national in the Member State concerned. If that is the case, this national cannot be excluded from the personal scope of Directive 2003/109.*
- ☞ [CJEU C-15/11](#) **Sommer** 21 June 2012  
 \* interpr. of Dir. 2004/114 Students Art. 17(3)  
 \* *The conditions of access to the labour market by Bulgarian students, may not be more restrictive than those set out in the Directive*
- ☞ [CJEU C-469/13](#) **Tahir** 17 July 2014  
 \* interpr. of Dir. 2003/109 Long-Term Residents Art. 7(1) + 13  
 \* *Family members of a person who has already acquired LTR status may not be exempted from the condition laid down in Article 4(1), under which, in order to obtain that status, a TCN must have resided legally and continuously in the MS concerned for five years immediately prior to the submission of the relevant application. Art. 13 of the LTR Directive does not allow a MS to issue family members, as defined in Article 2(e) of that directive, with LTR'*

1.3: Regular Migration: Jurisprudence: CJEU Judgments

*EU residence permits on terms more favourable than those laid down by that directive.*

- ☞ [CJEU C-311/13](#) **Tümer** 5 Nov. 2014  
 \* interpr. of Dir. 2003/109 Long-Term Residents  
 \* *While the LTR provided for equal treatment of long-term resident TCNs, this ‘in no way precludes other EU acts, such as’ the insolvent employers Directive, ‘from conferring, subject to different conditions, rights on TCNs with a view to achieving individual objectives of those acts’.*
- ☞ [CJEU C-465/14](#) **Wieland & Rothwangl** 27 Oct. 2016  
 \* interpr. of Reg. 859/2003 Social Security TCN Art. 1  
 \* *Article 2(1) and (2) of Regulation 859/2003, must be interpreted as not precluding legislation of a Member State which provides that a period of employment — completed pursuant to the legislation of that Member State by an employed worker who was not a national of a Member State during that period but who, when he requests the payment of an old-age pension, falls within the scope of Article 1 of that regulation — is not to be taken into consideration by that Member State for the determination of that worker’s pension rights.*
- ☞ [CJEU C-247/09](#) **Xhymshiti** 18 Nov. 2010  
 \* interpr. of Reg. 859/2003 Social Security TCN  
 \* *In the case in which a national of a non-member country is lawfully resident in a MS of the EU and works in Switzerland, Reg. 859/2003 does not apply to that person in his MS of residence, in so far as that regulation is not among the Community acts mentioned in section A of Annex II to the EU-Switzerland Agreement which the parties to that agreement undertake to apply.*
- ☞ [CJEU C-87/12](#) **Ymeraga** 8 May 2013  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 3(3)  
 \* *Directives 2003/86 and 2004/38 are not applicable to third-country nationals who apply for the right of residence in order to join a family member who is a Union citizen and has never exercised his right of freedom of movement as a Union citizen, always having resided as such in the Member State of which he holds the nationality (see, also, C-256/11 Dereci a.o., par. 58).*

1.3.2 CJEU pending cases on Regular Migration

- New
- ☞ [CJEU C-123/17](#) **Yön**  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 7  
 \* *On the differences in meaning of the standstill clauses Art. 7 of Dec. 2/76 and Art. 13 of Dec. 1/80 and the meaning of the hardship clause in the context of language requirements.*
  - ☞ [CJEU C-550/16](#) **A. & S.**  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 2(f)  
 \* *The District Court of Amsterdam has requested a preliminary ruling on the interpretation of art 2(f) of the Family Reunification Directive on the issue whether the age of an unaccompanied minor asylum seeker is taken into account at the time of arrival in the Member State or - if protection is granted - at the later time of a request for family reunification. In this case the unaccompanied asylum seeker was a minor at the time of arrival. However, after protection was granted he was no longer a minor.*
  - ☞ [CJEU C-636/16](#) **Lopez Pastuzano**  
 \* interpr. of Dir. 2003/109 Long-Term Residents Art. 12  
 \* *Must Article 12 be interpreted as precluding national legislation, which does not provide for the application of the requirements of protection against the expulsion of a long-term resident foreign national to all administrative expulsion decisions regardless of the legal nature or type thereof, but instead restricts the application of those requirements to a specific type of expulsion?*

1.3.3 EFTA judgments on Regular Migration

- ☞ [EFTA E-4/11](#) **Clauder v. LIE** 26 July 2011  
 \* interpr. of Dir. 2003/86 Family Reunification Art. 7(1)  
 \* *An EEA national (e.g. German) with a right of permanent residence, who is a pensioner and in receipt of social welfare benefits in the host EEA State (e.g. Liechtenstein), may claim the right to family reunification even if the family member will also be claiming social welfare benefits.*
- ☞ [EFTA E-28/15](#) **Yankuba Jabbi v. NO** 21 Sep. 2016  
 \* interpr. of Dir. 2004/38 Right of Residence Art. 7(1)(b) + 7(2)  
 \* *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.*

1.3.4 ECtHR Judgments on Regular Migration

- ☞ [ECtHR 8000/08](#) **A.A. v. UK** 20 Sep. 2011  
 \* violation of ECHR Art. 8



- \* *The applicant alleged, in particular, that his deportation to Nigeria would violate his right to respect for his family and private life and would deprive him of the right to education by terminating his university studies in the United Kingdom.*
- ☞ [ECtHR 31183/13](#) *Abuhmaid v. UKR* 12 Jan. 2017  
no violation of ECHR Art. 8 + 13
- \* *The applicant is a Palestinian residing in Ukraine for over twenty years. In 2010 the temporary residence permit expired. Since then, the applicant has applied for asylum unsuccessfully. The Court found that the applicant does not face any real or imminent risk of expulsion from Ukraine since his new application for asylum is still being considered and therefore declared this complaint inadmissible.*
- ☞ [ECtHR 26940/10](#) *Antwi v. NOR* 14 Feb. 2012  
no violation of ECHR Art. 8
- \* *A case similar to Nunez (ECtHR 28 June 2011) except that the judgment is not unanimous (2 dissenting opinions). Mr Antwi from Ghana migrates in 1988 to Germany on a false Portuguese passport. In Germany he meets his future wife (also from Ghana) who lives in Norway and is naturalised to Norwegian nationality. Mr Antwi moves to Norway to live with her and their first child is born in 2001 in Norway. In 2005 the parents marry in Ghana and subsequently it is discovered that mr Antwi travels on a false passport. In Norway mr Antwi goes to trial and is expelled to Ghana with a five year re-entry ban. The Court does not find that the Norwegian authorities acted arbitrarily or otherwise transgressed the margin of appreciation which should be accorded to it in this area when seeking to strike a fair balance between its public interest in ensuring effective immigration control, on the one hand, and the applicants' need that the first applicant be able to remain in Norway, on the other hand.*
- ☞ [ECtHR 38590/10](#) *Biao v. DK* 24 May 2016  
violation of ECHR Art. 8 + 14
- \* *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.*
- ☞ [ECtHR 54273/00](#) *Boultif v. CH* 2 Aug. 2001  
violation of ECHR Art. 8
- \* *Expulsion of one of the spouses is a serious obstacle to family life for the remaining spouse and children in the context of article 8. In this case the ECtHR establishes guiding principles in order to examine whether such a measure is necessary in a democratic society. Relevant criteria are:*
- the nature and seriousness of the offence committed by the applicant;
  - the length of the applicant's stay in the country from which he is going to be expelled;
  - the time elapsed since the offence was committed as well as the applicant's conduct in that period;
  - the nationalities of the various persons concerned;
  - the applicant's family situation, such as the length of the marriage;
  - and other factors expressing the effectiveness of a couple's family life;
  - whether the spouse knew about the offence at the time when he or she entered into a family relationship;
  - and whether there are children in the marriage, and if so, their age.
- Not least, the Court will also consider the seriousness of the difficulties which the spouse is likely to encounter in the country of origin, though the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself exclude an expulsion.*
- ☞ [ECtHR 47017/09](#) *Butt v. NO* 4 Dec. 2012  
violation of ECHR Art. 8
- \* *At the age of 3 and 4, the Butt children enter Norway with their mother from Pakistan in 1989. They receive a residence permit on humanitarian grounds. After a couple of years the mother returns with the children to Pakistan without knowledge of the Norwegian authorities. After a couple years the mother travels - again - back to Norway to continue living there. The children are 10 and 11 years old. When the father of the children wants to live also in Norway, a new investigation shows that the family has lived both in Norway and in Pakistan and their residence permit is withdrawn. However, the expulsion of the children is not carried out. Years later, their deportation is discussed again. The mother has already died and the adult children still do not have any contact with their father in Pakistan. Their ties with Pakistan are so weak and reversely with Norway so strong that their expulsion would entail a violation of art. 8.*
- ☞ [ECtHR 22689/07](#) *De Souza Ribeiro v. UK* 13 Dec. 2012  
violation of ECHR Art. 8 + 13
- \* *A Brazilian in French Guiana was removed to Brazil within 50 minutes after an appeal had been lodged against his removal order. In this case the Court considers that the haste with which the removal order was executed had the effect of rendering the available remedies ineffective in practice and therefore inaccessible. The brevity of that time lapse excludes any possibility that the court seriously examined the circumstances and legal arguments in favour of or against a violation of Article 8 of the Convention in the event of the removal order being enforced. Thus, while States are afforded some discretion as to the manner in which they conform to their obligations under Article 13 of the Convention, that discretion must not result, as in the present case, in an applicant being denied access in practice to the minimum procedural safeguards needed to protect him against arbitrary expulsion. Concerning the danger of overloading the courts and adversely affecting the proper administration of justice in French Guiana, the Court reiterates that, as with Article 6 of the Convention, Article 13 imposes on the Contracting States the duty to*

organise their judicial systems in such a way that their courts can meet its requirements.

- ☞ [ECtHR 17120/09](#) **Dhahbi v. IT** 8 Apr. 2014  
 \* violation of ECHR Art. 6, 8 + 14  
 \* *The ECtHR ruled that art. 6(1) also means that a national judge has an obligation to decide on a question which requests for a preliminary ruling on the interpretation of Union law. Either the national judge explicitly argues why such a request is pointless (or already answered) or the national judge requests the CJEU for a preliminary ruling on the issue. In this case the Italian Supreme Court did not answer the question at all.*
- ☞ [ECtHR 56971/10](#) **El Ghatet v. CH** 8 Nov. 2016  
 \* violation of ECHR Art. 8  
 \* *The applicant is an Egyptian national, who applied for asylum in Switzerland leaving his son behind in Egypt. While his asylum application was rejected, the father obtained a residence permit and after having married a Swiss national also Swiss nationality. The couple have a daughter and eventually divorced. The father's first request for family reunification with his son was accepted in 2003 but eventually his son returned to Egypt. The father's second request for family reunification in 2006 was rejected. According to the Swiss Federal Supreme Court, the applicant's son had closer ties to Egypt where he had been cared for by his mother and grandmother. Moreover, the father should have applied for family reunification immediately after arriving in Switzerland. The Court first considers that it would be unreasonable to ask the father to relocate to Egypt to live together with his son there, as this would entail a separation from the father's daughter living in Switzerland. The son had reached the age of 15 when the request for family reunification was lodged and there were no other major threats to his best interests in the country of origin. Based on these facts, the Court finds that no clear conclusion can be drawn whether or not the applicants' interest in a family reunification outweighed the public interest of the respondent State in controlling the entry of foreigners into its territory. Nevertheless, the Court notes that the domestic court have merely examined the best interest of the child in a brief manner and put forward a rather summary reasoning. As such the child's best interests have not sufficiently been placed at the centre of its balancing exercise. The Court therefore finds a violation of Art. 8.*
- ☞ [ECtHR 22251/07](#) **G.R. v. NL** 10 Jan. 2012  
 \* violation of ECHR Art. 8 + 13  
 \* *The applicant did not have effective access to the administrative procedure by which he might, subject to fulfilling the conditions prescribed by domestic law, obtain a residence permit which would allow him to reside lawfully with his family in the Netherlands, due to the disproportion between the administrative charge in issue and the actual income of the applicant's family. The Court finds that the extremely formalistic attitude of the Minister – which, endorsed by the Regional Court, also deprived the applicant of access to the competent administrative tribunal – unjustifiably hindered the applicant's use of an otherwise effective domestic remedy. There has therefore been a violation of Article 8 and 13 of the Convention.*
- ☞ [ECtHR 52166/09](#) **Hasanbasic v. CH** 11 June 2013  
 \* violation of ECHR Art. 8  
 \* *After living in Switzerland for 23 years with a residence permit, the applicant decides to go back to Bosnia. Soon after, he gets seriously ill and wants to get back to his wife who stayed in Switzerland. However, this (family reunification) request is denied mainly because of the fact that he has been on welfare and had been fined (a total of 350 euros) and convicted for several offences (a total of 17 days imprisonment). The court rules that this rejection, given the circumstances of the case, is disproportionate and a violation of article 8.*
- ☞ [ECtHR 22341/09](#) **Hode and Abdi v. UK** 6 Nov. 2012  
 \* violation of ECHR Art. 8 + 14  
 \* *Discrimination on the basis of date of marriage has no objective and reasonable justification.*
- ☞ [ECtHR 12738/10](#) **Jeunesse v. NL** 3 Oct. 2014  
 \* violation of ECHR Art. 8  
 \* *The central issue in this case is whether, bearing in mind the margin of appreciation afforded to States in immigration matters, a fair balance has been struck between the competing interests at stake, namely the personal interests of the applicant, her husband and their children in maintaining their family life in the Netherlands on the one hand and, on the other, the public order interests of the respondent Government in controlling immigration. In view of the particular circumstances of the case, it is questionable whether general immigration policy considerations of themselves can be regarded as sufficient justification for refusing the applicant residence in the Netherlands.*
- ☞ [ECtHR 32504/11](#) **Kaplan a.o. v. NO** 24 July 2014  
 \* violation of ECHR Art. 8  
 \* *A Turkish father's application for asylum is denied in 1998. After a conviction for aggravated burglary in 1999 he gets an expulsion order and an indefinite entry ban. On appeal this entry ban is reduced to 5 years. Finally he is expelled in 2011. His wife and children arrived in Norway in 2003 and were granted citizenship in 2012. Given the youngest daughter special care needs (related to chronic and serious autism), the bond with the father and the long period of inactivity of the immigration authorities, the Court states that it is not convinced in the concrete and exceptional circumstance of the case that sufficient weight was attached to the best interests of the child.*
- ☞ [ECtHR 38030/12](#) **Khan v. GER** 23 Sep. 2016  
 \* interpr. 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 out of the list.

- New**
- ☞ [ECtHR 41697/12](#) **Krasniqi v. AUS** 25 Apr. 2017  
 \* no violation of ECHR Art. 8  
 \* *The applicant is from Kosovo and entered Austria in 1994 when he was 19 years old. Within a year he was arrested for working illegally and was issued a five-year residence ban. He lodged an asylum application, which was dismissed, and returned voluntarily to Kosovo in 1997. In 1998 he went back to Austria and filed a second asylum request with his wife and daughter. Although the asylum claim was dismissed they were granted subsidiary protection. The temporary residence permit was extended a few times but expired in December 2009 as he had not applied for its renewal. After nine convictions on drugs offences and aggravated threat, he was issued a ten-year residence ban. Although the applicant is well integrated in Austria, the Court concludes that the Austrian authorities have not overstepped the margin of appreciation accorded to them in immigration matters by expelling the applicant.*
  - ☞ [ECtHR 1638/03](#) **Maslov v. AU** 22 Mar. 2007  
 \* violation of ECHR Art. 8  
 \* *In addition to the criteria set out in **Boutif** and **Üner** the ECtHR considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.*
  - ☞ [ECtHR 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 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 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 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 38058/09](#) **Osman v. DK** 14 June 2011  
 \* violation of ECHR Art. 8  
 \* *The Court concluded that the denial of admission of a 17 years old Somali girl to Denmark, where she had lived from the age of seven until the age of fifteen, violated Article 8. For a settled migrant who has lawfully spent all of the major part of his or her childhood and youth in a host country, very serious reasons are required to justify expulsion'. The Danish Government had argued that the refusal was justified because the applicant had been taken out of the country by her father, with her mother's permission, in exercise of their rights of parental responsibility. The Court agreed 'that the exercise of parental rights constitutes a fundamental element of family life', but concluded that 'in respecting parental rights, the authorities cannot ignore the child's interest including its own right to respect for private and family life'.*
  - ☞ [ECtHR 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 77063/11](#) **Salem v. DK** 1 Dec. 2016  
 \* no violation of ECHR Art. 8  
 \* *The applicant is a stateless Palestinian from Lebanon. In 1994, having married a Danish woman he is granted a residence permit, and in 2000 he is also granted asylum. In June 2010 the applicant - by then father of 8 children - is convicted of drug trafficking and dealing, coercion by violence, blackmail, theft, and the possession of weapons. He is sentenced to five years imprisonment, which decision is upheld by the Supreme Court in 2011 adding a life-long ban on his return. Appeals against his expulsion are refused and at the end of 2014 he is deported to Libanon. The ECtHR rules that although the applicant has 8 children in Denmark, he has an extensive and serious criminal record. Also, he is not well-integrated into Danish society (still being illiterate and not being able to speak Danish).*
- ☞ [ECtHR 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 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. In this judgment the Court adds two additional criteria:*  
 – *the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and*  
 – *the solidity of social, cultural and family ties with the host country and with the country of destination.*
- ☞ [ECtHR 7994/14](#) **Ustinova v. RUS** 8 Nov. 2016  
 \* violation of ECHR Art. 8  
 \* *The applicant, Anna Ustinova, is a national of Ukraine who was born in 1984. She moved to live in Russia at the beginning of 2000. In March 2013 Ms Ustinova was denied re-entry to Russia after a visit to Ukraine with her two children. This denial was based on a decision issued by the Consumer Protection Authority (CPA) in June 2012, that, during her pregnancy in 2012, Ms Ustinova had tested positive for HIV and therefor her presence in Russia constituted a threat to public health. This decision was challenged but upheld by a district Court, a Regional Court and the Supreme Court. Only the Constitutional Court declared this incompatible with the Russian Constitution. Although ms Ustinova has since been able to re-enter Russia via a border crossing with no controls, her name has not yet been definitively deleted from the list of undesirable individuals maintained by the Border Control Service.*

## 2 Borders and Visas

### 2.1 Borders and Visas: Adopted Measures

case law sorted in chronological order

#### Regulation 2016/1624

#### **Border and Coast Guard Agency**

*Creating a Borders and Coast Guard Agency*

- \* OJ 2016 L 251/1
- \* Repealing: Regulation 2007/2004 and Regulation 1168/2011 (Frontex) and Regulation 863/2007 (Rapid Interventions Teams).

#### Regulation 562/2006

#### **Borders Code**

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

- \* OJ 2006 L 105/1
- \* This Regulation is replaced by Regulation 2016/399 Borders Code (codified).  
*amd by Reg. 296/2008 (OJ 2008 L 97/60)*  
*amd by Reg. 81/2009 (OJ 2009 L 35/56): On the use of the VIS*  
*amd by Reg. 265/2010 (OJ 2010 L 85/1): On movement of persons with a long-stay visa*  
*amd by Reg. 610/2013 (OJ 2013 L 182/1)*  
*amd by Reg. 1051/2013 (OJ 2013 L 295/1)*

#### *CJEU judgments*

<i>New</i>	☞ CJEU C-9/16 <i>A.</i>	21 June	2017	Art. 20 + 21
	☞ CJEU C-17/16 <i>El Dakkak</i>	4 May	2017	Art. 4(1)
	☞ CJEU C-575/12 <i>Air Baltic</i>	4 Sep.	2014	Art. 5
	☞ CJEU C-23/12 <i>Zakaria</i>	17 Jan.	2013	Art. 13(3)
	☞ CJEU C-88/12 <i>Jaou</i>	14 Sep.	2012	Art. 20 + 21 - deleted
	☞ CJEU C-355/10 <i>EP v. Council</i>	5 Sep.	2012	
	☞ CJEU C-278/12 (PPU) <i>Adil</i>	19 July	2012	Art. 20 + 21
	☞ CJEU C-606/10 <i>ANAFE</i>	14 June	2012	Art. 13 + 5(4)(a)
	☞ CJEU C-430/10 <i>Gaydarov</i>	17 Nov.	2011	
	☞ CJEU C-188/10 & C-189/10 <i>Melki &amp; Abdeli</i>	22 June	2010	Art. 20 + 21
	☞ CJEU C-261/08 & C-348/08 <i>Garcia &amp; Cabrera</i>	22 Oct.	2009	Art. 5, 11 + 13
	<i>CJEU pending cases</i>			
	☞ CJEU C-346/16 <i>C.</i>	pending		Art. 20 + 21
	See further: § 2.3			

#### 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  
Amendment not yet published  
*amd by Reg. -/2017 (not yet): on the reinforcement of checks against relevant databases and external borders*

#### Decision 574/2007

#### **Borders Fund I**

*Establishing European External Borders Fund*

- \* OJ 2007 L 144
- \* This Regulation is repealed by Regulation 515/2004 (Borders Fund II)

#### Regulation 515/2014

#### **Borders Fund II**

*Borders and Visa Fund*

- \* OJ 2014 L 150/143
- \* This Regulation repeals Decision No 574/2007 (Borders Fund I)

#### Regulation 1052/2013

#### **EUROSUR**

*Establishing the European Border Surveillance System (Eurosurr)*

- \* OJ 2013 L 295/11

#### *CJEU judgments*

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

#### Regulation 2007/2004

#### **Frontex**

*Establishing External Borders Agency*

## 2.1: Borders and Visas: Adopted Measures

- \* OJ 2004 L 349/1
- \* This Regulation is replaced by Regulation 2016/1624 Border and Coast Guard Agency  
*amd by Reg. 863/2007 (OJ 2007 L 199/30): Border guard teams*  
*amd by Reg. 1168/2011 (OJ 2011 L 304/1)*

**Regulation 1931/2006****Local Border traffic**

*Local border traffic within enlarged EU at external borders of EU*

- \* OJ 2006 L 405/1  
*amd by Reg. 1342/2011 (OJ 2011 L 347/41)*

*CJEU judgments*

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

**Regulation 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 261/24

UK opt in

**Regulation 2252/2004****Passports**

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

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

*CJEU judgments*

- ☞ CJEU C-446/12 *Willems a.o.* 16 Apr. 2015 Art. 4(3)
- ☞ CJEU C-101/13 *U.* 2 Oct. 2014
- ☞ CJEU C-139/13 *Com. v. Belgium* 13 Feb. 2014 Art. 6
- ☞ CJEU C-291/12 *Schwarz* 17 Oct. 2013 Art. 1(2)  
See further: § 2.3

**Recommendation 761/2005****Researchers**

*On uniform short-stay visas for researchers from third countries*

- \* OJ 2005 L 289/23

**Regulation 1053/2013****Schengen Evaluation**

*Schengen Evaluation*

- \* OJ 2013 L 295/27

**Regulation 1987/2006****SIS II**

*Establishing second generation Schengen Information System*

- \* OJ 2006 L 381/4
- \* Replacing:  
Reg. 378/2004 (OJ 2004 L 64)  
Reg. 871/2004 (OJ 2004 L 162/29)  
Reg. 2424/2001 (OJ 2001 L 328/4)  
Reg. 1988/2006 (OJ 2006 L 411/1)  
Ending validity of:  
Dec. 2001/886; 2005/451; 2005/728; 2006/628

**Council 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

**Council Decision 2016/1209****SIS II Manual**

*On the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II)*

- \* OJ 2016 L 203/35

**New Council Decision 2017/818****Temporary Internal Border Control**

*Setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk*

- \* OJ 2017 L 122/73

**Decision 565/2014****Transit Bulgaria a.o. countries**

*Transit through Bulgaria, Croatia, Cyprus and Romania*

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

**Regulation 693/2003****Transit Documents**

*Establishing a specific Facilitated Transit Document (FTD) and a Facilitated Rail Transit Document (FRTD)*

2.1: Borders and Visas: Adopted Measures

\* OJ 2003 L 99/8

**Regulation 694/2003**

*Format for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD)*

\* OJ 2003 L 99/15

**Transit Documents Format**

**Decision 586/2008**

*Transit through Switzerland and Liechtenstein*

\* OJ 2008 L 162/27

\* amending Dec. 896/2006 (OJ 2006 L 167)

**Transit Switzerland**

**Decision 1105/2011**

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

\* OJ 2011 L 287/9

**Travel Documents**

**Regulation 767/2008**

*Establishing Visa Information System (VIS) and the exchange of data between MS*

\* OJ 2008 L 218/60

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

**VIS**

**Decision 512/2004**

*Establishing Visa Information System (VIS)*

\* OJ 2004 L 213/5

**VIS (start)**

**Council Decision 2008/633**

*Concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and Europol*

\* OJ 2008 L 218/129

**VIS Access**

**Regulation 1077/2011**

*Establishing an Agency to manage VIS, SIS & Eurodac*

\* OJ 2011 L 286/1

**VIS Management Agency**

**Regulation 810/2009**

*Establishing a Community Code on Visas*

\* OJ 2009 L 243/1

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

*CJEU judgments*

**New** ☞ CJEU C-638/16 PPU **X. & X.**

☞ CJEU C-575/12 **Air Baltic**

☞ CJEU C-84/12 **Koushaki**

☞ CJEU C-39/12 **Dang**

☞ CJEU C-83/12 **Vo**

*CJEU pending cases*

☞ CJEU C-403/16 **El Hassani**

See further: § 2.3

**Visa Code**

7 Mar. 2017 Art. 25(1)(a)

4 Sep. 2014 Art. 24(1) + 34

19 Dec. 2013 Art. 23(4) + 32(1)

18 June 2012 Art. 21 + 34 - deleted

10 Apr. 2012 Art. 21 + 34

pending Art. 32

**Regulation 1683/95**

*Uniform format for visas*

\* OJ 1995 L 164/1

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

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

**Visa Format**

UK opt in

**Regulation 539/2001**

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

\* OJ 2001 L 81/1

**New** Ukraine added

*amd by Reg. 2414/2001 (OJ 2001 L 327/1): Moving Romania to 'white list'*

*amd by Reg. 453/2003 (OJ 2003 L 69/10): Moving Ecuador to 'black list'*

*amd by Reg. 851/2005 (OJ 2005 L 141/3): On reciprocity for visas*

*amd by Reg. 1932/2006 (OJ 2006 L 405/23)*

*amd by Reg. 1244/2009 (OJ 2009 L 336/1): Lifting visa req. for Macedonia, Montenegro and Serbia*

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

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

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

*amd by Reg. 259/2014 (OJ 2014 L 105/9): Lifting visa req. for Moldova*

*amd by Reg. 509/2014 (OJ 2014 L 149/67): Lifting visa req. for Colombia, Dominica, Grenada,*

*amd by Reg. 509/2014 (OJ 2014 L 149/67): and Kiribati, Marshall Islands, Micronesia, Nauru,*

*amd by Reg. 509/2014 (OJ 2014 L 149/67): and Palau, Peru, Saint Lucia, Saint Vincent & Gr's,*

*amd by Reg. 509/2014 (OJ 2014 L 149/67): and Samoa, Solomon Islands, Timor-Leste, Tonga,*

*amd by Reg. 509/2014 (OJ 2014 L 149/67): and Trinidad and Tobago, Tuvalu, the UA Emirate,*

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*amd by Reg. 509/2014 (OJ 2014 L 149/67): and Vanuatu.*  
*amd by Reg. 372/2017 (OJ 2017 L 61/7): Lifting visa req. for Georgia*  
*amd by Reg. 371/2017 (OJ 2017 L61/1): On Suspension mechanism*

**New** *amd by Reg. 850/2017 (OJ 2017 L 133/1): Lifting visa req. for Ukrain*

CJEU judgments

☞ CJEU C-88/14 **Com. v. EP** 16 July 2015  
 See further: § 2.3

Regulation 333/2002

*Uniform format for forms for affixing the visa*

\* OJ 2002 L 53/4

**Visa Stickers**

UK opt in

**ECHR**

**Anti-torture**

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

Art. 3 Prohibition of Torture, Degrading Treatment

\* ETS 005 (4 November 1950)

impl. date 31 Aug. 1954

ECtHR Judgments

☞ ECtHR 19356/07 **Shioshvili a.o.** 20 Dec. 2016 Art. 3 + 13

☞ ECtHR 53608/11 **B.M.** 19 Dec. 2013 Art. 3 + 13

☞ ECtHR 55352/12 **Aden Ahmed** 23 July 2013 Art. 3 + 5

☞ ECtHR 11463/09 **Samaras** 28 Feb. 2012 Art. 3

☞ ECtHR 27765/09 **Hirsi** 21 Feb. 2012 Art. 3 + 13

See further: § 2.3

**2.2 Borders and Visas: Proposed Measures**

**Regulation**

**EES**

*Establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders*

\* COM (2013) 95, 27 Feb. 2013

\* Revised (COM (2016) 194, 6 April 2016)  
 agreed in Council, Feb 2017

**Regulation amending Regulation 562/2006**

**EES usage**

*On the use of the EES - amending Borders Code*

\* COM (2013) 96, 27 Feb. 2013

\* Revised (COM (2016) 196, 6 April 2016)  
 agreed in Council, Feb 2017

**Regulation**

**ETIAS**

*Establishing a European Travel Information and Authorisation System*

\* Com (2016) 731, 16 Nov 2016

\* Amending Regulations 515/2014, 2016/399, 2016/794 and 2016/1624.

**Regulation**

**SIS II usage on returns**

*On the use of SIS for the return of illegally staying third-country nationals*

\* Com (2016) 881

**Regulation**

**SIS III**

*On the replacement of SIS II*

\* Com (2016) 881

**Regulation amending Regulation 562/2006**

**Touring Visa**

*Establishing Touring Visa*

\* Com (2014) 163

\* amending: Regulation 562/2006 (Borders Code)  
 and Regulation 767/2008 (VIS)  
 negotiations stalled

**Regulation**

**Travellers**

*Establishing a Registered Traveller Programme (RTP)*

\* COM (2013) 97, 27 Feb. 2013

Withdrawn

**Regulation amending Regulation 810/2009**

**Visa Code II**

*Recast of the Visa Code*

\* Com (2014) 164

negotiations stalled



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

- \* COM (2016) 277, 4 May 2016

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

- \* COM (2016) 279, 4 May 2016

**Visa waiver Turkey****Regulation amending Regulation 539/2001***Visa List amendment*

- \* COM (2016) 236, 20 April 2016  
agreed in Council

**Visa waiver Ukraine****2.3 Borders and Visas: Jurisprudence***case law sorted in alphabetical order***2.3.1 CJEU Judgments on Borders and Visas**

<i>New</i>	<ul style="list-style-type: none"> <li>☞ <a href="#">CJEU C-9/16</a></li> <li>* interpr. of Reg. 562/2006</li> <li>* <i>Art. 20 and 21 must be interpreted as precluding national legislation, which confers on the police authorities of a MS the power to check the identity of any person, within an area of 30 kilometres from that MS's land border with other Schengen States, with a view to preventing or terminating unlawful entry into or residence in the territory of that Member State or preventing certain criminal offences which undermine the security of the border, irrespective of the behaviour of the person concerned and of the existence of specific circumstances, unless that legislation lays down the necessary framework for that power ensuring that the practical exercise of it cannot have an effect equivalent to that of border checks, which is for the referring court to verify.</i> <i>Also, Art. 20 and 21 must be interpreted as not precluding national legislation, which permits the police authorities of the MS to carry out, on board trains and on the premises of the railways of that MS, identity or border crossing document checks on any person, and briefly to stop and question any person for that purpose, if those checks are based on knowledge of the situation or border police experience, provided that the exercise of those checks is subject under national law to detailed rules and limitations determining the intensity, frequency and selectivity of the checks, which is for the referring court to verify.</i></li> </ul>	<ul style="list-style-type: none"> <li><b>A.</b></li> <li>Borders Code</li> </ul>	<ul style="list-style-type: none"> <li>21 June 2017</li> <li>Art. 20 + 21</li> </ul>
	<ul style="list-style-type: none"> <li>☞ <a href="#">CJEU C-278/12 (PPU)</a></li> <li>* interpr. of Reg. 562/2006</li> <li>* <i>The Schengen Borders Code must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which enables officials responsible for border surveillance and the monitoring of foreign nationals to carry out checks, in a geographic area 20 kilometres from the land border between a MS and the State parties to the CISA, with a view to establishing whether the persons stopped satisfy the requirements for lawful residence applicable in the MS concerned, when those checks are based on general information and experience regarding the illegal residence of persons at the places where the checks are to be made, when they may also be carried out to a limited extent in order to obtain such general information and experience-based data in that regard, and when the carrying out of those checks is subject to certain limitations concerning, inter alia, their intensity and frequency.</i></li> </ul>	<ul style="list-style-type: none"> <li><b>Adil</b></li> <li>Borders Code</li> </ul>	<ul style="list-style-type: none"> <li>19 July 2012</li> <li>Art. 20 + 21</li> </ul>
	<ul style="list-style-type: none"> <li>☞ <a href="#">CJEU C-575/12</a></li> <li>* interpr. of Reg. 562/2006</li> <li>* <i>The Borders Code precludes national legislation, which makes the entry of TCNs to the territory of the MS concerned subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.</i></li> </ul>	<ul style="list-style-type: none"> <li><b>Air Baltic</b></li> <li>Borders Code</li> </ul>	<ul style="list-style-type: none"> <li>4 Sep. 2014</li> <li>Art. 5</li> </ul>
	<ul style="list-style-type: none"> <li>☞ <a href="#">CJEU C-575/12</a></li> <li>* interpr. of Reg. 810/2009</li> <li>* <i>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.</i></li> </ul>	<ul style="list-style-type: none"> <li><b>Air Baltic</b></li> <li>Visa Code</li> </ul>	<ul style="list-style-type: none"> <li>4 Sep. 2014</li> <li>Art. 24(1) + 34</li> </ul>
	<ul style="list-style-type: none"> <li>☞ <a href="#">CJEU C-606/10</a></li> <li>* interpr. of Reg. 562/2006</li> <li>* annulment of national legislation on visa</li> <li>* <i>Article 5(4)(a) must be interpreted as meaning that a MS which issues to a TCN a re-entry visa within the meaning of that provision cannot limit entry into the Schengen area solely to points of entry to its national territory.</i> <i>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)</i></li> </ul>	<ul style="list-style-type: none"> <li><b>ANAFE</b></li> <li>Borders Code</li> </ul>	<ul style="list-style-type: none"> <li>14 June 2012</li> <li>Art. 13 + 5(4)(a)</li> </ul>
	<ul style="list-style-type: none"> <li>☞ <a href="#">CJEU C-241/05</a></li> <li>* interpr. of</li> <li>* on the conditions of movement of third-country nationals not subject to a visa requirement; on the meaning of 'first entry' and successive stays</li> </ul>	<ul style="list-style-type: none"> <li><b>Bot</b></li> <li>Schengen Agreement</li> </ul>	<ul style="list-style-type: none"> <li>4 Oct. 2006</li> <li>Art. 20(1)</li> </ul>

2.3: Borders and Visas: Jurisprudence: CJEU Judgments

<p>* 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'.</p>			
<p>☞ <a href="#">CJEU C-139/13</a>                  * violation of Reg. 2252/2004                  * Failure to implement biometric passports containing digital fingerprints within the prescribed periods.</p>	<p><b>Com. v. Belgium</b>                  Passports</p>	<p>13 Feb. 2014                  Art. 6</p>	
<p>☞ <a href="#">CJEU C-257/01</a>                  * validity of                  * challenge to Regs. 789/2001 and 790/2001                  * upholding validity of Regs.</p>	<p><b>Com. v. Council</b>                  Visa Applications</p>	<p>18 Jan. 2005</p>	
<p>☞ <a href="#">CJEU C-88/14</a>                  * 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.</p>	<p><b>Com. v. EP</b>                  Visa List</p>	<p>16 July 2015</p>	
<p>☞ <a href="#">CJEU C-39/12</a>                  * 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.</p>	<p><b>Dang</b>                  Visa Code</p>	<p>18 June 2012                  Art. 21 + 34 - deleted</p>	
<p>☞ <a href="#">CJEU C-17/16</a>                  * interpr. of Reg. 562/2006                  * The concept of crossing an external border of the Union is defined differently in the 'Cash Regulation' (1889/2005) compared to the Borders Code.</p>	<p><b>El Dakkak</b>                  Borders Code</p>	<p>4 May 2017                  Art. 4(1)</p>	
<p>☞ <a href="#">CJEU C-355/10</a>                  * 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.</p>	<p><b>EP v. Council</b>                  Borders Code</p>	<p>5 Sep. 2012</p>	
<p>☞ <a href="#">CJEU C-261/08 &amp; C-348/08</a>                  * 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 fulfil, or no longer fulfils, the conditions of duration of stay applicable there, that MS is not obliged to adopt a decision to expel that person.</p>	<p><b>Garcia &amp; Cabrera</b>                  Borders Code</p>	<p>22 Oct. 2009                  Art. 5, 11 + 13</p>	
<p>☞ <a href="#">CJEU C-430/10</a>                  * 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.</p>	<p><b>Gaydarov</b>                  Borders Code</p>	<p>17 Nov. 2011</p>	
<p>☞ <a href="#">CJEU C-88/12</a>                  * 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</p>	<p><b>Jaoo</b>                  Borders Code</p>	<p>14 Sep. 2012                  Art. 20 + 21 - deleted</p>	
<p>☞ <a href="#">CJEU C-84/12</a>                  * 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.</p>	<p><b>Koushkaki</b>                  Visa Code</p>	<p>19 Dec. 2013                  Art. 23(4) + 32(1)</p>	
<p>☞ <a href="#">CJEU C-139/08</a>                  * interpr. of Dec. 896/2006</p>	<p><b>Kqiku</b>                  Transit Switzerland</p>	<p>2 Apr. 2009                  Art. 1 + 2</p>	

- \* on transit visa legislation for third-country nationals subject to a visa requirement
- \* *Residence permits issued by the Swiss Confederation or the Principality of Liechtenstein to TCNs subject to a visa requirement, are considered to be equivalent to a transit visa only.*
- ☞ [CJEU C-188/10 & C-189/10](#) **Melki & Abdeli** 22 June 2010  
 \* interpr. of Reg. 562/2006 Borders Code Art. 20 + 21  
 \* consistency of national law and European Union law, abolition of border control and the area of 20 kilometres from the land border  
 \* *The French 'stop and search' law, which allowed for controls behind the internal border, is in violation of article 20 and 21 of the Borders code, due to the lack of requirement of "behaviour and of specific circumstances giving rise to a risk of breach of public order". According to the Court, controls may not have an effect equivalent to border checks.*
- ☞ [CJEU C-291/12](#) **Schwarz** 17 Oct. 2013  
 \* interpr. of Reg. 2252/2004 Passports Art. 1(2)  
 \* *Although the taking and storing of fingerprints in passports constitutes an infringement of the rights to respect for private life and the protection of personal data, such measures are nonetheless justified for the purpose of preventing any fraudulent use of passports.*
- ☞ [CJEU C-254/11](#) **Shomodi** 21 Mar. 2013  
 \* interpr. of Reg. 1931/2006 Local Border traffic Art. 2(a) + 3(3)  
 \* *The holder of a local border traffic permit must be able to move freely within the border area for a period of three months if his stay is uninterrupted and to have a new right to a three-month stay each time that his stay is interrupted. There is such an interruption of stay upon the crossing of the border irrespective of the frequency of such crossings, even if they occur several times daily.*
- ☞ [CJEU C-44/14](#) **Spain v. EP & Council** 8 Sep. 2015  
 \* non-transp. of Reg. 1052/2013 EUROSUR  
 \* *Limited forms of cooperation do not constitute a form of taking part within the meaning of Article 4 of the Schengen Protocol. Consequently, Article 19 of the Eurosur Regulation cannot be regarded as giving the Member States the option of concluding agreements which allow Ireland or the United Kingdom to take part in the provisions in force of the Schengen acquis in the area of the crossing of the external borders.*
- ☞ [CJEU C-101/13](#) **U.** 2 Oct. 2014  
 \* interpr. of Reg. 2252/2004 Passports  
 \* *About the recording and spelling of names, surnames and family names in passports. Where a MS whose law provides that a person's name comprises his forenames and surname chooses nevertheless to include (also) the birth name of the passport holder in the machine readable personal data page of the passport, that State is required to state clearly in the caption of those fields that the birth name is entered there.*
- ☞ [CJEU C-77/05 & C-137/05](#) **UK v. Council** 18 Dec. 2007  
 \* validity of Border Agency Regulation and Passport Regulation  
 \* judgment against UK
- ☞ [CJEU C-482/08](#) **UK v. Council** 26 Oct. 2010  
 \* annulment of decision on police access to VIS, due to UK non-participation  
 \* judgment against UK
- ☞ [CJEU C-83/12](#) **Vo** 10 Apr. 2012  
 \* interpr. of Reg. 810/2009 Visa Code Art. 21 + 34  
 \* *First substantive decision on Visa Code. The Court rules that the Visa Code does not preclude that national legislation of one MS penalises migration-related identity fraud with genuine visa issued by another MS.*
- ☞ [CJEU C-446/12](#) **Willems a.o.** 16 Apr. 2015  
 \* interpr. of Reg. 2252/2004 Passports Art. 4(3)  
 \* *Article 4(3) does not require the Member States to guarantee, in their legislation, that biometric data collected and stored in accordance with that regulation will not be collected, processed and used for purposes other than the issue of the passport or travel document, since that is not a matter which falls within the scope of that regulation.*
- New ☞ [CJEU C-638/16 PPU](#) **X. & X.** 7 Mar. 2017  
 \* interpr. of Reg. 810/2009 Visa Code Art. 25(1)(a)  
 \* *Contrary to the opinion of the AG, the Court ruled that Article 1 of the Visa Code, must be interpreted as meaning that an application for a visa with limited territorial validity made on humanitarian grounds by a TCN, on the basis of Article 25 of the code, to the representation of the MS of destination that is within the territory of a third country, with a view to lodging, immediately upon his or her arrival in that MS, an application for international protection and, thereafter, to staying in that MS for more than 90 days in a 180-day period, does not fall within the scope of that code but, as EU law currently stands, solely within that of national law.*
- ☞ [CJEU C-23/12](#) **Zakaria** 17 Jan. 2013  
 \* interpr. of Reg. 562/2006 Borders Code Art. 13(3)  
 \* *MSs are obliged to establish a means of obtaining redress only against decisions to refuse entry.*

## 2.3.2 CJEU pending cases on Borders and Visas

- ☞ [CJEU C-346/16](#) **C.** Art. 20 + 21  
 \* interpr. of Reg. 562/2006 Borders Code  
 \* *On the question whether the Borders Code precludes national legislation which grants the police 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?*
- ☞ [CJEU C-403/16](#) **El Hassani** Art. 32  
 \* interpr. of Reg. 810/2009 Visa Code  
 \* *On the question whether a MS has to guarantee an effective remedy.*

## 2.3.3 ECtHR Judgments on Borders and Visas

- ☞ [ECtHR 55352/12](#) **Aden Ahmed v. MAL** 23 July 2013  
 \* violation of ECHR Art. 3 + 5  
 \* *The case concerns a migrant who had entered Malta in an irregular manner by boat. The ECtHR found a violation of art. 5(1), mainly due to the failure of the Maltese authorities to pursue deportation or to do so with due diligence, and of art. 5(4) due to absence of an effective and speedy domestic remedy to challenge the lawfulness of their detention. Also, the ECtHR requested the Maltese authorities (Art. 46) to establish a mechanism allowing a determination of the lawfulness of immigration detention within a reasonable time-limit. In this case the Court for the first time found Malta in violation of art. 3 because of the immigration detention conditions. Those conditions in which the applicant had been living for 14½ months were, taken as a whole, amounted to degrading treatment.*
- ☞ [ECtHR 53608/11](#) **B.M. v. GR** 19 Dec. 2013  
 \* violation of ECHR Art. 3 + 13  
 \* *The applicant was an Iranian journalist who alleged to have been arrested and tortured due to his involvement in protests against the government. After his arrival in Greece a decision had been taken to return him to Turkey, and he had been held in custody in a police station and in various detention centres. His application for asylum was first not registered by the Greek authorities, and later they dismissed the application. The application mainly concerned the conditions of detention, in particular overcrowding, unhygienic conditions, lack of external contact, and lack of access to telephone, translators and any kind of information. Referring to its previous case law, the ECtHR held these conditions to be in violation of Art. 3. As there had been no effective domestic remedy against that situation, Art. 13 in combination with art. 3 had also been violated.*
- ☞ [ECtHR 27765/09](#) **Hirsi v. IT** 21 Feb. 2012  
 \* violation of ECHR Art. 3 + 13  
 \* *The Court concluded that the decision of the Italian authorities to send TCNs - who were intercepted outside the territorial waters of Italy - back to Libya, had exposed them to the risk of ill-treatment there, as well as to the risk of ill-treatment if they were sent back to their countries of origin (Somalia and Eritrea). For the first time the Court applied Article 4 of Protocol no. 4 (prohibition of collective expulsion) in the circumstance of aliens who were not physically present on the territory of the State, but in the high seas. Italy was also held responsible for exposing the aliens to a treatment in violation with Article 3 ECHR, as it transferred them to Libya 'in full knowledge of the facts' and circumstances in Libya. The Court also concluded that they had had no effective remedy in Italy against the alleged violations (Art. 13).*
- ☞ [ECtHR 11463/09](#) **Samaras v. GR** 28 Feb. 2012  
 \* violation of ECHR Art. 3  
 \* *The conditions of detention of the applicants – one Somali and twelve Greek nationals – at Ioannina prison were held to constitute degrading treatment in violation of ECHR art. 3.*
- ☞ [ECtHR 19356/07](#) **Shioshvili a.o. v. RUS** 20 Dec. 2016  
 \* violation of ECHR Art. 3 + 13  
 \* *Applicant with Georgian nationality, is expelled from Russia with her four children after living there for 8 years and being eight months pregnant. While leaving Russia they are taken off a train and forced to walk to the border. A few weeks later she gives birth to a dead child. Violation (also) of article 2 and 4 Protocol nr. 4.*

## 3 Irregular Migration

### 3.1 Irregular Migration: Adopted Measures

case law sorted in chronological order

#### Directive 2001/51

*Obligation of carriers to return TCNs when entry is refused*

- \* OJ 2001 L 187/45

#### Carrier sanctions

impl. date 11 Feb. 2003

UK opt in

#### Decision 267/2005

*Establishing a secure web-based Information and Coordination Network for MS' Migration Management Services*

- \* OJ 2005 L 83/48

#### Early Warning System

UK opt in

#### Directive 2009/52

*Minimum standards on sanctions and measures against employers of illegally staying TCNs*

- \* OJ 2009 L 168/24

#### Employers Sanctions

impl. date 20 July 2011

#### Directive 2003/110

*Assistance with transit for expulsion by air*

- \* OJ 2003 L 321/26

#### Expulsion by Air

#### Decision 191/2004

*On the compensation of the financial imbalances resulting from the mutual recognition of decisions on the expulsion of TCNs*

- \* OJ 2004 L 60/55

#### Expulsion Costs

UK opt in

#### Directive 2001/40

*Mutual recognition of expulsion decisions of TCNs*

- \* OJ 2001 L 149/34

#### Expulsion Decisions

impl. date 2 Oct. 2002

UK opt in

*CJEU judgments*

☞ CJEU C-456/14 *Orrego Arias*

3 Sep. 2015 Art. 3(1)(a) - inadmissible

See further: § 3.3

#### Decision 573/2004

*On the organisation of joint flights for removals from the territory of two or more MSs, of TCNs*

- \* OJ 2004 L 261/28

#### Expulsion Joint Flights

UK opt in

#### Conclusion

*Transit via land for expulsion*

- \* adopted 22 Dec. 2003 by Council

#### Expulsion via Land

UK opt in

#### Directive 2002/90

*Facilitation of unauthorised entry, transit and residence*

- \* OJ 2002 L 328

#### Illegal Entry

UK opt in

#### Regulation 377/2004

*On the creation of an immigration liaison officers network*

- \* OJ 2004 L 64/1

and by Reg 493/2011 (OJ 2011 L 141/13)

#### Immigration Liaison Officers

UK opt in

New

#### Recommendation 2017/432

*Making returns more effective when implementing the Returns Directive*

- \* OJ 2017 L 66/15

#### Implementing Return Dir.

#### Directive 2008/115

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

- \* OJ 2008 L 348/98

#### Return Directive

impl. date 24 Dec. 2010

*CJEU judgments*

☞ CJEU C-47/15 *Affum*

7 June 2016 Art. 2(1) + 3(2)

☞ CJEU C-290/14 *Celaj*

1 Oct. 2015

☞ CJEU C-554/13 *Zh. & O.*

11 June 2015

Art. 7(4)

☞ CJEU C-38/14 *Zaizoune*

23 Apr. 2015

Art. 4(2) + 6(1)

☞ CJEU C-562/13 *Abdida*

18 Dec. 2014

Art. 5+13

☞ CJEU C-249/13 *Boudjlida*

11 Dec. 2014

Art. 6

☞ 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)

## 3.1: Irregular Migration: Adopted Measures

	☞ CJEU C-474/13 <i>Pham</i>	17 July 2014	Art. 16(1)
	☞ CJEU C-189/13 <i>Da Silva</i>	3 July 2014	inadmissible
	☞ CJEU C-146/14 (PPU) <i>Mahdi</i>	5 June 2014	Art. 15
	☞ CJEU C-297/12 <i>Filev &amp; Osmani</i>	19 Sep. 2013	Art. 2(2)(b) + 11
	☞ CJEU C-383/13 (PPU) <i>G. &amp; R.</i>	10 Sep. 2013	Art. 15(2) + 6
	☞ CJEU C-534/11 <i>Arslan</i>	30 May 2013	Art. 2(1)
	☞ CJEU C-522/11 <i>Mbaye</i>	21 Mar. 2013	Art. 2(2)(b) + 7(4)
	☞ CJEU C-430/11 <i>Sagor</i>	6 Dec. 2012	Art. 2, 15 + 16
	☞ CJEU C-329/11 <i>Achughbabian</i>	6 Dec. 2011	
	☞ CJEU C-61/11 (PPU) <i>El Dridi</i>	28 Apr. 2011	Art. 15 + 16
	☞ CJEU C-357/09 (PPU) <i>Kadzoev</i>	30 Nov. 2009	Art. 15(4), (5) + (6)
	<i>CJEU pending cases</i>		
New	☞ CJEU C-175/17 <i>X.</i>	pending	Art. 13
	☞ CJEU C-181/16 <i>Gnandi</i>	pending	Art. 5
	☞ CJEU C-184/16 <i>Petrea</i>	pending	Art. 6(1)
	☞ CJEU C-199/16 <i>Nianga</i>	pending	Art. 5
	☞ CJEU C-225/16 <i>Ouhrami</i>	pending	Art. 11(2)
	☞ CJEU C-82/16 <i>K.</i>	pending	Art. 5, 11 + 13
	See further: § 3.3		
	<b>Decision 575/2007</b>	<b>Return Programme</b>	
	<i>Establishing the Eur. Return Fund as part of the General Programme Solidarity and Management of Migration Flows</i>		
	* OJ 2007 L 144		UK opt in
	<b>Directive 2011/36</b>	<b>Trafficking Persons</b>	
	<i>On preventing and combating trafficking in human beings and protecting its victims</i>		
	* OJ 2011 L 101/1 (Mar. 2011)	impl. date 6 Apr. 2013	UK opt in
	* Replacing Framework Decision 2002/629 (OJ 2002 L 203/1)		
	<b>Directive 2004/81</b>	<b>Trafficking Victims</b>	
	<i>Residence permits for TCNs who are victims of trafficking</i>		
	* OJ 2004 L 261/19		
	<i>CJEU judgments</i>		
	☞ CJEU C-266/08 <i>Comm. v. Spain</i>	14 May 2009	
	See further: § 3.3		

## ECHR

## Detention - Collective Expulsion

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

Art. 5 Detention

Prot. 4 Art. 4 Collective Expulsion

\* ETS 005 (4 November 1950)

impl. date 31 Aug. 1954

*ECtHR Judgments*

	☞ ECtHR 55352/12 <i>Aden Ahmed</i>	23 July 2013	Art. 3 + 5
New	☞ ECtHR 23707/15 <i>Muzamba Oyaw</i>	4 Apr. 2017	Art. 5 - inadmissible
New	☞ ECtHR 39061/11 <i>Thimothawes</i>	4 Apr. 2017	Art. 5
	☞ ECtHR 3342/11 <i>Richmond Yaw</i>	6 Oct. 2016	Art. 5
	☞ ECtHR 53709/11 <i>A.F.</i>	13 June 2013	Art. 5
	☞ ECtHR 13058/11 <i>Abdelhakim</i>	23 Oct. 2012	Art. 5
	☞ ECtHR 13457/11 <i>Ali Said</i>	23 Oct. 2012	Art. 5
	☞ ECtHR 50520/09 <i>Ahmade</i>	25 Sep. 2012	Art. 5
	☞ ECtHR 14902/10 <i>Mahmundi</i>	31 July 2012	Art. 5
	☞ ECtHR 27765/09 <i>Hirsi</i>	21 Feb. 2012	Prot. 4 Art. 4
	☞ ECtHR 10816/10 <i>Lokpo &amp; Touré</i>	20 Sep. 2011	Art. 5
	See further: § 3.3		

## 3.2 Irregular Migration: Proposed Measures

\* Nothing to report

## 3.3 Irregular Migration: Jurisprudence

*case law sorted in alphabetical order*

## 3.3.1 CJEU Judgments on Irregular Migration

- ☞ [CJEU C-562/13](#) *Abdida* 18 Dec. 2014  
 \* interpr. of Dir. 2008/115 Return Directive Art. 5+13  
 \* *Although the Belgium court had asked a preliminary ruling on the interpretation of the Qualification Dir., the CJEU re-interpreted the question of an issue of Art. 5 and 13 of the Returns Directive. These articles are to be interpreted as precluding national legislation which: (1) does not endow with suspensive effect an appeal against a decision ordering a third country national suffering from a serious illness to leave the territory of a Member State, where the enforcement of that decision may expose that third country national to a serious risk of grave and irreversible deterioration in his state of health, and (2) does not make provision, in so far as possible, for the basic needs of such a third country national to be met, in order to ensure that that person may in fact avail himself of emergency health care and essential treatment of illness during the period in which that Member State is required to postpone removal of the third country national following the lodging of the appeal.*
- ☞ [CJEU C-329/11](#) *Achughbalian* 6 Dec. 2011  
 \* interpr. of Dir. 2008/115 Return Directive  
 \* *The directive precludes national legislation permitting the imprisonment of an illegally staying third-country national who has not (yet) been subject to the coercive measures provided for in the directive and has not, if detained with a view to be returned, reached the expiry of the maximum duration of that detention. The directive does not preclude penal sanctions being imposed after full application of the return procedure.*
- ☞ [CJEU C-47/15](#) *Affum* 7 June 2016  
 \* interpr. of Dir. 2008/115 Return Directive Art. 2(1) + 3(2)  
 \* *Art. 2(1) and 3(2) must be interpreted as meaning that a TCN is staying illegally on the territory of a MS and therefore falls within the scope of that directive when, without fulfilling the conditions for entry, stay or residence, he passes in transit through that MS as a passenger on a bus from another MS forming part of the Schengen area and bound for a third MS outside that area. Also, the Directive must be interpreted as precluding legislation of a MS which permits a TCN in respect of whom the return procedure established by the directive has not yet been completed to be imprisoned merely on account of illegal entry across an internal border, resulting in an illegal stay. That interpretation also applies where the national concerned may be taken back by another MS pursuant to an agreement or arrangement within the meaning of Art. 6(3).*
- ☞ [CJEU C-534/11](#) *Arslan* 30 May 2013  
 \* interpr. of Dir. 2008/115 Return Directive Art. 2(1)  
 \* *The Return Directive does not apply during the period from the making of the (asylum) application to the adoption of the decision at first instance on that application or, as the case may be, until the outcome of any action brought against that decision is known.*
- ☞ [CJEU C-473/13 & C-514/13](#) *Bero & Bouzalmate* 17 July 2014  
 \* interpr. of Dir. 2008/115 Return Directive Art. 16(1)  
 \* *As a rule, a MS is required to detain illegally staying TCNs for the purpose of removal in a specialised detention facility of that State even if the MS has a federal structure and the federated state competent to decide upon and carry out such detention under national law does not have such a detention facility.*
- ☞ [CJEU C-249/13](#) *Boudjlida* 11 Dec. 2014  
 \* interpr. of Dir. 2008/115 Return Directive Art. 6  
 \* *The right to be heard in all proceedings (in particular, Art 6), must be interpreted as extending to the right of an illegally staying third-country national to express, before the adoption of a return decision concerning him, his point of view on the legality of his stay, on the possible application of Art 5 and 6(2) to (5) and on the detailed arrangements for his return.*
- ☞ [CJEU C-290/14](#) *Celaj* 1 Oct. 2015  
 \* interpr. of Dir. 2008/115 Return Directive  
 \* *The Directive must be interpreted as not, in principle, precluding legislation of a MS which provides for the imposition of a prison sentence on an illegally staying third-country national who, after having been returned to his country of origin in the context of an earlier return procedure, unlawfully re-enters the territory of that State in breach of an entry ban, at least in cases of re-entry in breach of an entry ban.*
- ☞ [CJEU C-266/08](#) *Comm. v. Spain* 14 May 2009  
 \* non-transp. of Dir. 2004/81 Trafficking Victims  
 \* *Failure of Spain to transpose the Directive.*
- ☞ [CJEU C-189/13](#) *Da Silva* 3 July 2014  
 \* interpr. of Dir. 2008/115 Return Directive inadmissible  
 \* *On the permissibility of national legislation imposing a custodial sentence for the offence of illegal entry prior to the institution of deportation proceedings.*
- ☞ [CJEU C-61/11 \(PPU\)](#) *El Dridi* 28 Apr. 2011  
 \* interpr. of Dir. 2008/115 Return Directive Art. 15 + 16  
 \* *The Return Directive precludes that a Member State has legislation which provides for a sentence of imprisonment to be imposed on an illegally staying TCN on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.*

- ☞ [CJEU C-297/12](#) **Filev & Osmani** 19 Sep. 2013  
 \* interpr. of Dir. 2008/115 Return Directive Art. 2(2)(b) + 11  
 \* *Directive must be interpreted as precluding a MS from providing that an expulsion or removal order which predates by five years or more the period between the date on which that directive should have been implemented and the date on which it was implemented, may subsequently be used as a basis for criminal proceedings, where that order was based on a criminal law sanction (within the meaning of Article 2(2)(b)) and where that MS exercised the discretion provided for under that provision.*
- ☞ [CJEU C-383/13 \(PPU\)](#) **G. & R.** 10 Sep. 2013  
 \* interpr. of Dir. 2008/115 Return Directive Art. 15(2) + 6  
 \* *If the extension of a detention measure has been decided in an administrative procedure in breach of the right to be heard, the national court responsible for assessing the lawfulness of that extension decision may order the lifting of the detention measure only if it considers, in the light of all of the factual and legal circumstances of each case, that the infringement at issue actually deprived the party relying thereon of the possibility of arguing his defence better, to the extent that the outcome of that administrative procedure could have been different.*
- ☞ [CJEU C-357/09 \(PPU\)](#) **Kadzoev** 30 Nov. 2009  
 \* interpr. of Dir. 2008/115 Return Directive Art. 15(4), (5) + (6)  
 \* *The maximum duration of detention must include a period of detention completed in connection with a removal procedure commenced before the rules in the directive become applicable. Only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.*
- ☞ [CJEU C-146/14 \(PPU\)](#) **Mahdi** 5 June 2014  
 \* interpr. of Dir. 2008/115 Return Directive Art. 15  
 \* *Any decision adopted by a competent authority, on expiry of the maximum period allowed for the initial detention of a TCN, on the further course to take concerning the detention must be in the form of a written measure that includes the reasons in fact and in law for that decision. The Dir. precludes that an initial six-month period of detention may be extended solely because the third-country national concerned has no identity documents.*
- ☞ [CJEU C-522/11](#) **Mbaye** 21 Mar. 2013  
 \* interpr. of Dir. 2008/115 Return Directive Art. 2(2)(b) + 7(4)  
 \* *The directive does not preclude that a fine because of illegal stay of a TCN in a MS is replaced by expulsion if there is a risk of absconding.*
- ☞ [CJEU C-166/13](#) **Mukarubega** 5 Nov. 2014  
 \* interpr. of Dir. 2008/115 Return Directive Art. 3 + 7  
 \* *A national authority is not precluded from failing to hear a TCN specifically on the subject of a return decision where, after that authority has determined that the TCN is staying illegally in the national territory on the conclusion of a procedure which fully respected that person's right to be heard, it is contemplating the adoption of such a decision in respect of that person, whether or not that return decision is the result of refusal of a residence permit.*
- ☞ [CJEU C-456/14](#) **Orrego Arias** 3 Sep. 2015  
 \* interpr. of Dir. 2001/40 Expulsion Decisions Art. 3(1)(a) - inadmissible  
 \* *This case concerns the exact meaning of the term 'offence punishable by a penalty involving deprivation of liberty of at least one year', set out in Art 3(1)(a). However, the question was incorrectly formulated. Consequently, the Court ordered that the case was inadmissible.*
- ☞ [CJEU C-474/13](#) **Pham** 17 July 2014  
 \* interpr. of Dir. 2008/115 Return Directive Art. 16(1)  
 \* *The Dir. does not permit a MS to detain a TCN for the purpose of removal in prison accommodation together with ordinary prisoners even if the TCN consents thereto.*
- ☞ [CJEU C-430/11](#) **Sagor** 6 Dec. 2012  
 \* interpr. of Dir. 2008/115 Return Directive Art. 2, 15 + 16  
 \* *An illegal stay by a TCN in a MS:  
 (1) can be penalised by means of a fine, which may be replaced by an expulsion order;  
 (2) can not be penalised by means of a home detention order unless that order is terminated as soon as the physical transportation of the TCN out of that MS is possible.*
- ☞ [CJEU C-38/14](#) **Zaïroune** 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.

### 3.3.2 CJEU pending cases on Irregular Migration

- ☞ [CJEU C-181/16](#) **Gnandi**  
 \* interpr. of Dir. 2008/115 Return Directive Art. 5  
 \* **AG: 15 June 2017**  
 \* *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](#) **K.**  
 \* interpr. of Dir. 2008/115 Return Directive Art. 5, 11 + 13  
 \* *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](#) **Nianga**  
 \* interpr. of Dir. 2008/115 Return Directive Art. 5  
 \* *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](#) **Ouhrami**  
 \* interpr. of Dir. 2008/115 Return Directive Art. 11(2)  
 \* **AG: 18 May 2017**  
 \* *On the start of the entry ban term.*
- ☞ [CJEU C-184/16](#) **Petrea**  
 \* interpr. of Dir. 2008/115 Return Directive Art. 6(1)  
 \* *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 *ratione personae* of the Returns Directive?*
- New** ☞ [CJEU C-175/17](#) **X.**  
 \* interpr. of Dir. 2008/115 Return Directive Art. 13  
 \* *On the suspensory effect of an appeal.*

### 3.3.3 ECtHR Judgments on Irregular Migration

- ☞ [ECtHR 53709/11](#) **A.F. v. GR** 13 June 2013  
 \* violation of ECHR Art. 5  
 \* *An Iranian entering Greece from Turkey had initially not been registered as an asylum seeker by the Greek authorities, which ordered his return to Turkey. However, the Turkish authorities refused to readmit him into Turkey, and he was then detained by the Greek police. Against the background of reports from Greek and international organisations, having visited the relevant police detention facilities either during the applicant's detention or shortly after his release – including the European Committee for the Prevention of Torture, the UN Special Rapporteur on Torture, the German NGO ProAsyl and the Greek National Human Rights Commission – the ECtHR found a violation of art. 3 due to the serious lack of space*

3.3: Irregular Migration: Jurisprudence: ECtHR Judgments

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 13058/11](#) *Abdelhakim v. HU* 23 Oct. 2012  
 \* violation of ECHR Art. 5

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

☞ [ECtHR 50520/09](#) *Ahmade v. GR* 25 Sep. 2012  
 \* violation of ECHR Art. 5

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

The Court found an additional violation of ECHR art. 13 taken together with art. 3, resulting from the structural deficiencies of the Greek asylum system, as evidenced by the period during which the applicant had been awaiting the outcome of his appeal against the refusal of asylum, and the risk that he might be deported before his asylum appeal had been examined.

ECHR art. 5 para. 4 was violated due to the lack of judicial competence to review the lawfulness of the deportation constituting the legal basis of detention.

☞ [ECtHR 59727/13](#) *Ahmed v. UK* 2 Mar. 2017  
 \* no violation of ECHR Art. 5(1)

\* A fifteen year old Somali asylum seeker gets a temporary residence permit in The Netherlands in 1992. After 6 years (1998) he travels to the UK and applies - again - for asylum but under a false name. The asylum request is rejected but he is allowed to stay (with family) in the UK in 2004. In 2007 he is sentenced to four and a half months' imprisonment and also faced with a deportation order in 2008. After the Sufi and Elmi judgment (8319/07) the Somali is released on bail in 2011. The Court states that the periods of time taken by the Government to decide on his appeals against the deportation orders were reasonable.

☞ [ECtHR 13457/11](#) *Ali Saïd v. HU* 23 Oct. 2012  
 \* violation of ECHR Art. 5

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

☞ [ECtHR 27765/09](#) *Hirsi v. IT* 21 Feb. 2012  
 \* violation of ECHR Prot. 4 Art. 4

\* The Court concluded that the decision of the Italian authorities to send TCNs - who were intercepted outside the territorial waters of Italy - back to Libya, had exposed them to the risk of ill-treatment there, as well as to the risk of ill-treatment if they were sent back to their countries of origin (Somalia and Eritrea). They also had been subjected to collective expulsion prohibited by Art. 4 of Protocol No. 4. The Court also concluded that they had had no effective remedy in Italy against the alleged violations.

☞ [ECtHR 10816/10](#) *Lokpo & Touré v. HU* 20 Sep. 2011  
 \* violation of ECHR Art. 5

\* The applicants entered Hungary illegally. After their arrest and during subsequent detention they applied for asylum. They were kept however in detention.

The Court ruled that Article 5 § 1 (right to liberty and security) was violated, stating that the absence of elaborate reasoning for an applicant's deprivation of liberty renders that measure incompatible with the requirement of lawfulness.

☞ [ECtHR 14902/10](#) *Mahmundi v. GR* 31 July 2012  
 \* violation of ECHR Art. 5

\* The conditions of detention of the applicants – Afghan nationals, subsequently seeking asylum in Norway, who had been detained in the Pagani detention centre upon being rescued from a sinking boat by the maritime police – were held to be in violation of ECHR art. 3. In the specific circumstances of this case the treatment during 18 days of detention was considered not only degrading, but also inhuman, mainly due to the fact that the applicants' children had also been detained, some of them separated from their parents. In addition, a female applicant had been in the final stages of pregnancy and had received insufficient medical assistance and no information about the place of her giving birth and what would happen to her and her child.

ECHR art. 13, taken together with art. 3, had been violated by the impossibility for the applicants to take any action before the courts to complain of their conditions of detention.

ECHR art. 5 para. 4 was violated due to the lack of judicial competence to review the lawfulness of the deportation that constitutes the legal basis for detention.

New ☞ [ECtHR 23707/15](#) *Muzamba Oyaw v. BEL* 4 Apr. 2017  
 \* no violation of ECHR Art. 5 - inadmissible

\* The applicant is a Congolese national who is in administrative detention awaiting his deportation while his (Belgian) partner is pregnant. The ECtHR found his complaint under Article 5 § 1 manifestly ill-founded since his

*detention was justified for the purposes of deportation, the domestic courts had adequately assessed the necessity of the detention and its duration (less than three months) had not been excessive.*

☞ [ECtHR 3342/11](#) ***Richmond Yaw v. IT*** 6 Oct. 2016  
 \* violation of ECHR Art. 5

\* *The case concerns the placement in detention of four Ghanaian nationals pending their removal from Italy. The applicants arrived in Italy in June 2008 after fleeing inter-religious clashes in Ghana. On 20 November 2008 deportation orders were issued with a view to their removal. This order for detention was upheld on 24 November 2008 by the justice of the peace and extended, on 17 December 2008, by 30 days without the applicants or their lawyer being informed. They were released on 14 January 2009 and the deportation order was withdrawn in June 2010. In June 2010 the Court of Cassation declared the detention order of 17 December 2008 null and void on the ground that it had been adopted without a hearing and in the absence of the applicants and their lawyer. Their subsequent claims for compensation for the damage were dismissed by the Rome District Court.*

New ☞ [ECtHR 39061/11](#) ***Thimothawes v. BEL*** 4 Apr. 2017  
 \* no violation of ECHR Art. 5

\* *The case concerned an Egyptian asylum-seeker who was detained in Belgium awaiting his deportation after his asylum request was rejected. After a maximum administrative detention period of 5 months he was released. With this (majority) judgment the Court acquits the Belgian State of the charge of having breached the right to liberty under article 5(1) by systematically detaining asylum seekers at its external border at the national airport.*

## 4 External Treaties

### 4.1 External Treaties: Association Agreements

case law sorted in chronological order

#### EC-Turkey Association Agreement

- \* into force 23 Dec. 1963

#### EC-Turkey Association Agreement Additional Protocol

- \* into force 1 Jan. 1973

##### *CJEU judgments*

☞	CJEU C-1/15 <i>Comm. v. Austria</i>	22 Sep.	2016	Art. 41(1) - deleted
☞	CJEU C-561/14 <i>Genc (Caner)</i>	12 Apr.	2016	Art. 41(1)
☞	CJEU C-138/13 <i>Dogan (Naime)</i>	10 July	2014	Art. 41(1)
☞	CJEU C-221/11 <i>Demirkan</i>	24 Sep.	2013	Art. 41(1)
☞	CJEU C-186/10 <i>Tural Oguz</i>	21 July	2011	Art. 41(1)
☞	CJEU C-228/06 <i>Soysal</i>	19 Feb.	2009	Art. 41(1)
☞	CJEU C-16/05 <i>Tum &amp; Dari</i>	20 Sep.	2007	Art. 41(1)
☞	CJEU C-37/98 <i>Savas</i>	11 May	2000	Art. 41(1)

See further: § 4.4

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

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

##### *CJEU judgments*

New	☞	CJEU C-652/15 <i>Tekdemir</i>	29 Mar.	2017	Art. 13
	☞	CJEU C-508/15 <i>Ucar</i>	21 Dec.	2016	Art. 7
	☞	CJEU C-91/13 <i>Essent</i>	11 Sep.	2014	Art. 13
	☞	CJEU C-225/12 <i>Demir</i>	7 Nov.	2013	Art. 13
	☞	CJEU C-268/11 <i>Gühlbahce</i>	8 Nov.	2012	Art. 6(1) + 10
	☞	CJEU C-451/11 <i>Dülger</i>	19 July	2012	Art. 7
	☞	CJEU C-7/10 & C-9/10 <i>Kahveci &amp; Inan</i>	29 Mar.	2012	Art. 7
	☞	CJEU C-436/09 <i>Belkiran</i>	13 Jan.	2012	deleted
	☞	CJEU C-371/08 <i>Ziebell or Örnek</i>	8 Dec.	2011	Art. 14(1)
	☞	CJEU C-256/11 <i>Dereci et al.</i>	15 Nov.	2011	Art. 13
	☞	CJEU C-187/10 <i>Unal</i>	29 Sep.	2011	Art. 6(1)
	☞	CJEU C-484/07 <i>Pehlivan</i>	16 June	2011	Art. 7
	☞	CJEU C-303/08 <i>Metin Bozkurt</i>	22 Dec.	2010	Art. 7 + 14(1)
	☞	CJEU C-300/09 & C-301/09 <i>Toprak/Oguz</i>	9 Dec.	2010	Art. 13
	☞	CJEU C-92/07 <i>Comm. v. Netherlands</i>	29 Apr.	2010	Art. 10(1) + 13
	☞	CJEU C-14/09 <i>Genc (Hava)</i>	4 Feb.	2010	Art. 6(1)
	☞	CJEU C-462/08 <i>Bekleyen</i>	21 Jan.	2010	Art. 7(2)
	☞	CJEU C-242/06 <i>Sahin</i>	17 Sep.	2009	Art. 13
	☞	CJEU C-337/07 <i>Altun</i>	18 Dec.	2008	Art. 7
	☞	CJEU C-453/07 <i>Er</i>	25 Sep.	2008	Art. 7
	☞	CJEU C-294/06 <i>Payir</i>	24 Jan.	2008	Art. 6(1)
	☞	CJEU C-349/06 <i>Polat</i>	4 Oct.	2007	Art. 7 + 14
	☞	CJEU C-325/05 <i>Derin</i>	18 July	2007	Art. 6, 7 and 14
	☞	CJEU C-4/05 <i>Güzeli</i>	26 Oct.	2006	Art. 10(1)
	☞	CJEU C-502/04 <i>Torun</i>	16 Feb.	2006	Art. 7
	☞	CJEU C-230/03 <i>Sedef</i>	10 Jan.	2006	Art. 6
	☞	CJEU C-373/03 <i>Aydinli</i>	7 July	2005	Art. 6 + 7
	☞	CJEU C-374/03 <i>Gürol</i>	7 July	2005	Art. 9
	☞	CJEU C-383/03 <i>Dogan (Ergül)</i>	7 July	2005	Art. 6(1) + (2)
	☞	CJEU C-136/03 <i>Dörr &amp; Unal</i>	2 June	2005	Art. 6(1) + 14(1)
	☞	CJEU C-467/02 <i>Cetinkaya</i>	11 Nov.	2004	Art. 7 + 14(1)
	☞	CJEU C-275/02 <i>Ayaz</i>	30 Sep.	2004	Art. 7
	☞	CJEU C-465/01 <i>Comm. v. Austria</i>	16 Sep.	2004	Art. 10(1)
	☞	CJEU C-317/01 & C-369/01 <i>Abatay &amp; Sahin</i>	21 Oct.	2003	Art. 13 + 41(1)

## 4.1: External Treaties: Association Agreements

☞	CJEU C-171/01 <i>Birlikte</i>	8 May 2003	Art. 10(1)
☞	CJEU C-188/00 <i>Kurz (Yuze)</i>	19 Nov. 2002	Art. 6(1) + 7
☞	CJEU C-89/00 <i>Bicakci</i>	19 Sep. 2000	
☞	CJEU C-65/98 <i>Eyüp</i>	22 June 2000	Art. 7
☞	CJEU C-329/97 <i>Ergat</i>	16 Mar. 2000	Art. 7
☞	CJEU C-340/97 <i>Nazli</i>	10 Feb. 2000	Art. 6(1) + 14(1)
☞	CJEU C-1/97 <i>Birden</i>	26 Nov. 1998	Art. 6(1)
☞	CJEU C-210/97 <i>Akman</i>	19 Nov. 1998	Art. 7
☞	CJEU C-36/96 <i>Günaydin</i>	30 Sep. 1997	Art. 6(1)
☞	CJEU C-98/96 <i>Ertanir</i>	30 Sep. 1997	Art. 6(1) + 6(3)
☞	CJEU C-285/95 <i>Kol</i>	5 June 1997	Art. 6(1)
☞	CJEU C-386/95 <i>Eker</i>	29 May 1997	Art. 6(1)
☞	CJEU C-351/95 <i>Kadiman</i>	17 Apr. 1997	Art. 7
☞	CJEU C-171/95 <i>Tetik</i>	23 Jan. 1997	Art. 6(1)
☞	CJEU C-434/93 <i>Ahmet Bozkurt</i>	6 June 1995	Art. 6(1)
☞	CJEU C-355/93 <i>Eroglu</i>	5 Oct. 1994	Art. 6(1)
☞	CJEU C-237/91 <i>Kus</i>	16 Dec. 1992	Art. 6(1) + 6(3)
☞	CJEU C-192/89 <i>Sevince</i>	20 Sep. 1990	Art. 6(1) + 13
☞	CJEU C-12/86 <i>Demirel</i>	30 Sep. 1987	Art. 7 + 12
	<i>CJEU pending cases</i>		
New ☞	CJEU C-123/17 <i>Yön</i>	pending	Art. 13
	See further: § 4.4		
	<b>EC-Turkey Association Agreement Decision 3/80</b>		
*	Dec. 3/80 of 19 Sept. 1980 on Social Security		
	<i>CJEU judgments</i>		
☞	CJEU C-171/13 <i>Demirci a.o.</i>	14 Jan. 2015	Art. 6(1)
☞	CJEU C-485/07 <i>Akdas</i>	26 May 2011	Art. 6(1)
	See further: § 4.4		

## 4.2 External Treaties: Readmission

**Albania**

- \* OJ 2005 L 124 (into force 1 May 2006 (TCN: May 2008))

UK opt in

**Armenia**

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

**Azerbaijan**

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

**Belarus**

- \* negotiation mandate approved by Council, Feb. 2011

**Cape Verde**

- \* OJ 2013 L 281 (into force 1 Dec. 2014)

**Georgia**

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

**Russia**

- \* OJ 2007 L 129 (into force 1 June 2007 (TCN: June 2010))

UK opt in

**Sri Lanka**

- \* OJ 2005 L 124/43 (into force 1 May 2005)

UK opt in

**Turkey**

- \* Com (2012) 239 (into force 1 Oct. 2014)  
Additional provisions as of 1 June 2016

**Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova**

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

UK opt in

**Turkey (Statement)**

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

[CJEU judgments](#)

- ☞ CJEU T-192/16 *N.F.* 27 Feb. 2017 inadm.  
See further: § 4.4

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

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

**Azerbaijan: visa**

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

**Belarus: visa**

- \* council mandate to negotiate, Feb. 2011

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

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

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

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

**Cape Verde: visa**

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

**China: Approved Destination Status treaty**

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

**Denmark: Dublin II treaty**

- \* OJ 2006 L 66/38 (into force 1 April 2006 )

**Mauritius, Antigua/Barbuda, Barbados, Seychelles, St. Kitts and Nevis and Bahamas: visa abolition**

(into force, May 2009)

**Moldova: visa**

(into force 1 July 2013)

**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

**Russia: Visa facilitation**

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

**Switzerland: Free Movement of Persons**

- \* OJ 2002 L 114 (into force 1 June 2002)

**Switzerland: Implementation of Schengen, Dublin**

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

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

- ☞ [CJEU C-317/01 & C-369/01](#) *Abatay & Sahin* 21 Oct. 2003
- \* interpr. of Dec. 1/80 Art. 13 + 41(1)
- \* *Direct effect and scope standstill obligation*

☞	<a href="#">CJEU C-434/93</a>	<b>Ahmet Bozkurt</b>	6 June 1995
*	interpr. of	Dec. 1/80	Art. 6(1)
*	<i>Belonging to labour market</i>		
☞	<a href="#">CJEU C-485/07</a>	<b>Akdas</b>	26 May 2011
*	interpr. of	Dec. 3/80	Art. 6(1)
*	<i>Supplements to social security can not be withdrawn solely on the ground that the beneficiary has moved out of the Member State.</i>		
☞	<a href="#">CJEU C-210/97</a>	<b>Akman</b>	19 Nov. 1998
*	interpr. of	Dec. 1/80	Art. 7
*	<i>Turkish worker has left labour market.</i>		
☞	<a href="#">CJEU C-337/07</a>	<b>Altun</b>	18 Dec. 2008
*	interpr. of	Dec. 1/80	Art. 7
*	<i>On the rights of family members of an unemployed Turkish worker or fraud by a Turkish worker.</i>		
☞	<a href="#">CJEU C-275/02</a>	<b>Ayaz</b>	30 Sep. 2004
*	interpr. of	Dec. 1/80	Art. 7
*	<i>A stepchild is a family member.</i>		
☞	<a href="#">CJEU C-373/03</a>	<b>Aydinli</b>	7 July 2005
*	interpr. of	Dec. 1/80	Art. 6 + 7
*	<i>A long detention is no justification for loss of residence permit.</i>		
☞	<a href="#">CJEU C-462/08</a>	<b>Bekleyen</b>	21 Jan. 2010
*	interpr. of	Dec. 1/80	Art. 7(2)
*	<i>The child of a Turkish worker has free access to labour and an independent right to stay in Germany, if this child is graduated in Germany and its parents have worked at least three years in Germany.</i>		
☞	<a href="#">CJEU C-436/09</a>	<b>Belkiran</b>	13 Jan. 2012
*	interpr. of	Dec. 1/80	deleted
*	<i>Case withdrawn because of judgment C-371/08 (Ziebell). Art. 14(1) of Dec. 1/80 does not have the same scope as art. 28(3)(a) of the Directive on Free Movement.</i>		
☞	<a href="#">CJEU C-89/00</a>	<b>Bicakci</b>	19 Sep. 2000
*	interpr. of	Dec. 1/80	
*	<i>Art 14 does not refer to a preventive expulsion measure.</i>		
☞	<a href="#">CJEU C-1/97</a>	<b>Birden</b>	26 Nov. 1998
*	interpr. of	Dec. 1/80	Art. 6(1)
*	<i>In so far as he has available a job with the same employer, a Turkish national in that situation is entitled to demand the renewal of his residence permit in the host MS, even if, pursuant to the legislation of that MS, the activity pursued by him was restricted to a limited group of persons, was intended to facilitate their integration into working life and was financed by public funds.</i>		
☞	<a href="#">CJEU C-171/01</a>	<b>Birlikte</b>	8 May 2003
*	interpr. of	Dec. 1/80	Art. 10(1)
*	<i>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.</i>		
☞	<a href="#">CJEU C-467/02</a>	<b>Cetinkaya</b>	11 Nov. 2004
*	interpr. of	Dec. 1/80	Art. 7 + 14(1)
*	<i>The meaning of a "family member" is analogous to its meaning in the Free Movement Regulation.</i>		
☞	<a href="#">CJEU C-1/15</a>	<b>Comm. v. Austria</b>	22 Sep. 2016
*	non-transp. of	Protocol	Art. 41(1) - deleted
*	<i>Incorrect way of implementation by means of adjusting policy guidelines instead of adjusting legislation: the European Commission withdraws its complaint.</i>		
☞	<a href="#">CJEU C-465/01</a>	<b>Comm. v. Austria</b>	16 Sep. 2004
*	interpr. of	Dec. 1/80	Art. 10(1)
*	<i>Austria has failed to fulfil its obligations by denying workers who are nationals of other MS the right to stand for election for workers' chambers: art. 10(1) prohibition of all discrimination based on nationality.</i>		
☞	<a href="#">CJEU C-92/07</a>	<b>Comm. v. Netherlands</b>	29 Apr. 2010
*	interpr. of	Dec. 1/80	Art. 10(1) + 13
*	<i>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.</i>		
☞	<a href="#">CJEU C-225/12</a>	<b>Demir</b>	7 Nov. 2013
*	interpr. of	Dec. 1/80	Art. 13
*	<i>Holding a temporary residence permit, which is valid only pending a final decision on the right of residence, does</i>		

not fall within the meaning of 'legally resident'.

☞ * *	<a href="#">CJEU C-171/13</a> interpr. of <i>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.</i>	<b>Demirci a.o.</b> Dec. 3/80	14 Jan. 2015 Art. 6(1)
☞ * *	<a href="#">CJEU C-12/86</a> interpr. of <i>No right to family reunification.</i>	<b>Demirel</b> Dec. 1/80	30 Sep. 1987 Art. 7 + 12
☞ * *	<a href="#">CJEU C-221/11</a> interpr. of <i>The freedom to 'provide services' does not encompass the freedom to 'receive' services in other EU Member States.</i>	<b>Demirkan</b> Protocol	24 Sep. 2013 Art. 41(1)
☞ * *	<a href="#">CJEU C-256/11</a> interpr. of <i>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.</i>	<b>Dereci et al.</b> Dec. 1/80	15 Nov. 2011 Art. 13
☞ * *	<a href="#">CJEU C-325/05</a> interpr. of <i>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.</i>	<b>Derin</b> Dec. 1/80	18 July 2007 Art. 6, 7 and 14
☞ * *	<a href="#">CJEU C-383/03</a> interpr. of <i>Return to labour market: no loss due to detention.</i>	<b>Dogan (Ergül)</b> Dec. 1/80	7 July 2005 Art. 6(1) + (2)
☞ * *	<a href="#">CJEU C-138/13</a> interpr. of <i>The language requirement abroad is not in compliance with the standstill clauses of the Association Agreement. Although the question was also raised whether this requirement is in compliance with the Family Reunification Dir., the Court did not answer that question.</i>	<b>Dogan (Naime)</b> Protocol	10 July 2014 Art. 41(1)
☞ * *	<a href="#">CJEU C-136/03</a> interpr. of <i>The procedural guarantees set out in the Dir on Free Movement also apply to Turkish workers.</i>	<b>Dörr &amp; Unal</b> Dec. 1/80	2 June 2005 Art. 6(1) + 14(1)
☞ * *	<a href="#">CJEU C-451/11</a> interpr. of <i>Art. 7 is also applicable to family members of Turkish nationals who can rely on the Regulation, who don't have the Turkish nationality themselves, but instead a nationality from a third country.</i>	<b>Dülger</b> Dec. 1/80	19 July 2012 Art. 7
☞ * *	<a href="#">CJEU C-386/95</a> interpr. of <i>On the meaning of "same employer".</i>	<b>Eker</b> Dec. 1/80	29 May 1997 Art. 6(1)
☞ * *	<a href="#">CJEU C-453/07</a> interpr. of <i>On the consequences of having no paid employment.</i>	<b>Er</b> Dec. 1/80	25 Sep. 2008 Art. 7
☞ * *	<a href="#">CJEU C-329/97</a> interpr. of <i>No loss of residence right in case of application for renewal residence permit after expiration date.</i>	<b>Ergat</b> Dec. 1/80	16 Mar. 2000 Art. 7
☞ * *	<a href="#">CJEU C-355/93</a> interpr. of <i>On the meaning of "same employer".</i>	<b>Eroglu</b> Dec. 1/80	5 Oct. 1994 Art. 6(1)
☞ * *	<a href="#">CJEU C-98/96</a> interpr. of <i>On interpretation of Art 45 TFEU</i>	<b>Ertanir</b> Dec. 1/80	30 Sep. 1997 Art. 6(1) + 6(3)
☞ * *	<a href="#">CJEU C-91/13</a> interpr. of <i>The posting by a German company of Turkish workers in the Netherlands to work in the Netherlands is not affected by the standstill-clauses. However, this situation falls within the scope of art. 56 and 57 TFEU precluding such making available is subject to the condition that those workers have been issued with work permits.</i>	<b>Essent</b> Dec. 1/80	11 Sep. 2014 Art. 13
☞	<a href="#">CJEU C-65/98</a>	<b>Eyüp</b>	22 June 2000



* *	interpr. of <i>On the obligation to co-habit as a family.</i>	Dec. 1/80	Art. 7
☞ * *	<a href="#">CJEU C-561/14</a> interpr. of <i>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.</i>	<b>Genc (Caner)</b> Protocol	12 Apr. 2016 Art. 41(1)
☞ * *	<a href="#">CJEU C-14/09</a> interpr. of <i>On the determining criteria of the concept worker and the applicability of these criteria on both EU and Turkish workers.</i>	<b>Genc (Hava)</b> Dec. 1/80	4 Feb. 2010 Art. 6(1)
☞ * *	<a href="#">CJEU C-268/11</a> interpr. of <i>A MS cannot withdraw the residence permit of a Turkish employee with retroactive effect.</i>	<b>Gühlbahce</b> Dec. 1/80	8 Nov. 2012 Art. 6(1) + 10
☞ * *	<a href="#">CJEU C-36/96</a> interpr. of <i>Turkish national who has been lawfully employed in a Member State for an uninterrupted period of more than three years in a genuine and effective economic activity for the same employer and whose employment status is not objectively different to that of other employees employed by the same employer or in the sector concerned and exercising identical or comparable duties, is duly registered.</i>	<b>Günaydin</b> Dec. 1/80	30 Sep. 1997 Art. 6(1)
☞ * *	<a href="#">CJEU C-374/03</a> interpr. of <i>On the right to an education grant for study in Turkey.</i>	<b>Gürol</b> Dec. 1/80	7 July 2005 Art. 9
☞ * *	<a href="#">CJEU C-4/05</a> interpr. of <i>The rights of the Ass. Agr. apply only after one year with same employer.</i>	<b>Güzeli</b> Dec. 1/80	26 Oct. 2006 Art. 10(1)
☞ * *	<a href="#">CJEU C-351/95</a> interpr. of <i>On the calculation of the period of cohabitation as a family.</i>	<b>Kadiman</b> Dec. 1/80	17 Apr. 1997 Art. 7
☞ * *	<a href="#">CJEU C-7/10 &amp; C-9/10</a> interpr. of <i>The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.</i>	<b>Kahveci &amp; Inan</b> Dec. 1/80	29 Mar. 2012 Art. 7
☞ * *	<a href="#">CJEU C-285/95</a> interpr. of <i>On the consequences of conviction for fraud</i>	<b>Kol</b> Dec. 1/80	5 June 1997 Art. 6(1)
☞ * *	<a href="#">CJEU C-188/00</a> interpr. of <i>On the rights following an unjustified expulsion measure</i>	<b>Kurz (Yuze)</b> Dec. 1/80	19 Nov. 2002 Art. 6(1) + 7
☞ * *	<a href="#">CJEU C-237/91</a> interpr. of <i>On stable position on the labour market</i>	<b>Kus</b> Dec. 1/80	16 Dec. 1992 Art. 6(1) + 6(3)
☞ * *	<a href="#">CJEU C-303/08</a> interpr. of <i>Art. 7 means that a Turkish national who enjoys certain rights, does not lose those rights on account of his divorce, which took place after those rights were acquired. By contrast, Art. 14(1) does not preclude a measure ordering the expulsion of a Turkish national who has been convicted of criminal offences, provided that his personal conduct constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society. It is for the competent national court to assess whether that is the case in the main proceedings.</i>	<b>Metin Bozkurt</b> Dec. 1/80	22 Dec. 2010 Art. 7 + 14(1)
☞ * *	<a href="#">CJEU C-340/97</a> interpr. of <i>On the effects of detention on residence rights.</i>	<b>Nazli</b> Dec. 1/80	10 Feb. 2000 Art. 6(1) + 14(1)
☞	<a href="#">CJEU C-294/06</a>	<b>Payir</b>	24 Jan. 2008

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*	interpr. of	Dec. 1/80	Art. 6(1)
*	<i>Residence rights do not depend on the reason for admission.</i>		
☞	<a href="#">CJEU C-484/07</a>	<i>Pehlivan</i>	16 June 2011
*	interpr. of	Dec. 1/80	Art. 7
*	<i>Family member marries in first 3 years but continues to live with Turkish worker. Art. 7 precludes legislation under which a family member properly authorised to join a Turkish migrant worker who is already duly registered as belonging to the labour force of that State loses the enjoyment of the rights based on family reunification under that provision for the reason only that, having attained majority, he or she gets married, even where he or she continues to live with that worker during the first three years of his or her residence in the host Member State.</i>		
☞	<a href="#">CJEU C-349/06</a>	<i>Polat</i>	4 Oct. 2007
*	interpr. of	Dec. 1/80	Art. 7 + 14
*	<i>Multiple convictions for small crimes do not lead to expulsion.</i>		
☞	<a href="#">CJEU C-242/06</a>	<i>Sahin</i>	17 Sep. 2009
*	interpr. of	Dec. 1/80	Art. 13
*	<i>On the fees for a residence permit.</i>		
☞	<a href="#">CJEU C-37/98</a>	<i>Savas</i>	11 May 2000
*	interpr. of	Protocol	Art. 41(1)
*	<i>On the scope of the standstill obligation.</i>		
☞	<a href="#">CJEU C-230/03</a>	<i>Sedef</i>	10 Jan. 2006
*	interpr. of	Dec. 1/80	Art. 6
*	<i>On the meaning of “same employer”.</i>		
☞	<a href="#">CJEU C-192/89</a>	<i>Sevinç</i>	20 Sep. 1990
*	interpr. of	Dec. 1/80	Art. 6(1) + 13
*	<i>On the meaning of stable position and the labour market.</i>		
☞	<a href="#">CJEU C-228/06</a>	<i>Soysal</i>	19 Feb. 2009
*	interpr. of	Protocol	Art. 41(1)
*	<i>On the standstill obligation and secondary law.</i>		
☞	<a href="#">CJEU C-652/15</a>	<i>Tekdemir</i>	29 Mar. 2017
*	interpr. of	Dec. 1/80	Art. 13
*	<i>Art. 13 must be interpreted as meaning that the objective of efficient management of migration flows may constitute an overriding reason in the public interest capable of justifying a national measure, introduced after the entry into force of that decision in the Member State in question, requiring nationals of third countries under the age of 16 years old to hold a residence permit in order to enter and reside in that Member State. Such a measure is not, however, proportionate to the objective pursued where the procedure for its implementation as regards child nationals of third countries born in the MS in question and one of whose parents is a Turkish worker lawfully residing in that MS, such as the applicant in the main proceedings, goes beyond what is necessary for attaining that objective.</i>		
☞	<a href="#">CJEU C-171/95</a>	<i>Tetik</i>	23 Jan. 1997
*	interpr. of	Dec. 1/80	Art. 6(1)
*	<i>On the meaning of voluntary unemployment after 4 years.</i>		
☞	<a href="#">CJEU C-300/09 &amp; C-301/09</a>	<i>Toprak/Oguz</i>	9 Dec. 2010
*	interpr. of	Dec. 1/80	Art. 13
*	<i>On the reference date regarding the prohibition to introduce new restrictions for Turkish workers and their family members.</i>		
☞	<a href="#">CJEU C-502/04</a>	<i>Torun</i>	16 Feb. 2006
*	interpr. of	Dec. 1/80	Art. 7
*	<i>On possible reasons for loss of residence right.</i>		
☞	<a href="#">CJEU C-16/05</a>	<i>Tum &amp; Dari</i>	20 Sep. 2007
*	interpr. of	Protocol	Art. 41(1)
*	<i>On the scope of the standstill obligation.</i>		
☞	<a href="#">CJEU C-186/10</a>	<i>Tural Oguz</i>	21 July 2011
*	interpr. of	Protocol	Art. 41(1)
*	<i>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.</i>		
☞	<a href="#">CJEU C-508/15</a>	<i>Ucar</i>	21 Dec. 2016
*	interpr. of	Dec. 1/80	Art. 7
*	<i>Art 7 must be interpreted as meaning that that provision confers a right of residence in the host MS on a family member of a Turkish worker, who has been authorised to enter that MS, for the purposes of family reunification, and who, from his entry into the territory of that MS, has lived with that Turkish worker, even if the period of at</i>		

New

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*least three years during which the latter is duly registered as belonging to the labour force does not immediately follow the arrival of the family member concerned in the host MS, but is subsequent to it.*

- ☞ [CJEU C-187/10](#) **Unal** 29 Sep. 2011
- \* *interpr. of* Dec. 1/80 Art. 6(1)
- \* *Art. 6(1) must be interpreted as precluding the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the point in time at which there was no longer compliance with the ground on the basis of which his residence permit had been issued under national law if there is no question of fraudulent conduct on the part of that worker and that withdrawal occurs after the expiry of the one-year period of legal employment.*
  
- ☞ [CJEU C-371/08](#) **Ziebell or Örnek** 8 Dec. 2011
- \* *interpr. of* Dec. 1/80 Art. 14(1)
- \* *Decision No 1/80 does not preclude an expulsion measure based on grounds of public policy from being taken against a Turkish national whose legal status derives from the second indent of the first paragraph of Article 7 of that decision, in so far as the personal conduct of the individual concerned constitutes at present a genuine and sufficiently serious threat affecting a fundamental interest of the society of the host Member State and that measure is indispensable in order to safeguard that interest. It is for the national court to determine, in the light of all the relevant factors relating to the situation of the Turkish national concerned, whether such a measure is lawfully justified in the main proceedings.*

4.4.2 CJEU pending cases on EEC-Turkey Association Agreement

- New* ☞ [CJEU C-123/17](#) **Yön**
- \* *interpr. of* Dec. 1/80 Art. 13
- \* *Meaning of the standstill clause of Art 13 Dec 1/80 and Art 7 Dec 2/76 in relation to the language requirement of visa for retiring spouses.*

4.4.3 CJEU Judgments on Readmission Treaties

- ☞ [CJEU T-192/16](#) **N.F.** 27 Feb. 2017
- \* *validity of* EU-Turkey Statement inadm.
- \* *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. The action is dismissed on the ground of the Court's lack of jurisdiction to hear and determine it. Two other identical cases T-193/16 (N.G.) and T-257/16 (N.M.) were also declared inadmissible.*