# Newsletter on European Migration Issues for Judges

2022/4

NEMIS

*Quarterly update on full overview of*

- *Legislation and*
- *Jurisprudence*

*on*

- *EU Migration and*
- *Borders Law*





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## New in this Issue of NEMIS



## About

NEMIS is designed for judges who need to keep up to date with EU developments in migration and borders law.
NEMIS contains ***all*** European legislation and jurisprudence on access and residence rights of third country nationals.
Thus, this newsletter highlights topical issues in the editorial and contains a reasonable **complete overview** of relevant case law.

NEMIS does not include jurisprudence on free movement or asylum. We would like to refer to separate Newsletters on these issues:
NEAIS, the Newsletter on European Asylum Issues, and
NEFIS the Newsletter on European Free Movement Issues.


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## Contents



## Editorial

**Welcome** to the fourth issue of NEMIS in 2022. We would like to draw your attention to the following.

**Family Reunification**
In ***X.*** (C-230/21) the CJEU was asked whether being married prevents a refugee minor from being regarded as an 'unaccompanied minor' and from enjoying the right to family reunification with her ascendant relative under the provisions of the Family Reunification Directive? The question was raised by the Belgian Council for asylum and immigration proceedings (Raad voor Vreemdelingenbetwistingen).
The CJEU states explicitly that the Best Interests of the Child are enshrined in the Charter: 'Art. 7 of the Charter recognises the right to respect for private or family life. That provision of the Charter must, next, be read in conjunction with the obligation to take account of the child's best interests, enshrined in Art. 24(2) of the Charter, that provision also applying to decisions which are not necessarily addressed to that minor but have significant consequences for him or her'. Subsequently, the CJEU rules that Art. 10(3) FR Dir. must be interpreted as meaning that an unaccompanied refugee minor residing in a MS does not have to be unmarried in order to acquire the status of sponsor for the purposes of family reunification with his or her first-degree relatives in the direct ascending line.

The case ***M.T. a.o. v. Sweden*** (22105/18) concerned the suspension of family reunification in Sweden between July 2016 and July 2019 for those, such as the second applicant, who had been given temporary-protection status. The ECtHR found in particular that Sweden had correctly balanced the needs of society and the applicants when denying them family reunification temporarily. It furthermore held that the difference in treatment of the applicants vis-à-vis refugees had been objectively justified, in particular given the strain on the State from the large number of refugees who had already been taken in, and had not been disproportionate.
The ECtHR held, by six votes to one, that there had been no violation of Art. 8 nor Art. 14.

**Frontex**
In ***S.S. & S.T.*** (T-282/21) the CJEU was asked to declare that, after Frontex was called upon to act in accordance with the procedure laid down in Art. 265 TFEU, Frontex unlawfully failed to act, by refraining from taking the decision to withdraw the financing of all or of part of its activities in the Aegean Sea region, to suspend those activities or to terminate them in whole or in part, in accordance with Art. 46(4) of Fronex Reg. II (2019/1896), or by not providing duly justified grounds for failing to implement the relevant measure within the meaning of Art. 46(6) of that regulation, and, further, that it did not take a view in response to the applicants' preliminary request. The CJEU concluded that this action is inadmissible, since Art. 265 TFEU only concerns *failure to act by failing to take a decision or to define a position.* Consequently, a refusal to act in accordance with the invitation to act has no bearing.

**Return**
In ***I.L.*** (C-241/21) the CJEU ruled that Art. 15(1) Return Dir. must be interpreted as ***not*** permitting a MS to order the detention of an illegally staying third-country national solely on the basis of a general criterion based on the risk that the effective enforcement of the removal would be compromised, without satisfying one of the specific grounds for detention provided for and clearly defined by the legislation implementing that provision in national law.

In ***U.P.*** (C-825/21) the CJEU ruled that Art. 6(4) Return Dir. must be interpreted as not precluding legislation of a Member State under which, where a right to stay is granted to a third-country national staying illegally on its territory pending the outcome of the processing of an application for leave to remain for one of the reasons covered by that provision, on account of the admissibility of that application, the grant of that right entails the implicit withdrawal of a return decision previously adopted in respect of that national after the rejection of his or her application for international protection.

In ***C. & B.*** (C-39/21 & C-704/20) the CJEU ruled that Art. 15(2) and (3) Return Dir. read in conjunction with Art. 6 and 47 Charter, must be interpreted as meaning that a judicial authority's review of compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law must lead that authority to raise ***of its own motion***, on the basis of the material in the file brought to its attention, as supplemented or clarified during the adversarial proceedings before it, any failure to comply with a condition governing lawfulness which has not been invoked by the person concerned.

In ***X.*** (C-69/21) the Grand Chamber of the CJEU ruled on an important issue concerning the expulsion of a third-country national who is suffering from a seriou illness. Tthe CJEU rules that:
(1) Art 5 Return Dir., read in conjunction with Art. 1, 4 and 19(2) Charter, must be interpreted as precluding a return decision from being taken or a removal order from being made in respect of a third-country national who is staying illegally on the territory of a MS and suffering from a serious illness, where there are substantial grounds for believing that the person concerned would be exposed, in the third-country to which he or she would be removed, to a real risk of a significant, permanent and rapid increase in his or her pain, if he or she were returned, on account of the only effective analgesic treatment being prohibited in that country. A Member State may not lay down a strict period within which such an increase must be liable to materialise in order to preclude that

return decision or that removal order.
(2)Art. 5 and 9(1)(a) must be interpreted as precluding the consequences of the removal order in the strict sense on the state of health of a third-country national from being taken into account by the competent national authority solely in order to examine whether he or she is able to travel.
(3) Directive 2008/115, read in conjunction with Art. 7, as well as Art. 1 and 4 Charter must be interpreted as meaning that
(a) it does not require the MS on whose territory a third-country national is staying illegally to grant that national a right of residence where he or she cannot be the subject of a return decision or a removal order because there are substantial grounds for believing that he or she would be exposed, in the receiving country, to a real risk of a rapid, significant and permanent increase in the pain caused by the serious illness from which he or she suffers;
(b) the state of health of that national and the care he or she receives on that territory, on account of that illness, must be taken into account, together with all the other relevant factors, by the competent national authority when it examines whether the right to respect for the private life of that national precludes him or her being the subject of a return decision or a removal order;
(c) the adoption of such a decision or measure does not infringe that right on the sole ground that, if he or she were returned to the receiving country, that national would be exposed to the risk that his or her state of health deteriorates, where such a risk does not reach the severity threshold required under Art. 4 Charter.

In ***O.T.E.*** (C-66/21) the CJEU ruled that:
(1) Art. 2 Dir. 2004/81 on a residence permit issued to third-country nationals who are victims of trafficking must be interpreted as meaning that the measure by which a third-country national is transferred from the territory of one MS to that of another MS, pursuant to Dublin III, falls within the scope of the concept of 'expulsion order'.
(2) Art. 6(2) Dir. 2004/81 must be interpreted as precluding the enforcement of a Dublin III transfer decision, during the reflection period guaranteed in Art. 6 of that directive, but as not precluding the adoption of such a decision, or of measures preparatory to the enforcement of that decision, provided that those preparatory measures do not deprive such a reflection period of its effectiveness, which is a matter for the referring court to determine.

The AG concluded in ***M.D.*** (C-528/21) that the Return Directive does not apply in a situation where a third-country national is outside the EU and no return decision in Hungary has been taken. In this case the AG concludes that there is a strong indication that the third-country national who is the father of an Hungarian minor living in Hungary, has a derived residence permit based on Art. 20 TFEU. This should be examined before an entry and residence ban is decided

**Extradition**
The ECtHR decided three extradition cases focussing on the question whether the applicant would face a real risk of treatment in violation of Art 3 ECHR.
In ***McCallum v. Italy*** (20863/21) the Grand Chamber of the ECtHR GC declared the application concerning extradition to USA inadmissible as the complaint was found manifestly ill-founded.

In ***Liu v. Poland*** (37610/18) the ECtHR concluded that extradition to China would constitute a violation of art. 3 ECHR, due to widespread and routine use of torture and ill-treatment in Chinese detention facilities and prisons. Also a violation of art. 5(1)(f) ECHR as the Polish authorities had failed to act with necessary expedition to ensure that detention had not exceeded the time reasonably required for extradition proceedings.

In ***Sanchez-Sanchez v. UK*** (22854/20) the Grand Chamber of the ECtHR decided that the applicant had not shown that, in case of conviction in the US, there would be a real risk of a sentence of life imprisonment without parole.

**New Pending Cases**
**Long-Term Residents**
In ***N.W.*** (C-420/22) the Hungarian High Court has asked about the interpretation of Art. 10(1) LTR Dir. Must this Article be interpreted as as meaning that the authority of a MS which, on grounds of national security or public policy or public security, has adopted a confidential decision ordering the withdrawal of a long-term residence permit which had previously been issued, must ensure there is a guarantee that in all circumstances the person concerned, a TCN, is entitled to know at least the essence of the confidential information underpinning the decision and to use that information in the proceedings concerning the decision, where the responsible authority considers that such disclosure would be contrary to the interests of national security?

=.=
Nijmegen, December 2022, Carolus Grütters

# 1 Regular Migration

## 1.1 Regular Migration: Adopted Measures

*case law sorted in chronological order*

**Directive 2009/50** — **Blue Card I**

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

* OJ 2009 L 155/17 — impl. date 19 June 2011

* Directive is replaced by Blue Card II (Dir. 2021/1883)

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 28 Oct. | 2021 | C-462/20 | ***ASGI*** | Art. 14(1)(g)+14(1)(e) |

See further: § 1.3

**Directive 2021/1883** — **Blue Card II**

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

* OJ 2021 L 382/1 — into force 17 Nov. 2021

* Directive replaces Blue Card I (Dir. 2009/50)

**Directive 2003/86** — **Family Reunification**

*On the right to Family Reunification*

* OJ 2003 L 251/12 — impl. date 3 Oct. 2005

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

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| *New* ☞ | CJEU | 17 Nov. | 2022 | C-230/21 | ***X. / Belgium*** | Art. 10(3)(a)+2(f) |
| ☞ | CJEU | 1 Aug. | 2022 | C-273/20 | ***Germany / S.W. (DE)*** | Art. 10(3)+16(1)(a) |
| ☞ | CJEU | 1 Aug. | 2022 | C-279/20 | ***Germany / X.C. (DE)*** | Art. 4(1)(c)+16(1)(b) |
| ☞ | CJEU (GC) | 2 Sep. | 2021 | C-930/19 | ***X. / Belgium*** | Art. 15(3) |
| ☞ | CJEU | 16 July | 2020 | C-133/19 | ***B.M.M.*** | Art. 4 |
| ☞ | CJEU | 12 Dec. | 2019 | C-381/18 | ***G.S.*** | Art. 6(1)+(2) |
| ☞ | CJEU | 12 Dec. | 2019 | C-519/18 | ***T.B.*** | Art. 10(2) |
| ☞ | CJEU | 20 Nov. | 2019 | C-706/18 | ***X. / Belgium*** | Art. 3(5)+5(4) |
| ☞ | CJEU | 14 Mar. | 2019 | C-557/17 | ***Y.Z. a.o.*** | Art. 16(2)(a) |
| ☞ | CJEU | 13 Mar. | 2019 | C-635/17 | ***E.*** | Art. 3(2)(c)+11(2) |
| ☞ | CJEU | 7 Nov. | 2018 | C-257/17 | ***C. & A.*** | Art. 3(3) |
| ☞ | CJEU | 7 Nov. | 2018 | C-484/17 | ***K.*** | Art. 15 |
| ☞ | CJEU | 7 Nov. | 2018 | C-380/17 | ***K. & B.*** | Art. 9(2) |
| ☞ | CJEU | 12 Apr. | 2018 | C-550/16 | ***A. & S.*** | Art. 2(f) |
| ☞ | CJEU | 21 Apr. | 2016 | C-558/14 | ***Khachab*** | Art. 7(1)(c) |
| ☞ | CJEU | 9 July | 2015 | C-153/14 | ***K. & A.*** | Art. 7(2) |
| ☞ | CJEU | 17 July | 2014 | C-338/13 | ***Noorzia*** | Art. 4(5) |
| ☞ | CJEU | 10 July | 2014 | C-138/13 | ***Dogan (Naime)*** | Art. 7(2) |
| ☞ | CJEU | 8 May | 2013 | C-87/12 | ***Ymeraga*** | Art. 3(3) |
| ☞ | CJEU | 6 Dec. | 2012 | C-356/11 | ***O. & S.*** | Art. 7(1)(c) |
| ☞ | CJEU | 10 June | 2011 | C-155/11 | ***Imran*** | Art. 7(2) - no adj. |
| ☞ | CJEU | 4 Mar. | 2010 | C-578/08 | ***Chakroun*** | Art. 7(1)(c)+2(d) |
| ☞ | CJEU (GC) | 27 June | 2006 | C-540/03 | ***EP / Council (EP)*** | Art. 8 |

*CJEU pending cases*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | (pending) | | C-355/20 | ***B.L. & B.C.*** | Art. 10(3)+16(1)(a) |
| ☞ | CJEU | (pending) | | C-560/20 | ***C.R. / L.Hptmn (AT)*** | Art. 10(3)+7(1) |

See further: § 1.3

**Council Decision 2007/435** — **Integration Fund**

*Establishing European Fund for the Integration of TCNs for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows*

* OJ 2007 L 168/18 — UK, IRL opt in

**Directive 2014/66** — **Intra-Corporate Transferees**

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

* OJ 2014 L 157/1 — impl. date 29 Nov. 2016

**Directive 2003/109** — **Long-Term Residents**

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

* OJ 2004 L 16/44 — impl. date 23 Jan. 2006

* amended by Dir. 2011/51

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU (GC) | 7 Sep. | 2022 | C-624/20 | ***E.K.*** | Art. 3(2)(e) |
| ☞ | CJEU | 20 Jan. | 2022 | C-432/20 | ***Z.K. / L.Hptmn (AT)*** | Art. 9(1)(c) |
| ☞ | CJEU | 28 Oct. | 2021 | C-462/20 | ***ASGI*** | Art. 11(1)(f)+11(1)(d) |
| ☞ | CJEU | 10 June | 2021 | C-94/20 | ***Oberösterreich*** | Art. 11 |
| ☞ | CJEU | 11 Jan. | 2021 | C-761/19 | ***Com. / Hungary (Com)*** | Art. 11(1)(a) |
| ☞ | CJEU | 25 Nov. | 2020 | C-303/19 | ***INPS / V.R. (IT)*** | Art. 11(1)(d) |
| ☞ | CJEU | 3 Sep. | 2020 | C-503/19 | ***U.Q.*** | Art. 4+6(1) |
| ☞ | CJEU | 11 June | 2020 | C-448/19 | ***W.T.*** | Art. 12 |
| ☞ | CJEU | 3 Oct. | 2019 | C-302/18 | ***X.*** | Art. 5(1)(a) |
| ☞ | CJEU | 14 Mar. | 2019 | C-557/17 | ***Y.Z. a.o.*** | Art. 9(1)(a) |
| ☞ | CJEU (GC) | 7 Dec. | 2017 | C-636/16 | ***Lopez Pastuzano*** | Art. 12 |
| ☞ | CJEU | 2 Sep. | 2015 | C-309/14 | ***CGIL*** | |
| ☞ | CJEU | 4 June | 2015 | C-579/13 | ***P. & S.*** | Art. 5+11 |
| ☞ | CJEU | 5 Nov. | 2014 | C-311/13 | ***Tümer*** | |
| ☞ | CJEU | 17 July | 2014 | C-469/13 | ***Tahir*** | Art. 7(1)+13 |
| ☞ | CJEU | 8 Nov. | 2012 | C-40/11 | ***Iida*** | Art. 7(1) |
| ☞ | CJEU | 18 Oct. | 2012 | C-502/10 | ***Singh*** | Art. 3(2)(e) |
| ☞ | CJEU | 26 Apr. | 2012 | C-508/10 | ***Com. / NL (Com)*** | |
| ☞ | CJEU (GC) | 24 Apr. | 2012 | C-571/10 | ***Servet Kamberaj*** | Art. 11(1)(d) |

*CJEU pending cases*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | (pending) | | C-112/22 | ***C.U. & N.D.*** | Art. 11(1)(d) |
| ☞ | CJEU | (pending) | | C-129/22 | ***E.F.*** | Art. 14 |
| *New* ☞ | CJEU | (pending) | | C-420/22 | ***N.W.*** | Art. 10(1) |
| ☞ | CJEU | (pending) | | C-829/21 | ***T.E.*** | Art. 14+15 |

See further: § 1.3

**Directive 2011/51** — **Long-Term Residents ext.**

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

* OJ 2011 L 132/1 — impl. date 20 May 2013

* extending Dir. 2003/109 on LTR

**Council Decision 2006/688** — **Mutual Information**

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

* OJ 2006 L 283/40 — UK, IRL opt in

**Directive 2005/71** — **Researchers**

*On a specific procedure for admitting TCNs for the purposes of scientific research*

* OJ 2005 L 289/15 — impl. date 12 Oct. 2007

* Directive is replaced by Dir. 2016/801 Researchers and Students

**Recommendation 762/2005** — **Researchers**

*To facilitate the admission of TCNs to carry out scientific research*

* OJ 2005 L 289/26

**Directive 2016/801** — **Researchers and Students**

*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 — impl. date 24 May 2018

* This directive replaces both Dir 2005/71 on Researchers and Dir 2004/114 on Students

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 10 Mar. | 2021 | C-949/19 | ***M.A. / Konsul (PL)*** | Art. 34(5) |

See further: § 1.3

**Regulation 1030/2002** — **Residence Permit Format**

*Laying down a uniform format for residence permits for TCNs*

* OJ 2002 L 157/1 — impl. date 15 June 2002 — UK opt in

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

*amd by Reg. 1954/2017 (OJ 2017 L 286/9)*

**Directive 2014/36** — **Seasonal Workers**

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

* OJ 2014 L 94/375 — impl. date 30 Sep. 2016

**Directive 2011/98** — **Single Permit**

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

* OJ 2011 L 343/1 — impl. date 25 Dec. 2013

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 28 Oct. | 2021 | C-462/20 | ***ASGI*** | Art. 12(1)(g)+12(1)(e) |
| ☞ | CJEU (GC) | 2 Sep. | 2021 | C-350/20 | ***O.D. a.o. / INPS (IT)*** | Art. 12(1)(e)+3(1) |
| ☞ | CJEU | 25 Nov. | 2020 | C-302/19 | ***INPS / W.S. (IT)*** | Art. 12(1)(e) |
| ☞ | CJEU | 21 June | 2017 | C-449/16 | ***Martinez Silva*** | Art. 12(1)(e) |

See further: § 1.3

**Regulation 859/2003** — **Social Security TCN I**

*Third-Country Nationals' Social Security extending Reg. 1408/71 and Reg. 574/72*

* OJ 2003 L 124/1 — UK, IRL opt in

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

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 27 Oct. | 2016 | C-465/14 | ***Wieland & Rothwangl*** | Art. 1 |
| ☞ | CJEU | 18 Nov. | 2010 | C-247/09 | ***Xhymshiti*** | |

See further: § 1.3

**Regulation 1231/2010** — **Social Security TCN II**

*Social Security for EU Citizens and TCNs who move within the EU*

* OJ 2010 L 344/1 — impl. date 1 Jan. 2011 — IRL opt in

* Replacing Reg. 859/2003 on Social Security TCN

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 3 Mar. | 2021 | C-523/20 | ***Koppány*** | Art. 1 |
| ☞ | CJEU | 24 Jan. | 2019 | C-477/17 | ***Balandin*** | Art. 1 |

See further: § 1.3

**Directive 2004/114** — **Students**

*Admission of Third-Country Nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service*

* OJ 2004 L 375/12 — impl. date 12 Jan. 2007

* Directive is replaced by Dir. 2016/801 Researchers and Students

*CJEU judgments*

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

See further: § 1.3

**CRC** — **Best interest of the Child**

*UN Convention on the Rights of the Child*

Art. 3 Best interests of the child

Art. 10 Family Life

* 1577 UNTS 27531 — impl. date 2 Sep. 1990

* Optional Communications Protocol that allows for individual complaints entered into force 14-4-2014

*CtRC views*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CtRC | 28 Sep. | 2020 | 56/2018 | ***V.A.*** | Art. 3 |
| ☞ | CtRC | 28 Sep. | 2020 | 31/2017 | ***W.M.C.*** | Art. 3 |
| ☞ | CtRC | 27 Sep. | 2018 | 12/2017 | ***C.E.*** | Art. 3+10 |

See further: § 1.3

**ECHR** **Family - Marriage - Discriminiation**

*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 impl. date 31 Aug. 1954

*ECtHR Judgments*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *New* | ☞ | ECtHR | 20 Oct. | 2022 | 22105/18 | ***M.T. a.o. v SE*** | Art. 8+14 |
| | ☞ | ECtHR | 27 Sep. | 2022 | 18339/19 | ***Otite v UK*** | Art. 8 |
| | ☞ | ECtHR | 3 Mar. | 2022 | 27801/19 | ***Johansen v DK*** | Art. 8 |
| | ☞ | ECtHR | 13 Jan. | 2022 | 1480/16 | ***Hashemi et al. v AZ*** | Art. 8 |
| | ☞ | ECtHR | 16 Dec. | 2021 | 43084/19 | ***Alami v FR*** | Art. 8 |
| | ☞ | ECtHR | 30 Nov. | 2021 | 40240/19 | ***Avci v DK*** | Art. 8 |
| | ☞ | ECtHR | 25 Nov. | 2021 | 21643/19 | ***Kikoso v FR*** | Art. 8 |
| | ☞ | ECtHR | 21 Oct. | 2021 | 42011/19 | ***Melouli v FR*** | Art. 8 |
| | ☞ | ECtHR | 14 Sep. | 2021 | 41643/19 | ***Abdi v DK*** | Art. 8 |
| | ☞ | ECtHR (GC) | 9 July | 2021 | 6697/18 | ***M.A. v DK*** | Art. 8 |
| | ☞ | ECtHR | 10 June | 2021 | 78228/14 | ***Aliyev v UA*** | Art. 8 |
| | ☞ | ECtHR | 12 Jan. | 2021 | 26957/19 | ***Kahn v DK*** | Art. 8 |
| | ☞ | ECtHR | 12 Jan. | 2021 | 56803/18 | ***Munir v DK*** | Art. 8 |
| | ☞ | ECtHR | 22 Dec. | 2020 | 43936/18 | ***Usmanov v RU*** | Art. 8 |
| | ☞ | ECtHR | 8 Dec. | 2020 | 59006/18 | ***M.M. v CH*** | Art. 8 |
| | ☞ | ECtHR | 24 Nov. | 2020 | 80343/17 | ***Unuane v UK*** | Art. 8 |
| | ☞ | ECtHR | 6 Oct. | 2020 | 59066/16 | ***Bou Hassoun v BG*** | Art. 8 |
| | ☞ | ECtHR | 28 July | 2020 | 25402/14 | ***Pormes v NL*** | Art. 8 |
| | ☞ | ECtHR | 7 July | 2020 | 62130/15 | ***K.A. v CH*** | Art. 8 |
| | ☞ | ECtHR | 12 May | 2020 | 42321/15 | ***Sudita v HU*** | Art. 8 |
| | ☞ | ECtHR | 14 May | 2019 | 23270/16 | ***Abokar v SE*** | Art. 8 |
| | ☞ | ECtHR | 9 Apr. | 2019 | 23887/16 | ***I.M. v CH*** | Art. 8 |
| | ☞ | ECtHR | 18 Dec. | 2018 | 76550/13 | ***Saber a.o. v ES*** | Art. 8 |
| | ☞ | ECtHR | 20 Nov. | 2018 | 42517/15 | ***Yurdaer v DK*** | Art. 8 |
| | ☞ | ECtHR | 23 Oct. | 2018 | 25593/14 | ***Assem Hassan v DK*** | Art. 8 |
| | ☞ | ECtHR | 23 Oct. | 2018 | 7841/14 | ***Levakovic v DK*** | Art. 8 |
| | ☞ | ECtHR | 12 June | 2018 | 23038/15 | ***Gaspar v RU*** | Art. 8 |
| | ☞ | ECtHR | 12 June | 2018 | 47781/10 | ***Zezev v RU*** | Art. 8 |
| | ☞ | ECtHR | 15 May | 2018 | 32248/12 | ***Ibrogimov v RU*** | Art. 8+14 |
| | ☞ | ECtHR | 26 Apr. | 2018 | 63311/14 | ***Hoti v HR*** | Art. 8 |
| | ☞ | ECtHR | 14 Sep. | 2017 | 41215/14 | ***Ndidi v UK*** | Art. 8 |
| | ☞ | ECtHR | 29 June | 2017 | 33809/15 | ***Alam v DK*** | Art. 8 |
| | ☞ | ECtHR | 25 Apr. | 2017 | 41697/12 | ***Krasniqi v AT*** | Art. 8 |
| | ☞ | ECtHR | 12 Jan. | 2017 | 31183/13 | ***Abuhmaid v UA*** | Art. 8+13 |
| | ☞ | ECtHR | 1 Dec. | 2016 | 77063/11 | ***Salem v DK*** | Art. 8 |
| | ☞ | ECtHR | 8 Nov. | 2016 | 56971/10 | ***El Ghatet v CH*** | Art. 8 |
| | ☞ | ECtHR | 8 Nov. | 2016 | 7994/14 | ***Ustinova v RU*** | Art. 8 |
| | ☞ | ECtHR (GC) | 21 Sep. | 2016 | 38030/12 | ***Khan v DE*** | Art. 8 |
| | ☞ | ECtHR | 21 June | 2016 | 76136/12 | ***Ramadan v MT*** | Art. 8 |
| | ☞ | ECtHR (GC) | 24 May | 2016 | 38590/10 | ***Biao v DK*** | Art. 8+14 |
| | ☞ | ECtHR | 3 Oct. | 2014 | 12738/10 | ***Jeunesse v NL*** | Art. 8 |
| | ☞ | ECtHR | 24 July | 2014 | 32504/11 | ***Kaplan a.o. v NO*** | Art. 8 |
| | ☞ | ECtHR | 10 July | 2014 | 52701/09 | ***Mugenzi v FR*** | Art. 8 |
| | ☞ | ECtHR | 8 Apr. | 2014 | 17120/09 | ***Dhahbi v IT*** | Art. 6+8+14 |
| | ☞ | ECtHR | 11 June | 2013 | 52166/09 | ***Hasanbasic v CH*** | Art. 8 |
| | ☞ | ECtHR | 16 Apr. | 2013 | 12020/09 | ***Udeh v CH*** | Art. 8 |
| | ☞ | ECtHR | 13 Dec. | 2012 | 22689/07 | ***De Souza Ribeiro v UK*** | Art. 8+13 |
| | ☞ | ECtHR | 4 Dec. | 2012 | 47017/09 | ***Butt v NO*** | Art. 8 |
| | ☞ | ECtHR | 6 Nov. | 2012 | 22341/09 | ***Hode and Abdi v UK*** | Art. 8+14 |
| | ☞ | ECtHR | 14 Feb. | 2012 | 26940/10 | ***Antwi v NO*** | Art. 8 |
| | ☞ | ECtHR | 10 Jan. | 2012 | 22251/07 | ***G.R. v NL*** | Art. 8+13 |
| | ☞ | ECtHR | 20 Sep. | 2011 | 8000/08 | ***A.A. v UK*** | Art. 8 |
| | ☞ | ECtHR | 28 June | 2011 | 55597/09 | ***Nunez v NO*** | Art. 8 |
| | ☞ | ECtHR | 14 June | 2011 | 38058/09 | ***Osman v DK*** | Art. 8 |

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| ☞ | ECtHR | 14 Dec. | 2010 | 34848/07 | ***O'Donoghue v UK*** | Art. 12+14 |
| ☞ | ECtHR | 6 July | 2010 | 41615/07 | ***Neulinger v CH*** | Art. 8 |
| ☞ | ECtHR | 22 Mar. | 2007 | 1638/03 | ***Maslov v AT*** | Art. 8 |
| ☞ | ECtHR | 18 Oct. | 2006 | 46410/99 | ***Üner v NL*** | Art. 8 |
| ☞ | ECtHR | 2 Aug. | 2001 | 54273/00 | ***Boultif v CH*** | Art. 8 |

See further: § 1.3

## 1.2 Regular Migration: Proposed Measures

* nothing to report

## 1.3 Regular Migration: Jurisprudence

*case law sorted in alphabetical order*

### 1.3.1 CJEU Judgments on Regular Migration

☞ CJEU 12 Apr. 2018, C-550/16 — ***A. & S.*** — EU:C:2018:248
AG 26 Oct. 2017 — EU:C:2017:824

* interpr. of Dir. 2003/86 — Family Reunification Art. 2(f)
ref. from Rechtbank Den Haag (zp) Amsterdam, NL, 31 Oct. 2016

* *Art. 2(f) (in conjunction with Art. 10(3)(a)) must be interpreted as meaning that a TCN or stateless person who is below the age of 18 at the time of his or her entry into the territory of a MS and of the introduction of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status must be regarded as a 'minor' for the purposes of that provision.*

☞ CJEU 10 Sep. 2014, C-491/13 — ***Ben Alaya*** — EU:C:2014:2187
AG 12 June 2014 — EU:C:2014:1933

* interpr. of Dir. 2004/114 — Students Art. 6+7
ref. from Verwaltungsgericht Berlin, Germany, 13 Sep. 2013

* *The MS concerned is obliged to admit to its territory a third-country national who wishes to stay for more than three months in that territory for study purposes, where that national meets the conditions for admission exhaustively listed in Art. 6 and 7 and provided that that MS does not invoke against that person one of the grounds expressly listed by the directive as justification for refusing a residence permit.*

☞ CJEU 7 Nov. 2018, C-257/17 — ***C. & A.*** — EU:C:2018:876
AG 27 June 2018 — EU:C:2018:503

* interpr. of Dir. 2003/86 — Family Reunification Art. 3(3)
ref. from Raad van State, NL, 15 May 2017

* *Article 15(1) and (4) does not preclude national legislation which permits an application for an autonomous residence permit, lodged by a TCN who has resided over five years in a MS by virtue of family reunification, to be rejected on the ground that he has not shown that he has passed a civic integration test on the language and society of that MS provided that the detailed rules for the requirement to pass that examination do not go beyond what is necessary to attain the objective of facilitating the integration of those third country nationals.*
*Article 15(1) and (4) does not preclude national legislation which provides that an autonomous residence permit cannot be issued earlier than the date on which it was applied for.*

☞ CJEU 28 Oct. 2021, C-462/20 — ***ASGI*** — EU:C:2021:894

* interpr. of Dir. 2003/109 — Long-Term Residents Art. 11(1)(f)+11(1)(d)
ref. from Tribunale di Milano, Italy, 14 Sep. 2020

* *Although Art. 11(1)(d) does not preclude, Art. 11(1)(f) does preclude legislation of a MS which excludes TCNs covered by those directives from eligibility for a card granted to families allowing access to discounts or price reductions when purchasing goods and services supplied by public or private entities which have entered into an agreement with the government of that MS.*

☞ CJEU 28 Oct. 2021, C-462/20 — ***ASGI*** — EU:C:2021:894

* interpr. of Dir. 2009/50 — Blue Card I Art. 14(1)(g)+14(1)(e)
ref. from Tribunale di Milano, Italy, 14 Sep. 2020

* *Although Art. 14(1)(e) does not preclude, Art. 14(1)(g) does preclude legislation of a MS which excludes TCNs covered by those directives from eligibility for a card granted to families allowing access to discounts or price reductions when purchasing goods and services supplied by public or private entities which have entered into an agreement with the government of that MS.*

☞ CJEU 28 Oct. 2021, C-462/20 ***ASGI*** EU:C:2021:894
* interpr. of Dir. 2011/98 Single Permit Art. 12(1)(g)+12(1)(e)
ref. from Tribunale di Milano, Italy, 14 Sep. 2020
* *Although Art. 12(1)(e) does not preclude, Art. 12(1)(g) does preclude legislation of a MS which excludes TCNs covered by those directives from eligibility for a card granted to families allowing access to discounts or price reductions when purchasing goods and services supplied by public or private entities which have entered into an agreement with the government of that MS.*

☞ CJEU 16 July 2020, C-133/19 ***B.M.M.*** EU:C:2020:577
AG 19 Mar. 2020 EU:C:2020:222
* interpr. of Dir. 2003/86 Family Reunification Art. 4
ref. from Conseil d'Etat, Belgium, 19 Feb. 2019
* joined cases: C-133/19 + C-136/19 + C-137/19
* *Point (c) of the first subparagraph of Art. 4(1) of Family Reunification Directive must be interpreted as meaning that the date which should be referred to for the purpose of determining whether an unmarried TCN or refugee is a minor child, within the meaning of that provision, is that of the submission of the application for entry and residence for the purpose of family reunification for minor children, and not that of the decision on that application by the competent authorities of that MS, as the case may be, after an action brought against a decision rejecting such an application.*
*Art. 18, read in the light of Article 47 of the Charter, must be interpreted as precluding an action against the rejection of an application for family reunification of a minor child from being dismissed as inadmissible on the sole ground that the child has reached majority during the court proceedings.*

☞ CJEU 24 Jan. 2019, C-477/17 ***Balandin*** EU:C:2019:60
AG 27 Sep. 2018 EU:C:2018:783
* interpr. of Reg. 1231/2010 Social Security TCN II Art. 1
ref. from Centrale Raad van Beroep, NL, 4 Aug. 2017
* *Article 1 must be interpreted as meaning that third country nationals, who temporarily reside and work in different Member States in the service of an employer established in a Member State, may rely on the coordination rules (laid down by Reg. 883/2004 and Reg. 987/2009 and Reg. 883/2004), in order to determine the social security legislation to which they are subject, provided that they are legally staying and working in the territory of the Member States.*

☞ CJEU 2 Sep. 2015, C-309/14 ***CGIL*** EU:C:2015:523
* interpr. of Dir. 2003/109 Long-Term Residents
ref. from Tribunale Amministrativo Regionale per il Lazio, Italy, 30 June 2014
* *Italian national legislation has set a minimum fee for a residence permit, which is around eight times the charge for the issue of a national identity card. Such a fee is disproportionate in the light of the objective pursued by the directive and is liable to create an obstacle to the exercise of the rights conferred by the directive.*

☞ CJEU 4 Mar. 2010, C-578/08 ***Chakroun*** EU:C:2010:117
AG 10 Dec. 2009 EU:C:2009:776
* interpr. of Dir. 2003/86 Family Reunification Art. 7(1)(c)+2(d)
ref. from Raad van State, NL, 29 Dec. 2008
* *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 26 Apr. 2012, C-508/10 ***Com. / NL (Com)*** EU:C:2012:243
AG 19 Jan. 2012 EU:C:2012:125
* incor. appl. of Dir. 2003/109 Long-Term Residents
ref. from European Commission, EU, 25 Oct. 2010
* *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 11 Jan. 2021, C-761/19 ***Com. / Hungary (Com)*** EU:C:2021:74
* interpr. of Dir. 2003/109 Long-Term Residents Art. 11(1)(a)
ref. from European Commission, EU,
* withdrawn
* *Hungary had failed to fulfil its obligations under Art. 11(1)(a) of Dir. 2003/109 by not admitting TCNs who are long-term residents as members of the College of Veterinary Surgeons, which prevents those TCNs ab initio from working as employed veterinarians or exercising that profession on a self-employed basis.*
*Only after the Commission brought this case to the CJEU, Hungary took the necessary measures to fulfil its obligations.*

☞ CJEU 10 July 2014, C-138/13 ***Dogan (Naime)*** EU:C:2014:2066
AG 30 Apr. 2014 EU:C:2014:287

* interpr. of Dir. 2003/86 Family Reunification Art. 7(2)
ref. from Verwaltungsgericht Berlin, Germany, 19 Mar. 2013

* *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 13 Mar. 2019, C-635/17 ***E.*** EU:C:2019:192
AG 29 Nov. 2018 EU:C:2018:973

* interpr. of Dir. 2003/86 Family Reunification Art. 3(2)(c)+11(2)
ref. from Rechtbank Den Haag (zp) Haarlem, NL, 14 Nov. 2017

* *The CJEU has jurisdiction, on the basis of Art. 267 TFEU, to interpret Article 11(2) of Council Directive 2003/86 in a situation where a national court is called upon to rule on an application for family reunification lodged by a beneficiary of subsidiary protection, if that provision was made directly and unconditionally applicable to such a situation under national law.*
*Art. 11(2) of Directive 2003/86 must be interpreted as precluding, in circumstances such as those at issue in the main proceedings, in which an application for family reunification has been lodged by a sponsor benefiting from subsidiary protection in favour of a minor of whom she is the aunt and allegedly the guardian, and who resides as a refugee and without family ties in a third country, that application from being rejected solely on the ground that the sponsor has not provided official documentary evidence of the death of the minor's biological parents and, consequently, that she has an actual family relationship with him, and that the explanation given by the sponsor to justify her inability to provide such evidence has been deemed implausible by the competent authorities solely on the basis of the general information available concerning the situation in the country of origin, without taking into consideration the specific circumstances of the sponsor and the minor and the particular difficulties they have encountered, according to their testimony, before and after fleeing their country of origin.*

☞ CJEU (GC) 7 Sep. 2022, C-624/20 ***E.K.*** EU:C:2022:639
AG 17 Mar. 2022 EU:C:2022:194

* interpr. of Dir. 2003/109 Long-Term Residents Art. 3(2)(e)
ref. from Rechtbank Den Haag (zp) Amsterdam, NL, 24 Nov. 2020

* *Art. 3(2)(e) LTR Dir. must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, is an autonomous concept of EU law, which must be interpreted uniformly throughout the Member States.*
*Art. 3(2)(e) LTR Dir. must be interpreted as meaning that the concept of residence 'solely on temporary grounds', which is referred to therein, does not cover the residence of a third-country national under Art. 20 TFEU within the territory of the Member State of which the Union citizen concerned is a national.*

☞ CJEU (GC) 27 June 2006, C-540/03 ***EP / Council (EP)*** EU:C:2006:429
AG 8 Sep. 2005 EU:C:2005:117

* interpr. of Dir. 2003/86 Family Reunification Art. 8
ref. from European Commission, EU, 22 Dec. 2013

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

☞ CJEU (GC) 4 Apr. 2017, C-544/15 ***Fahimian*** EU:C:2017:255
AG 29 Nov. 2016 EU:C:2016:908

* interpr. of Dir. 2004/114 Students Art. 6(1)(d)
ref. from Verwaltungsgericht Berlin, Germany, 19 Oct. 2015

* *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 12 Dec. 2019, C-381/18 ***G.S.*** EU:C:2019:1072
AG 11 July 2019 EU:C:2019:608

* interpr. of Dir. 2003/86 Family Reunification Art. 6(1)+(2)
ref. from Raad van State, NL, 11 June 2018

* joined cases: C-381/18 + C-382/18

* *Art. 6(1)+(2) must be interpreted as not precluding a national practice under which the competent authorities may, on grounds of public policy: (1) reject an application, founded on that directive, for entry and residence, on the basis of a criminal conviction imposed during a previous stay on the territory of the Member State concerned, and (2) withdraw a residence permit founded on that directive or refuse to renew it where a sentence sufficiently severe in comparison with the duration of the stay has been imposed on the applicant, provided that that practice is applicable only if the offence which warranted the criminal conviction at issue is sufficiently serious to establish that it is necessary to rule out residence of that applicant and that those authorities carry out the individual assessment provided for in Art. 17.*

☞ CJEU 1 Aug. 2022, C-273/20 ***Germany / S.W. (DE)*** EU:C:2022:617

* interpr. of Dir. 2003/86 Family Reunification Art. 10(3)+16(1)(a)
ref. from Bundesverwaltungsgericht, Germany, 23 Apr. 2020

* *Art 16(1)(a) Family Reunification Dir. must be interpreted as meaning that, in the case of family reunification of parents with an unaccompanied minor refugee, pursuant to Art. 10(3)(a), read in conjunction with Art. 2(f), the fact that that refugee is still a minor on the date of the decision on the application for entry and residence for the purpose of family reunification submitted by the sponsor's parents does not constitute a 'condition', within the meaning of Art. 16(1)(a), failure to comply with which allows the MS to reject such an application. Furthermore, those provisions, read in the light of Art. 13(2), must be interpreted as precluding national legislation under which, in such a situation, the right of residence of the parents concerned comes to an end as soon as the child reaches the age of majority.*
*Art. 16(1)(b) must be interpreted as meaning that, in order to find that there is a real family relationship, within the meaning of that provision, in the case of family reunification of a parent with a minor child who has been granted refugee status, where that child attained his or her majority before the decision on the application for entry and residence for the purpose of family reunification, submitted by that parent, was adopted, a first-degree relationship in the direct ascending line is not sufficient on its own. However, it is not necessary for the child sponsor and the parent concerned to cohabit in a single household or to live under the same roof in order for that parent to qualify for family reunification. Occasional visits, in so far as they are possible, and regular contact of any kind may be sufficient to consider that those persons are reconstructing personal and emotional relationships and to establish the existence of a real family relationship. Furthermore, nor can the child sponsor and the parent concerned be required to support each other financially.*

☞ CJEU 1 Aug. 2022, C-279/20 ***Germany / X.C. (DE)*** EU:C:2022:618
AG 16 Dec. 2021 EU:C:2021:1030

* interpr. of Dir. 2003/86 Family Reunification Art. 4(1)(c)+16(1)(b)
ref. from Bundesverwaltungsgericht, Germany, 23 Apr. 2020

* *Art. 4(1)(c) Family Reunification Dir. must be interpreted as meaning that the date to which reference must be made in order to determine whether the child of a sponsor who has been granted refugee status is a minor child, within the meaning of that provision, where that child has attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, is the date on which the parent sponsor submitted his or her asylum application with a view to obtaining refugee status, provided that an application for family reunification was submitted within three months of the recognition of the parent sponsor's refugee status.*
*Art. 16(1)(b) must be interpreted as meaning that in order to find that there is a real family relationship, within the meaning of that provision, in the case of family reunification of a minor child with a parent who has been granted refugee status, where that child has attained his or her majority before the parent sponsor was granted refugee status and before the application for family reunification was submitted, the legal parent/child relationship is not sufficient on its own. However, it is not necessary for the parent sponsor and the child concerned to cohabit in a single household or to live under the same roof in order for that child to qualify for family reunification. Occasional visits, in so far as they are possible, and regular contact of any kind may be sufficient to consider that those persons are reconstructing personal and emotional relationships and to establish the existence of a real family relationship. Furthermore, nor can the parent sponsor and his or her child be required to support each other financially.*

☞ CJEU 8 Nov. 2012, C-40/11 ***Iida*** EU:C:2012:691
AG 15 May 2012 EU:C:2012:296

* interpr. of Dir. 2003/109 Long-Term Residents Art. 7(1)
ref. from Verwaltungsgerichtshof Baden-Württemberg, Germany, 28 Jan. 2011

* *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 10 June 2011, C-155/11 ***Imran*** EU:C:2011:387

* interpr. of Dir. 2003/86 Family Reunification Art. 7(2) - no adj.
ref. from Rechtbank Den Haag (zp) Zwolle, NL, 31 Mar. 2011

* *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 25 Nov. 2020, C-303/19 ***INPS / V.R. (IT)*** EU:C:2020:958
AG 11 June 2020 EU:C:2020:454

* interpr. of Dir. 2003/109 Long-Term Residents Art. 11(1)(d)
ref. from Corte Suprema di cassazione, Italy, 11 Apr. 2019

* *Art. 11(1)(d) must be interpreted as precluding legislation of a MS under which, for the purposes of determining entitlement to a social security benefit, the family members of a long-term resident, within the meaning of Art. 2(b) thereof, who do not reside in the territory of that MS, but in a third country are not taken into account, whereas the family members of a national of that MS who reside in a third country are taken into account, where that MS has not expressed its intention of relying on the derogation to equal treatment permitted by Art. 11(2) of that directive by transposing it into national law.*

☞ CJEU 25 Nov. 2020, C-302/19 ***INPS / W.S. (IT)***
AG 11 June 2020 EU:C:2020:452

* interpr. of Dir. 2011/98 Single Permit Art. 12(1)(e)
ref. from Corte Suprema di cassazione, Italy,

* *Art. 12(1)(e) must be interpreted as precluding the legislation of a MS under which, for the purpose of determining entitlement to a social security benefit, the family members of the holder of a single permit, within the meaning of Art. 2 (c) thereof, who do not reside in the territory of that MS but in a third country are not be taken into account, whereas account is taken of family members of nationals of that MS residing in a third country.*

☞ CJEU 7 Nov. 2018, C-484/17 ***K.*** EU:C:2018:878

* interpr. of Dir. 2003/86 Family Reunification Art. 15
ref. from Raad van State, NL, 10 Aug. 2017

* *Article 15(1) and (4) does not preclude national legislation, which permits an application for an autonomous residence permit, lodged by a TCN who has resided over five years in a MS by virtue of family reunification, to be rejected on the ground that he has not shown that he has passed a civic integration test on the language and society of that MS provided that the detailed rules for the requirement to pass that examination do not go beyond what is necessary to attain the objective of facilitating the integration of those third country nationals, which is for the referring court to ascertain.*

☞ CJEU 9 July 2015, C-153/14 ***K. & A.*** EU:C:2015:523
AG 19 Mar. 2015 EU:C:2015:186

* interpr. of Dir. 2003/86 Family Reunification Art. 7(2)
ref. from Raad van State, NL, 3 Apr. 2014

* *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 7 Nov. 2018, C-380/17 ***K. & B.*** EU:C:2018:877
AG 27 June 2018 EU:C:2018:504

* interpr. of Dir. 2003/86 Family Reunification Art. 9(2)
ref. from Raad van State, NL, 26 June 2017

* *Article 12(1) does not preclude national legislation which permits an application for family reunification lodged on behalf of a member of a refugee's family, on the basis of the more favourable provisions for refugees of Chapter V of that directive, to be rejected on the ground that that application was lodged more than three months after the sponsor was granted refugee status, whilst affording the possibility of lodging a fresh application under a different set of rules provided that that legislation:*
*(a) lays down that such a ground of refusal cannot apply to situations in which particular circumstances render the late submission of the initial application objectively excusable;*
*(b) lays down that the persons concerned are to be fully informed of the consequences of the decision rejecting their initial application and of the measures which they can take to assert their rights to family reunification effectively; and*
*(c) ensures that sponsors recognised as refugees continue to benefit from the more favourable conditions for the exercise of the right to family reunification applicable to refugees, specified in Articles 10 and 11 or in Article 12(2) of the directive.*

☞ CJEU 21 Apr. 2016, C-558/14 ***Khachab*** EU:C:2016:285
AG 23 Dec. 2015 EU:C:2015:852

* interpr. of Dir. 2003/86 Family Reunification Art. 7(1)(c)
ref. from Tribunal Superior de Justicia del Pais Vasco, Spain, 5 Dec. 2014

* *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.*

☞ CJEU 3 Mar. 2021, C-523/20 ***Koppány*** EU:C:2021:160
* interpr. of Reg. 1231/2010 Social Security TCN II Art. 1
ref. from Győri Törvényszék, Hungary, 19 Oct. 2020
* *Art. 1 of Reg. on Social Security TCN II must be interpreted as meaning that nationals of third countries who reside temporarily and have a residence permit in a MS, and who have a document stating their place of accommodation issued by the immigration authority and work in different MSs for an employer established in that MS, may rely on the coordination rules laid down by Reg. on Social Security TCN I (883/2004).*

☞ CJEU 10 June 2021, C-94/20 ***Oberösterreich*** EU:C:2021:477
AG 2 Mar. 2021 EU:C:2021:186
* interpr. of Dir. 2003/109 Long-Term Residents Art. 11
ref. from Landesgericht Linz, Austria, 25 Feb. 2020
* *Art. 11(1)(d) must be interpreted as precluding, even where the option of applying the derogation provided for in Art. 11 (4) of that directive has been exercised, a regulation by a MS on the basis of which TCNs who are long-term residents are only eligible for a housing allowance on condition that they demonstrate, in a manner determined by that scheme, that they have a basic knowledge of the language of that MS, if this housing allowance is one of the 'main benefits' within the meaning of of the latter provision, which is for the referring court to determine.*
*Thus, the principle of non-discrimination on grounds of ethnic origin precludes national legislation which allows for different requirements for EU citizens, EEA nationals and their family members on the one hand and third country nationals (including those with long-term resident status within the meaning of Dir. 2003/109) on the other hand.*

☞ CJEU (GC) 7 Dec. 2017, C-636/16 ***Lopez Pastuzano*** EU:C:2017:949
* interpr. of Dir. 2003/109 Long-Term Residents Art. 12
ref. from Juzgado de lo Contencioso-Adm. of Pamplona, Spain, 9 Dec. 2016
* *The CJEU declares that the LTR directive precludes legislation of a MS which, as interpreted by some domestic courts, does not provide for the application of the requirements of protection against the expulsion of a third-country national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it.*

☞ CJEU 10 Mar. 2021, C-949/19 ***M.A. / Konsul (PL)*** EU:C:2021:186
* interpr. of Dir. 2016/801 Researchers and Students Art. 34(5)
ref. from Naczelny Sąd Administracyjny, Poland, 31 Dec. 2019
* *On the issue of an effective remedy (art 47 Charter) against the refusal of issuing a visa. Art. 21(2a) Borders Code must be interpreted as not being applicable to a national of a third State who has been refused a long-stay visa.*
*EU law, in particular Art. 34(5) of Dir. 2016/801 (researchers and students), read in the light of Art. 47 Charter must be interpreted as meaning that it requires the MSs to provide for an appeal procedure against decisions refusing a visa for the purpose of studies, within the meaning of that directive, the procedural rules of which are a matter for the legal order of each MS, in conformity with the principles of equivalence and effectiveness, and that procedure must, at a certain stage, guarantee a judicial appeal. It is for the referring court to establish whether the application for a national long-term visa for the purpose of studies that is at issue in the main proceedings falls within the scope of that directive.*

☞ CJEU 21 June 2017, C-449/16 ***Martinez Silva*** EU:C:2017:485
* interpr. of Dir. 2011/98 Single Permit Art. 12(1)(e)
ref. from Corte D'Appello Di Genova, Italy, 11 Aug. 2016
* *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 17 July 2014, C-338/13 ***Noorzia*** EU:C:2014:2092
AG 30 Apr. 2014 EU:C:2014:288
* interpr. of Dir. 2003/86 Family Reunification Art. 4(5)
ref. from Verwaltungsgerichtshof, Austria, 20 June 2013
* *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 6 Dec. 2012, C-356/11 ***O. & S.*** EU:C:2012:776
AG 27 Sep. 2012 EU:C:2012:595
* interpr. of Dir. 2003/86 Family Reunification Art. 7(1)(c)
ref. from Korkein hallinto-oikeus, Finland, 7 July 2011
* *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 (GC) 2 Sep. 2021, C-350/20 ***O.D. a.o. / INPS (IT)*** EU:C:2021:659
* interpr. of Dir. 2011/98 Single Permit Art. 12(1)(e)+3(1)
ref. from Corte Constitutionale , Italy, 30 July 2020
* *Art. 12(1)(e) Dir. 2011/98 must be interpreted as precluding national legislation which excludes the third-country nationals referred to in Art. 3(1)(b) and (c) of that directive from entitlement to a childbirth allowance and a maternity allowance provided for by that legislation.*

☞ CJEU 4 June 2015, C-579/13 ***P. & S.*** EU:C:2015:369
AG 28 Jan. 2015 EU:C:2015:39
* interpr. of Dir. 2003/109 Long-Term Residents Art. 5+11
ref. from Centrale Raad van Beroep, NL, 15 Nov. 2012
* *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 24 Nov. 2008, C-294/06 ***Payir*** EU:C:2008:36
AG 18 July 2007 EU:C:2007:455
* interpr. of Dir. 2004/114 Students
ref. from Court of Appeal (England & Wales), UK, 24 Jan. 2008
* *The fact that a Turkish national was granted leave to enter the territory of a MS as an au pair or as a student cannot deprive him of the status of 'worker' and prevent him from being regarded as 'duly registered as belonging to the labour force' of that MS.*

☞ CJEU (GC) 24 Apr. 2012, C-571/10 ***Servet Kamberaj*** EU:C:2012:233
AG 13 Dec. 2011 EU:C:2011:827
* interpr. of Dir. 2003/109 Long-Term Residents Art. 11(1)(d)
ref. from Tribunale di Bolzano, Italy, 7 Dec. 2010
* *EU Law precludes a distinction on the basis of ethnicity or linguistic groups in order to be eligible for housing benefit.*

☞ CJEU 18 Oct. 2012, C-502/10 ***Singh*** EU:C:2012:636
AG 15 May 2012 EU:C:2012:294
* interpr. of Dir. 2003/109 Long-Term Residents Art. 3(2)(e)
ref. from Raad van State, NL, 20 Oct. 2010
* *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 this Dir.*

☞ CJEU 21 June 2012, C-15/11 ***Sommer*** EU:C:2012:371
AG 1 Mar. 2012 EU:C:2012:116
* interpr. of Dir. 2004/114 Students Art. 17(3)
ref. from Verwaltungsgerichtshof, Austria, 12 Jan. 2011
* *The conditions of access to the labour market by Bulgarian students, may not be more restrictive than those set out in the Directive*

☞ CJEU 12 Dec. 2019, C-519/18 ***T.B.*** EU:C:2019:1070
AG 5 Sep. 2019 EU:C:2019:681
* interpr. of Dir. 2003/86 Family Reunification Art. 10(2)
ref. from Fővárosi Közigazgatási és Munkaügyi Bíróság, Hungary, 7 Aug. 2018
* *Art. 10(2) must be interpreted as not precluding a MS State from authorising the family reunion of a refugee's sister only if she is, on account of her state of health, unable to provide for her own needs, provided that:*
*(1) that inability is assessed having regard to the special situation of refugees and at the end of a case-by-case examination taking into account all the relevant factors, and*
*(2) that it may be ascertained, having regard to the special situation of refugees and at the end of a case-by-case examination taking into account all the relevant factors, that the material support of the person concerned is actually provided by the refugee, or that the refugee appears as the family member most able to provide the material support required.*

☞ CJEU 17 July 2014, C-469/13 ***Tahir*** EU:C:2014:2094
* interpr. of Dir. 2003/109 Long-Term Residents Art. 7(1)+13
ref. from Tribunale di Verona, Italy, 30 Aug. 2013
* *Family members of a person who has already acquired LTR status may not be exempted from the condition laid down in Article 4(1), under which, in order to obtain that status, a TCN must have resided legally and continuously in the MS concerned for five years immediately prior to the submission of the relevant application. Art. 13 of the LTR Directive does not allow a MS to issue family members, as defined in Article 2(e) of that directive, with LTR' EU residence permits on terms more favourable than those laid down by that directive.*

☞ CJEU 5 Nov. 2014, C-311/13 ***Tümer*** EU:C:2014:2337
AG 12 June 2014 EU:C:2014:1997
* interpr. of Dir. 2003/109 Long-Term Residents
ref. from Centrale Raad van Beroep, NL, 7 June 2013
* *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 3 Sep. 2020, C-503/19 ***U.Q.*** EU:C:2020:454

* interpr. of Dir. 2003/109 Long-Term Residents Art. 4+6(1)

ref. from Juzgado de lo Contencioso-Administrativo de Barcelona, Spain, 2 July 2019

* joined cases: C-503/19 + C-592/19

* *Art. 6(1) of LTR Directive must be interpreted as precluding the legislation of a MS as it is interpreted by some of the courts of that State, which provides that a TCN may be refused long-term resident status for the sole reason that he or she has previous criminal convictions, without a specific assessment of his or her situation, in particular, the nature of the offence committed by that national, the threat he or she may pose to public policy or public security, the length of his or her residence on the territory of that MS and the links he or she has with that State.*

☞ CJEU 11 June 2020, C-448/19 ***W.T.*** EU:C:2020:467

* interpr. of Dir. 2003/109 Long-Term Residents Art. 12

ref. from Tribunal Superior de Justicia de Castilla-La Mancha, Spain, 12 June 2019

* *Art. 12 of Dir. 2003/109 must be interpreted as precluding legislation of a MS which, as interpreted by national case-law with reference to Council Directive 2001/40, provides for the expulsion of any third-country national who holds a long-term residence permit who has committed a criminal offence punishable by a custodial sentence of at least one year, without it being necessary to examine whether the third country national represents a genuine and sufficiently serious threat to public order or public security or to take into account the duration of residence in the territory of that Member State, the age of the person concerned, the consequences of expulsion for the person concerned and family members and the links with the country of residence or the absence of links with the country of origin.*

☞ CJEU 27 Oct. 2016, C-465/14 ***Wieland & Rothwangl*** EU:C:2016:820

AG 4 Feb. 2016 EU:C:2016:77

* interpr. of Reg. 859/2003 Social Security TCN I Art. 1

ref. from Centrale Raad van Beroep, NL, 9 Oct. 2014

* *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 3 Oct. 2019, C-302/18 ***X.*** EU:C:2019:830

AG 6 June 2019 EU:C:2019:469

* interpr. of Dir. 2003/109 Long-Term Residents Art. 5(1)(a)

ref. from Raad voor Vreemdelingenbetwistingen, Belgium, 4 May 2018

* *Art. 5(1)(a) of LTR Dir. must be interpreted as meaning that the concept of 'resources' referred to in that provision does not concern solely the 'own resources' of the applicant for long-term resident status, but may also cover the resources made available to that applicant by a third party provided that, in the light of the individual circumstances of the applicant concerned, they are considered to be stable, regular and sufficient.*

☞ CJEU 20 Nov. 2019, C-706/18 ***X. / Belgium*** EU:C:2019:993

* interpr. of Dir. 2003/86 Family Reunification Art. 3(5)+5(4)

ref. from Raad voor Vreemdelingenbetwistingen, Belgium, 14 Nov. 2018

* *Dir. 2003/86 on family reunification must be interpreted as precluding national legislation under which, in the absence of a decision being adopted within six months of the date on which the application for family reunification was lodged, the competent national authorities must automatically issue a residence permit to the applicant, without necessarily having to establish in advance that the latter actually meets the requirements for residence in the host Member State in accordance with EU law.*

☞ CJEU (GC) 2 Sep. 2021, C-930/19 ***X. / Belgium*** EU:C:2021:657

AG 22 Mar. 2021 EU:C:2021:225

* interpr. of Dir. 2003/86 Family Reunification Art. 15(3)

ref. from Conseil du contentieux des étrangers, Belgium, 20 Dec. 2019

* *The preliminary question is whether Art. 13(2) infringe Articles 20 and 21 of the Charter, in that it provides that divorce, annulment of marriage or termination of a registered partnership does not entail loss of the right of residence of a Union citizen's family members who are not nationals of a MS. The CJEU concludes that this question has disclosed no factor of a kind such as to affect the validity of Art. 13(2) of Directive 2004/38.*

*(89) (...) notwithstanding the fact that point (c) of the first subparagraph of Art. 13(2) of Dir. 2004/38 and Art. 15(3) of Dir. 2003/86 share the objective of ensuring protection for family members who are victims of domestic violence, the regimes introduced by those directives relate to different fields, the principles, subject matters and objectives of which are also different. In addition, the beneficiaries of Dir. 2004/38 enjoy a different status and rights of a different kind to those upon which the beneficiaries of Dir. 2003/86 may rely, and the discretion which the MSs are recognised as having to apply the conditions laid down in those directives is not the same. It is, in particular, a choice made by the Belgian authorities in connection with the exercise of the broad discretion conferred on them by Art. 15(4) of Dir. 2003/86 which has led to the difference in treatment complained of by the applicant in the main proceedings.*

*(90) It must therefore be held that, as regards the retention of their right of residence on the territory of the MS concerned, third-country nationals who are spouses of Union citizens, have been the victims of acts of domestic violence committed by their spouses, and fall within the scope of Dir. 2004/38, on the one hand, and third-country nationals who are spouses of other third-country nationals, have been the victims of acts of domestic violence committed by their spouses, and fall within the scope of Directive 2003/86, on the other, are not in a comparable situation for the purposes of the possible application of the principle of equal treatment, observance of which is ensured by European Union law and, in particular, by Art. 20 of the Charter.*

☞ CJEU 18 Nov. 2010, C-247/09 ***Xhymshiti*** EU:C:2010:698
* interpr. of Reg. 859/2003 Social Security TCN I
ref. from Finanzgericht Baden-Württemberg, Germany, 7 July 2009
* *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 14 Mar. 2019, C-557/17 ***Y.Z. a.o.*** EU:C:2019:203
AG 4 Oct. 2018 EU:C:2018:820
* interpr. of Dir. 2003/86 Family Reunification Art. 16(2)(a)
ref. from Raad van State, NL, 22 Sep. 2017
* *Art. 16(2)(a) of Dir. 2003/86 (on Family Reunification) must be interpreted as meaning that, where falsified documents were produced for the issuing of residence permits to family members of a third-country national, the fact that those family members did not know of the fraudulent nature of those documents does not preclude the Member State concerned, in application of that provision, from withdrawing those permits. In accordance with Article 17 of that directive, it is however for the competent national authorities to carry out, beforehand, a case-by-case assessment of the situation of those family members, by making a balanced and reasonable assessment of all the interests in play.*

☞ CJEU 14 Mar. 2019, C-557/17 ***Y.Z. a.o.*** EU:C:2019:203
AG 4 Oct. 2018 EU:C:2018:820
* interpr. of Dir. 2003/109 Long-Term Residents Art. 9(1)(a)
ref. from Raad van State, NL, 22 Sep. 2017
* *Art. 9(1)(a) of Dir. 2003/109 (on Long-Term Residents) must be interpreted as meaning that, where long-term resident status has been granted to third-country nationals on the basis of falsified documents, the fact that those nationals did not know of the fraudulent nature of those documents does not preclude the Member State concerned, in application of that provision, from withdrawing that status.*

☞ CJEU 8 May 2013, C-87/12 ***Ymeraga*** EU:C:2013:291
* interpr. of Dir. 2003/86 Family Reunification Art. 3(3)
ref. from Cour Administrative, Luxembourg, 20 Feb. 2012
* *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: CJEU 15 Nov. 2011, C-256/11 Dereci, par. 58 in our other newsletter NEFIS).*

☞ CJEU 20 Jan. 2022, C-432/20 ***Z.K. / L.Hptmn (AT)*** EU:C:2022:39
AG 21 Oct. 2021 EU:C:2021:866
* interpr. of Dir. 2003/109 Long-Term Residents Art. 9(1)(c)
* *Art. 9(1)(c) LTR must be interpreted as meaning that any physical presence of a long-term resident in the territory of the EU during a period of 12 consecutive months, even if such a presence does not exceed, during that period, a total duration of only a few days, is sufficient to prevent the loss, by that resident, of his or her right to long-term resident status under that provision.*

*New* ☞ CJEU 17 Nov. 2022, C-230/21 ***X. / Belgium*** EU:C:2022:887
AG 16 June 2022 EU:C:2022:477
* interpr. of Dir. 2003/86 Family Reunification Art. 10(3)(a)+2(f)
ref. from Raad voor Vreemdelingenbetwistingen, Belgium, 6 Apr. 2021
* *The CJEU was asked whether being married prevents a refugee minor from being regarded as an 'unaccompanied minor' and from enjoying the right to family reunification with her ascendant relative under the provisions of the Family Reunification Directive? The question was raised by the Belgian Council for asylum and immigration proceedings (Raad voor Vreemdelingenbetwistingen).*
*The CJEU states explicitly that the Best Interests of the Child are enshrined in the Charter: 'Art. 7 of the Charter recognises the right to respect for private or family life. That provision of the Charter must, next, be read in conjunction with the obligation to take account of the child's best interests, enshrined in Art. 24(2) of the Charter, that provision also applying to decisions which are not necessarily addressed to that minor but have significant consequences for him or her'. Subsequently, the CJEU rules that Art. 10(3) FR Dir. must be interpreted as meaning that an unaccompanied refugee minor residing in a MS does not have to be unmarried in order to acquire the status of sponsor for the purposes of family reunification with his or her first-degree relatives in the direct ascending line.*

### 1.3.2 CJEU pending cases on Regular Migration

☞ CJEU C-355/20 ***B.L. & B.C.***
* interpr. of Dir. 2003/86 Family Reunification Art. 10(3)+16(1)(a)
* *On the reunification with a minor refugee.*

☞ CJEU C-560/20 ***C.R. / L.Hptmn (AT)***
* interpr. of Dir. 2003/86 Family Reunification Art. 10(3)+7(1)
ref. from Verwaltungsgericht Wien, Austria, 26 Oct. 2020
* *On family reunification of refugees with their family members and medical care*

☞ CJEU C-129/22 ***E.F.***
* interpr. of Dir. 2003/109 Long-Term Residents Art. 14
* *Can a third-country national who has been granted long-term resident status under by a first MS (i.e., Italy) require the second MS (i.e., Germany) to renew a residence permit issued to him or her in implementation of Art. 14 without providing evidence of the continuing existence of long-term resident status?*

*New*

☞ CJEU C-420/22 ***N.W.***
* interpr. of Dir. 2003/109 Long-Term Residents Art. 10(1)
ref. from Szegedi Törvényszék, Hungary, 8 Aug. 2022
* *The Hungarian High Court would like to know whether Art. 10(1) LTR Dir must be interpreted as as meaning that the authority of a MS which, on grounds of national security or public policy or public security, has adopted a decision ordering the withdrawal of a long-term residence permit which had previously been issued, and the specialised authority which has determined that the matter is confidential, must ensure there is a guarantee that in all circumstances the person concerned, who is a third-country national, and his or her legal representative, are entitled to know at least the essence of the confidential or classified information and data underpinning the decision which is based on those grounds and to use that information or those data in the proceedings concerning the decision, where the responsible authority considers that such disclosure would be contrary to the interests of national security?*

☞ CJEU C-112/22 ***C.U. & N.D.***
* interpr. of Dir. 2003/109 Long-Term Residents Art. 11(1)(d)
ref. from Tribunale di Napoli, Italy, 17 Feb. 2022
* joined cases: C-112/22 + C-223/22
* *On the issue of equal treatment in the context of social assistance only after long residence.*

☞ CJEU C-829/21 ***T.E.***
* interpr. of Dir. 2003/109 Long-Term Residents Art. 14+15
* *Is Paragraph 38a(1) of the German Aufenthaltsgesetz, which, under national law, must be interpreted as meaning that an onward-migrating long-term resident must also have long-term resident status in the first MS at the time of renewal of his or her residence permit, consistent with the provisions of Art. 14 et seq. of LTR, which merely provide that a long-term resident has the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the other conditions set out in Chapter III of the directive are met?*

## 1.3.3 ECtHR Judgments on Regular Migration and Family Life (Art. 8, 12, 14)

☞ ECtHR 20 Sep. 2011, 8000/08 ***A.A. v UK*** CE:ECHR:2011:0920JUD000800008
* 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 UK.*

☞ ECtHR 14 Sep. 2021, 41643/19 ***Abdi v DK*** CE:ECHR:2021:0914JUD004164319
* violation of ECHR: Art. 8
* Referral to the Grand Chamber is pending
* *The applicant, Mohamed Hassan Abdi, is a Somali national who was born in 1993 and lives in Ringe in Denmark. The Danish authorities decided in 2018 to expel the applicant, with a permanent ban on his re-entry to the country, following his conviction for possession of a firearm. The Danish Courts ruled that this was a proportionate measure to prevent disorder and crime. The question before the ECtHR was whether this was correct.*
*The ECtHR, however, notes that prior to the case at hand, apart from the crimes committed as a minor, the offences committed mainly concerned traffic offences and violations of the legislation on controlled substances, none of which indicated that in general the applicant posed a threat to public order. The Court also observes that the applicant had not previously been warned of expulsion or had a conditional expulsion order imposed. Seen in the light that the applicant arrived in Denmark at a very young age (4) and had lawfully resided there for approximately twenty years, he thus had very strong ties with Denmark, whereas his ties with Somalia were virtually non-existing.*
*The ECtHR is therefore of the view that the expulsion of the applicant combined with a life-long ban on returning was disproportionate.*

☞ ECtHR 14 May 2019, 23270/16 ***Abokar v SE*** CE:ECHR:2019:0514JUD002327016
* no violation of ECHR: Art. 8
* *The applicant is a Somali national who was born in 1986. He was granted refugee status and a residence permit in Italy in 2013. Also in 2013, he is married in Sweden to A who holds a permanent resident status in Sweden. The couple has two children. The applicant applies under a different name also for asylum in Sweden. That request, however, is denied and Sweden sends him back to Italy.*
*Subsequently, the applicant applies for a regular residence permit based on family reunification in Sweden. Due to using false IDs the Swedish authorities conclude that the applicant could not make his identity probable. Also, the applicant could not prove that they had been living together prior to his moving to Sweden. As a result his application was denied.*
*The Court finds that the Swedish authorities have not failed to strike a fair balance between the applicant's interests, on the one hand, and the State's interest in effective implementation of immigration control, on the other. The Court further notes that since both the applicant and his wife have been granted residence permits in member States of the European Union (Italy and Sweden), the family can easily travel between Italy and Sweden and stay for longer periods in either of those countries.*

☞ ECtHR 12 Jan. 2017, 31183/13 ***Abuhmaid v UA*** CE:ECHR:2017:0112JUD003118313
* 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 29 June 2017, 33809/15 ***Alam v DK*** CE:ECHR:2017:0629JUD003380915
* no violation of ECHR: Art. 8
* *The applicant is a Pakistani national who entered DK in 1984 when she was 2 years old. She has two children. In 2013 she is convicted of murder, aggravated robbery and arson to life imprisonment. She was also expelled from DK with a life-long entry ban. The Court states that it has no reason to call into question the conclusions reached by the domestic courts on the basis of the balancing exercise which they carried out. Those conclusions were neither arbitrary nor manifestly unreasonable. The Court is thus satisfied that the interference with the applicant's private and family life was supported by relevant and sufficient reasons and that her expulsion would not be disproportionate given all the circumstances of the case.*

☞ ECtHR 16 Dec. 2021, 43084/19 ***Alami v FR*** CE:ECHR:2021:1216JUD004308419
* no violation of ECHR: Art. 8
* inadmissable
* *The case concerned a Moroccan applicant who is subject to a deportation order from France. He had submitted that his removal would interfere excessively with his right to respect for his private and family life; he emphasised, in particular, his ties with his children, who are resident in France.*
*The Court noted firstly that the domestic courts before which the applicant had lodged an appeal to have the deportation order annulled had specifically reviewed the proportionality of the infringement of the applicant's right to respect for his private and family life. It further noted that, in the balancing exercise carried out by them, these courts had taken into consideration both the arguments presented by the applicant and the seriousness of his criminal convictions.*
*After noting that the applicant's children were adults and that he did not allege an absence of social and cultural ties with his country of origin, in which he had lived until the age of 24, the Court concluded that, having regard to the considerable discretion ("wide margin of appreciation") enjoyed by the domestic courts and to the fair balance struck by them between the various interests at stake, there were no serious grounds for departing from the conclusions reached by these courts, to the effect that enforcement of the applicant's deportation to Morocco would not interfere disproportionately with his right to respect for his private and family life, as guaranteed by Article 8 of the Convention.*
*The ECtHR declared unanimously the application inadmissable.*

☞ ECtHR 10 June 2021, 78228/14 ***Aliyev v UA*** CE:ECHR:2021:0610JUD007822814
* violation of ECHR: Art. 8
* *The applicant has Azerbaijani nationality while his mother had the Ukranian nationality. They live in Ukraine. The Ukrainian authorities found that she had failed to renounce the citizenship of Azerbaijan within the time-limit set in the Citizenship Act. As a consequence, they revoked the Ukrainian nationality of the mother, and the residence permit of the son. Subsequently, his expulsion was ordered with a five-year re-entry ban.*
*The ECtHR concludes unanimously that, even without going into considerations concerning the disagreement between the domestic courts as to whether the revocation of the mother's citizenship could serve as legal basis for the revocation of the applicant's residence permit, the ECtHR is not convinced that the domestic authorities' decision to treat the applicant's presence in Ukraine as irregular was based on a foreseeable interpretation of domestic law. Moreover, the domestic authorities and courts did not engage in any examination of the necessity of those measures against the applicant and simply disregarded the applicant's arguments in that respect.*

☞ ECtHR 14 Feb. 2012, 26940/10 ***Antwi v NO*** CE:ECHR:2012:0214JUD002694010
* 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 23 Oct. 2018, 25593/14 ***Assem Hassan v DK*** CE:ECHR:2018:1023JUD002559314
* no violation of ECHR: Art. 8
* *The case concerned the expulsion from Denmark of a Jordanian national, who has six children of Danish nationality. He was deported in 2014 following several convictions for drugs offences.*
*The Court was not convinced that the best interests of the applicant's six children had been so adversely affected by his deportation that they should outweigh the other criteria to be taken into account, such as the prevention of disorder or crime.*

☞ ECtHR 30 Nov. 2021, 40240/19 ***Avci v DK*** CE:ECHR:2021:1130JUD004024019
* no violation of ECHR: Art. 8
* *The applicant was born in Denmark in 1993. In 2013 and 2018 he was he was convicted of serious drug offences. He was not married and did not have any children. He did have, however, family in Turkey where he had been on holiday several times. A Danish Court convicts him of 4 years imprisonment. In appeal, he is also expelled from Denmark with a permanent re-entry ban.*
*The ECtHR concludes (4 - 3 votes) that the interference with the applicant's private life was supported by relevant and sufficient reasons. Subsequently, the ECtHR concludes that he balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law.*

☞ ECtHR (GC) 24 May 2016, 38590/10 ***Biao v DK*** CE:ECHR:2016:0524JUD003859010
* 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 6 Oct. 2020, 59066/16 ***Bou Hassoun v BG*** CE:ECHR:2020:1006JUD005906616
* violation of ECHR: Art. 8
* *The applicant did not enjoy the minimum degree of protection against arbitrariness inherent in the concept of lawfulness under the Convention. This means that the interference with his right to respect for family and private life was not "in accordance with the law", as required by Art. 8(2).*
*Similar cases all against Bulgaria: ECtHR 24 Apr. 2008, 1365/07, C.G.; ECtHR 2 Sep. 2010, 1537/08, Kaushal; ECtHR 11 Feb 2010, 31465/08, Raza; ECtHR 1 jun. 2017, 55950/09, Grabchak; ECtHR 1 Jun. 2017, 45158/09, Kurilovich; ECtHR 1 Jun. 2017, 41887/09, Gapaev.*

☞ ECtHR 2 Aug. 2001, 54273/00 ***Boultif v CH*** CE:ECHR:2001:0802JUD005427300
* 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 4 Dec. 2012, 47017/09 ***Butt v NO*** CE:ECHR:2012:1204JUD004701709
* violation of ECHR: Art. 8
* *At the age of 3 and 4, the Butt children enter Norway with their mother from Pakistan in 1989. They receive a residence permit on humanitarian grounds. After a couple of years the mother returns with the children to Pakistan without knowledge of the Norwegian authorities. After a couple years the mother travels - again - back to Norway to continue living there. The children are 10 an 11 years old. When the father of the children wants to live also in Norway, a new investigation shows that the family has lived both in Norway and in Pakistan and their residence permit is withdrawn. However, the expulsion of the children is not carried out. Years later, their deportation is discussed again. The mother has already died and the adult children still do not have any contact with their father in Pakistan. Their ties with Pakistan are so weak and reversely with Norway so strong that their expulsion would entail a violation of art. 8.*

☞ ECtHR 13 Dec. 2012, 22689/07 ***De Souza Ribeiro v UK*** CE:ECHR:2012:1213JUD002268907
* 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 8 Apr. 2014, 17120/09 ***Dhahbi v IT*** CE:ECHR:2014:0408JUD001712009
* 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 8 Nov. 2016, 56971/10 ***El Ghatet v CH*** CE:ECHR:2016:1108JUD005697110
* 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 10 Jan. 2012, 22251/07 ***G.R. v NL*** CE:ECHR:2012:0110JUD002225107
* 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 12 June 2018, 23038/15 ***Gaspar v RU*** CE:ECHR:2018:0612JUD002303815
* interpr. of ECHR: Art. 8
* *Request for referral to the Grand Chamber pending. In this case a residence permit of a Czech national married to a Russian national was withdrawn based on a no further motivated report implicating that the applicant was considered a danger to national security.*

☞ ECtHR 11 June 2013, 52166/09 ***Hasanbasic v CH*** CE:ECHR:2013:0611JUD005216609
* 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 13 Jan. 2022, 1480/16 ***Hashemi et al. v AZ*** CE:ECHR:2022:0113JUD000148016
* violation of ECHR: Art. 8
* joined cases: 1480/16, 3936/16, 15835/16, 28034/16, 34491/16, 51348/16, 15904/17
* *The applicants are eight Afghan and Pakistani nationals. They fled Afghanistan and Pakistan during the 2000s and settled in Azerbaijan, where they registered with the UNHCR, which issued them with a letter of protection.*
*The applicants in this case complain about the national authorities' refusal to issue identity cards to their children, who were born in Azerbaijan, and to acknowledge them as Azerbaijani citizens. Before the national courts, the applicants argued that, in application of the principle of ius soli, as enshrined in the Azerbaijani legislation in force prior to 30 May 2014, their children, who had been born before that date, were Azerbaijani citizens. They alleged that the domestic authorities' refusal to issue them with identity papers was illegal. On various dates the applicants' requests were all rejected by the domestic courts, which held that their children could not be considered to be Azerbaijani citizens, given that their parents held another nationality, namely that of Afghanistan or Pakistan.*
*The ECtHR declares unanimously a violation of art. 8.*

☞ ECtHR 6 Nov. 2012, 22341/09 ***Hode and Abdi v UK*** CE:ECHR:2012:1106JUD002234109
* violation of ECHR: Art. 8+14
* *Discrimination on the basis of date of marriage has no objective and reasonable justification.*

☞ ECtHR 26 Apr. 2018, 63311/14 ***Hoti v HR*** CE:ECHR:2018:0426JUD006331114
* violation of ECHR: Art. 8
* *The applicant is a stateless person who came to Croatia at the age of seventeen and has lived and worked there for almost forty years. The applicant has filed several requests for Croatian nationality and permanent residence status; these, however, were all denied. The Court does consider that, in the particular circumstances of the applicant's case, the respondent State has not complied with its positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of his further stay and status in Croatia determined with due regard to his private-life interests.*

☞ ECtHR 9 Apr. 2019, 23887/16 ***I.M. v CH*** CE:ECHR:2019:0409JUD002388716
* violation of ECHR: Art. 8
* *The applicant is a Kosovar national who was born in 1964 and has lived in Switzerland since 1993. In 2003 he committed a rape; he was sentenced to two years and three months' imprisonment. Once that conviction had become final, the authorities decided to expel him. The applicant's health worsened over the years: since 2012 his disability rate had stood at 80%. In 2015 his final appeal against the expulsion order was dismissed: the Federal Administrative Court held that the authorities had to be afforded a wide margin of discretion under the subsidiarity principle. Consequently, the applicant lost his disability allowance and was now dependent on his children.*
*The ECtHR ruled that the Swiss authorities had only examined the proportionality of the expulsion order superficially, briefly considered the risk of reoffending and mentioned the difficulties which the applicant would have faced on his return to Kosovo. Other aspects had been either overlooked or considered very superficially even though they had been relevant criteria under the Court's case-law, including the solidity of the applicant's social, cultural and family links with the host country and the country of destination, medical evidence, the applicant's situation of dependence on his adult children, the change in the applicant's behaviour twelve years after the commission of the offence, and the impact of his seriously worsening state of health on the risk of his reoffending.*

☞ ECtHR 15 May 2018, 32248/12 ***Ibrogimov v RU*** CE:ECHR:2018:0515JUD003224812
* violation of ECHR: Art. 8+14
* *The applicant was born in Uzbekistan. After the death of this grandfather he wanted to move to his family (father, mother, brother and sister) who already lived in Russia and held Russian nationality. After a mandatory blood test he was found HIV-positive and therefor declared 'undesirable'. The exclusion order was upheld by a District court and in appeal. The EcthR held unanimously that the applicant has been a victim of discrimination on account of his health.*

☞ ECtHR 3 Oct. 2014, 12738/10 ***Jeunesse v NL*** CE:ECHR:2014:1003JUD001273810
* 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 3 Mar. 2022, 27801/19 ***Johansen v DK*** CE:ECHR:2022:0303JUD002780119
* violation of ECHR: Art. 8
* inadmissable
* *The case concerned the stripping of the applicant's Danish nationality following his conviction in 2017 for terrorism offences, in particular for having gone to Syria to join the "Islamic State". The authorities also ordered his deportation from Denmark with a permanent ban on his return.*
*A Danish district court sentenced him to four years' imprisonment, but found no basis for depriving him of his Danish nationality or for expulsion. This judgment was upheld by the High Court in April 2018. However, the Supreme Court overturned the lower courts' decisions in November 2018.*
*The ECtHR found in particular that the decisions concerning the applicant, who has dual Danish and Tunisian nationality, had been made after a thorough, diligent and swift assessment of his case, bearing in mind the gravity of his offences, his arguments and personal circumstances, the Court's case-law and Denmark's international obligations. It emphasised that it was legitimate for Contracting States to take a firm stand against terrorism, which in itself constituted a grave threat to human rights.*

☞ ECtHR 7 July 2020, 62130/15 ***K.A. v CH*** CE:ECHR:2020:0707JUD006213015
* no violation of ECHR: Art. 8
* *The applicant national of Kosovo who did not reside legally in Switzerland, married in 1999 a Bangladeshi woman with a residence permit in Switzerland. As a result K.A. received a residence permit on the basis of family life. The couple had a son in 2002 which was in foster care since 2010. In 2010 the applicant was convicted of a drug-related offence to 26 months imprisonment of which 20 were suspended. Until 2012 another 18 sentences were ordered. As a result his residence permit was not renewed in 2012 and he was ordered to leave the country. In 2015 his appeals were dismissed and he was refused entry for a period of seven years.*
*The ECtHR ruled that, although both his wife and son were ill, he did not participate in their care on a daily basis, and he had lived with his wife only intermittently, the Swiss authorities had carried out an adequate and convincing analysis of the relevant facts and considerations, and a thorough weighing up of the competing interests involved. Thus, the contested measures of expulsion and an entry ban of seven years, were considered proportionate.*

☞ ECtHR 12 Jan. 2021, 26957/19 ***Kahn v DK*** CE:ECHR:2021:0112JUD002695719
* no violation of ECHR: Art. 8
* *Similar to ECtHR 12 Jan 2021, 56803/18, Munir v. DK.*
*The applicant is a Pakistani national who was born in Denmark in 1986. He has a criminal record and was once subject to a conditional expulsion order. By a final Supreme Court judgment of 20 November 2018, the applicant was convicted, inter alia, of threatening a police inspector on duty. He was sentenced to 3 months' imprisonment and an order for expulsion with a ban on re-entry for 6 years was imposed on him. In total the applicant has been imprisoned for almost ten years.*
*The ECtHR concludes that the interference with the applicant's private life was supported by relevant and sufficient reasons. It is satisfied that "very serious reasons" were adequately adduced by the Supreme Court when assessing the applicant's case, and that his expulsion was not disproportionate in the light of all the circumstances of the case. It notes that the Supreme Court, explicitly and thoroughly assessed whether the expulsion order could be deemed to be contrary to Denmark's international obligations. The ECtHR points out in that regard that, in accordance with the principle of subsidiarity, although opinions may differ on the outcome of a judgment, "where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts".*

☞ ECtHR 24 July 2014, 32504/11 ***Kaplan a.o. v NO*** CE:ECHR:2014:0724JUD003250411
* 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 (GC) 21 Sep. 2016, 38030/12 ***Khan v DE*** CE:ECHR:2016:0921JUD003803012
* 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.*

☞ ECtHR 25 Nov. 2021, 21643/19 ***Kikoso v FR*** CE:ECHR:2021:1125JUD002164319
* no violation of ECHR: Art. 8
* Inadmissible
* *The case concerns an return decision and an entry ban for a period of ten years, in addition to a six-month prison sentence imposed for possession and use of forged administrative documents. The ECtHR rules that the national authorities were entitled to, on the basis of the complainant's conduct and the seriousness and (risk of) repetition of the offenses in question, holding that the measures were necessary to prevent disorder or crime. The measure is proportionate to the objectives pursued and does not constitute an excessive interference with the right of the complainant on respect for his private and family life, despite the fact that he has been living in France for 20 years.*

☞ ECtHR 25 Apr. 2017, 41697/12 ***Krasniqi v AT*** CE:ECHR:2017:0425JUD004169712
* 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 23 Oct. 2018, 7841/14 ***Levakovic v DK*** CE:ECHR:2018:1023JUD000784114
* no violation of ECHR: Art. 8
* *This case concerns a decision to expel the applicant to Croatia, with which he had no ties apart from nationality, after he was tried and convicted for crimes committed in Denmark, where he had lived most of his life. The Court found that the domestic courts had made a thorough assessment of his personal circumstances, balancing the competing interests and taking Strasbourg case-law into account. The domestic courts had been aware that very strong reasons were necessary to justify the expulsion of a migrant who has been settled for a long time, but had found that his crimes were serious enough to warrant such a measure.*

☞ ECtHR (GC) 9 July 2021, 6697/18 ***M.A. v DK*** CE:ECHR:2021:0709JUD000669718
* violation of ECHR: Art. 8

* *The applicant is a Syrian national who fled the country in 2015 and entered Denmark where he was granted "temporary protection status" for one year under the Aliens Act. The Danish Immigration Service did not find that he had fulfilled the requirements for being granted special "Convention status" or "protection status", for which residence permits were normally granted for five years. After five months of residing in Denmark, the applicant requested family reunification with his wife and two adult children. His request was rejected because he had not been in possession of a residence permit for the last three years, as required in law, and because there were no exceptional reasons to otherwise justify family reunification. The applicant unsuccessfully appealed against the refusal to grant him family reunification with his wife up to the Supreme Court, which handed down its decision in 2016. In 2018, having resided in Denmark for just over two years and ten months, the applicant submitted a new request for family reunification. After submitting the correct documentation, the applicant's wife was granted a permit and entered the country.*
*The Court considered that MSs should be accorded a wide margin of appreciation in deciding whether to impose a waiting period for family reunification requested by persons who had not been granted refugee status but who enjoyed subsidiary protection or, like the applicant, temporary protection.*
*Nevertheless, the discretion enjoyed by the States in this field could not be unlimited and fell to be examined in the light of the proportionality of the measure. While the Court saw no reason to question the rationale of a waiting period of two years as that underlying Art. 8 of the Family Reunification Directive, beyond such duration the insurmountable obstacles to enjoying family life in the country of origin progressively assumed more importance in the fair balance assessment. Although Art. 8 could not be considered to impose on a State a general obligation to authorise family reunification on its territory, the requirements of the Convention had to be practical and effective, not theoretical and illusory in their application to the particular case.*
*Violation: sixteen votes to one.*

☞ ECtHR 8 Dec. 2020, 59006/18 ***M.M. v CH*** CE:ECHR:2020:1208JUD005900618
* no violation of ECHR: Art. 8

* *The applicant, a Spanish national who was born in Switzerland in 1980 was deported from Switzerland to Spain and banned for five years, the minimum term under the Criminal Code, following his conviction and suspended twelve-month prison sentence for committing indecent assault on a minor and taking drugs. The ECtHR rules that the Swiss Courts had sound reasons justifying deportation.*

*New* ☞ ECtHR 20 Oct. 2022, 22105/18 ***M.T. a.o. v SE*** CE:ECHR:2022:1020JUD002210518
* no violation of ECHR: Art. 8+14

* *This case concerned the suspension of family reunification in Sweden between July 2016 and July 2019 for those, such as the second applicant, who had been given temporary-protection status. The Court found in particular that Sweden had correctly balanced the needs of society and the applicants when denying them family reunification temporarily. It furthermore held that the difference in treatment of the applicants vis-à-vis refugees had been objectively justified, in particular given the strain on the State from the large number of refugees who had already been taken in, and had not been disproportionate.*
*The ECtHR held, by six votes to one, that there had been no violation of Art. 8 nor Art. 14.*

☞ ECtHR 22 Mar. 2007, 1638/03 ***Maslov v AT*** CE:ECHR:2007:0322JUD000163803
* violation of ECHR: Art. 8

* *In addition to the criteria set out in Boultif (54273/00) and Üner (46410/99) 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 21 Oct. 2021, 42011/19 ***Melouli v FR*** CE:ECHR:2021:1021JUD004201119
* no violation of ECHR: Art. 8

* *The complainant is an Algerian citizen. His application for a residence permit is rejected by the French authorities. The ECtHR notes that the French judges have tested for proportionality. In addition, the Court finds that the complainant has not indicated why he has not requested an extension of his residence permit. He has not demonstrated a dependency relationship with his relatives living in France. The complaint is manifestly unfounded and therefore inadmissible.*

☞ ECtHR 12 Oct. 2006, 13178/03 ***Mubilanzila Mayeka v BE*** CE:ECHR:2006:1012JUD001317803
* no violation of ECHR: Art. 5+8+13

* *Mrs Mayeka, a Congolese national, arrived in Canada in September 2000, where she was granted refugee status in July 2001 and obtained indefinite leave to remain in March 2003. After being granted asylum, she asked her brother, a Dutch national living in the Netherlands, to collect her daughter Tabitha, who was then five years old, from the Democratic Republic of the Congo at the airport of Brussels and to look after her until she was able to join her mother in Canada. Shortly after arriving at Brussels airport on 18 August 2002, Tabitha was detained because she did not have the necessary documents to enter Belgium. An application for asylum that had been lodged on behalf of Tabitha was declared inadmissible by the Belgian Aliens Office. A request to place Tabitha in the care of foster parents was not answered. Although the Brussels Court of First instance held on 16 October 2002 that Tabitha's detention was unjust and ordered her immediate release, the Belgian authorities deported the five year old child to Congo on a plane.*
*The Court considered that owing to her very young age, the fact that she was an illegal alien in a foreign land, that she was unaccompanied by her family from whom she had become separated and that she had been left to her own devices, Tabitha was in an extremely vulnerable situation.*
*The Court ruled that the measures taken by the Belgian authorities were far from adequate and that Belgium had violated its positive obligations to take requisite measures and preventive action. Since there was no risk of Tabitha's seeking to evade the supervision of the Belgian authorities, her detention in a closed centre for adults served no purpose and other measures more conducive to the higher interest of the child guaranteed by Article 3 of the Convention on the Rights of the Child, could have been taken. Since Tabitha was an unaccompanied alien minor, Belgium was under an obligation to facilitate the reunion of the family. However, Belgium had failed to comply with these obligations and had disproportionately interfered with the applicants' rights to respect for their family life.*

☞ ECtHR 10 July 2014, 52701/09 ***Mugenzi v FR*** CE:ECHR:2014:0710JUD005270109
* 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 12 Jan. 2021, 56803/18 ***Munir v DK*** CE:ECHR:2021:0112JUD005680318
* no violation of ECHR: Art. 8

* *Similar to ECtHR 12 Jan 2021, 56803/18, Kahn v. DK.*
*The applicant is an Iraqi national who entered Denmark in 1999 at the age of four.He was granted permanent residence. In 2011, he was convicted of two violent offences. In 2014 he was again convicted of a violent offence. In 2015 he was convicted of being in possession of cocaine and in 2016 he was convicted of particularly aggressive and violent offences while in prison. He was sentenced to six months of imprisonment with an expulsion order for six years. He had not finished secondary school nor completed an apprenticeship as a mechanic.*
*The ECtHR concludes that the interference with the applicant's private life was supported by relevant and sufficient reasons. It is satisfied that "very serious reasons" were adequately adduced by the national authorities when assessing his case, and that his expulsion was not disproportionate given all the circumstances of the case. It notes that all levels of court, including the Supreme Court, explicitly and thoroughly assessed whether the expulsion order could be considered to be contrary to Denmark's international obligations. The Court points out in this connection that, in accordance with the principle of subsidiarity, although opinions may differ on the outcome of a judgment, "where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts"*

☞ ECtHR 14 Sep. 2017, 41215/14 ***Ndidi v UK*** CE:ECHR:2017:0914JUD004121514
* no violation of ECHR: Art. 8

* *This case concerns a Nigerian national's complaint about his deportation from the UK. Mr Ndidi, the applicant, arrived with his mother in the UK aged two. He had an escalating history of offending from the age of 12, with periods spent in institutions for young offenders. He was released in March 2011, aged 24, and served with a deportation order. All his appeals were unsuccessful. The Court pointed out in particular that there would have to be strong reasons for it to carry out a fresh assessment of this balancing exercise, especially where independent and impartial domestic courts had carefully examined the facts of the case, applying the relevant human rights standards consistently with the European Convention and its case-law.*

☞ ECtHR 6 July 2010, 41615/07 ***Neulinger v CH*** CE:ECHR:2010:0706JUD004161507
* 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 28 June 2011, 55597/09 ***Nunez v NO*** CE:ECHR:2011:0628JUD005559709
* violation of ECHR: Art. 8
* *Athough 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 14 Dec. 2010, 34848/07 ***O'Donoghue v UK*** CE:ECHR:2010:1214JUD003484807
* violation of ECHR: Art. 12+14
* *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 14 June 2011, 38058/09 ***Osman v DK*** CE:ECHR:2011:0614JUD003805809
* 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 27 Sep. 2022, 18339/19 ***Otite v UK*** CE:ECHR:2022:0927JUD001833919
* no violation of ECHR: Art. 8
* *This case concerned a Nigerian national being served in October 2015 with notice of his liability to deportation, despite having been granted Indefinite Leave to Remain in the UK in 2004. The notice came after his conviction in 2014 on two counts of conspiracy to make or supply articles for use in fraud which had resulted in a four-year-and-eight-month prison sentence. His appeal against deportation was dismissed as the Upper Tribunal concluded that the effect on his wife and children, all British citizens, would not be "unduly harsh". The ECtHR found (by five votes to two) in particular that the strength of the applicant's family and private life in the UK did not outweigh the public interest in his deportation.*

☞ ECtHR 28 July 2020, 25402/14 ***Pormes v NL*** CE:ECHR:2020:0728JUD002540214
* no violation of ECHR: Art. 8
* *The applicant was born in Indonesia and travelled at the age of 4 to the Netherlands where he was raised by, a Dutch family with 4 other children, close friends of his presumed Dutch father. Only at the age of 13 it became clear that the applicant might not have Dutch nationality and without a legal status in the Netherlands. Still being a minor, he was convicted of several indecent assaults, criminal offences. In that period he also applied for a temporary residence permit on the basis of family reunion with the Dutch family he grew up with. This applications was rejected. Although a District Court ruled in favour of the applicant the Council of State, the highest administrative judge, quashed that decision and upheld the original decision to refuse a residence permit.*
*The ECtHR declared, having regard in particular to the nature, seriousness and number of the offences committed by the applicant, including at a time when he knew that his residence status in the Netherlands was precarious, that the domestic authorities did not attribute excessive weight to the general interest in the prevention of disorder or crime and have not overstepped the margin of appreciation afforded to them in the circumstances of the present case.*

☞ ECtHR 21 June 2016, 76136/12 ***Ramadan v MT*** CE:ECHR:2016:0621JUD007613612
* 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 18 Dec. 2018, 76550/13 ***Saber a.o. v ES*** CE:ECHR:2018:1218JUD007655013
* violation of ECHR: Art. 8
* *The Moroccan applicants had been tried and sentenced to imprisonment. The subsequent expulsion, which automatically resulted in the cancellation of any right of residence, was upheld by an administrative court, and in appeal by the High Court. However, the ECtHR found that the national authorities had failed to examine the nature and seriousness of the criminal convictions in question, as well as all the other criteria established by the case-law of the Court, in order to assess the necessity of the expulsion and exclusion orders.*

☞ ECtHR 1 Dec. 2016, 77063/11 ***Salem v DK*** CE:ECHR:2016:1201JUD007706311
* 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 12 May 2020, 42321/15 ***Sudita v HU*** CE:ECHR:2020:0512JUD004232115
* violation of ECHR: Art. 8
* *The applicant, a stateless person of Somali and Nigerian descent, arrived in Hungary in 2002. His attempts to regularise his status were unsuccessful due to a domestic provision which required "lawful stay in the country" as a precondition for granting stateless status. In 2015, this provision was removed by the Constitutional Court of Hungary. Ultimately, the applicant was granted stateless status in October 2017. The ECtHR ruled that Hungary had not complied with its positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issue of his status in Hungary determined with due regard to his private-life interests under Article 8.*

☞ ECtHR 16 Apr. 2013, 12020/09 ***Udeh v CH*** CE:ECHR:2013:0416JUD001202009
* 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 18 Oct. 2006, 46410/99 ***Üner v NL*** CE:ECHR:2006:1018JUD004641099
* 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 24 Nov. 2020, 80343/17 ***Unuane v UK*** CE:ECHR:2020:1124JUD008034317
* violation of ECHR: Art. 8
* *The applicant, a Nigerian national, was deported after a conviction for offences relating to falsification of immigration documents. The applicant appealed unsuccessfully. His Nigerian partner was convicted of the same offence and, along with their three minor children, was initially subject to a deportation order as well. Unlike the applicant, their appeals were allowed, in light of the best interests of the children, and they remained in the United Kingdom. However, the seriousness of the particular offence(s) committed by the applicant were not of a nature or degree capable of outweighing the best interests of the children so as to justify his expulsion. The applicant's deportation had therefore been disproportionate to the legitimate aim pursued.*

☞ ECtHR 22 Dec. 2020, 43936/18 ***Usmanov v RU*** CE:ECHR:2020:1222JUD004393618
* violation of ECHR: Art. 8
* *The applicant, who was born in Tajikistan, settled in Russia with his wife and children and obtained Russian citizenship. Ten years later, after discovering that the applicant had omitted information about his siblings when applying for citizenship, the authorities annulled his citizenship and passports (an "internal" and "travel" passport), leaving him without identity documents. They also imposed an entry ban, preventing him from entering Russia, and administratively removed him from the territory. The applicant appealed unsuccessfully.*
*The ECtHR ruled that the annulment of citizenship for omitting information about siblings after a period of ten years was disproportionate and arbitrary.*

☞ ECtHR 8 Nov. 2016, 7994/14 ***Ustinova v RU*** CE:ECHR:2016:1108JUD000799414
* 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.*

☞ ECtHR 20 Nov. 2018, 42517/15 ***Yurdaer v DK*** CE:ECHR:2018:1120JUD004251715
* no violation of ECHR: Art. 8
* *Mr Yurdaer, a Turkish national, was born in Germany (1973) and moved to Denmark when he was 5 years old. He married in Denmark (1995) and got three children. These children are also Turkish nationals. The applicant was convicted twice of drug offences and sentenced to 8 years imprisonment. By then, he had stayed for almost 28 years lawfully in Denmark. Subsequently, the Danish immigration service advised for expulsion and ultimately the High Court upheld this expulsion order, which was implemented in 2017 and combined with a permanent ban on re-entry. The ECtHR recognised that the Danish Courts carefully balanced the competing interests and explicitly took into account the criteria set out in the Court's case-law, including the applicant's family situation. Thus, the Court found that the interference was supported by relevant and sufficient reasons, and was proportionate.*

☞ ECtHR 12 June 2018, 47781/10 ***Zezev v RU*** CE:ECHR:2018:0612JUD004778110
* violation of ECHR: Art. 8
* *In this case an application for Russian nationality of a Kazakh national married to a Russian national was rejected based on information from the Secret Sercice implicating that the applicant posed a treat to Russia's national security.*

### 1.3.4 CtRC views on Regular Migration and Best Interests of the Child (Art. 3)

☞ CtRC 27 Sep. 2018, CRC/C/79/D/12/2017 ***C.E. v BE***
* violation of CRC: Art. 3+10
* *C.E. is an in Morocco abandoned child, which was entrusted by the Marrakesh Court of First Instance under 'kafala' (care of abandoned children) to two Belgian-Moroccan married nationals. Kafala establishes a sort of guardianship but does not give the child any family rights. Thus, the Belgian authorities refused a visa on the basis of family reunification. Also a long-stay visa on humanitarian grounds was refused based on the argument that kafala does not count as adoption and that a visa on humanitarian grounds is no replacement of (an application for) adoption.*
*The Committee recalls that it is not its role to replace national authorities in the interpretation of national law and the assessment of facts and evidence, but to verify the absence of arbitrariness or denial of justice in the assessment of authorities, and to ensure that the best interests of the child have been a primary consideration in this assessment. Subsequently, the Committee notes that the term 'family' should be interpreted broadly including also adoptive or foster parents. In view of the fact that no consideration was given to the de facto family ties that existed in this case, and since it has been more than seven years since the authors submitted an application for a visa, the Committee concludes that the State party has failed to comply with its obligation to deal with the authors' request, which was equivalent to an application for family reunification, in a positive, humane and expeditious manner and that it has failed to ensure that the submission of the request entailed no adverse consequences for the applicants and for the members of their family, in violation of article 10 of the Convention.*

☞ CtRC 28 Sep. 2020, CRC/C/85/D/56/2018 ***V.A. v CH***
* violation of CRC: Art. 3
* *The author and her husband are journalists and owners of the Ilkxeber Info newspaper. In March 2017, they fled Azerbaijan with their sons E.A. and U.A., as the situation facing opposition journalists in Azerbaijan was becoming increasingly critical and the life of the author's husband was seriously in danger. The family applied for asylum in Kreuzlingen, Switzerland. In the absence of interpreters, their communication with officials was almost non-existent. Their requests to be allowed to cook for themselves, to be transferred to an apartment and to obtain medical treatment for the author's husband for a shoulder injury were not taken seriously. The "precarious and degrading" accommodation conditions and the linguistic isolation had repercussions on the mental and physical well-being of the family members. The author's husband became depressed. After 7 months the family reluctantly agreed to withdraw its asylum claim and to be voluntarily repatriated. Since the author's father-in-law had bribed the Azerbaijani police to ensure that his son was not incarcerated, they believed they would be safe and left Switzerland. However, the author's husband was arrested, and the author was beaten and threatened. The author and her two children returned to Switzerland using a smuggler which offered them Italian visa. Back in Switzerland to the Swiss authorities stated that the new asylum request had to be handled by Italy on the basis of Dublin III. Although a request was made to the Swiss authorities to take charge of her asylum request, this was denied. An effort to transfer the mother and children to Italy was aborted due to heavy panic attacks of the mother.*
*The Committee is of the view that the facts of which it has been apprised amount to a violation of articles 3 and 12 of the Convention. Consequently, the State party is under an obligation to reconsider the author's request to apply article 17 of the Dublin III Regulation in order to process E.A. and U.A.'s asylum application as a matter of urgency, ensuring that the best interests of the children are a primary consideration and that E.A. and U.A. are heard. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, the Committee recommends that the State party ensure that children are systematically heard in the context of asylum procedures and that national protocols applicable to the return of children are in line with the Convention.*

☞ CtRC 28 Sep. 2020, CRC/C/85/D/31/2017 ***W.M.C. v DK***

* violation of CRC: Art. 3

* *The author, who is unmarried, is from the Fujian Province of China. She escaped China after the Chinese authorities performed a forced abortion on her. Her father was killed in the incident during the scuffle with the police and her mother died later from the shock, owing to a heart condition. In March 2012, the author arrived in Denmark using a false passport. In October 2012, she was detained by the police for staying in Denmark without valid travel documents. In November 2012, she applied for asylum. On 7 March 2014, she gave birth to her first child, X.C. The father of the child, also an asylum seeker in Denmark, does not appear on the child's birth certificate. On 9 November 2015, her second child, L.G., was born, allegedly while the author was in administrative detention. The author contends that she initially sought asylum in Denmark on the grounds that she feared being forced to have an abortion if she were returned to China and got pregnant again. On 7 September 2015, X.C. and her mother were denied asylum by the Danish Immigration Service. She appealed to the Refugees Appeals Board, which upheld the the decision of the Danish Immigration Service.*
*The Committee takes note of a 2019 (US) report, according to which, although under both civil law and marriage law the children of single women are entitled to the same rights as those born to married parents, in practice children born to single mothers or unmarried couples are considered outside of the policy and are subject to the social compensation fee and the denial of legal documents, such as birth documents and the hukou. The Committee also takes note of a 2018 report of the UK Home Office, in which it is stated that many children born to single or unmarried parents had been denied a household registration document, preventing them from accessing public services, medical treatment and education. The Committee therefore concludes that the State party failed to duly consider the best interests of the child when assessing the alleged risk that the author's children would face of not being registered in the hukou if deported to China and to take proper safeguards to ensure the child's well-being upon return, in violation of Art. 3.*

# 2 Borders and Visas

## 2.1 Borders and Visas: Adopted Measures

*case law sorted in chronological order*

**Regulation 2021/1133** — **Access to VISA and EURODAC**

*Amending Reg. access to Visa Information System*

* OJ 2021 L 248/1
* Amending reg. 603/2013, 2016/794, 2019/816, 2019/818

**Regulation 2016/1624** — **Border and Coast Guard Agency**

*Creating a Borders and Coast Guard Agency*

* OJ 2016 L 251/1
* This Regulation repeals: Reg. 2007/2004 and Reg. 1168/2011 (Frontex I) and Reg. 863/2007 (Rapid Interventions Teams). This Regulation is replaced by Reg. 2019/1896 (Frontex II).

**Regulation 562/2006** — **Borders Code I**

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

* OJ 2006 L 105/1
* This Regulation is replaced by Reg. 2016/399 Borders Code II.

*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. 810/2009 (OJ 2009 L 243/1): Visa Code*
*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): On Fundamental Rights*
*amd by Reg. 1051/2013 (OJ 2013 L 295/1): On specific measures in case of serious deficiencies*

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 6 Oct. | 2021 | C-35/20 | ***A. / Syyttäjä (FI)*** | Art. 20+21(c) |
| ☞ | CJEU | 13 Dec. | 2018 | C-412/17 | ***Touring Tours a.o.*** | Art. 22+23 |
| ☞ | CJEU | 21 June | 2017 | C-9/16 | ***A.*** | Art. 20+21 |
| ☞ | CJEU | 4 May | 2017 | C-17/16 | ***El Dakkak*** | Art. 4(1) |
| ☞ | CJEU | 4 Sep. | 2014 | C-575/12 | ***Air Baltic*** | Art. 5 |
| ☞ | CJEU | 17 Jan. | 2013 | C-23/12 | ***Zakaria*** | Art. 13(3) |
| ☞ | CJEU (GC) | 5 Sep. | 2012 | C-355/10 | ***EP / Council (EP)*** | |
| ☞ | CJEU | 19 July | 2012 | C-278/12 (PPU) | ***Adil*** | Art. 20+21 |
| ☞ | CJEU | 14 June | 2012 | C-606/10 | ***ANAFE*** | Art. 13+5(4)(a) |
| ☞ | CJEU | 17 Nov. | 2011 | C-430/10 | ***Gaydarov*** | |
| ☞ | CJEU (GC) | 22 June | 2010 | C-188/10 | ***Melki & Abdeli*** | Art. 20+21 |
| ☞ | CJEU | 22 Oct. | 2009 | C-261/08 | ***Garcia & Cabrera*** | Art. 5+11+13 |

See further: § 2.3

**Regulation 2016/399** — **Borders Code II**

*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 Reg. 562/2006 Borders Code I

*amd by Reg. 458/2017 (OJ 2017 L 74): on the reinforcement of checks against relevant dBases and ext. borders*
*amd by Reg. 2225/2017 (OJ 2017 L 327/1): on the use of the EES*
*amd by Reg 817/2019 (OJ 2019 L 135/27)*

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU (GC) | 26 Apr. | 2022 | C-368/20 | ***N.W.*** | Art. 25+29 |
| ☞ | CJEU | 10 Mar. | 2021 | C-949/19 | ***M.A. / Konsul (PL)*** | Art. 21(2) |
| ☞ | CJEU | 4 Mar. | 2021 | C-193/19 | ***A. / Migrationsverket (SE)*** | Art. 25(1)+6(1)(a) |
| ☞ | CJEU | 4 June | 2020 | C-554/19 | ***F.U.*** | Art. 22+23 |
| ☞ | CJEU | 30 Apr. | 2020 | C-584/18 | ***Blue Air*** | Art. 13+2(j)+15 |
| ☞ | CJEU | 5 Feb. | 2020 | C-341/18 | ***J. a.o.*** | Art. 11 |
| ☞ | CJEU | 12 Dec. | 2019 | C-380/18 | ***E.P.*** | Art. 6(1)(e) |
| ☞ | CJEU (GC) | 19 Mar. | 2019 | C-444/17 | ***Arib*** | Art. 32 |

*CJEU pending cases*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | (pending) | | C-143/22 | ***ADDE*** | Art. 14 |

See further: § 2.3

**Decision 574/2007** — **Borders Fund I**

*Establishing European External Borders Fund*

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

**Regulation 515/2014** — **Borders Fund II**

*Internal Security Fund*

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

**Regulation 2021/1148** — **Borders Fund III**

*Funding programme for borders and visas (2021-2027)*

* OJ 2021 L 251/48

**Regulation 2017/2226** — **EES**

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

* OJ 2017 L 327/20 — impl. date 29 Dec. 2017

**Regulation 2018/1240** — **ETIAS**

*Establishing a European Travel Information and Authorisation System*

* OJ 2018 L 236/1
* Amending Reg. 1077/2011, 515/2014, 2016/399, 2016/1624 and 2017/2226.

*amd by Reg. 817/2019 (OJ 2019 L 135/27): Amendment*

**Regulation 2021/1152** — **ETIAS access immigration dBases**

*ETIAS access to immigration databases*

* OJ 2021 L 249/15

**Regulation 2021/1151** — **ETIAS access other info systems**

*ETIAS access to law enforcement databases*

* OJ 2021 L 249/7

**Regulation 2018/1726** — **EU-LISA**

*On the European Agency for the Operational Management of large-scale IT systems*

* OJ 2018 L 295/99
* Replacing Reg. 1077/2011 (VIS Management Agency)

*amd by Reg. 817/2019 (OJ 2019 L 135/27)*

**Regulation 1052/2013** — **EUROSUR**

*Establishing the European Border Surveillance System (Eurosur)*

* OJ 2013 L 295/11 — impl. date 26 Nov. 2013
* This Regulation is repealed by Reg. 2019/1896 (Frontex II)

*CJEU judgments*

| | | | | | |
|---|---|---|---|---|---|
| ☞ | CJEU (GC) | 8 Sep. | 2015 | C-44/14 | ***Spain / EP & Council (ES)*** |

See further: § 2.3

**Regulation 2007/2004** — **Frontex I**

*Establishing External Borders Agency*

* OJ 2004 L 349/1

* This Regulation is replaced by Reg. 2016/1624 Border and Coast Guard Agency.
In 2019 replaced by Regulation 2019/1896 (Frontex II).
*amd by Reg. 863/2007 (OJ 2007 L 199/30): Border guard teams*
*amd by Reg. 1168/2011 (OJ 2011 L 304/1): Code of Conduct and joint operations*

**Regulation 2019/1896** — **Frontex II**

*Frontex II*

* OJ 2019 L 295/1

* COM (2018) 631, 12 Sep 2018

* This Regulation repeals Reg. 1052/2013 (Eurosur) and Reg. 2016/1624 (Border and Coast Guard Agency).

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 7 Apr. | 2022 | T-282/21 | ***S.S. & S.T. / Frontex*** | Art. 46(4) |

See further: § 2.3

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

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

* OJ 2006 L 405/1 — impl. date 19 Jan. 2007

*amd by Cor. 1931/2006 (OJ 2006 L 029): Corrigendum*
*amd by Reg. 1342/2011 (OJ 2011 L 347/41): On definition of border area*

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 21 Mar. | 2013 | C-254/11 | ***Shomodi*** | Art. 2(a)+3(3) |

See further: § 2.3

**Regulation 656/2014** — **Maritime Surveillance**

*Rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex*

* OJ 2014 L 189/93 — impl. date 17 July 2014

**Directive 2004/82** — **Passenger Data**

*On the obligation of carriers to communicate passenger data*

* OJ 2004 L 261/24 — impl. date 5 Sep. 2006 — UK opt in

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

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

* OJ 2004 L 385/1 — impl. date 18 Jan. 2005

*amd by Reg. 444/2009 (OJ 2009 L 142/1): on biometric identifiers*

*CJEU judgments*

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

See further: § 2.3

**Directive 2009/16** — **Port State Control**

*Port State Control*

* OJ 2009 L 131 — impl. date 17 May 2009

*amd by Dir. 2110/2017 (OJ 2017 L 315): inspections*

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU (GC) | 1 Aug. | 2022 | C-14/21 | ***Sea Watch*** | Art. 11+13+19 |

See further: § 2.3

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

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

* OJ 2005 L 289/23

**Convention** — **Schengen Acquis**

*Implementing the Schengen Agreement of 14 June 1985*

* OJ 2000 L 239

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 16 Jan. | 2018 | C-240/17 | ***E.*** | Art. 25(1)+25(2) |

See further: § 2.3

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

*Schengen Evaluation*

* OJ 2013 L 295/27

**Regulation 1987/2006** — **SIS II**

*Establishing 2nd generation Schengen Information System*

* OJ 2006 L 381/4 impl. date 17 Jan. 2007
* 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
  *amd by Reg. 1988/2006 (OJ 2006 L 411/1): on extending funding of SIS II*
  *amd by Reg. 1726/2018 (OJ 2018 L 295/99): establishing agency (EU-LISA)*

**Council Decision 2016/268** — **SIS II Access**

*List of competent authorities which are authorised to search directly the data contained in the 2nd generation SIS*

* OJ 2016 C 268/1

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

*On the SIRENE Manual and other implementing measures for SIS II*

* OJ 2016 L 203/35

**Regulation 2018/1861** — **SIS II usage on borders**

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

* OJ 2018 L 312/14
* amending the Schengen Convention and repealing Reg. 1987/2006
  *amd by Reg. 817/2019 (OJ 2019 L 135/27)*

**Regulation 2018/1860** — **SIS II usage on returns**

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

* OJ 2018 L 312/1

**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)*

* OJ 2003 L 99/8

**Regulation 694/2003** — **Transit Documents Format**

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

* OJ 2003 L 99/15

**Decision 896/2006** — **Transit Switzerland**

*Transit through Switzerland and Liechtenstein*

* OJ 2006 L 167/8
  *amd by Dec 586/2008 (OJ 2008 L 162/27)*
  *CJEU judgments*

☞ CJEU 2 Apr. 2009 C-139/08 ***Kqiku*** Art. 1+2

See further: § 2.3

**Decision 1105/2011** — **Travel Documents**

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

* OJ 2011 L 287/9 impl. date 25 Nov. 2011

**Regulation 767/2008** — **VIS**

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

* OJ 2008 L 218/60
* Third-pillar VIS Decision (OJ 2008 L 218/129)
  *amd by Reg. 817/2019 (OJ 2019 L 135/27): Amendment*

**Decision 512/2004** — **VIS (start)**

*Establishing Visa Information System (VIS)*

* OJ 2004 L 213/5

**Council Decision 2008/633** — **VIS Access**

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

* OJ 2008 L 218/129

**Regulation 1077/2011** — **VIS Management Agency**

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

* OJ 2011 L 286/1
* Repealed and replaced by Reg. 2018/1726 (EU-LISA)

**Regulation 810/2009** — **Visa Code**

*Establishing a Community Code on Visas*

* OJ 2009 L 243/1 impl. date 5 Apr. 2010

*amd by Reg. 154/2012 (OJ 2012 L 58/3): On the relation with the Schengen acquis*
*amd by Reg. 1155/2019 (OJ 2019 L 188/55)*

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 26 Mar. | 2021 | C-121/20 | ***V.G.*** | Art. 22 |
| ☞ | CJEU (GC) | 24 Nov. | 2020 | C-225/19 | ***R.N.N.S. / BuZa (NL)*** | Art. 32 |
| ☞ | CJEU | 29 July | 2019 | C-680/17 | ***Vethanayagam*** | Art. 8(4)+32(3) |
| ☞ | CJEU | 13 Dec. | 2017 | C-403/16 | ***El Hassani*** | Art. 32 |
| ☞ | CJEU | 7 Mar. | 2017 | C-638/16 PPU | ***X. & X.*** | Art. 25(1)(a) |
| ☞ | CJEU | 4 Sep. | 2014 | C-575/12 | ***Air Baltic*** | Art. 24(1)+34 |
| ☞ | CJEU (GC) | 19 Dec. | 2013 | C-84/12 | ***Koushkaki*** | Art. 23(4)+32(1) |
| ☞ | CJEU | 10 Apr. | 2012 | C-83/12 | ***Vo*** | Art. 21+34 |

See further: § 2.3

**Regulation 1683/95** — **Visa Format**

*Uniform format for visas*

* OJ 1995 L 164/1 UK opt in

*amd by Reg. 334/2002 (OJ 2002 L 53/7)*
*amd by Reg. 856/2008 (OJ 2008 L 235/1)*
*amd by Reg. 517/2013 (OJ 2013 L158/1): accession of Croatia*
*amd by Reg. 610/2013 (OJ 2013 L 182/1)*
*amd by Reg. 1370/2017 (OJ 2017 L 198/24)*

**Regulation 539/2001** — **Visa List I**

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

* OJ 2001 L 81/1
* This Regulation is replaced by Regulation 2018/1806 Visa List II

**Regulation 2018/1806** — **Visa List II**

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

* OJ 2018 L 303/39
* This Regulation replaces Regulation 539/2001 Visa List I

*amd by Reg. 592/2019 (OJ 2019 L 103I/1): Waive visas for UK in the context of Brexit*

*CJEU pending cases*

| | | | | | | |
|---|---|---|---|---|---|---|
| *New* ☞ | CJEU AG | 15 Dec. | 2022 | C-137/21 | ***EP / European Com.*** | Art. 7(f) |

See further: § 2.3

**Regulation 333/2002** — **Visa Stickers**

*Uniform format for forms for affixing the visa*

* OJ 2002 L 53/4 UK opt in

**ECHR** **Anti-torture**

*European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols*
Art. 3 Prohibition of Torture, Degrading Treatment
Art. 2 Prot 4 Freedom of movement
* ETS 005 impl. date 31 Aug. 1954

*ECtHR Judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| *New* ☞ | ECtHR (GC) | 3 Nov. | 2022 | 22854/20 | ***Sanchez-Sanchez v UK*** | Art. 3 |
| *New* ☞ | ECtHR | 6 Oct. | 2022 | 37610/18 | ***Liu v PL*** | Art. 3+5(1) |
| *New* ☞ | ECtHR (GC) | 21 Sep. | 2022 | 20863/21 | ***McCallum v IT*** | Art. 3 |
| ☞ | ECtHR | 14 June | 2022 | 38121/20 | ***L.B. v LT*** | Art. 2 Prot 4 |
| ☞ | ECtHR | 11 Mar. | 2021 | 6865/19 | ***Feilazo v MT*** | Art. 3+5(1) |
| ☞ | ECtHR | 2 Mar. | 2021 | 36037/17 | ***R.R. a.o. v HU*** | Art. 3+5(1) |
| ☞ | ECtHR | 25 June | 2020 | 9347/14 | ***Moustahi v FR*** | Art. 3 |
| ☞ | ECtHR | 4 Dec. | 2018 | 43639/12 | ***Khanh v CY*** | Art. 3 |
| ☞ | ECtHR | 20 Dec. | 2016 | 19356/07 | ***Shioshvili a.o. v RU*** | Art. 3+13 |
| ☞ | ECtHR | 19 Dec. | 2013 | 53608/11 | ***B.M. v GR*** | Art. 3+13 |
| ☞ | ECtHR | 23 July | 2013 | 55352/12 | ***Aden Ahmed v MT*** | Art. 3 |
| ☞ | ECtHR | 28 Feb. | 2012 | 11463/09 | ***Samaras v GR*** | Art. 3 |
| ☞ | ECtHR | 21 Feb. | 2012 | 27765/09 | ***Hirsi v IT*** | Art. 3+13 |
| ☞ | ECtHR | 25 June | 2020 | 9347/14 | ***Moustahi v FR*** | Art. 5+2 Prot 4 |

See further: § 2.3

## 2.2 Borders and Visas: Proposed Measures

**Regulation amending Regulation**
*On temporary reintroduction of checks at internal borders*
* COM (2017) 571, 27 Sep 2017
* amending Borders Code (Reg. 2016/399)
Council and EP could not agree before EP elections (2019)

**Regulation** **Borders and Visas Fund**
*New funding programme for borders and visas*
* COM (2008) 473, 12 June 2018
* Council and EP agreed

**Regulation amending Regulation 539/2001** **Visa waiver Kosovo**
*Visa List amendment*
* COM (2016) 277, 4 May 2016
* Discussions within Council

**Regulation amending Regulation 539/2001** **Visa waiver Turkey**
*Visa List amendment*
* COM (2016) 279, 4 May 2016
* Discussions within Council

## 2.3 Borders and Visas: Jurisprudence

*case law sorted in alphabetical order*

### 2.3.1 CJEU Judgments on Borders and Visas

☞ CJEU 21 June 2017, C-9/16 ***A.*** EU:C:2017:483
* interpr. of Reg. 562/2006 Borders Code I Art. 20+21
ref. from Amtsgericht Kehl, Germany, 7 Jan. 2016
* *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.*
*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.*

☞ CJEU 6 Oct. 2021, C-35/20 ***A. / Syyttäjä (FI)*** EU:C:2021:813
AG 3 June 2021 EU:C:2021:456
* interpr. of Reg. 562/2006 Borders Code I Art. 20+21(c)
ref. from Korkein Oikeus, Finland, 21 Jan. 2020
* *On the issue whether a domestic obligation to carry a passport is consistent with Union law. Finland imposed daily fines for crossing the Finnish border without carrying a valid travel document. BC II (2016/399) was not yet applicable at the material time.*
*The BC must be interpreted as not precluding national legislation by which a Member State obliges its nationals, on pain of criminal penalties, to carry a valid identity card or passport when traveling to another Member State. However, a fine of 20% of the offender's net monthly income, is not proportionate to the seriousness of the offense, which is of a minor nature.*

☞ CJEU 4 Mar. 2021, C-193/19 ***A. / Migrationsverket (SE)*** EU:C:2021:168
AG 16 July 2020 EU:C:2020:594
* interpr. of Reg. 2016/399 Borders Code II Art. 25(1)+6(1)(a)
ref. from Administrative Court for Immigration Matters, Sweden,
* *Art. 25(1) Borders Code must be interpreted as not precluding legislation of a MS which permits the issue, extension or renewal of a residence permit for the purposes of family reunification, requested from within the territory of that MS by a third-country national who is the subject of an alert in the Schengen Information System for the purposes of refusing entry in the Schengen area and whose identity has not been able to be established by means of a valid travel document, only where the interests of the MS which issued the alert and which has first been consulted have been taken into account and where the residence permit is issued, extended or renewed only for 'substantive reasons' within the meaning of that provision. The Borders Code must be interpreted as meaning that it does not apply to a third-country national who is in such a situation.*

☞ CJEU 19 July 2012, C-278/12 (PPU) ***Adil*** EU:C:2012:508
* interpr. of Reg. 562/2006 Borders Code I Art. 20+21
ref. from Raad van State, NL, 4 June 2012
* *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.*

☞ CJEU 4 Sep. 2014, C-575/12 ***Air Baltic*** EU:C:2014:2155
AG 21 May 2014 EU:C:2014:346
* interpr. of Reg. 562/2006 Borders Code I Art. 5
ref. from Administratīvā apgabaltiesa, Latvia, 7 Dec. 2012
* *The Borders Code precludes national legislation, which makes the entry of TCNs to the territory of the MS concerned subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.*

☞ CJEU 4 Sep. 2014, C-575/12 ***Air Baltic*** EU:C:2014:2155
AG 21 May 2014 EU:C:2014:346
* interpr. of Reg. 810/2009 Visa Code Art. 24(1)+34
ref. from Administratīvā apgabaltiesa, Latvia, 7 Dec. 2012
* *The cancellation of a travel document by an authority of a third country does not mean that the uniform visa affixed to that document is automatically invalidated.*

☞ CJEU 14 June 2012, C-606/10 ***ANAFE*** EU:C:2012:348
AG 29 Nov. 2011 EU:C:2011:789
* interpr. of Reg. 562/2006 Borders Code I Art. 13+5(4)(a)
ref. from Conseil d'Etat, France, 22 Dec. 2010
* annulment of national legislation on visa
* *Article 5(4)(a) must be interpreted as meaning that a MS which issues to a TCN a re-entry visa within the meaning of that provision cannot limit entry into the Schengen area solely to points of entry to its national territory.*
*The principles of legal certainty and protection of legitimate expectations did not require the provision of transitional measures for the benefit of TCNs who had left the territory of a MS when they were holders of temporary residence permits issued pending examination of a first application for a residence permit or an application for asylum and wanted to return to that territory (after the entry into force of this Regulation)*

☞ CJEU (GC) 19 Mar. 2019, C-444/17 ***Arib*** EU:C:2019:220
AG 17 Oct. 2018 EU:C:2018:836
* interpr. of Reg. 2016/399 Borders Code II Art. 32
ref. from Cour de Cassation, France, 21 July 2017
* *Art. 2(2)(a) of Directive 2008/115 read in conjunction with Art. 32 of Regulation 2016/399 must be interpreted as not applying to the situation of an illegally staying third-country national who was apprehended in the immediate vicinity of an internal border of a Member State, even where that Member State has reintroduced border control at that border, pursuant to Article 25 of the regulation, on account of a serious threat to public policy or internal security in that Member State.*

☞ CJEU 30 Apr. 2020, C-584/18 ***Blue Air*** EU:C:2020:324
AG 21 Nov. 2019 EU:C:2019:1003
* interpr. of Reg. 2016/399 Borders Code II Art. 13+2(j)+15
ref. from Eparchiako Dikastirio Larnakas, Cyprus, 19 Sep. 2018
* AG: 21 Nov. 2019
* *Art. 13 should be interpreted as precluding an air carrier (relying on the refusal of the authorities of the MS of destination to grant a TCN access to that State) to refuse boarding without this refusal of entry is laid down in a reasoned written decision of which the third-country national has been notified in advance.*
*Art. 2(j) should be interpreted as meaning that a refusal by an air carrier to board a passenger due to the alleged inadequacy of his travel documents does not automatically deprive the passenger of the protection provided for in that Regulation. Indeed, when that passenger disputes that denied boarding, it is for the competent judicial authority to assess, taking into account the circumstances of the case, whether that refusal is based on reasonable grounds under that provision.*
*Art. 15 is to be interpreted as precluding a clause applicable to passengers in the pre-published general terms and conditions for the operation or provision of services of an air carrier that limit or exclude the liability of that air carrier when a passenger is refused access to a flight based on the alleged inadequacy of his travel documents, thereby depriving that passenger of any right to compensation.*

☞ CJEU 4 Oct. 2006, C-241/05 ***Bot*** EU:C:2006:634
AG 27 Apr. 2006 EU:C:2006:272
* interpr. of Schengen Agreement: Art. 20(1)
ref. from Conseil d'Etat, France, 9 May 2005
* *This provision allows TCNs not subject to a visa requirement to stay in the Schengen Area for a maximum period of three months during successive periods of six months, provided that each of those periods commences with a 'first entry'.*

☞ CJEU 18 Jan. 2005, C-257/01 ***Com. / Council (Com)*** EU:C:2005:25
AG 27 Apr. 2004 EU:C:2004:226
* validity of Visa Applications:
ref. from Commission, EC, 3 July 2001
* challenge to Regs. 789/2001 and 790/2001
* *The Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications and border checks and surveillance is upheld.*

☞ CJEU 13 Feb. 2014, C-139/13 ***Com. / Belgium (Com)*** EU:C:2014:80
* violation of Reg. 2252/2004 Passports Art. 6
ref. from European Commission, EU, 19 Mar. 2013
* *Failure to implement biometric passports containing digital fingerprints within the prescribed periods.*

☞ CJEU (GC) 16 July 2015, C-88/14 ***Com. / EP (Com)*** EU:C:2015:499
AG 7 May 2015 EU:C:2015:304
* validity of Reg. 539/2001 Visa List
ref. from European Commission, EU, 21 Feb. 2014
* *The Commission had requested an annullment of an amendment of the visa list by Regulation 1289/2013. The Court dismisses the action.*

☞ CJEU 16 Jan. 2018, C-240/17 ***E.*** EU:C:2018:8
AG 13 Dec. 2017 EU:C:2017:963

* interpr. of Schengen Acquis: Art. 25(1)+25(2)
ref. from Korkein hallinto-oikeus, Finland, 10 May 2017

* *Art 25(1) must be interpreted as meaning that it is open to the Contracting State which intends to issue a return decision accompanied by a ban on entry and stay in the Schengen Area to a TCN who holds a valid residence permit issued by another Contracting State to initiate the consultation procedure laid down in that provision even before the issue of the return decision. That procedure must, in any event, be initiated as soon as such a decision has been issued.*
*Art 25(2) must be interpreted as meaning that it does not preclude the return decision accompanied by an entry ban issued by a Contracting State to a TCN who is the holder of a valid residence permit issued by another Contracting State being enforced even though the consultation procedure laid down in that provision is ongoing, if that TCN is regarded by the Contracting State issuing the alert as representing a threat to public order or national security.*

☞ CJEU 12 Dec. 2019, C-380/18 ***E.P.*** EU:C:2019:1071
AG 11 July 2019 EU:C:2019:609

* interpr. of Reg. 2016/399 Borders Code II Art. 6(1)(e)
ref. from Raad van State, NL, 11 June 2018

* *Art 6(1)(e) must be interpreted as not precluding a national practice under which the competent authorities may issue a return decision to a TCN not subject to a visa requirement, who is present on the territory of the MSs for a short stay, on the basis of the fact that that national is considered to be a threat to public policy because he or she is suspected of having committed a criminal offence, provided that that practice is applicable only if: (1) the offence is sufficiently serious, in the light of its nature and of the punishment which may be imposed, to justify that national's stay on the territory of the Member States being brought to an immediate end, and (2) those authorities have consistent, objective and specific evidence to support their suspicions, matters which are for the referring court to establish.*

☞ CJEU 4 May 2017, C-17/16 ***El Dakkak*** EU:C:2017:341
AG 21 Dec. 2016 EU:C:2016:1001

* interpr. of Reg. 562/2006 Borders Code I Art. 4(1)
ref. from Cour de Cassation, France, 12 Jan. 2016

* *The concept of crossing an external border of the Union is defined differently in the 'Cash Regulation' (1889/2005) compared to the Borders Code.*

☞ CJEU 13 Dec. 2017, C-403/16 ***El Hassani*** EU:C:2017:960
AG 7 Sep. 2017 EU:C:2017:659

* interpr. of Reg. 810/2009 Visa Code Art. 32
ref. from Naczelny Sąd Administracyjny, Poland, 19 July 2016

* *Article 32(3) must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal.*

☞ CJEU (GC) 5 Sep. 2012, C-355/10 ***EP / Council (EP)*** EU:C:2012:516
AG 17 Apr. 2012 EU:C:2012:207

* violation of Reg. 562/2006 Borders Code I
ref. from European Parliament, EU, 14 July 2010

* annulment of measure supplementing Borders Code

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

☞ CJEU 4 June 2020, C-554/19 ***F.U.*** EU:C:2020:439

* interpr. of Reg. 2016/399 Borders Code II Art. 22+23
ref. from Staatsanwaltschaft Offenburg, Germany,

* *Artt. 22 and 23 must be interpreted as not opposing national legislation which confers on the police authorities of the MS concerned the power to check the identity of any person in an area of 30 kilometres from the land border of that MS with other Schengen States, with the aim of preventing or stopping illegal entry or stay on the territory of that MS or of preventing certain offences which jeopardise border security, regardless of the behaviour of the person concerned and the existence of special circumstances, provided that this competence appears to be framed by sufficiently detailed details and limitations as to the intensity, frequency and selectivity of the checks carried out, thus ensuring that the practical exercise of the said competence cannot have an effect equivalent to that of border checks, which however, is for the referring court to verify.*

☞ CJEU 22 Oct. 2009, C-261/08 ***Garcia & Cabrera*** EU:C:2009:648
AG 19 May 2009 EU:C:2009:207

* interpr. of Reg. 562/2006 Borders Code I Art. 5+11+13
ref. from Tribunal Superior de Justicia de Murcia, Spain, 19 June 2008

* joined cases: C-261/08 + C-348/08

* *Articles 6b and 23 must be interpreted as meaning that where a TCN is unlawfully present on the territory of a MS because he or she does not fulfil, or no longer fulfils, the conditions of duration of stay applicable there, that MS is not obliged to adopt a decision to expel that person.*

☞ CJEU 17 Nov. 2011, C-430/10 ***Gaydarov*** EU:C:2011:749

* interpr. of Reg. 562/2006 Borders Code I
ref. from Administrativen sad Sofia-grad, Bulgaria, 2 Sep. 2010

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

☞ CJEU 5 Feb. 2020, C-341/18 ***J. a.o.*** EU:C:2020:76
AG 17 Oct. 2019 EU:C:2019:882

* interpr. of Reg. 2016/399 Borders Code II Art. 11
ref. from Raad van State, NL, 24 May 2018

* AG: 17 Oct. 2019

* *Article 11(1) must be interpreted as meaning that, when a seaman who is a TCN signs on with a ship in long-term mooring in a sea port of a State forming part of the Schengen area, for the purpose of working on board, before leaving that port on that ship, an exit stamp must, where provided for by that code, be affixed to that seaman's travel documents not at the time of his signing on, but when the master of that ship notifies the competent national authorities of the ship's imminent departure.*

☞ CJEU (GC) 19 Dec. 2013, C-84/12 ***Koushkaki*** EU:C:2013:862
AG 11 Apr. 2013 EU:C:2013:232

* interpr. of Reg. 810/2009 Visa Code Art. 23(4)+32(1)
ref. from Verwaltungsgericht Berlin, Germany, 17 Feb. 2012

* *Art. 23(4), 32(1) and 35(6) must be interpreted as meaning that the competent authorities of a MS cannot refuse a visa to an applicant unless one of the grounds for refusal of a visa listed in those provisions can be applied to that applicant. In the examinations of those conditions and the relevant facts, authorities have a wide discretion. The obligation to issue a uniform visa is subject to the condition that there is no reasonable doubt that the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.*

☞ CJEU 2 Apr. 2009, C-139/08 ***Kqiku*** EU:C:2009:230

* interpr. of Dec. 896/2006 Transit Switzerland Art. 1+2
ref. from Oberlandesgericht Karlsruhe, Germany, 7 Apr. 2008

* *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 10 Mar. 2021, C-949/19 ***M.A. / Konsul (PL)*** EU:C:2021:186

* interpr. of Reg. 2016/399 Borders Code II Art. 21(2)
ref. from Naczelny Sąd Administracyjny, Poland, 31 Dec. 2019

* *On the issue of an effective remedy (art 47 Charter) against the refusal of issuing a visa. Art. 21(2a) Borders Code must be interpreted as not being applicable to a national of a third State who has been refused a long-stay visa.*
*EU law, in particular Art. 34(5) of Dir. 2016/801 (research and students), read in the light of Art. 47 Charter must be interpreted as meaning that it requires the MSs to provide for an appeal procedure against decisions refusing a visa for the purpose of studies, within the meaning of that directive, the procedural rules of which are a matter for the legal order of each MS, in conformity with the principles of equivalence and effectiveness, and that procedure must, at a certain stage, guarantee a judicial appeal. It is for the referring court to establish whether the application for a national long-term visa for the purpose of studies that is at issue in the main proceedings falls within the scope of that directive.*

☞ CJEU (GC) 22 June 2010, C-188/10 ***Melki & Abdeli*** EU:C:2010:363
AG 7 June 2010 EU:C:2010:319

* interpr. of Reg. 562/2006 Borders Code I Art. 20+21
ref. from Cour de Cassation , France, 16 Apr. 2010

* joined cases: C-188/10 + C-189/10

* *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 (GC) 26 Apr. 2022, C-368/20 ***N.W.*** EU:C:2022:298
AG 6 Oct. 2021 EU:C:2021:821

* interpr. of Reg. 2016/399 Borders Code II Art. 25+29

* joined cases: C-368/20 + C-369/20

* *Art. 25(4) must be interpreted as precluding border control at internal borders from being temporarily reintroduced by a MS on the basis of Art. 25+27 of that where the duration of its reintroduction exceeds the maximum total duration of six months, set in Art. 25(4), and no new threat exists that would justify applying afresh the periods provided for in Art. 25. Art. 25(4) must be interpreted as precluding national legislation by which a MS obliges a person, on pain of a penalty, to present a passport or identity card on entering the territory of that MS via an internal border, when the reintroduction of the internal border control in relation to which that obligation is imposed is contrary to that provision.*

☞ CJEU (GC) 24 Nov. 2020, C-225/19 ***R.N.N.S. / BuZa (NL)*** EU:C:2020:951
AG 9 Sep. 2020 EU:C:2020:679

* interpr. of Reg. 810/2009 Visa Code Art. 32
ref. from Rechtbank Den Haag (zp) Haarlem, NL, 5 Mar. 2019

* joined cases: C-225/19 + C-226/19

* *Art. 32(2) and (3), read in the light of Article 47 of the Charter, must be interpreted as meaning:*
*(1) that a MS which has adopted a final decision refusing to issue a visa on the basis of Art. 32(1)(a)(vi), because another MS objected to the issuing of that visa is required to indicate, in that decision, the identity of the MS which raised that objection, the specific ground for refusal based on that objection, accompanied, where appropriate, by the essence of the reasons for that objection, and the authority which the visa applicant may contact in order to ascertain the remedies available in that other MS and,*
*(2) that, where an appeal is lodged against that decision on the basis of Article 32(3) the courts of the MS which adopted that decision cannot examine the substantive legality of the objection raised by another MS to the issuing of the visa.*

☞ CJEU 7 Apr. 2022, T-282/21 ***S.S. & S.T. / Frontex*** EU:C:2022:235

* interpr. of Reg. 2019/1896 Frontex II Art. 46(4)

* inadmissable

* *The CJEU was asked to declare that, after Frontex was called upon to act in accordance with the procedure laid down in Art. 265 TFEU, Frontex unlawfully failed to act, by refraining from taking the decision to withdraw the financing of all or of part of its activities in the Aegean Sea region, to suspend those activities or to terminate them in whole or in part, in accordance with Art. 46(4) of Fronex Reg. II (2019/1896), or by not providing duly justified grounds for failing to implement the relevant measure within the meaning of Art. 46(6) of that regulation, and, further, that it did not take a view in response to the applicants' preliminary request. The CJEU concluded that this action is inadmissible, since Art. 265 TFEU only concerns failure to act by failing to take a decision or to define a position. Consequently, a refusal to act in accordance with the invitation to act has no bearing.*

☞ CJEU 17 Oct. 2013, C-291/12 ***Schwarz*** EU:C:2013:670
AG 13 June 2013 EU:C:2013:401

* interpr. of Reg. 2252/2004 Passports Art. 1(2)
ref. from Verwaltungsgericht Gelsenkirchen, Germany, 12 June 2012

* *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 (GC) 1 Aug. 2022, C-14/21 ***Sea Watch*** EU:C:2022:604
AG 22 Feb. 2022 EU:C:2022:104

* interpr. of Dir. 2009/16 Port State Control Art. 11+13+19
ref. from Tribunale Adm. Sicilia, Italy, 23 Dec. 2020

* joined cases: C-14/21 + C-15/21

* *Dir. 2009/16 Port State control must be interpreted as:*
*(1) applying to ships which, although classified and certified as cargo ships by the flag State, are in practice being systematically used by a humanitarian organisation for non-commercial activities relating to the search for and rescue of persons in danger or distress at sea; and*
*(2)precluding national legislation ensuring its transposition into domestic law from limiting its applicability only to ships which are used for commercial activities.*
*Art. 11(b) must be interpreted as meaning that the port State may subject ships which systematically carry out search and rescue activities and which are located in one of its ports or in waters falling within its jurisdiction, having entered those waters and after all the operations relating to the transhipment or disembarking of persons to whom their respective masters have decided to render assistance have been completed, to an additional inspection if that State has established, on the basis of detailed legal and factual evidence, that there are serious indications capable of proving that there is a danger to health, safety, on-board working conditions or the environment, having regard to the conditions under which those ships operate.*
*Art. 13 must be interpreted as meaning that, during more detailed inspections organised pursuant to that article, the port State has the power to take account of the fact that ships which have been classified and certified as cargo ships by the flag State are, in practice, being systematically used for activities relating to the search for and rescue of persons in danger or distress at sea in the context of a control intended to assess, on the basis of detailed legal and factual evidence, whether there is a danger to persons, property or the environment, having regard to the conditions under which those ships operate. By contrast, the port State does not have the power to demand proof that those ships hold certificates other than those issued by the flag State or that they comply with all the requirements applicable to another classification.*
*Art. 19 must be interpreted as meaning that, in the event that it is established that ships which are, in practice, being systematically used for activities relating to the search for and rescue of persons in danger or distress at sea, despite having been classified and certified as cargo ships by a Member State which is the flag State, have been operated in a manner posing a danger to persons, property or the environment, the Member State which is the port State may not make the non-detention of those ships or the lifting of such a detention subject to the condition that those ships hold certificates appropriate to those activities and comply with all the corresponding requirements. By contrast, that State may impose predetermined corrective measures relating to safety, pollution prevention and on-board living and working conditions,*

☞ CJEU 21 Mar. 2013, C-254/11 ***Shomodi*** EU:C:2012:773
AG 6 Dec. 2012 EU:C:2012:773

* interpr. of Reg. 1931/2006 Local Border traffic Art. 2(a)+3(3)
ref. from Supreme Court, Hungary, 25 May 2011

* *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 (GC) 8 Sep. 2015, C-44/14 ***Spain / EP & Council (ES)*** EU:C:2015:554
AG 13 May 2015 EU:C:2015:320

* non-transp. of Reg. 1052/2013 EUROSUR
ref. from Government, Spain, 27 Jan. 2014

* *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 13 Dec. 2018, C-412/17 ***Touring Tours a.o.*** EU:C:2018:1005
AG 6 Sep. 2018 EU:C:2018:671

* interpr. of Reg. 562/2006 Borders Code I Art. 22+23
ref. from Bundesverwaltungsgericht, Germany, 10 July 2017

* joined cases: C-412/17 + C-474/17

* *Article 67(2) TFEU and Article 21 Borders Code must be interpreted to the effect that they preclude legislation of a MS, which requires every coach transport undertaking providing a regular cross-border service within the Schengen area to the territory of that MS to check the passports and residence permits of passengers before they cross an internal border in order to prevent the transport of TCNs not in possession of those travel documents to the national territory, and which allows, for the purposes of complying with that obligation to carry out checks, the police authorities to issue orders prohibiting such transport, accompanied by a threat of a recurring fine, against transport undertakings which have been found to have conveyed to that territory TCNs who were not in possession of the requisite travel documents.*

☞ CJEU 2 Oct. 2014, C-101/13 ***U.*** EU:C:2014:2249
AG 30 Apr. 2014 EU:C:2014:296

* interpr. of Reg. 2252/2004 Passports
ref. from Verwaltungsgerichtshof Baden-Württemberg, Germany, 28 Feb. 2013

* *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 26 Mar. 2021, C-121/20 ***V.G.*** EU:C:2021:267
* interpr. of Reg. 810/2009 Visa Code Art. 22
ref. from Rechtbank Den Haag (zp) Amsterdam, NL, 4 Mar. 2020
* withdrawn
* *With reference to CJEU 24 Nov. 2020, C-225/19 and C-226/19, this prejudicial question is withdrawn.*

☞ CJEU 29 July 2019, C-680/17 ***Vethanayagam*** EU:C:2019:627
AG 28 Mar. 2019 EU:C:2019:278
* interpr. of Reg. 810/2009 Visa Code Art. 8(4)+32(3)
ref. from Rechtbank Den Haag (zp) Utrecht, NL, 5 Dec. 2017
* *Art. 32(3) of the Visa Code, must be interpreted as not allowing the sponsor to bring an appeal in his own name against a decision refusing a visa.*
*Art. 8(4)(d) and Art. 32(3), must be interpreted as meaning that, when there is a bilateral representation arrangement providing that the consular authorities of the representing MS are entitled to take decisions refusing visas, it is for the competent authorities of that MS to decide on appeals brought against a decision refusing a visa.*
*A combined interpretation of Art. 8(4)(d) and Art. 32(3) according to which an appeal against a decision refusing a visa must be conducted against the representing State, is compatible with the fundamental right to effective judicial protection.*

☞ CJEU 10 Apr. 2012, C-83/12 ***Vo*** EU:C:2012:202
AG 26 Mar. 2012 EU:C:2012:170
* interpr. of Reg. 810/2009 Visa Code Art. 21+34
ref. from Bundesgerichtshof, Germany, 17 Feb. 2012
* *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 16 Apr. 2015, C-446/12 ***Willems a.o.*** EU:C:2015:238
* interpr. of Reg. 2252/2004 Passports Art. 4(3)
ref. from Raad van State, NL, 3 Oct. 2012
* *Article 4(3) does not require the Member States to guarantee, in their legislation, that biometric data collected and stored in accordance with that regulation will not be collected, processed and used for purposes other than the issue of the passport or travel document, since that is not a matter which falls within the scope of that regulation.*

☞ CJEU 7 Mar. 2017, C-638/16 PPU ***X. & X.*** EU:C:2017:173
AG 7 Feb. 2017 EU:C:2017:93
* interpr. of Reg. 810/2009 Visa Code Art. 25(1)(a)
ref. from Conseil du contentieux des étrangers, Belgium, 12 Dec. 2016
* *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 17 Jan. 2013, C-23/12 ***Zakaria*** EU:C:2013:24
* interpr. of Reg. 562/2006 Borders Code I Art. 13(3)
ref. from Augstākās tiesas Senāts, Latvia, 17 Jan. 2012
* *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-143/22 ***ADDE***
* interpr. of Reg. 2016/399 Borders Code II Art. 14
* *On the issue of the temporary reintroduction of border controls at internal borders, can foreign nationals arriving directly from the territory of a State party to the Schengen Convention be refused entry, when entry checks are carried out at that border, on the basis of Art. 14 of that regulation, without the Return Directive being applicable?*

*New* ☞ CJEU C-137/21 ***EP / European Com.***
AG 15 Dec. 2022 EU:C:2022:989
* Reg. 2018/1806 Visa List II Art. 7(f)
* *The European Parliament asks the Court to find that, by not adopting a delegated act, as provided for in Art. 7(f) Visa List II (Reg. 2018/1806), the European Commission has failed to fulfill its obligations under the TFEU. The AG concludes that the action brought by Parliament is inadmissible.*

## 2.3.3 ECtHR Judgments on Borders and Visas and Degrading Treatment (Art. 3, 13)

☞ ECtHR 23 July 2013, 55352/12 ***Aden Ahmed v MT*** CE:ECHR:2013:0723JUD005535212
* violation of ECHR: Art. 3
* *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 19 Dec. 2013, 53608/11 ***B.M. v GR*** CE:ECHR:2013:1219JUD005360811
* 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 11 Mar. 2021, 6865/19 ***Feilazo v MT*** CE:ECHR:2021:0311JUD000686519
* violation of ECHR: Art. 3+5(1)
* *The applicant, a Nigerian national, was placed in immigration detention pending deportation. His detention lasted for around fourteen months. He alleged that he had not had the opportunity to correspond with the Court without interference by the prison authorities, and had been denied access to materials intended to substantiate his application.*
*The ECtHR was particularly struck by the fact that the applicant had been held alone in a container for nearly seventy-five days without access to natural light or air, and that during the first forty days he had had no opportunity to exercise. Furthermore, during that period, and particularly the first forty days, the applicant had been subjected to a de facto isolation. The applicant had been put in isolation for his own protection, upon his request. However, the stringency and duration of the measure put in place, namely, that for at least forty days the applicant had had barely any contact with anyone, seemed excessive in the circumstances. No measures appeared to have been taken by the authorities to ensure that the applicant's physical and psychological condition had allowed him to remain in isolation, nor did it appear that, in the specific circumstances of the case, any other alternatives to that isolation had been envisaged.*
*Furthermore, following that period, the applicant had been moved to other living quarters where new arrivals (of asylum seekers) had been kept in Covid-19 quarantine. There was no indication that the applicant had been in need of such quarantine – particularly after an isolation period which had lasted for nearly seven weeks. Thus, placing him, for several weeks, with other persons who could have posed a risk to his health, in the absence of any relevant consideration to that effect, could not be considered as a measure complying with basic sanitary requirements.*
*Unanimously the ECtHR held a violation of Art. 3 on the conditions of detention. Also, unanimously the ECtHR held a violation of Art. 5(1) as the grounds for the applicant's detention had not remained valid for the whole period.*

☞ ECtHR 21 Feb. 2012, 27765/09 ***Hirsi v IT*** CE:ECHR:2012:0221JUD002776509
* 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 4 Dec. 2018, 43639/12 ***Khanh v CY*** CE:ECHR:2018:1204JUD004363912
* violation of ECHR: Art. 3
* *The applicant Vietnamese woman had been held in pre-removal detention at a police station for a period of approximately five months. The Court restated that police stations and similar establishments are designed to accommodate people for very short duration, and the CPT as well as the national Ombudsman had deemed the police station in question unsuitable for accommodating people for longer periods. As the Government had failed to submit information capable of refuting the applicant's allegations about overcrowding, the Court concluded that the conditions of detention had amounted to degrading treatment prohibited by art. 3*

☞ ECtHR 14 June 2022, 38121/20 ***L.B. v LT*** CE:ECHR:2022:0614JUD003812120
* violation of ECHR: Art. 2 Prot 4
* *Violation due to refusal to issue a travel document to beneficiary of subsidiary protection.*

*New* ☞ ECtHR 6 Oct. 2022, 37610/18 ***Liu v PL*** CE:ECHR:2022:1006JUD003761018
* violation of ECHR: Art. 3+5(1)
* *The case concerned the extradition proceedings brought against the applicant, on conclusion of which (in 2020) the Polish courts had authorised his handover to the authorities of the People's Republic of China. He was wanted for trial there in connection with a vast international telecom-fraud syndicate following a Sino-Spanish investigation. It also concerned his detention in Poland pending extradition.*
*The Court found in particular that the situation within the Chinese prison system could be equated to a "general situation of violence" (Art. 3). Furthermore, it held that the Polish Government had failed to act with the necessary expedition to ensure that the length of his detention had not been overly long (Art. 5(1)(f)).*

*New* ☞ ECtHR (GC) 21 Sep. 2022, 20863/21 ***McCallum v IT*** CE:ECHR:2022:0921JUD002086321
* no violation of ECHR: Art. 3
* inadmissable
* *No risk of irreducible life sentence in the event of extradition to the USA, the applicant becoming eligible for parole after reduction of charges. Application is inadmissible as the complaint was found manifestly ill-founded.*

☞ ECtHR 25 June 2020, 9347/14 ***Moustahi v FR*** CE:ECHR:2020:0625JUD000934714
* violation of ECHR: Art. 3
* *Two children, 3 and 5 years old in 2013, left the Comoros on a makeshift boat heading for Mayotte, where their father was living, as a legal resident. Having been intercepted at sea, their names were added to a removal order issued against one of the adults in the group. Subsequently, they were placed in administrative detention in a police station. Although their father came to meet them there he was not allowed to see them and the children were placed with the 'stranger' adult on a ferry bound for the Comoros.*
*An hour later, the father lodged an application for urgent proceedings in the Administrative Court. While noting that the decision in question was "manifestly unlawful", the judge rejected the application for lack of urgency. The urgent applications judge of the Conseil d'État dismissed an appeal, finding that it was up to the father to follow the appropriate procedure in order to apply for family reunification. In 2014 the two children were granted a long-stay visa in this context.*

☞ ECtHR 2 Mar. 2021, 36037/17 ***R.R. a.o. v HU*** CE:ECHR:2021:0302JUD003603717
* violation of ECHR: Art. 3+5(1)
* *An Iranian-Afghan family including three minor children, were confined in the Röszke transit zone at the border of Hungary and Serbia for almost four months while awaiting the outcome of their requests for asylum. The ECtHR found, in particular, that the lack of food provided to R.R. and the conditions of stay of the other applicants (a pregnant woman and children) had led to a violation of Art. 3. It also found that that the applicants' stay in the transit zone had amounted to a deprivation of liberty and that the absence of any formal decision of the authorities and any proceedings by which the lawfulness of their detention could have been decided speedily by a court had led to violations of Art. 5.*

☞ ECtHR 28 Feb. 2012, 11463/09 ***Samaras v GR*** CE:ECHR:2012:0228JUD001146309
* 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.*

*New* ☞ ECtHR (GC) 3 Nov. 2022, 22854/20 ***Sanchez-Sanchez v UK*** CE:ECHR:2022:1103JUD002285420
* no violation of ECHR: Art. 3
* *The applicant has not shown that, in case of conviction in the US, there would be a real risk of a sentence of life imprisonment without parole.*

☞ ECtHR 20 Dec. 2016, 19356/07 ***Shioshvili a.o. v RU*** CE:ECHR:2016:1220JUD001935607
* 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 and Border Detention

## 3.1 Irregular Migration: Adopted Measures

*case law sorted in chronological order*

**Directive 2001/51** — **Carrier sanctions**

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

* OJ 2001 L 187/45 — impl. date 11 Feb. 2003 — UK opt in

**Decision 267/2005** — **Early Warning System**

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

* OJ 2005 L 83/48 — UK opt in

* Repealed by Reg. 2016/1624 (Borders and Coast Guard).

**Directive 2009/52** — **Employers Sanctions**

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

* OJ 2009 L 168/24 — impl. date 20 July 2011

**Directive 2003/110** — **Expulsion by Air**

*Assistance with transit for expulsion by air*

* OJ 2003 L 321/26

**Decision 191/2004** — **Expulsion Costs**

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

* OJ 2004 L 60/55 — UK opt in

**Directive 2001/40** — **Expulsion Decisions**

*Mutual recognition of expulsion decisions of TCNs*

* OJ 2001 L 149/34 — impl. date 2 Oct. 2002 — UK opt in

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 11 June 2020 | C-448/19 | ***W.T.*** | in full |
| ☞ | CJEU | 3 Sep. 2015 | C-456/14 | ***Orrego Arias*** | Art. 3(1)(a) |

See further: § 3.3

**Decision 573/2004** — **Expulsion Joint Flights**

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

* OJ 2004 L 261/28 — UK opt in

**Conclusion** — **Expulsion via Land**

*Transit via land for expulsion*

* adopted 22 Dec. 2003 by Council — UK opt in

**Regulation 2019/1240** — **Immigration Liaison Network**

*On the creation of a European network of immigration liaison officers*

* OJ 2019 L 198/88 — UK opt in

* Replaces by Reg 377/2004 (Liaison Officers)

**Directive 2008/115** — **Return**

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

* OJ 2008 L 348/98 — impl. date 24 Dec. 2010

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| New | ☞ | CJEU (GC) | 22 Nov. 2022 | C-69/21 | ***X. / Stscr (NL)*** | Art. 5+6+9 |
| New | ☞ | CJEU (GC) | 8 Nov. 2022 | C-39/21 (PPU) | ***C. & B.*** | Art. 15(2)(b) |
| New | ☞ | CJEU | 20 Oct. 2022 | C-825/21 | ***U.P.*** | Art. 6(4) |
| New | ☞ | CJEU | 6 Oct. 2022 | C-241/21 | ***I.L.*** | Art. 15(1) |
| | ☞ | CJEU | 15 Sep. 2022 | C-420/20 | ***H.N.*** | Art. 3+9+11(2) |
| | ☞ | CJEU | 8 Sep. 2022 | C-56/22 | ***P.L.*** | Art. 5+6+13 |
| | ☞ | CJEU | 10 Mar. 2022 | C-519/20 | ***K. / Gifhorn (DE)*** | Art. 16(1)+18(1) |
| | ☞ | CJEU | 3 Mar. 2022 | C-409/20 | ***U.N.*** | Art. 6+7+8 |
| | ☞ | CJEU | 3 June 2021 | C-546/19 | ***B.Z. / Westerwaldkreis (DE)*** | Art. 2(2)(b)+3(6) |
| | ☞ | CJEU | 5 May 2021 | C-641/20 | ***V.T. / CPAS (BE)*** | Art. 5+13 |
| | ☞ | CJEU | 11 Mar. 2021 | C-112/20 | ***M.A.*** | Art. 5+13 |
| | ☞ | CJEU | 24 Feb. 2021 | C-673/19 | ***M. a.o.*** | Art. 3+6+15 |
| | ☞ | CJEU | 14 Jan. 2021 | C-441/19 | ***T.Q.*** | Art. 6+8+10 |
| | ☞ | CJEU (GC) | 17 Dec. 2020 | C-808/18 | ***Com. / Hungary (Com)*** | Art. 5+6+12+13 |
| | ☞ | CJEU | 4 Dec. 2020 | C-746/19 | ***U.D.*** | all Art. |
| | ☞ | CJEU | 8 Oct. 2020 | C-568/19 | ***M.O. / Toledo (ES)*** | Art. 6(1)+8(1) |
| | ☞ | CJEU | 30 Sep. 2020 | C-233/19 | ***B. / CPAS (BE)*** | Art. 16(1) |
| | ☞ | CJEU | 30 Sep. 2020 | C-402/19 | ***L.M. / CPAS (BE)*** | Art. 5+13 |
| | ☞ | CJEU | 17 Sep. 2020 | C-806/18 | ***J.Z.*** | Art. 11(2) |
| | ☞ | CJEU | 2 July 2020 | C-18/19 | ***W.M.*** | Art. 16(1) |
| | ☞ | CJEU (GC) | 14 May 2020 | C-924/19 (PPU) | ***F.M.S. & F.N.Z.*** | Art. 13 |
| | ☞ | CJEU (GC) | 19 Mar. 2019 | C-444/17 | ***Arib*** | Art. 2(2)(a) |
| | ☞ | CJEU | 26 Sep. 2018 | C-175/17 | ***X.*** | Art. 13 |
| | ☞ | CJEU (GC) | 19 June 2018 | C-181/16 | ***Gnandi*** | Art. 5 |
| | ☞ | CJEU (GC) | 8 May 2018 | C-82/16 | ***K.A. a.o.*** | Art. 5+11+13 |
| | ☞ | CJEU | 14 Sep. 2017 | C-184/16 | ***Petrea*** | Art. 6(1) |
| | ☞ | CJEU | 26 July 2017 | C-225/16 | ***Ouhrami*** | Art. 11(2) |
| | ☞ | CJEU (GC) | 7 June 2016 | C-47/15 | ***Affum*** | Art. 2(1)+3(2) |
| | ☞ | CJEU | 1 Oct. 2015 | C-290/14 | ***Celaj*** | |
| | ☞ | CJEU | 11 June 2015 | C-554/13 | ***Zh. & O.*** | Art. 7(4) |
| | ☞ | CJEU | 23 Apr. 2015 | C-38/14 | ***Zaizoune*** | Art. 4(2)+6(1) |
| | ☞ | CJEU (GC) | 18 Dec. 2014 | C-562/13 | ***Abdida*** | Art. 5+13 |
| | ☞ | CJEU | 11 Dec. 2014 | C-249/13 | ***Boudjlida*** | Art. 6 |
| | ☞ | CJEU | 5 Nov. 2014 | C-166/13 | ***Mukarubega*** | Art. 3+7 |
| | ☞ | CJEU (GC) | 17 July 2014 | C-473/13 | ***Bero & Bouzalmate*** | Art. 16(1) |
| | ☞ | CJEU (GC) | 17 July 2014 | C-474/13 | ***Pham*** | Art. 16(1) |
| | ☞ | CJEU | 5 June 2014 | C-146/14 (PPU) | ***Mahdi*** | Art. 15 |
| | ☞ | CJEU | 19 Sep. 2013 | C-297/12 | ***Filev & Osmani*** | Art. 2(2)(b)+11 |
| | ☞ | CJEU | 10 Sep. 2013 | C-383/13 (PPU) | ***G. & R.*** | Art. 15(2)+6 |
| | ☞ | CJEU | 30 May 2013 | C-534/11 | ***Arslan*** | Art. 2(1) |
| | ☞ | CJEU | 21 Mar. 2013 | C-522/11 | ***Mbaye*** | Art. 2(2)(b)+7(4) |
| | ☞ | CJEU | 6 Dec. 2012 | C-430/11 | ***Sagor*** | Art. 2+15+16 |
| | ☞ | CJEU (GC) | 6 Dec. 2011 | C-329/11 | ***Achughbabian*** | |
| | ☞ | CJEU | 28 Apr. 2011 | C-61/11 (PPU) | ***El Dridi*** | Art. 15+16 |
| | ☞ | CJEU (GC) | 30 Nov. 2009 | C-357/09 (PPU) | ***Kadzoev*** | Art. 15(4), (5) + (6) |

*CJEU pending cases*

| | | | | | | |
|---|---|---|---|---|---|---|
| | ☞ | CJEU | (pending) | C-663/21 | ***A.A.*** | Art. 5+6+8+9 |
| | ☞ | CJEU | (pending) | C-257/22 | ***C.D.*** | Art. 4+5 |
| | ☞ | CJEU AG | 24 Nov. 2022 | C-528/21 | ***M.D.*** | Art. 5+11 |
| | ☞ | CJEU | (pending) | C-712/21 | ***X.X.X. / Etat Belge (BE)*** | Art. 5 |

See further: § 3.3

**Recommendation 2017/432** — **Return Dir. Implementation**

*Making returns more effective when implementing the Returns Directive*

* OJ 2017 L 66/15

**Decision 575/2007** — **Return Programme**

*Establishing the Eur. Return Fund as part of the General Programme Solidarity and Management of Migration Flows*

* OJ 2007 L 144 — UK opt in

* Repealed by Reg. 516/2014 (Asylum, Migration and Integration Fund).

**Directive 2011/36** — **Trafficking Persons**

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

* OJ 2011 L 101/1 — impl. date 6 Apr. 2013 — UK opt in

* Replacing Framework Decision 2002/629 (OJ 2002 L 203/1)

**Directive 2004/81** — **Trafficking Victims**

*Residence permits for TCNs who are victims of trafficking*

* OJ 2004 L 261/19 — impl. date 6 Aug. 2004

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| New | ☞ | CJEU | 20 Oct. 2022 | C-66/21 | ***O.T.E.*** | Art. 6(2) |

See further: § 3.3

**Directive 2002/90** — **Unauthorized Entry**

*Facilitation of unauthorised entry, transit and residence*

* OJ 2002 L 328 — impl. date 5 Dec. 2002 — UK opt in

*CJEU judgments*

| | | | | | |
|---|---|---|---|---|---|
| ☞ | CJEU | 25 May 2016 | C-218/15 | ***Paoletti a.o.*** | Art. 1 |
| ☞ | CJEU | 10 Apr. 2012 | C-83/12 | ***Vo*** | Art. 1 |

See further: § 3.3

**CRC** — **Child's identity - Guardianship**

*UN Convention on the Rights of the Child*

Art. 8 Identity

Art. 20 Guardian

* 1577 UNTS 27531 — impl. date 2 Sep. 1990

* Optional Communications Protocol that allows for individual complaints entered into force 14-4-2014

*CtRC views*

| | | | | | |
|---|---|---|---|---|---|
| ☞ | CtRC | 29 Jan. 2021 | 63/2018 | ***C.O.C.*** | Art. 8+12+20 |
| ☞ | CtRC | 28 Sep. 2020 | 28/2017 | ***M.B.*** | Art. 8+20 |
| ☞ | CtRC | 28 Sep. 2020 | 26/2017 | ***M.B.S.*** | Art. 8+20 |
| ☞ | CtRC | 28 Sep. 2020 | 40/2018 | ***S.M.A.*** | Art. 8+20 |
| ☞ | CtRC | 7 Feb. 2020 | 24/2017 | ***M.A.B.*** | Art. 8+20 |
| ☞ | CtRC | 18 Sep. 2019 | 27/2017 | ***R.K.*** | Art. 8+20 |
| ☞ | CtRC | 31 May 2019 | 16/2017 | ***A.L.*** | Art. 8 |
| ☞ | CtRC | 31 May 2019 | 22/2017 | ***J.A.B.*** | Art. 8+20 |

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

Art. 4 Prot. 4 Collective Expulsion

Art. 3 Prot. 4 Expulsion of nationals

* ETS 005 — impl. date 31 Aug. 1954

*ECtHR Judgments*

| | | | | | |
|---|---|---|---|---|---|
| ☞ | ECtHR | 25 June 2020 | 9347/14 | ***Moustahi v FR*** | Art. 5+2 Prot 4 |
| ☞ | ECtHR | 25 June 2019 | 10112/16 | ***Al Husin v BA*** | Art. 5 |
| ☞ | ECtHR | 25 Apr. 2019 | 62824/16 | ***V.M. v UK*** | Art. 5 |
| ☞ | ECtHR | 6 Nov. 2018 | 52548/15 | ***K.G. v BE*** | Art. 5 |
| ☞ | ECtHR | 4 Apr. 2017 | 23707/15 | ***Muzamba Oyaw v BE*** | Art. 5 |
| ☞ | ECtHR | 4 Apr. 2017 | 39061/11 | ***Thimothawes v BE*** | Art. 5 |
| ☞ | ECtHR | 6 Oct. 2016 | 3342/11 | ***Richmond Yaw v IT*** | Art. 5 |
| ☞ | ECtHR | 23 July 2013 | 55352/12 | ***Aden Ahmed v MT*** | Art. 5 |
| ☞ | ECtHR | 13 June 2013 | 53709/11 | ***A.F. v GR*** | Art. 5 |
| ☞ | ECtHR | 23 Oct. 2012 | 13058/11 | ***Abdelhakim v HU*** | Art. 5 |
| ☞ | ECtHR | 25 Sep. 2012 | 50520/09 | ***Ahmade v GR*** | Art. 5 |
| ☞ | ECtHR | 31 July 2012 | 14902/10 | ***Mahmundi v GR*** | Art. 5 |

See further: § 3.3

## 3.2 Irregular Migration: Proposed Measures

**Directive** **Return II**

*Amending Return Directive*

* COM (2018) 634, 12 Sep 2018
Council agreed position in June 2019; no EP position yet

## 3.3 Irregular Migration and Border Detention: Jurisprudence

*case law sorted in alphabetical order*

### 3.3.1 CJEU judgments on Irregular Migration

☞ CJEU 15 Sep. 2022, C-420/20 ***H.N.*** EU:C:2022:679
AG 3 Mar. 2022 EU:C:2022:157

* interpr. of Dir. 2008/115 Return Art. 3+9+11(2)
ref. from Sofiyski Rayonen sad, Bulgaria, 7 Aug. 2020

* *In so far as it is apparent from the order for reference that, in the present case, the person concerned is prevented from entering the territory of the MS in which his trial is taking place because of an entry ban imposed on him by the competent authorities of that Member State, it remains to be determined whether Return Dir. 2008/115, in such a situation, precludes the MS concerned from withdrawing or suspending the entry ban imposed on that person.*
*In that regard, it should be recalled that that directive, which lays down common standards and procedures to be applied in the MSs for returning illegally staying third-country nationals, permits MSs, as provided for in Art. 11(3), where a return decision is accompanied by an entry ban, to withdraw or suspend such a ban.*
*Thus, the fourth subparagraph of that paragraph states that, in specific cases or certain categories of cases, for other reasons, MS are to have such an option.*
*As the Advocate General observed in point 87 of his Opinion, the fourth subparagraph of Art. 11(3) Return Dir. confers on the MS a wide discretion in defining the cases in which they consider that an entry ban accompanied by a return decision should be suspended or lifted and therefore allows them to withdraw or suspend such an entry ban in order to enable a suspect or accused person to travel to their territory in order to be present at his or her trial.*

*New* ☞ CJEU 6 Oct. 2022, C-241/21 ***I.L.*** EU:C:2022:753
AG 2 June 2022 EU:C:2022:432

* interpr. of Dir. 2008/115 Return Art. 15(1)
ref. from Riigikohus, Estonia, 30 Mar. 2021

* *Art. 15(1) Return Dir. must be interpreted as not permitting a MS to order the detention of an illegally staying third-country national solely on the basis of a general criterion based on the risk that the effective enforcement of the removal would be compromised, without satisfying one of the specific grounds for detention provided for and clearly defined by the legislation implementing that provision in national law.*

☞ CJEU 10 Mar. 2022, C-519/20 ***K. / Gifhorn (DE)*** EU:C:2022:178
AG 25 Nov. 2021 EU:C:2021:958

* interpr. of Dir. 2008/115 Return Art. 16(1)+18(1)
ref. from Amtsgericht Hannover, Germany, 15 Oct. 2020

* *Art. 16(1) Return Dir. must be interpreted as meaning that a certain section of a prison, which, although it has its own director, comes under the direction of that prison and under the authority of the minister responsible for the prison system, and where third-country nationals are kept in detention with a view to their removal in specialized buildings, which have their own facilities and which are separate from the other buildings of this section, in which criminally convicted persons are detained, may be regarded as a 'special detention facility' within the meaning of that provision, provided that the detention conditions applicable to those third-country nationals prevent as much as possible that this detention is equivalent to detention in prison environment and are such as to respect both the fundamental rights guaranteed by the Charter and the rights enshrined in Art. 16(2) to (5) and Art. 17 of the RD.*
*(2) Art. 18 RD, read in conjunction with Art. 47 Charter, must be interpreted as meaning that the national court which, within the framework of its jurisdiction, must rule on the detention or extension order the detention in a prison of a third-country national pending his removal must be able to verify whether the conditions under which a MS can detain this third-country national in prison pursuant to Art. 18.*
*(3) Article 16(1) of Directive 2008/115, read in conjunction with the principle of the primacy of EU law, must be interpreted as meaning that a national court rules on legislation of a Member State under which illegal residents are resident in the territory of that Member State pending their removal, third-country nationals may be temporarily detained in a prison, where they are kept separate from ordinary prisoners, should not apply if the conditions under which such an arrangement according to Article 18(1) is not or no longer met , and the second sentence of Article 16(1) of that directive is compatible with EU law.*

☞ CJEU 30 Sep. 2020, C-402/19 ***L.M. / CPAS (BE)*** EU:C:2020:759
AG 4 Mar. 2020 EU:C:2020:155

* interpr. of Dir. 2008/115 Return Art. 5+13
ref. from Cour du Travail de Liege, Belgium, 17 May 2019

* *Artt. 5, 13 and 14, read in the light of Art. 7, 19(2), 21 and 47 of the Charter, must be interpreted as precluding national legislation which does not provide, as far as possible, for the basic needs of a TCN to be met where:*
*– that national has appealed against a return decision made in respect of him or her;*
*– the adult child of that TCN is suffering from a serious illness;*
*– the presence of that TCN with that adult child is essential;*
*– an appeal was brought on behalf of that adult child against a return decision taken against him or her, the enforcement of which may expose that adult child to a serious risk of grave and irreversible deterioration in his or her state of health, and*
*– that TCN does not have the means to meet his or her needs himself or herself.*

☞ CJEU 3 Mar. 2022, C-409/20 ***U.N.*** EU:C:2022:148

* interpr. of Dir. 2008/115 Return Art. 6+7+8

* *Art. 6(1) and 8(1) Return Dir., read in conjunction with Art. 6(4), 7(1) and 7(2), must be interpreted as not precluding legislation of a MS which penalises a third-country national staying illegally in the territory of that MS, in the absence of aggravating circumstances, initially by a fine together with an obligation to leave the territory of that MS within a prescribed period unless, before the expiry of that period, that third-country national's stay is regularised and, subsequently, if that third-country national's stay is not regularised, by a decision ordering his or her compulsory removal, provided that that period is set in accordance with the requirements laid down in Art. 7(1) and (2).*

*New* ☞ CJEU 20 Oct. 2022, C-825/21 ***U.P.*** EU:C:2022:810

* interpr. of Dir. 2008/115 Return Art. 6(4)
ref. from Cour de cassation, Belgium, 13 Dec. 2021

* *Art. 6(4) must be interpreted as not precluding legislation of a MS under which, where a right to stay is granted to a third-country national staying illegally on its territory pending the outcome of the processing of an application for leave to remain for one of the reasons covered by that provision, on account of the admissibility of that application, the grant of that right entails the implicit withdrawal of a return decision previously adopted in respect of that national after the rejection of his or her application for international protection.*

☞ CJEU 5 May 2021, C-641/20 ***V.T. / CPAS (BE)*** EU:C:2021:374

* interpr. of Dir. 2008/115 Return Art. 5+13
ref. from Tribunal du Travail de Liège, Belgium, 26 Nov. 2020

* *Art. 5+13 must be interpreted as precluding national legislation which:*
** does not confer automatic suspensory effect on an action brought by a TCN against a return decision, within the meaning of Art. 3(4), concerning him, after the withdrawal by the competent authority of his refugee status pursuant to Art. 11 QD, and, correlatively,*
** does not confer on that TCN a provisional right to reside and to have his basic needs taken care of until a decision on that action is taken,*
*in the exceptional case where that national, who is affected by a serious illness, may, as a result of that decision being enforced, be exposed to a serious risk of grave and irreversible deterioration in his state of health.*
*In this context, the national court, hearing a dispute the outcome of which is linked to the possible suspension of the effects of the return decision, must hold that the action brought against that decision has automatic suspensory effect, where that action contains arguments, that do not appear to be manifestly unfounded, seeking to establish that the enforcement of that decision would expose the TCN to a serious risk of grave and irreversible deterioration in his state of health.*

☞ CJEU (GC) 18 Dec. 2014, C-562/13 ***Abdida*** EU:C:2014:2453
AG 4 Sep. 2014 EU:C:2014:2167

* interpr. of Dir. 2008/115 Return Art. 5+13
ref. from Cour du Travail de Bruxelles, Belgium, 31 Oct. 2013

* *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 (GC) 6 Dec. 2011, C-329/11 ***Achughbabian*** EU:C:2011:807
AG 26 Oct. 2011 EU:C:2011:694

* interpr. of Dir. 2008/115 Return
ref. from Court d'Appel de Paris, France, 29 June 2011

* *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 (GC) 7 June 2016, C-47/15 ***Affum*** EU:C:2016:408
AG 2 Feb. 2016 EU:C:2016:68
* interpr. of Dir. 2008/115 Return Art. 2(1)+3(2)
ref. from Cour de Cassation , France, 6 Feb. 2015
* *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 (GC) 19 Mar. 2019, C-444/17 ***Arib*** EU:C:2019:220
AG 17 Oct. 2018 EU:C:2018:836
* interpr. of Dir. 2008/115 Return Art. 2(2)(a)
ref. from Cour de Cassation , France, 21 July 2017
* *Article 2(2)(a) of Dir. 2008/115 read in conjunction with Art. 32 of Regulation 2016/399 (Borders Code), must be interpreted as not applying to the situation of an illegally staying third-country national who was apprehended in the immediate vicinity of an internal border of a Member State, even where that Member State has reintroduced border control at that border, pursuant to Article 25 of the regulation, on account of a serious threat to public policy or internal security in that Member State.*

☞ CJEU 30 May 2013, C-534/11 ***Arslan*** EU:C:2013:343
AG 31 Jan. 2013 EU:C:2013:52
* interpr. of Dir. 2008/115 Return Art. 2(1)
ref. from Nejvyšší správní soud, Czech, 20 Oct. 2011
* *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 30 Sep. 2020, C-233/19 ***B. / CPAS (BE)*** EU:C:2020:757
AG 28 May 2020 EU:C:2020:397
* interpr. of Dir. 2008/115 Return Art. 16(1)
ref. from Cour du Travail de Liege, Belgium, 18 Mar. 2019
* *Art. 5 and 13, read in the light of Art. 19(2) and 47 of the Charter, must be interpreted as meaning that a national court, hearing a dispute on social assistance, the outcome of which is linked to the possible suspension of the effects of a return decision taken in respect of a TCN suffering from a serious illness, must hold that an action for annulment and suspension of that decision leads to automatic suspension of that decision, even though suspension of that decision does not result from the application of national legislation, where:*
*(1) that action contains arguments seeking to establish that the enforcement of that decision would expose that third-country national to a serious risk of grave and irreversible deterioration in his or her state of health, which does not appear to be manifestly unfounded, and that*
*(2) that legislation does not provide for any other remedy, governed by precise, clear and foreseeable rules, which automatically entail the suspension of such a decision.*

☞ CJEU 3 June 2021, C-546/19 ***B.Z. / Westerwaldkreis (DE)*** EU:C:2021:432
AG 10 Feb. 2021 EU:C:2021:105
* interpr. of Dir. 2008/115 Return Art. 2(2)(b)+3(6)
ref. from Bundesverwaltungsgericht, Germany,
* *An entry ban falls within the scope of the Return Directive also if the reasons for this ban are not related to migration but public order in the context of a criminal conviction. If the return decision connected to that entry ban is annulled - even if that return decision was final - that return decision is no longer valid.*

☞ CJEU (GC) 17 July 2014, C-473/13 ***Bero & Bouzalmate*** EU:C:2014:2095
AG 30 Apr. 2014 EU:C:2014:295
* interpr. of Dir. 2008/115 Return Art. 16(1)
ref. from Bundesgerichtshof, Germany, 3 Sep. 2013
* joined cases: C-473/13 + C-514/13
* *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 11 Dec. 2014, C-249/13 ***Boudjlida*** EU:C:2014:2431
AG 25 June 2014 EU:C:2014:2032
* interpr. of Dir. 2008/115 Return Art. 6
ref. from Tribunal administratif de Pau, France, 6 May 2013
* *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.*

*New*

☞ CJEU (GC) 8 Nov. 2022, C-39/21 (PPU) ***C. & B.*** EU:C:2022:858
AG 21 June 2022 EU:C:2022:451

* interpr. of Dir. 2008/115 Return Art. 15(2)(b)
ref. from Rechtbank Den Haag (zp) Den Bosch, NL, 26 Jan. 2021

* joined cases: C-39/21 + C-704/20

* *Art. 15(2) and (3) Return Dir. read in conjunction with Art. 6 and 47 Charter, must be interpreted as meaning that a judicial authority's review of compliance with the conditions governing the lawfulness of the detention of a third-country national which derive from EU law must lead that authority to raise of its own motion, on the basis of the material in the file brought to its attention, as supplemented or clarified during the adversarial proceedings before it, any failure to comply with a condition governing lawfulness which has not been invoked by the person concerned.*

☞ CJEU 1 Oct. 2015, C-290/14 ***Celaj*** EU:C:2015:640
AG 28 Apr. 2015 EU:C:2015:285

* interpr. of Dir. 2008/115 Return
ref. from Tribunale di Firenze, Italy, 12 June 2014

* *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 (GC) 17 Dec. 2020, C-808/18 ***Com. / Hungary (Com)*** EU:C:2020:1029
AG 25 June 2020 EU:C:2020:493

* non-transp. of Dir. 2008/115 Return Art. 5+6+12+13
ref. from European Commission, EU, 21 Dec. 2018

* *Hungary has failed to fulfil its obligations:*
** in providing that applications for international protection from third-country nationals or stateless persons who, arriving from Serbia, wish to access, in its territory, the international protection procedure, may be made only in the transit zones of Röszke (Hungary) and Tompa (Hungary), while adopting a consistent and generalised administrative practice drastically limiting the number of applicants authorised to enter those transit zones daily;*
** in establishing a system of systematic detention of applicants for international protection in the transit zones of Röszke and Tompa, without observing the guarantees provided for in Art. 24(3) and Art. 43 of Dir. 2013/32 and Arts 8, 9 and 11 of Dir. 2013/33;*
** in allowing the removal of all third-country nationals staying illegally in its territory, with the exception of those of them who are suspected of having committed a criminal offence, without observing the procedures and safeguards laid down in Art. 5, 6(1), 12(1)+13(1) of Dir. 2008/115;*
** in making the exercise by applicants for international protection who fall within the scope of Art. 46(5) of Dir. 2013/32 of their right to remain in its territory subject to conditions contrary to EU law.*

☞ CJEU 28 Apr. 2011, C-61/11 (PPU) ***El Dridi*** EU:C:2011:268
AG 28 Apr. 2011 EU:C:2011:205

* interpr. of Dir. 2008/115 Return Art. 15+16
ref. from Corte D'Appello Di Trento, Italy, 10 Feb. 2011

* *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 (GC) 14 May 2020, C-924/19 (PPU) ***F.M.S. & F.N.Z.*** EU:C:2020:367
AG 23 Apr. 2020 EU:C:2020:294

* interpr. of Dir. 2008/115 Return Art. 13
ref. from Szegedi Közigazgatási és Munkaügyi Bíróság, Hungary, 18 Dec. 2019

* *1. Art. 13 Return Directive, must be interpreted as precluding legislation of a MS under which the amendment by an administrative authority of the country of destination stated in an earlier return decision can be contested by the TCN concerned only by means of an action brought before an administrative authority, without a subsequent judicial review of the decision of that authority being guaranteed. In such a situation, the principle of primacy of EU law and the right to effective judicial protection, guaranteed by Art. 47 of the Charter, must be interpreted as requiring the national court dealing with an action contesting the legality, under EU law, of the return decision consisting in such an amendment of the country of destination to declare that it has jurisdiction to hear that action.*
*(...) 7. Art. 15 must be interpreted as precluding: (1) a TCN being detained for the sole reason that he or she is the subject of a return decision and is unable to provide for his or her needs; (2) such detention taking place without a reasoned decision ordering detention having first been adopted and without the necessity and proportionality of such a measure having been examined; (3) there being no judicial review of the lawfulness of the administrative decision ordering detention; and, (4) such detention being capable of exceeding 18 months and being maintained when the removal arrangements are no longer in progress or are no longer being executed with due diligence.*

☞ CJEU 19 Sep. 2013, C-297/12 ***Filev & Osmani*** EU:C:2013:569

* interpr. of Dir. 2008/115 Return Art. 2(2)(b)+11
ref. from Amtsgericht Laufen, Germany, 18 June 2012

* *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 10 Sep. 2013, C-383/13 (PPU) ***G. & R.*** EU:C:2013:533
AG 23 Aug. 2013 EU:C:2013:553
* interpr. of Dir. 2008/115 Return Art. 15(2)+6
ref. from Raad van State, NL, 5 July 2013
* *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 (GC) 19 June 2018, C-181/16 ***Gnandi*** EU:C:2018:465
AG 22 Feb. 2018 EU:C:2018:90
* interpr. of Dir. 2008/115 Return Art. 5
ref. from Conseil d'Etat, Belgium, 31 Mar. 2016
* *Member States are entitled to adopt a return decision as soon as an application for international protection is rejected, provided that the return procedure is suspended pending the outcome of an appeal against that rejection.*
*Member States are required to provide an effective remedy against the decision rejecting the application for international protection, in accordance with the principle of equality of arms, which means, in particular, that all the effects of the return decision must be suspended during the period prescribed for lodging such an appeal and, if such an appeal is lodged, until resolution of the appeal.*

☞ CJEU 17 Sep. 2020, C-806/18 ***J.Z.*** EU:C:2020:724
AG 23 Apr. 2020 EU:C:2020:307
* interpr. of Dir. 2008/115 Return Art. 11(2)
ref. from Hoge Raad, NL, 23 Nov. 2018
* *The Return Directive, and in particular Art. 11 thereof, must be interpreted as not precluding legislation of a MS which provides that a custodial sentence may be imposed on an illegally staying TCN for whom the return procedure set out in that directive has been exhausted but who has not actually left the territory of the MSs, where the criminal act consists in an unlawful stay with notice of an entry ban, issued in particular on account of that TCN's criminal record or the threat he represents to public policy or national security, provided that the criminal act is not defined as a breach of such an entry ban and that that legislation is sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness, which is for the referring court to ascertain.*
*Follow up on the Ouhrami case (C-225/16) of 26 July 2017 on the consequences of an entry ban if the alien has not (yet) left the territory of the MS.*

☞ CJEU (GC) 8 May 2018, C-82/16 ***K.A. a.o.*** EU:C:2018:308
AG 26 Oct. 2017 EU:C:2017:821
* interpr. of Dir. 2008/115 Return Art. 5+11+13
ref. from Raad voor Vreemdelingenbetwistingen, Belgium, 12 Feb. 2016
* *Art. 5 and 11 must be interpreted as not precluding a practice of a MS that consists in not examining an application for residence for the purposes of family reunification, submitted on its territory by a TCN family member of a Union citizen who is a national of that MS and who has never exercised his or her right to freedom of movement, solely on the ground that that TCN is the subject of a ban on entering the territory of that Member State.*
*Art. 5 must be interpreted as precluding a national practice pursuant to which a return decision is adopted with respect to a TCN, who has previously been the subject of a return decision, accompanied by an entry ban that remains in force, without any account being taken of the details of his or her family life, and in particular the interests of a minor child of that TCN, referred to in an application for residence for the purposes of family reunification submitted after the adoption of such an entry ban, unless such details could have been provided earlier by the person concerned.*

☞ CJEU (GC) 30 Nov. 2009, C-357/09 (PPU) ***Kadzoev*** EU:C:2009:741
AG 10 Nov. 2009 EU:C:2009:691
* interpr. of Dir. 2008/115 Return Art. 15(4), (5) + (6)
ref. from Administrativen sad Sofia-grad, Bulgaria, 7 Sep. 2009
* *The maximum duration of detention must include a period of detention completed in connection with a removal procedure commenced before the rules in the directive become applicable. Only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.*

☞ CJEU 24 Feb. 2021, C-673/19 ***M. a.o.*** EU:C:2021:127
AG 20 Oct. 2020 EU:C:2020:840
* interpr. of Dir. 2008/115 Return Art. 3+6+15
ref. from Raad van State, NL, 4 Sep. 2019
* *Arts 3, 4, 6 and 15 must be interpreted as not precluding a MS from placing in administrative detention a TCN residing illegally on its territory, in order to carry out the forced transfer of that national to another MS in which that national has refugee status, where that national has refused to comply with the order to go to that other MS and it is not possible to issue a return decision to him or her.*

☞ CJEU 11 Mar. 2021, C-112/20 ***M.A.*** EU:C:2021:197
* interpr. of Dir. 2008/115 Return Art. 5+13
ref. from Conseil d'Etat, Belgium, 28 Feb. 2020
* Art. 24 Charter
* *Art. 5 Return Directive, read in conjunction with Art. 24 Charter, must be interpreted as meaning that MSs are required to take due account of the best interests of the child before adopting a return decision accompanied by an entry ban, even where the person to whom that decision is addressed is not a minor but his or her father.*

☞ CJEU 8 Oct. 2020, C-568/19 ***M.O. / Toledo (ES)*** EU:C:2020:807
* interpr. of Dir. 2008/115 Return Art. 6(1)+8(1)
ref. from Tribunal Superior de Justicia of Castilla La Mancha , Spain, 11 July 2019
* *First, it should be observed that, when applying domestic law, and within the limits established by general principles of law, national courts are required to interpret that law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by that directive. In this case, the referring court seems to preclude that possibility. Secondly, it must be observed that, in accordance with the Court's settled case-law, a directive cannot, of itself, impose obligations on an individual.*
*The Return Directive must be interpreted as meaning that, where national legislation makes provision, in the event of a TCN staying illegally in the territory of a MS, for either a fine or removal, and the latter measure may be adopted only if there are aggravating circumstances concerning that national, additional to his or her illegal stay, the competent national authority may not rely directly on the provisions of that directive in order to adopt a return decision and to enforce that decision, even in the absence of such aggravating circumstances.*

☞ CJEU 5 June 2014, C-146/14 (PPU) ***Mahdi*** EU:C:2014:1320
AG 14 May 2014 EU:C:2014:1936
* interpr. of Dir. 2008/115 Return Art. 15
ref. from Administrativen sad Sofia-grad, Bulgaria, 28 Mar. 2014
* *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 21 Mar. 2013, C-522/11 ***Mbaye*** EU:C:2013:190
* interpr. of Dir. 2008/115 Return Art. 2(2)(b)+7(4)
ref. from Ufficio del Giudice di Pace Lecce, Italy, 22 Sep. 2011
* *Third-country nationals prosecuted for or convicted of the offence of illegal residence provided for in the legislation of a Member State cannot, on account solely of that offence of illegal residence, be excluded from the scope of Directive 2008/115.*
*Directive 2008/115 does not preclude legislation of a Member State penalising the illegal residence of third-country nationals by a fine which may be replaced by expulsion. However, it is only possible to have recourse to that option to replace the fine where the situation of the person concerned corresponds to one of those referred to in Article 7(4) of that directive.*

☞ CJEU 5 Nov. 2014, C-166/13 ***Mukarubega*** EU:C:2014:2336
AG 25 June 2014 EU:C:2014:2031
* interpr. of Dir. 2008/115 Return Art. 3+7
ref. from Tribunal Administratif de Melun, France, 3 Apr. 2013
* *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.*

*New* ☞ CJEU 20 Oct. 2022, C-66/21 ***O.T.E.*** EU:C:2022:809
* interpr. of Dir. 2004/81 Trafficking Victims Art. 6(2)
ref. from Rechtbank Den Haag (zp) Zwolle, NL, 29 Jan. 2021
* *Art. 2 Dir. 2004/81 on a residence permit issued to third-country nationals who are victims of trafficking must be interpreted as meaning that the measure by which a third-country national is transferred from the territory of one MS to that of another MS, pursuant to Dublin III, falls within the scope of the concept of 'expulsion order'.*
*Art. 6(2) Dir. 2004/81 must be interpreted as precluding the enforcement of a Dublin III transfer decision, during the reflection period guaranteed in Art. 6 of that directive, but as not precluding the adoption of such a decision, or of measures preparatory to the enforcement of that decision, provided that those preparatory measures do not deprive such a reflection period of its effectiveness, which is a matter for the referring court to determine.*

☞ CJEU 3 Sep. 2015, C-456/14 ***Orrego Arias*** EU:C:2015:550
* interpr. of Dir. 2001/40 Expulsion Decisions Art. 3(1)(a)
ref. from Tribunal Superior de Justicia of Castilla La Mancha , Spain, 2 Oct. 2014
* inadmissable
* *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 inadmissable.*

☞ CJEU 26 July 2017, C-225/16 ***Ouhrami*** EU:C:2017:590
AG 18 May 2017 EU:C:2017:398
* interpr. of Dir. 2008/115 Return Art. 11(2)
ref. from Hoge Raad, NL, 22 Apr. 2016
* *Article 11(2) must be interpreted as meaning that the starting point of the duration of an entry ban, as referred to in that provision, which in principle may not exceed five years, must be calculated from the date on which the person concerned actually left the territory of the Member States.*

☞ CJEU 8 Sep. 2022, C-56/22 ***P.L.*** EU:C:2022:672
* interpr. of Dir. 2008/115 Return Art. 5+6+13
* *The request is manifestly unfounded.*

☞ CJEU 25 May 2016, C-218/15 ***Paoletti a.o.*** EU:C:2016:748
AG 26 May 2016 EU:C:2016:370
* interpr. of Dir. 2002/90 Unauthorized Entry Art. 1
ref. from Tribunale ordinario di Campobasso, Italy, 11 May 2015
* *Article 6 TEU and Article 49 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the accession of a State to the European Union does not preclude another Member State imposing a criminal penalty on persons who committed, before the accession, the offence of facilitation of illegal immigration for nationals of the first State.*

☞ CJEU 14 Sep. 2017, C-184/16 ***Petrea*** EU:C:2017:684
AG 27 Apr. 2017 EU:C:2017:324
* interpr. of Dir. 2008/115 Return Art. 6(1)
ref. from Dioikitiko Protodikeio Thessalonikis, Greece, 1 Apr. 2016
* *The Return Directive does not preclude a decision to return a EU citizen from being adopted by the same authorities and according to the same procedure as a decision to return a third-country national staying illegally referred to in Article 6 (1), provided that the transposition measures of Directive 2004/38 (Citizens Directive) which are more favourable to that EU citizen are applied.*

☞ CJEU (GC) 17 July 2014, C-474/13 ***Pham*** EU:C:2014:2096
AG 30 Apr. 2014 EU:C:2014:336
* interpr. of Dir. 2008/115 Return Art. 16(1)
ref. from Bundesgerichtshof, Germany, 3 Sep. 2013
* *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 6 Dec. 2012, C-430/11 ***Sagor*** EU:C:2012:777
* interpr. of Dir. 2008/115 Return Art. 2+15+16
ref. from Tribunale di Adria, Italy, 18 Aug. 2011
* *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 14 Jan. 2021, C-441/19 ***T.Q.*** EU:C:2021:9
AG 2 July 2020 EU:C:2020:515
* interpr. of Dir. 2008/115 Return Art. 6+8+10
ref. from Rechtbank Den Haag (zp) Den Bosch, NL, 12 June 2019
* *Art. 6(1) must be interpreted as meaning that, before issuing a return decision against an unaccompanied minor, the MS concerned must carry out a general and in-depth assessment of the situation of that minor, taking due account of the best interests of the child. In this context, that MS must ensure that adequate reception facilities are available for the unaccompanied minor in question in the State of return.*
*Art. 6(1) read in conjunction with Art. 5(a) and in the light of Art. 24(2) of the Charter, must be interpreted as meaning that a MS may not distinguish between unaccompanied minors solely on the basis of the criterion of their age for the purpose of ascertaining whether there are adequate reception facilities in the State of return.*
*Art. 8(1) must be interpreted as precluding a MS, after it has adopted a return decision in respect of an unaccompanied minor and has been satisfied, in accordance with Art. 10(2), that that minor will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return, from refraining from subsequently removing that minor until he or she reaches the age of 18 years.*

☞ CJEU 4 Dec. 2020, C-746/19 ***U.D.*** EU:C:2020:1064
* interpr. of Dir. 2008/115 Return all Art.
ref. from Juzgado de lo Contencioso-Administrativo de Barcelona, Spain, 14 Oct. 2019
* case is deleted
* *Did the Spanish State correctly transpose Dir. 2008/115 into national law.*
*Question was withdrawn with reference to the judgment CJEU 8 Oct. 2020, C-568/19.*

☞ CJEU 10 Apr. 2012, C-83/12 ***Vo*** EU:C:2012:202
AG 26 Mar. 2012 EU:C:2012:170

* interpr. of Dir. 2002/90 Unauthorized Entry Art. 1
ref. from Bundesgerichtshof, Germany, 17 Feb. 2012

* *The Visa Code is to be interpreted as meaning that is does not preclude national provisions under which assisting illegal immigration constitutes an offence subject to criminal penalties in cases where the persons smuggled, third-country nationals, hold visas which they obtained fraudulently by deceiving the competent authorities of the Member State of issue as to the true purpose of their journey, without prior annulment of those visas.*

☞ CJEU 2 July 2020, C-18/19 ***W.M.*** EU:C:2020:511
AG 27 Feb. 2020 EU:C:2020:130

* interpr. of Dir. 2008/115 Return Art. 16(1)
ref. from Bundesgerichtshof, Germany, 11 Jan. 2019

* *Art. 16(1) Return Directive must be interpreted as not precluding national legislation which allows an illegally staying TCN to be detained in prison accommodation for the purpose of removal, separated from ordinary prisoners, on the ground that he poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the internal or external security of the MS concerned.*

☞ CJEU 11 June 2020, C-448/19 ***W.T.*** EU:C:2020:467

* interpr. of Dir. 2001/40 Expulsion Decisions in full
ref. from Tribunal Superior de Justicia de Castilla-La Mancha, Spain, 12 June 2019

* *Art. 12 of Dir. 2003/109 must be interpreted as precluding legislation of a MS which, as interpreted by national case-law with reference to Council Directive 2001/40, provides for the expulsion of any third-country national who holds a long-term residence permit who has committed a criminal offence punishable by a custodial sentence of at least one year, without it being necessary to examine whether the third country national represents a genuine and sufficiently serious threat to public order or public security or to take into account the duration of residence in the territory of that Member State, the age of the person concerned, the consequences of expulsion for the person concerned and family members and the links with the country of residence or the absence of links with the country of origin.*

☞ CJEU 26 Sep. 2018, C-175/17 ***X.*** EU:C:2018:776
AG 24 Jan. 2018 EU:C:2018:34

* interpr. of Dir. 2008/115 Return Art. 13
ref. from Raad van State, NL, 6 Apr. 2017

* joined cases: C-175/17 + C-180/17

* *An appeal against a judgment delivered at first instance upholding a decision rejecting an application for international protection and imposing an obligation to return, does not confer on that remedy automatic suspensory effect even in the case where the person concerned invokes a serious risk of infringement of the principle of non-refoulement.*

*New* ☞ CJEU (GC) 22 Nov. 2022, C-69/21 ***X. / Stscr (NL)*** EU:C:2022:913
AG 9 June 2022 EU:C:2022:451

* interpr. of Dir. 2008/115 Return Art. 5+6+9
ref. from Rechtbank Den Haag (zp) Den Bosch, NL, 4 Feb. 2021

* *(1) Art 5 Return Dir., read in conjunction with Art. 1, 4 and 19(2) Charter, must be interpreted as precluding a return decision from being taken or a removal order from being made in respect of a third-country national who is staying illegally on the territory of a MS and suffering from a serious illness, where there are substantial grounds for believing that the person concerned would be exposed, in the third-country to which he or she would be removed, to a real risk of a significant, permanent and rapid increase in his or her pain, if he or she were returned, on account of the only effective analgesic treatment being prohibited in that country. A Member State may not lay down a strict period within which such an increase must be liable to materialise in order to preclude that return decision or that removal order.*
*(2)Art. 5 and 9(1)(a) must be interpreted as precluding the consequences of the removal order in the strict sense on the state of health of a third-country national from being taken into account by the competent national authority solely in order to examine whether he or she is able to travel.*
*(3) Directive 2008/115, read in conjunction with Art. 7, as well as Art. 1 and 4 Charter must be interpreted as meaning that*
*(a) it does not require the MS on whose territory a third-country national is staying illegally to grant that national a right of residence where he or she cannot be the subject of a return decision or a removal order because there are substantial grounds for believing that he or she would be exposed, in the receiving country, to a real risk of a rapid, significant and permanent increase in the pain caused by the serious illness from which he or she suffers;*
*(b) the state of health of that national and the care he or she receives on that territory, on account of that illness, must be taken into account, together with all the other relevant factors, by the competent national authority when it examines whether the right to respect for the private life of that national precludes him or her being the subject of a return decision or a removal order;*
*(c) the adoption of such a decision or measure does not infringe that right on the sole ground that, if he or she were returned to the receiving country, that national would be exposed to the risk that his or her state of health deteriorates, where such a risk does not reach the severity threshold required under Art. 4 Charter.*

☞ CJEU 23 Apr. 2015, C-38/14 ***Zaizoune*** EU:C:2015:260

* interpr. of Dir. 2008/115 Return Art. 4(2)+6(1)
ref. from Tribunal Superior de Justicia del Pais Vasco, Spain, 27 Jan. 2014

* *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 11 June 2015, C-554/13 ***Zh. & O.*** EU:C:2015:377
AG 12 Feb. 2015 EU:C:2015:94
* interpr. of Dir. 2008/115 Return Art. 7(4)
ref. from Raad van State, NL, 28 Oct. 2013
* *(1) Art. 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) Art. 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) Art. 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 TCN 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-663/21 ***A.A.***
* interpr. of Dir. 2008/115 Return Art. 5+6+8+9
* *On the revocation of subsidiary protection.*

☞ CJEU C-528/21 ***M.D.***
AG 24 Nov. 2022 EU:C:2022:933
* interpr. of Dir. 2008/115 Return Art. 5+11
* *On the lawfulness of an entry and residence ban ordered on grounds of national security against a third-country national who is a family member of an EU citizen (specifically, an ascendant relative of a Hungarian citizen who is a minor).*
*The AG concluded that the Return Directive does not apply in this situation. In this case the AG concludes that there is a strong indication that the third-country national who is the father of an Hungarian minor living in Hungary, has a derived residence permit based on Art. 20 TFEU. This should be examined before an entry and residence ban is decided.*

☞ CJEU C-257/22 ***C.D.***
* interpr. of Dir. 2008/115 Return Art. 4+5
ref. from Krajský soud v Brně, Czech, 14 Apr. 2022
* *On the meaning of the concept safe country of origin.*

☞ CJEU C-712/21 ***X.X.X. / Etat Belge (BE)***
* interpr. of Dir. 2008/115 Return Art. 5
ref. from Conseil d'Etat, Belgium, 4 Nov. 2021
* joined cases: C-712/21 + C-711/21
* *Must the circumstances referred to in Art. 5 Return Dir. have arisen at a time when the foreign national was legally resident or allowed to remain?*

## 3.3.3 ECtHR Judgments on Irregular Migration , Border Detention and Collective Expulsion (Art. 5; 4 Prot4)

☞ ECtHR 13 June 2013, 53709/11 ***A.F. v GR*** CE:ECHR:2013:0613JUD005370911
* violation of ECHR: Art. 5
* *An Iranian entering Greece from Turkey had initially not been registered as an asylum seeker by the Greek authorities, which ordered his return to Turkey. However, the Turkish authorities refused to readmit him into Turkey, and he was then detained by the Greek police.*
*Against the background of reports from Greek and international organisations, having visited the relevant police detention facilities either during the applicant's detention or shortly after his release – including the European Committee for the Prevention of Torture, the UN Special Rapporteur on Torture, the German NGO ProAsyl and the Greek National Human Rights Commission – the ECtHR found a violation of art. 3 due to the serious lack of space available to the applicant, also taking the duration of his detention into account. It was thus unnecessary for the Court to examine the applicant's other allegations concerning the detention conditions (art 5 ECHR) which the Government disputed. Yet, the Court noted that the Government's statements in this regard were not in accordance with the findings of the abovementioned organisations.*

☞ ECtHR 23 Oct. 2012, 13058/11 ***Abdelhakim v HU*** CE:ECHR:2012:1023JUD001305811
* 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 23 July 2013, 55352/12 ***Aden Ahmed v MT*** CE:ECHR:2013:0723JUD005535212
* violation of ECHR: Art. 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 25 Sep. 2012, 50520/09 ***Ahmade v GR*** CE:ECHR:2012:0925JUD005052009
* 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 2 Mar. 2017, 59727/13 ***Ahmed v UK*** CE:ECHR:2017:0302JUD005972713
* 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 25 June 2019, 10112/16 ***Al Husin v BA*** CE:ECHR:2019:0625JUD001011216
* violation of ECHR: Art. 5
* *The applicant was born in Syria in 1963. He fought as part of a foreign mujahedin*
*unit on the Bosnian side during the 1992-95 war. At some point he obtained citizenship of Bosnia and Herzegovina, but this was revoked in 2007. He was placed in an immigration detention centre in October 2008 as a threat to national security. He claimed asylum, but this was dismissed and a deportation order was issued in February 2011. The applicant lodged a first application to the ECtHR, which found that he faced a violation of his rights if he were to be deported to Syria. The authorities issued a new deportation order in March 2012 and proceeded over the following years to extend his detention on national security grounds. In the meantime, the authorities tried to find a safe third country to deport him to, but many countries in Europe and the Middle East refused to accept him.*
*In February 2016 he was released subject to restrictions, such as a ban on leaving his area of residence and having to report to the police. The Court concluded that the grounds for the applicant's detention had not remained valid for the whole period of his detention owing to the lack of a realistic prospect of his expulsion. There had therefore been a violation of his rights under Article 5(1)(f).*

☞ ECtHR (GC) 14 Sep. 2022, 24384/19 ***H.F. v FR*** CE:ECHR:2022:0914JUD002438419

* violation of ECHR: Art. 3 Prot 4

* joined cases: 24384/19, 44234/20

* *On the prohibition of expulsion of nationals. This case is about two women (born in 1989 and 1991) who traveled in 2014 and 2015 to Syria on their own initiative with their respective partners. Their decision to leave was part of a broader movement in which nationals from several European States went to Iraq or Syria to join the so-called "Islamic State in Iraq and the Levant" or "ISIL", also known as "ISIS". The partners of these women died in Syria. Both women gave birth to several children in Syria and ended up in the camps Roj and al-Hol. The ICRC regional director described the situation in these camps as "apocalyptic"..*
*The grandparents of these children tried to persuade the French government to repatriate their daughters and their children to France. The domestic courts refused to entertain jurisdiction on the grounds that the requests concerned acts that could not be detached from the conduct by France of its international relations. The ECtHR first assesses the question whether it has jurisdiction. Firstly, the ECtHR concludes that the request is outside its jurisdiction (is inadmissible) in the context of Art. 3. However, the ECtHR finds the request within it jurisdiction and therefore admissible in the context of Art. 3(2) Prot. 4.*
*Taken literally, the scope of Art. 3(2) Prot. 4 corresponded to a negative obligation of the State and was limited to purely formal measures prohibiting citizens from returning to national territory. However, it could not be ruled out that informal or indirect measures which de facto deprived the national of the effective enjoyment of his or her right to return might, depending on the circumstances, be incompatible with this provision.*
*Certain positive obligations inherent in Art. 3(2) Prot. 4 had long been imposed on States for the purpose of effectively guaranteeing entry to national territory. These corresponded to measures which stemmed traditionally from the State's obligation to issue travel documents to nationals, to ensure that they could cross the border. As regards the implementation of the right to enter, as in other contexts, the scope of any positive obligations would inevitably vary, depending on the diverse situations in the Contracting States and the choices to be made in terms of priorities and resources. Those obligations must not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities. Where the State was required to take positive measures, the choice of means was in principle a matter that fell within its margin of appreciation.*
*The question then is whether there was a right to repatriation (notably for those unable to reach State border as a result of material situation). The Convention did not guarantee a right to diplomatic protection by a Contracting State for the benefit of any person within its jurisdiction. Pursuant to this, individuals such as the applicants' family members, who*

☞ ECtHR 21 Feb. 2012, 27765/09 ***Hirsi v IT*** CE:ECHR:2012:0221JUD002776509

* violation of ECHR: Art. 4 Prot 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 6 Nov. 2018, 52548/15 ***K.G. v BE*** CE:ECHR:2018:1106JUD005254815

* no violation of ECHR: Art. 5

* *The applicant, a Sri Lankan national, arrived in Belgium in October 2009. He lodged eight asylum applications, alleging that he had been subjected to torture in Sri Lanka because he belonged to the Tamil minority. His requests were rejected and he was issued with a number of orders to leave Belgium but did not comply. In January 2011 he was sentenced to 18 months' imprisonment, for the offence of indecent assault committed with violence or threats against a minor under 16. In October 2014 he was notified that he was banned from entering Belgium for six years on the ground that he constituted a serious threat to public order. The decision of the Aliens Office referred, among other points, to his conviction, to police reports showing that he had committed the offences of assault, shop-lifting, and contact with minors, and also to the orders to leave Belgium with which he had not complied. He was then placed in a detention centre.*
*The Court stressed that the case had involved important considerations concerning the clarification of the risks actually facing the applicant in Sri Lanka, the protection of public safety in view of the serious offences of which he had been accused and the risk of a repeat offence, and also the applicant's mental health. The interests of the applicant and the public interest in the proper administration of justice had justified careful scrutiny by the authorities of all the relevant aspects and evidence and in particular the examination, by bodies that afforded safeguards against arbitrariness, of the evidence regarding the threat to national security and the applicant's health. The Court therefore considered, that the length of time for which the applicant had been at the Government's disposal – approximately 13 months – could not be regarded as excessive.*

☞ ECtHR 3 Feb. 2022, 20611/17 ***Kommissarov v CZ*** CE:ECHR:2022:0203JUD002061117

* violation of ECHR: Art. 5(1)(f)

* *The applicant is a Russian national who was born in 1968 and lives in Nizhny Novgorod (Russia). The case concerns the applicant's detention pending extradition from the Czech Republic to Russia. In 1998 the applicant settled in the Czech Republic and was granted permanent residence there in 2000. Meanwhile, in 1999, he was indicted in Russia for fraud. Between 2005 and 2014 several requests were lodged by the Russian authorities for his extradition, and in 2015 it was ruled that he could be extradited. Following an unsuccessful constitutional appeal in February 2016 and the dismissal of his application for asylum, the applicant was surrendered to the Russian authorities in November 2017.*
*The ECtHR concludes that as a result of the delays in the asylum proceedings, the length of the detention pending extradition, which lasted eighteen months, was not in accordance with domestic law. In this context, there were two relevant elements:*
** the time-limit for the detention pending extradition, and*
** the time-limit for dealing with the asylum claim (para. 27 and 29).*
*They both are inextricably linked – the time-limit for consideration of the asylum claim is intended, in the circumstances of the case, to ensure that the overall length of detention is not excessive.*
*The ECtHR holds unanimously that there has been a violation of art. 5(1)(f).*

☞ ECtHR 31 July 2012, 14902/10 ***Mahmundi v GR*** CE:ECHR:2012:0731JUD001490210

* 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.*

☞ ECtHR 25 June 2020, 9347/14 ***Moustahi v FR*** CE:ECHR:2020:0625JUD000934714

* violation of ECHR: Art. 5+2 Prot 4

* *Two children, 3 and 5 years old in 2013, left the Comoros on a makeshift boat heading for Mayotte, where their father was living, as a legal resident. Having been intercepted at sea, their names were added to a removal order issued against one of the adults in the group. Subsequently, they were placed in administrative detention in a police station. Although their father came to meet them there he was not allowed to see them and the children were placed with the 'stranger' adult on a ferry bound for the Comoros.*
*An hour later, the father lodged an application for urgent proceedings in the Administrative Court. While noting that the decision in question was "manifestly unlawful", the judge rejected the application for lack of urgency. The urgent applications judge of the Conseil d'État dismissed an appeal, finding that it was up to the father to follow the appropriate procedure in order to apply for family reunification. In 2014 the two children were granted a long-stay visa in this context.*

☞ ECtHR 4 Apr. 2017, 23707/15 ***Muzamba Oyaw v BE*** CE:ECHR:2017:0404JUD002370715

* no violation of ECHR: Art. 5

* inadmissable

* *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 3 Oct. 2017, 8675/15 ***N.D. & N.T. v ES*** CE:ECHR:2017:1003JUD000867515

* violation of ECHR: Art. 4 Prot 4

* joined cases: 8675/15, 8697/15

* *The applicants, a Malian and an Ivorian national, had attempted to enter the Spanish enclave Melilla from Morocco by climbing barriers making up the border crossing. Having climbed down on the Spanish side of the barriers, they were immediately arrested by members of the Guardia Civil, handcuffed and returned to Morocco without their identity having been checked and with no opportunity to explain their personal circumstances or to receive assistance from lawyers, interpreters or medical personnel.*
*The ECtHR first established that the facts of the case fell within the jurisdiction of Spain since the applicants had been under the continuous and exclusive control of the Spanish authorities from the moment they climbed down the border barriers. It was therefore unnecessary to decide whether the barrier was located on Spanish territory. As the applicants had been removed and sent back to Morocco against their wishes, the Spanish authorities' action had clearly constituted an 'expulsion' for the purposes of art. 4 Protocol no. 4. The removals had taken place without any prior administrative or judicial decision and without any procedure, in the absence of any examination of the applicants' individual situation and with no identification procedure carried out. Therefore, the expulsions had undoubtedly been collective, in violation of art. 4 Protocol 4. Due to the well documented circumstances and the immediate nature of the expulsions, the Court considered that the applicants had been deprived of any remedy that would have enabled them to submit their complaint under art. 4 Protocol 4 and to obtain a thorough and rigorous assessment of their request. Art. 13 had therefore also been violated.*

☞ ECtHR (GC) 13 Feb. 2020, 8671/15 ***N.D. & N.T. v ES*** CE:ECHR:2020:0213JUD000867115
* no violation of ECHR: Art. 4 Prot 4
* joined cases: 8671/15, 8697/15
* *See for the facts, the Court's judgment of 3 Oct. 2017. Contrary to the judgment of the Court, the Grand Chamber holds no violation of Art. 4 of the 4th Protocol on collective expulsion. The Court considered that the applicants had placed themselves in an unlawful situation when they had deliberately attempted to enter Spain by crossing the Melilla border protection structures as part of a large group and at an unauthorised location, taking advantage of the group's large numbers and using force. They had thus chosen not to use the legal procedures (to apply for asylum) which existed in order to enter Spanish territory lawfully. Consequently, the Court considered that the lack of individual removal decisions could be attributed to the fact that the applicants – assuming that they had wished to assert rights under the Convention – had not made use of the official entry procedures existing for that purpose, and that it had thus been a consequence of their own conduct.*
*In so far as it had found that the lack of an individualised procedure for their removal had been the consequence of the applicants' own conduct, the Court could not hold the respondent State responsible for the lack of a legal remedy in Melilla enabling them to challenge that removal.*

☞ ECtHR 6 Oct. 2016, 3342/11 ***Richmond Yaw v IT*** CE:ECHR:2016:1006JUD000334211
* 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.*

☞ ECtHR 10 Dec. 2020, 56751/16 ***Shiksaitov v SK*** CE:ECHR:2020:1210JUD005675116
* violation of ECHR: Art. 5(1)(f)
* *The applicant, a Russian national of Chechen origin, was granted refugee status in Sweden on grounds of his political opinions. An international arrest warrant had been issued against him on account of alleged acts of terrorism committed in Russia. While travelling, he was apprehended at the Slovak border as a person appearing on Interpol's list of wanted persons. He was later arrested and held in detention while the Slovak authorities conducted a preliminary investigation into the matter, followed by detention in view of extradition to Russia. In November 2016, the Supreme Court found his extradition to be inadmissible in light of his refugee status. He was released and administratively expelled to Sweden.*
*The applicant had been granted refugee status in Sweden – not in Slovakia. Such a decision was extraterritorially binding in that an award of refugee status by Sweden, as one of the State Parties to the 1951 Refugee Convention, could be called into question by Slovakia only in exceptional circumstances giving rise to the appearance that the beneficiary of the decision in question manifestly fell within the terms of the exclusion provision of Article 1F of the 1951 Convention and therefore did not meet the requirements of the definition of a refugee contained therein.*

☞ ECtHR 4 Apr. 2017, 39061/11 ***Thimothawes v BE*** CE:ECHR:2017:0404JUD003906111
* 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.*

☞ ECtHR 25 Apr. 2019, 62824/16 ***V.M. v UK*** CE:ECHR:2019:0425JUD006282416
* violation of ECHR: Art. 5
* see also: ECtHR 1 Sep 2016, 49734/12, V.M. v. UK
* *The applicant claims to have entered the UK illegally in 2003. On offences of cruelty towards her son, she is sentenced to twelve months imprisonment and the recommendation to be deported. After the end of her criminal sentence she was detained under immigration powers with the intention to deport her. She first complained with the ECtHR in 2012 about her detention (of 34 months) and the ECtHR found (in 2016) a violation of Art. 5(1) in the light of the authorities' delay in considering the applicant's further representations in the context of her claim for asylum. In the end she is not deported but released.*
*This procedure is her second complaint with the ECtHR and concerns the latter part of her detention under different litigation proceedings which had not yet ended during the first judgment of the Court. The applicant complained under Article 5 of the Convention that her detention had been arbitrary as the authorities had failed to act with appropriate "due diligence". Although six reviews of the applicant's detention were written by the applicant's 'caseworker' and several reports by doctors supporting an immediate release, these requests were filed as "yet another psychiatric report" which wer treated as a further request to revoke the deportation order.*
*The Court rules that the applicant was unlawfully detained due to the deficiencies in her detention reviews; the need to redress that unlawfulness was not lessened because the State did not make appropriate arrangements for her release during that period.*

### 3.3.4 CtRC views on Irregular Migration Identity of the Child (Art. 8, 20)

☞ CtRC 31 May 2019, CRC/C/81/D/16/2017 ***A.L. v ES***

* violation of CRC: Art. 8

* *The examination used to determine the author's age, the absence of a representative to assist him during this process and the almost automatic dismissal of the probative value of the birth certificate provided by the author, without the State party having even formally assessed the data and, in the event of uncertainty, having that data confirmed by the Algerian consular authorities, the Committee is of the view that the best interests of the child were not a primary consideration in the age determination process undergone by the author, in breach of art. 3 and 12. The Committee also notes that the State party violated his rights insofar as it altered elements of his identity by attributing to him an age and a date of birth that did not match the information on his birth certificate, even after the author had presented a copy of the certificate to the Spanish authorities.*

☞ CtRC 29 Jan. 2021, CRC/C/86/D/63/2018 ***C.O.C. v ES***

* violation of CRC: Art. 8+12+20

* *The author is a national of Gambia born in 2001. In 2018, the Maritime Safety and Rescue Agency detained the author as he attempted to enter Spain on board a small boat. Although he claimed to be a minor he was declared an adult on the basis of a wrist X-ray. However, nor this X-ray or any other test result was presented.*
*The Committee notes that the determination of the age of a young person who claims to be a minor is of fundamental importance, as the outcome determines whether that person will be entitled to or excluded from national protection as a child. Similarly, and this point is of vital importance to the Committee, the enjoyment of the rights set out in the Convention flows from that determination. Subsequently, it is imperative that there be due process to determine a person's age, as well as the opportunity to challenge the outcome through an appeals process.*

☞ CtRC 31 May 2019, CRC/C/81/D/22/2017 ***J.A.B. v ES***

* violation of CRC: Art. 8+20

* *The age-determination procedure undergone by the author, who claimed to be a child, was not accompanied by the safeguards needed to protect his rights under the Convention. In particular the failure to consider the author's originals of official identity documents issued by a sovereign country, the declaration of adulthood in response to the author's refusal to undergo age-determination tests, and the State's refusal to allow his representative to assist him during this process, the Committee is of the view that the best interests of the child were not a prime consideration in the age-determination procedure to which the author was subjected, in breach of articles 3 and 12 of the Convention.*
*The Committee further notes that the State party violated his rights under article 8 of the Convention insofar as it altered elements of his identity by attributing to him a date of birth that did not correspond to the information in the official documents issued by his country of origin, including his original passport.*
*The Committee further notes that the State's failure to provide protection in response to his situation as an unprotected, highly vulnerable unaccompanied child migrant who was ill, as well as the contradiction inherent in declaring the author to be an adult while at the same time requiring him to have a guardian in order to receive medical treatment and vaccinations. This constitutes a violation of Art. 20(1) and 24.*

☞ CtRC 7 Feb. 2020, CRC/C/83/D/24/2017 ***M.A.B. v ES***

* violation of CRC: Art. 8+20

* *The Committee considers that the age determination procedure undergone by the author, who claimed to be a child and provided evidence to support this claim, was not accompanied by the safeguards needed to protect his rights under the Convention. Given the circumstances of the present case, in particular the examination used to determine the author's age, the fact that he was not assisted by a representative during the age determination procedure and the fact that the State party almost automatically rejected as evidence the birth certificate that he provided, without even formally assessing the information that it contained and clearing up any doubts with the Guinean consular authorities, the Committee is of the view that the best interests of the child were not a primary consideration in the age determination procedure undergone by the author, contrary to artt. 3 and 12.*
*The Committee also considers that a child's date of birth forms part of his or her identity and that States parties have an obligation to respect the right of the child to preserve his or her identity without depriving him or her of any elements thereof. Although the author provided the Spanish authorities with a copy of his birth certificate, the State party failed to respect the identity of the author by rejecting the certificate as evidence, without first asking a competent authority to formally assess the information that it contained or asking the authorities of the author's country of origin to verify that information.*

☞ CtRC 28 Sep. 2020, CRC/C/85/D/28/2017 ***M.B. v ES***

* violation of CRC: Art. 8+20

* *The Committee considers that the lack of a process to assess the age of the author, who claimed to be a minor, the failure to take proper account of the official documents submitted by the author and issued by his country of origin, and the failure to appoint a guardian, constitute a violation of the author's Convention rights. Consequently, the Committee is of the view that the best interests of the child were not a primary consideration in the procedures in which the author took part, contrary to artt. 3 and 12 of the Convention.*
*The Committee also notes the author's claims that the State party violated his rights under art. 8 of the Convention insofar as it altered elements of his identity by attributing to him an age that did not match the information contained in the official document issued by his country of origin.*

☞ CtRC 28 Sep. 2020, CRC/C/85/D/26/2017 ***M.B.S. v ES***

* violation of CRC: Art. 8+20

* *The Committee considers that the age determination procedure undergone by the author, who claimed to be a minor, was not accompanied by the safeguards needed to protect his rights under the Convention. In the present case, this is due to the failure to take proper account of the original copy of the official birth certificate issued by his country of origin and the failure to appoint a guardian to assist him during the age determination procedure. Consequently, the Committee is of the view that the best interests of the child were not a primary consideration in the age determination procedure, contrary to artt. 3 and 12 of the Convention.*

☞ CtRC 18 Sep. 2019, CRC/C/82/D/27/2017 ***R.K. v ES***

* violation of CRC: Art. 8+20

* *The Committee considers that the age assessment procedure undergone by the author lacked the safeguards necessary to protect his rights under the Convention. This is a result of the test used (X-ray) to assess the author's age, the failure to appoint a representative to assist him during this process and the almost automatic dismissal of the probative value of the birth certificate provided by the author, without the State party having even formally assessed the information that it contained and, in the event of uncertainty, having confirmed that information with the consular authorities of Guinea.*
*The Committee notes that the State party failed to respect the author's identity by denying that the birth certificate had any probative value, without a competent authority having conducted a prior formal assessment of the information contained therein and without, alternatively, the State party having checked that information with the authorities of the author's country of origin.*

☞ CtRC 28 Sep. 2020, CRC/C/85/D/40/2018 ***S.M.A. v ES***

* violation of CRC: Art. 8+20

* *The Committee is therefore of the view that the age determination procedure undergone by the author, who claimed to be a minor, did not offer the safeguards needed to protect his rights under the Convention. In this case, the author underwent the age determination procedure without the necessary safeguards because his official birth certificate, issued by his country of origin, was not given proper consideration and because a guardian was not appointed to assist him during the procedure. The Committee is therefore of the view that the best interests of the child were not a primary consideration in the age determination procedure, in violation of artt. 3 and 12 of the Convention.*

# 4 External Treaties

## 4.1 External Treaties: Association Agreements

*case law sorted in chronological order*

**EEC-Turkey Association Agreement**

* OJ 1964 217/3687
* into force 23 Dec. 1963

**EEC-Turkey Association Agreement Additional Protocol**

* OJ 1972 L 293
* into force 1 Jan. 1973

*CJEU judgments*

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

See further: § 4.4

**EEC-Turkey Association Agreement Decision 2/76**

* Dec. 2/76 of 20 December 1976 on the implementation of Article 12 of the Ankara Agreement

**EEC-Turkey Association Agreement Decision 1/80**

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

*CJEU judgments*

| | | | | | | |
|---|---|---|---|---|---|---|
| ☞ | CJEU | 2 Sep. | 2021 | C-379/20 | ***B.*** | Art. 13 |
| ☞ | CJEU | 3 June | 2021 | C-194/20 | ***B.Y.*** | Art. 6, 7 and 9 |
| ☞ | CJEU | 21 Oct. | 2020 | C-720/19 | ***G.R.*** | Art. 7 |
| ☞ | CJEU | 3 Oct. | 2019 | C-70/18 | ***Stscr. / A. a.o. (NL)*** | Art. 13 |
| ☞ | CJEU | 10 July | 2019 | C-89/18 | ***A. / Udl.Min. (DK)*** | Art. 13 |
| ☞ | CJEU | 7 Aug. | 2018 | C-123/17 | ***Yön*** | Art. 13 |
| ☞ | CJEU | 29 Mar. | 2017 | C-652/15 | ***Tekdemir*** | Art. 13 |
| ☞ | CJEU | 21 Dec. | 2016 | C-508/15 | ***Ucar a.o.*** | Art. 7 |
| ☞ | CJEU (GC) | 12 Apr. | 2016 | C-561/14 | ***Genc (Caner)*** | Art. 13 |
| ☞ | CJEU | 11 Sep. | 2014 | C-91/13 | ***Essent*** | Art. 13 |
| ☞ | CJEU | 7 Nov. | 2013 | C-225/12 | ***Demir*** | Art. 13 |
| ☞ | CJEU | 8 Nov. | 2012 | C-268/11 | ***Gühlbahce*** | Art. 6(1)+10 |
| ☞ | CJEU | 19 July | 2012 | C-451/11 | ***Dülger*** | Art. 7 |
| ☞ | CJEU | 29 Mar. | 2012 | C-7/10 | ***Kahveci & Inan*** | Art. 7 |
| ☞ | CJEU | 8 Dec. | 2011 | C-371/08 | ***Ziebell or Örnek*** | Art. 14(1) |
| ☞ | CJEU (GC) | 15 Nov. | 2011 | C-256/11 | ***Dereci et al.*** | Art. 13 |
| ☞ | CJEU | 29 Sep. | 2011 | C-187/10 | ***Unal*** | Art. 6(1) |
| ☞ | CJEU | 16 June | 2011 | C-484/07 | ***Pehlivan*** | Art. 7 |
| ☞ | CJEU | 22 Dec. | 2010 | C-303/08 | ***Metin Bozkurt*** | Art. 7+14(1) |
| ☞ | CJEU | 9 Dec. | 2010 | C-300/09 | ***Toprak & Oguz*** | Art. 13 |
| ☞ | CJEU | 29 Apr. | 2010 | C-92/07 | ***Com. / NL*** | Art. 10(1)+13 |
| ☞ | CJEU | 4 Feb. | 2010 | C-14/09 | ***Genc (Hava)*** | Art. 6(1) |
| ☞ | CJEU | 21 Jan. | 2010 | C-462/08 | ***Bekleyen*** | Art. 7(2) |
| ☞ | CJEU | 17 Sep. | 2009 | C-242/06 | ***Sahin*** | Art. 13 |
| ☞ | CJEU | 18 Dec. | 2008 | C-337/07 | ***Altun*** | Art. 7 |
| ☞ | CJEU | 25 Sep. | 2008 | C-453/07 | ***Er*** | Art. 7 |
| ☞ | CJEU | 24 Jan. | 2008 | C-294/06 | ***Payir*** | Art. 6(1) |
| ☞ | CJEU | 4 Oct. | 2007 | C-349/06 | ***Polat*** | Art. 7+14 |
| ☞ | CJEU | 18 July | 2007 | C-325/05 | ***Derin*** | Art. 6, 7 and 14 |
| ☞ | CJEU | 26 Oct. | 2006 | C-4/05 | ***Güzeli*** | Art. 6 |
| ☞ | CJEU | 16 Feb. | 2006 | C-502/04 | ***Torun*** | Art. 7 |
| ☞ | CJEU | 10 Jan. | 2006 | C-230/03 | ***Sedef*** | Art. 6 |
| ☞ | CJEU | 7 July | 2005 | C-373/03 | ***Aydinli*** | Art. 6+7 |
| ☞ | CJEU | 7 July | 2005 | C-383/03 | ***Dogan (Ergül)*** | Art. 6(1) + (2) |
| ☞ | CJEU | 7 July | 2005 | C-374/03 | ***Gürol*** | Art. 9 |
| ☞ | CJEU | 2 June | 2005 | C-136/03 | ***Dörr & Unal*** | Art. 6(1)+14(1) |
| ☞ | CJEU | 11 Nov. | 2004 | C-467/02 | ***Cetinkaya*** | Art. 7+14(1) |
| ☞ | CJEU | 30 Sep. | 2004 | C-275/02 | ***Ayaz*** | Art. 7 |
| ☞ | CJEU | 16 Sep. | 2004 | C-465/01 | ***Com. / Austria*** | Art. 10(1) |
| ☞ | CJEU | 21 Oct. | 2003 | C-317/01 | ***Abatay & Sahin*** | Art. 13+41(1) |
| ☞ | CJEU | 8 May | 2003 | C-171/01 | ***Birlikte*** | Art. 10(1) |
| ☞ | CJEU | 19 Nov. | 2002 | C-188/00 | ***Kurz (Yuze)*** | Art. 6(1)+7 |
| ☞ | CJEU | 19 Sep. | 2000 | C-89/00 | ***Bicakci*** | |
| ☞ | CJEU | 22 June | 2000 | C-65/98 | ***Eyüp*** | Art. 7(1) |
| ☞ | CJEU | 16 Mar. | 2000 | C-329/97 | ***Ergat*** | Art. 7 |
| ☞ | CJEU | 10 Feb. | 2000 | C-340/97 | ***Nazli*** | Art. 6(1)+14(1) |
| ☞ | CJEU | 26 Nov. | 1998 | C-1/97 | ***Birden*** | Art. 6(1) |
| ☞ | CJEU | 19 Nov. | 1998 | C-210/97 | ***Akman*** | Art. 7 |
| ☞ | CJEU | 30 Sep. | 1997 | C-98/96 | ***Ertanir*** | Art. 6(1)+6(3) |
| ☞ | CJEU | 30 Sep. | 1997 | C-36/96 | ***Günaydin*** | Art. 6(1) |
| ☞ | CJEU | 5 June | 1997 | C-285/95 | ***Kol*** | Art. 6(1) |
| ☞ | CJEU | 29 May | 1997 | C-386/95 | ***Eker*** | Art. 6(1) |
| ☞ | CJEU | 17 Apr. | 1997 | C-351/95 | ***Kadiman*** | Art. 7 |
| ☞ | CJEU | 23 Jan. | 1997 | C-171/95 | ***Tetik*** | Art. 6(1) |
| ☞ | CJEU | 6 June | 1995 | C-434/93 | ***Ahmet Bozkurt*** | Art. 6(1) |
| ☞ | CJEU | 5 Oct. | 1994 | C-355/93 | ***Eroglu*** | Art. 6(1) |
| ☞ | CJEU | 16 Dec. | 1992 | C-237/91 | ***Kus*** | Art. 6(1)+6(3) |
| ☞ | CJEU | 20 Sep. | 1990 | C-192/89 | ***Sevince*** | Art. 6(1)+13 |

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|---|---|---|---|---|---|
| ☞ | CJEU | 30 Sep. 1987 | C-12/86 | ***Demirel*** | Art. 7+12 |

*CJEU pending cases*

| | | | | | |
|---|---|---|---|---|---|
| ☞ | CJEU | (pending) | C-402/21 | ***E.C. / Stscr (NL)*** | Art. 6+7+13 |
| ☞ | CJEU AG | 8 Sep. 2022 | C-279/21 | ***X. / Udlændingen (DK)*** | Art. 13 |
| ☞ | CJEU | (pending) | C-689/21 | ***X. / Udlæn. Min. (DK)*** | Art. 13 |

See further: § 4.4

**EEC-Turkey Association Agreement Decision 3/80**

* Dec. 3/80 of 19 Sept. 1980 on Social Security

*CJEU judgments*

| | | | | | |
|---|---|---|---|---|---|
| ☞ | CJEU | 13 Feb. 2020 | C-258/18 | ***Solak*** | Art. 6 |
| ☞ | CJEU | 15 May 2019 | C-677/17 | ***Çoban*** | Art. 6(1) |
| ☞ | CJEU | 14 Jan. 2015 | C-171/13 | ***Demirci a.o.*** | Art. 6(1) |
| ☞ | CJEU | 26 May 2011 | C-485/07 | ***Akdas*** | Art. 6(1) |
| ☞ | CJEU (GC) | 28 Apr. 2004 | C-373/02 | ***Öztürk*** | Art. 3 |

See further: § 4.4

## 4.2 External Treaties: Readmission

**Albania**

* OJ 2005 L 124/21 — into force 1 May 2006 — UK opt in

* into force for TCN: May 2008

**Armenia**

* OJ 2013 L 289/13 — into force 1 Jan. 2014

**Azerbaijan**

* OJ 2014 L 128/17 — into force 1 Sep. 2014

**Belarus**

* OJ 2020 L 181/3 — into force 1 July 2020

**Bosnia and Herzegovina**

* OJ 2007 L 334/66 — into force 1 Jan. 2008 — UK opt in

* into force for TCN: Jan. 2010

**Cape Verde**

* OJ 2013 L 282/15 — into force 1 Dec. 2014

**Georgia**

* OJ 2011 L 52/47 — into force 1 Mar. 2011 — UK opt in

**Hong Kong**

* OJ 2004 L 17/23 — into force 1 May 2004 — UK opt in

**Macao**

* OJ 2004 L 143/97 — into force 1 June 2004 — UK opt in

**Macedonia**

* OJ 2007 L 334/7 — into force 1 Jan. 2008 — UK opt in

* into force for TCN: Jan. 2010

**Moldova**

* OJ 2007 L 334/149 — into force 1 Jan. 2008 — UK opt in

* into force for TCN: Jan. 2010

**Montenegro**

* OJ 2007 L 334/26 — into force 1 Jan. 2008 — UK opt in

* into force for TCN: Jan. 2010

**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 — UK opt in

* into force for TCN: Jun. 2010

**Serbia**
* OJ 2007 L 334/46 into force 1 Jan. 2008 UK opt in
* into force for TCN: Jan. 2010

**Sri Lanka**
* OJ 2005 L 124/43 into force 1 May 2005 UK opt in

**Turkey**
* OJ 2014 L 134 into force 1 Oct. 2014
Additional provisions as of 1 June 2016

**Ukraine**
* OJ 2007 L 332/48 into force 1 Jan. 2008 UK opt in
* into force for TCN: Jan. 2010

**Turkey (Statement)**
* Not published in OJ - only Press Release

*CJEU judgments*

☞ CJEU 27 Feb. 2017 T-192/16 ***N.F. / European Council***

See further: § 4.4

## 4.3 External Treaties: Other

**Albania, Bosnia, Montenegro, Macedonia, Serbia: visa**
* OJ 2007 L 334 impl. date 1 Jan. 2008

**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**
* OJ 2020 L 180/3 into force 1 July 2020
* Commission proposal for partial suspension (Sep 2021)

**Brazil: short-stay visa waiver for holders of diplomatic or official passports**
* OJ 2011 L 66/1 into force 24 Feb. 2019

**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 2014

**Denmark: Dublin II treaty**
* OJ 2006 L 66/38 into force 1 Apr. 2006

**Georgia: visa**
* OJ 2012 C 169E

**Mauritius, Antigua/Barbuda, Barbados, Seychelles, St. Kitts and Nevis and Bahamas: visa abolition**
* OJ 2009 L 169 into force 1 May 2009

**Moldova: visa**
* OJ 2013 L 168/3 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 Mar. 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 into force 1 Dec. 2008

**Ukraine: visa**

* OJ 2013 L 168/11 into force 1 July 2013

## 4.4 External Treaties: Jurisprudence

*case law sorted in alphabetical order*

### 4.4.1 CJEU Judgments on EEC-Turkey Association Agreement

☞ CJEU 10 July 2019, C-89/18 ***A. / Udl.Min. (DK)*** EU:C:2019:580
AG 14 Mar. 2019 EU:C:2019:210

* interpr. of EEC-Turkey Dec. 1/80: Art. 13

ref. from Ostre Landsret, Denmark, 8 Feb. 2018

* *Art. 13 Dec. 1/80, must be interpreted as meaning that a national measure which makes family reunification between a Turkish worker legally resident in the MS concerned and his spouse conditional upon their overall attachment to that MS being greater than their overall attachment to a third country, constitutes a 'new restriction', within the meaning of that provision. Such a restriction is unjustified.*

☞ CJEU 21 Oct. 2003, C-317/01 ***Abatay & Sahin*** EU:C:2003:572
AG 13 May 2003 EU:C:2003:274

* interpr. of EEC-Turkey Dec. 1/80: Art. 13+41(1)

ref. from Bundessozialgericht, Germany, 13 Aug. 2001

* joined cases: C-317/01 + C-369/01

* *Art. 41(1) Add. Protocol and Art. 13 Dec. 1/80 have direct effect and prohibit generally the introduction of new national restrictions on the right of establishment and the freedom to provide services and freedom of movement for workers from the date of the entry into force in the host Member State of the legal measure of which those articles are part (scope standstill obligation).*

☞ CJEU 6 June 1995, C-434/93 ***Ahmet Bozkurt*** EU:C:1995:168
AG 28 Mar. 1995 EU:C:1995:86

* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)

ref. from Raad van State, NL, 4 Nov. 1993

* *In order to ascertain whether a Turkish worker belongs to the legitimate labour force of a Member State, for the purposes of Art. 6(1) of Dec.1/80 it is for the national court to determine whether the applicant's employment relationship retained a sufficiently close link with the territory of the Member State, and, in so doing, to take account, in particular, of the place where he was hired, the territory on which the paid employment is based and the applicable national legislation in the field of employment and social security law.*
*The existence of legal employment in a Member State within the meaning of Art. 6(1) of Dec. 1/80 can be established in the case of a Turkish worker who was not required by the national legislation concerned to hold a work permit or a residence permit issued by the authorities in the host State in order to carry out his work. The fact that such employment exists necessarily implies the recognition of a right of residence for the person concerned.*

☞ CJEU 26 May 2011, C-485/07 ***Akdas*** EU:C:2011:346

* interpr. of EEC-Turkey Dec. 3/80: Art. 6(1)

ref. from Centrale Raad van Beroep, NL, 5 Nov. 2007

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

☞ CJEU 19 Nov. 1998, C-210/97 ***Akman*** EU:C:1998:555
AG 9 July 1998 EU:C:1998:344

* interpr. of EEC-Turkey Dec. 1/80: Art. 7

ref. from Verwaltungsgericht Köln, Germany, 2 June 1997

* *A Turkish national is entitled to respond to any offer of employment in the host Member State after having completed a course of vocational training there, and consequently to be issued with a residence permit, when one of his parents has in the past been legally employed in that State for at least three years.*
*However, it is not required that the parent in question should still work or be resident in the Member State in question at the time when his child wishes to gain access to the employment market there.*

☞ CJEU 18 Dec. 2008, C-337/07 ***Altun*** EU:C:2008:744
AG 11 Sep. 2008 EU:C:2008:500

* interpr. of EEC-Turkey Dec. 1/80: Art. 7

ref. from Verwaltungsgericht Stuttgart, Germany, 20 July 2007

* *Art. 7(1) of Dec. 1/80 is to be interpreted as meaning that the child of a Turkish worker may enjoy rights arising by virtue of that provision where, during the three-year period when the child was co-habiting with that worker, the latter was working for two and a half years before being unemployed for the following six months.*
*The fact that a Turkish worker has obtained the right of residence in a Member State and, accordingly, the right of access to the labour market of that State as a political refugee does not prevent a member of his family from enjoying the rights arising under the first paragraph of Art. 7 of Dec. 1/80.*
*Art. 7(1) of Dec. 1/80 is to be interpreted as meaning that when a Turkish worker has obtained the status of political refugee on the basis of false statements, the rights that a member of his family derives from that provision cannot be called into to question if the latter, on the date on which the residence permit issued to that worker is withdrawn, fulfils the conditions laid down therein.*

☞ CJEU 30 Sep. 2004, C-275/02 ***Ayaz*** EU:C:2004:570
AG 25 May 2004 EU:C:2004:314
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Verwaltungsgericht Stuttgart, Germany, 26 July 2002
* *A stepson who is under the age of 21 years or is a dependant of a Turkish worker duly registered as belonging to the labour force of a Member State is a member of the family of that worker.*

☞ CJEU 7 July 2005, C-373/03 ***Aydinli*** EU:C:2005:434
* interpr. of EEC-Turkey Dec. 1/80: Art. 6+7
ref. from Verwaltungsgericht Freiburg, Germany, 12 Mar. 2003
* *A long detention is no justification for loss of residence permit.*

☞ CJEU 2 Sep. 2021, C-379/20 ***B.*** EU:C:2021:660
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Ostre Landsret, Denmark, 11 Aug. 2020
* *Art. 13 Dec. 1/80 must be interpreted as meaning that a national measure lowering from 18 to 15 years the age below which the child of a Turkish worker residing legally in the territory of the host MS may submit an application for family reunification constitutes a 'new restriction' within the meaning of that provision. Such a restriction may, however, be justified by the objective of ensuring the successful integration of the third-country nationals concerned, on condition that the detailed rules for its implementation do not go beyond what is necessary to attain the objective pursued.*

☞ CJEU 3 June 2021, C-194/20 ***B.Y.*** EU:C:2021:436
* interpr. of EEC-Turkey Dec. 1/80: Art. 6, 7 and 9
* *The first sentence of Art. 9 Dec. 1/80 must be interpreted as meaning that it cannot be relied on by Turkish children whose parents do not satisfy the conditions laid down in Arts. 6 and 7 of Dec. 1/80.*

☞ CJEU 21 Jan. 2010, C-462/08 ***Bekleyen*** EU:C:2010:30
AG 29 Oct. 2009 EU:C:2009:680
* interpr. of EEC-Turkey Dec. 1/80: Art. 7(2)
ref. from Oberverwaltungsgericht Berlin-Brandenburg, Germany, 27 Oct. 2008
* *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.*

☞ CJEU 19 Sep. 2000, C-89/00 ***Bicakci***
* interpr. of EEC-Turkey Dec. 1/80:
ref. from Verwaltungsgericht Berlin, Germany, 8 Mar. 2000
* *Art 14 does not refer to a preventive expulsion measure.*

☞ CJEU 26 Nov. 1998, C-1/97 ***Birden*** EU:C:1998:568
AG 28 May 1998 EU:C:1998:262
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Verwaltungsgericht Bremen, Germany, 6 Jan. 1997
* *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.*

☞ CJEU 8 May 2003, C-171/01 ***Birlikte*** EU:C:2003:260
AG 12 Dec. 2002 EU:C:2002:758
* interpr. of EEC-Turkey Dec. 1/80: Art. 10(1)
ref. from Verfassungsgerichtshof, Austria, 19 Apr. 2001
* *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.*

☞ CJEU 11 Nov. 2004, C-467/02 ***Cetinkaya*** EU:C:2004:708
AG 10 June 2004 EU:C:2004:366
* interpr. of EEC-Turkey Dec. 1/80: Art. 7+14(1)
ref. from Verwaltungsgericht Stuttgart, Germany, 19 Dec. 2002
* *The meaning of a "family member" is analogous to its meaning in the Free Movement Regulation.*

☞ CJEU 15 May 2019, C-677/17 ***Çoban*** EU:C:2019:408
AG 28 Feb. 2019 EU:C:2019:151
* interpr. of EEC-Turkey Dec. 3/80: Art. 6(1)
ref. from Centrale Raad van Beroep, NL, 1 Dec. 2017
* *The first subparagraph of Article 6(1) of Decision 3/80 must be interpreted as not precluding a national provision, such as that at issue in the main proceedings, which withdraws a supplementary benefit from a Turkish national who returns to his country of origin and who holds, at the date of his departure from the host Member State, long-term resident status, within the meaning of Council Directive 2003/109 (on long-term residents).*

☞ CJEU 29 Apr. 2010, C-92/07 ***Com. / NL*** EU:C:2010:228
* interpr. of EEC-Turkey Dec. 1/80: Art. 10(1)+13
ref. from Commission, , 16 Feb. 2007
* *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.*

☞ CJEU 16 Sep. 2004, C-465/01 ***Com. / Austria*** EU:C:2004:530
* interpr. of EEC-Turkey Dec. 1/80: Art. 10(1)
ref. from Commission, , 4 Dec. 2001
* *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.*

☞ CJEU 7 Nov. 2013, C-225/12 ***Demir*** EU:C:2013:725
AG 11 July 2013 EU:C:2013:475
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Raad van State, NL, 14 May 2012
* *Holding a temporary residence permit, which is valid only pending a final decision on the right of residence, does not fall within the meaning of 'legally resident'.*

☞ CJEU 14 Jan. 2015, C-171/13 ***Demirci a.o.*** EU:C:2015:8
AG 10 July 2014 EU:C:2014:2073
* interpr. of EEC-Turkey Dec. 3/80: Art. 6(1)
ref. from Centrale Raad van Beroep, NL, 8 Apr. 2013
* *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 .*

☞ CJEU 30 Sep. 1987, C-12/86 ***Demirel*** EU:C:1987:400
AG 19 May 1987 EU:C:1987:232
* interpr. of EEC-Turkey Dec. 1/80: Art. 7+12
ref. from Verwaltungsgericht Stuttgart, Germany, 17 Jan. 1986
* *No right to family reunification. Art. 12 EEC-Turkey and Art. 36 of the Additional Protocol, do not constitute rules of Community law which are directly applicable in the internal legal order of the Member States.*

☞ CJEU (GC) 24 Sep. 2013, C-221/11 ***Demirkan*** EU:C:2013:583
AG 11 Apr. 2013 EU:C:2013:237
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
ref. from Oberverwaltungsgericht Berlin, Germany, 11 May 2011
* *The freedom to 'provide services' does not encompass the freedom to 'receive' services in other EU Member States.*

☞ CJEU (GC) 15 Nov. 2011, C-256/11 ***Dereci et al.*** EU:C:2011:734
AG 29 Sep. 2011 EU:C:2011:626
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Verwaltungsgerichtshof, Austria, 25 May 2011
* *EU law does not preclude a Member State from refusing to allow a third country national to reside on its territory, where that third country national wishes to reside with a member of his family who is a citizen of the Union residing in the Member State of which he has nationality, who has never exercised his right to freedom of movement, provided that such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen of the Union, which is a matter for the referring court to verify.*
*Art. 41(1) of the Additional Protocol must be interpreted as meaning that the enactment of new legislation more restrictive that the previous legislation, which, for its part, relaxed earlier legislation concerning the conditions for the exercise of the freedom of establishment of Turkish nationals at the time of the entry into force of that protocol in the Member State concerned must be considered to be a 'new restriction' within the meaning of that provision.*

☞ CJEU 18 July 2007, C-325/05 ***Derin*** EU:C:2007:442
AG 11 Jan. 2007 EU:C:2007:20
* interpr. of EEC-Turkey Dec. 1/80: Art. 6, 7 and 14
ref. from Verwaltungsgericht Darmstadt, Germany, 17 Aug. 2005
* *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.*

☞ CJEU 7 July 2005, C-383/03 ***Dogan (Ergül)*** EU:C:2005:436
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1) + (2)
ref. from Verwaltungsgerichtshof, Austria, 4 Sep. 2003
* *Return to labour market: no loss due to imprisonment.*

☞ CJEU 10 July 2014, C-138/13 ***Dogan (Naime)*** EU:C:2014:2066
AG 30 Apr. 2014 EU:C:2014:287
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
ref. from Verwaltungsgericht Berlin, Germany, 19 Mar. 2013
* *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.*

☞ CJEU 2 June 2005, C-136/03 ***Dörr & Unal*** EU:C:2005:340
AG 21 Oct. 2004 EU:C:2004:651
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)+14(1)
ref. from Verwaltungsgerichtshof, Austria, 18 Mar. 2003
* *The procedural guarantees set out in the Dir. on Free Movement also apply to Turkish workers.*

☞ CJEU 19 July 2012, C-451/11 ***Dülger*** EU:C:2015:504
AG 7 June 2012 EU:C:2012:331
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Verwaltungsgericht Gießen, Germany, 1 Sep. 2011
* *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.*

☞ CJEU 29 May 1997, C-386/95 ***Eker*** EU:C:1997:257
AG 6 Mar. 1997 EU:C:1997:109
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Bundesverwaltungsgericht, Germany, 11 Dec. 1995
* *On the meaning of "same employer".*

☞ CJEU 25 Sep. 2008, C-453/07 ***Er*** EU:C:2008:524
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Verwaltungsgericht Gießen, Germany, 4 Oct. 2007
* *A Turkish national, who was authorised to enter the territory of a Member State as a child in the context of a family reunion, and who has acquired the right to take up freely any paid employment of his choice under the second indent of Art. 7(1) of Dec. 1/80 does not lose the right of residence in that State, which is the corollary of that right of free access, even though, at the age of 23, he has not been in paid employment since leaving school at the age of 16 and has taken part in government job-support schemes without, however, completing them.*

☞ CJEU 16 Mar. 2000, C-329/97 ***Ergat*** EU:C:2000:133
AG 3 June 1999 EU:C:1999:276
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Bundesverwaltungsgericht, Germany, 22 Sep. 1997
* *No loss of residence right in case of application for renewal residence permit after expiration date.*

☞ CJEU 5 Oct. 1994, C-355/93 ***Eroglu*** EU:C:1994:369
AG 12 July 1994 EU:C:1994:285
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Verwaltungsgericht Karlsruhe, Germany, 26 May 1993
* *On the meaning of "same employer". The first indent of Art. 6(1) is to be construed as not giving the right to the renewal of his permit to work for his first employer to a Turkish national who is a university graduate and who worked for more than one year for his first employer and for some ten months for another employer, having been issued with a two-year conditional residence authorization and corresponding work permits in order to allow him to deepen his knowledge by pursuing an occupational activity or specialized practical training.*

☞ CJEU 30 Sep. 1997, C-98/96 ***Ertanir*** EU:C:1997:446
AG 29 Apr. 1997 EU:C:1997:225
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)+6(3)
ref. from Verwaltungsgericht Darmstadt, Germany, 26 Mar. 1996
* *Art. 6(3) of Dec. 1/80 is to be interpreted as meaning that it does not permit Member States to adopt national legislation which excludes at the outset whole categories of Turkish migrant workers, such as specialist chefs, from the rights conferred by the three indents of Art. 6(1).*
*A Turkish national who has been lawfully employed in a Member State for*
*an uninterrupted period of more than one year ... is duly registered as belonging to the labour force of that Member State and is legally employed within the meaning of Art. 6(1) of Dec. 1/80.*
*A Turkish national in that situation may accordingly seek the renewal of his permit to reside in the host Member State notwithstanding the fact that he was advised when the work and residence permits were granted that they were for a maximum of three years and restricted to specific work, in this case as a specialist chef, for a specific employer.*
*Art. 6(1) of Dec. 1/80 is to be interpreted as requiring account to*
*be taken, for the purpose of calculating the periods of legal employment referred to in that provision, of short periods during which the Turkish worker did not hold a valid residence or work permit in the host Member State and which are not covered by Article 6(2) of that decision, where the competent authorities of the host Member State have not called in question on that ground the legality of the residence of the worker in the country but have, on the contrary, issued him with a new residence or work permit.*

☞ CJEU 11 Sep. 2014, C-91/13 ***Essent*** EU:C:2014:2206
AG 8 May 2014 EU:C:2014:312
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Raad van State, NL, 25 Feb. 2013
* *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.*

☞ CJEU 22 June 2000, C-65/98 ***Eyüp*** EU:C:2000:336
AG 18 Nov. 1999 EU:C:1999:561
* interpr. of EEC-Turkey Dec. 1/80: Art. 7(1)
ref. from Verwaltungsgerichtshof, Austria, 5 Mar. 1998
* *Art. 7(1) of Dec. 1/80 must be interpreted as covering the situation of a Turkish national who, like the applicant in the main proceedings, was authorised in her capacity as the spouse of a Turkish worker duly registered as belonging to the labour force of the host Member State to join that worker there, in circumstances where that spouse, having divorced before the expiry of the three-year qualification period laid down in the first indent of that provision, still continued in fact to live uninterruptedly with her former spouse until the date on which the two former spouses remarried. Such a Turkish national must therefore be regarded as legally resident in that Member State within the meaning of that provision, so that she may rely directly on her right, after three years, to respond to any offer of employment, and, after five years, to enjoy free access to any paid employment of her choice.*

☞ CJEU 21 Oct. 2020, C-720/19 ***G.R.*** EU:C:2020:847
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
* *Art. 7(1) of Dec. 1/80 must be interpreted as meaning that a member of the family of a Turkish worker who has acquired the rights laid down under that provision shall not lose the benefit of those rights when he or she acquires the nationality of the host Member State while losing his or her previous nationality.*

☞ CJEU (GC) 12 Apr. 2016, C-561/14 ***Genc (Caner)*** EU:C:2016:247
AG 20 Jan. 2016 EU:C:2016:28
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Ostre Landsret, Denmark, 5 Dec. 2014
* *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.*

☞ CJEU 4 Feb. 2010, C-14/09 ***Genc (Hava)*** EU:C:2010:57
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Verwaltungsgericht Berlin, Germany, 12 Jan. 2009
* *A Turkish worker, within the meaning of Art. 6(1) of Dec. 1/80, may rely on the right to free movement which he derives from the Assn. Agreement even if the purpose for which he entered the host Member State no longer exists. Where such a worker satisfies the conditions set out in Art. 6(1) of that decision, his right of residence in the host Member State cannot be made subject to additional conditions as to the existence of interests capable of justifying residence or as to the nature of the employment.*

☞ CJEU 8 Nov. 2012, C-268/11 ***Gühlbahce*** EU:C:2012:695
AG 21 June 2012 EU:C:2012:381
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)+10
ref. from Oberverwaltungsgericht Hamburg, Germany, 31 May 2011
* *A MS cannot withdraw the residence permit of a Turkish employee with retroactive effect.*

☞ CJEU 30 Sep. 1997, C-36/96 ***Günaydin*** EU:C:1997:445
AG 29 Apr. 1997 EU:C:1997:224
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Bundesverwaltungsgericht, Germany, 12 Feb. 1996
* *A 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.*

☞ CJEU 7 July 2005, C-374/03 ***Gürol*** EU:C:2005:435
AG 2 Dec. 2004 EU:C:2004:770
* interpr. of EEC-Turkey Dec. 1/80: Art. 9
ref. from Verwaltungsgericht Sigmarinen, Germany, 31 July 2003
* *Art. 9 of Dec. 1/80 has direct effect in the Member States. The condition of residing with parents in accordance with the first sentence of Art. 9 is met in the case of a Turkish child who, after residing legally with his parents in the host Member State, establishes his main residence in the place in the same Member State in which he follows his university studies, while declaring his parents' home to be his secondary residence only.*
*The second sentence of Art. 9 of Dec. No 1/80 has direct effect in the Member States. That provision guarantees Turkish children a non-discriminatory right of access to education grants, such as that provided for under the legislation at issue in the main proceedings, that right being theirs even when they pursue higher education studies in Turkey.*

☞ CJEU 26 Oct. 2006, C-4/05 ***Güzeli*** EU:C:2006:670
AG 23 Mar. 2006 EU:C:2006:202
* interpr. of EEC-Turkey Dec. 1/80: Art. 6
ref. from Verwaltungsgericht Aachen, Germany, 6 Jan. 2005
* *The first indent of Art. 6(1) of Dec. 1/80 must be interpreted as meaning that a Turkish worker can rely on the rights conferred upon him by that provision only where his paid employment with a second employer complies with the conditions laid down by law and regulation in the host Member State governing entry into its territory and employment. It is for the national court to make the requisite findings in order to establish whether that is the case in respect of a Turkish worker who changed employer prior to expiry of the period of three years provided for in the second indent of Art. 6(1) of that decision.*
*The second sentence of Art. 6(2) of Dec. No 1/80 must be interpreted as meaning that it is intended to ensure that periods of interruption of legal employment on account of involuntary unemployment and long-term sickness do not affect the rights that the Turkish worker has already acquired owing to preceding periods of employment the length of which is fixed in each of the three indents of Art. 6(1) respectively.*

☞ CJEU 17 Apr. 1997, C-351/95 ***Kadiman*** EU:C:1997:205
AG 16 Jan. 1997 EU:C:1997:22
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Verwaltungsgericht München, Germany, 13 Nov. 1995
* *The first indent of Art. 7(1) of Dec. 1/80 is to be interpreted as meaning that the family member concerned is in principle required to reside uninterruptedly for three years in the host Member State. However, account must be taken, for the purpose of calculating the three year period of legal residence within the meaning of that provision, of an involuntary stay of less than six months by the person concerned in his country of origin. The same applies to the period during which the person concerned was not in possession of a valid residence permit, where the competent authorities of the host Member State did not claim on that ground*
*that the person concerned was not legally resident within national territory,*
*but on the contrary issued a new residence permit to him.*

☞ CJEU 29 Mar. 2012, C-7/10 ***Kahveci & Inan*** EU:C:2012:180
AG 20 Oct. 2011 EU:C:2011:673
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Raad van State, NL, 8 Jan. 2010
* joined cases: C-7/10 + C-9/10
* *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.*

☞ CJEU 5 June 1997, C-285/95 ***Kol*** EU:C:1997:280
AG 6 Mar. 1997 EU:C:1997:107
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Oberverwaltungsgericht Berlin, Germany, 11 Aug. 1995
* *Art. 6(1) of Dec. 1/80 is to be interpreted as meaning that a Turkish worker does not satisfy the condition of having been in legal employment, within the meaning of that provision, in the host Member State, where he has been employed there under a residence permit which was issued to him only as a result of fraudulent conduct in respect of which he has been convicted.*

☞ CJEU 19 Nov. 2002, C-188/00 ***Kurz (Yuze)*** EU:C:2002:694
AG 25 Apr. 2002 EU:C:2002:256
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)+7
ref. from Verwaltungsgericht Karlsruhe, Germany, 22 May 2000
* *Where a Turkish national has worked for an employer for an uninterrupted period of at least four years, he enjoys in the host Member State, in accordance with the third indent of Art. 6(1) of Dec. 1/80, the right of free access to any paid employment of his choice and a corresponding right of residence.*
*Where a Turkish national who fulfils the conditions laid down in a provision of Dec. 1/80 and therefore enjoys the rights which it confers has been expelled, Community law precludes application of national legislation under which issue of a residence authorisation must be refused until a time-limit has been placed on the effects of the expulsion order.*

☞ CJEU 16 Dec. 1992, C-237/91 ***Kus*** EU:C:1992:527
AG 10 Nov. 1992 EU:C:1992:427
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)+6(3)
ref. from Hessischer Verwaltungsgerichtshof, Germany, 18 Sep. 1991
* *The third indent of Art. 6(1) of Dec. 1/80 must be interpreted as meaning that a Turkish worker does not fulfil the requirement, laid down in that provision, of having been engaged in legal employment for at least four years, where he was employed on the basis of a right of residence conferred on him only by the operation of national legislation permitting residence in the host country pending completion of the procedure for the grant of a residence permit, even though his right of residence has been upheld by a judgment of a court at first instance against which an appeal is pending.*
*The first indent of Art. 6(1) of Dec. 1/80 must be interpreted as meaning that a Turkish national who obtained a permit to reside on the territory of a Member State in order to marry there a national of that Member State and has worked there for more than one year with the same employer under a valid work permit is entitled under that provision to renewal of his work permit even if at the time when his application is determined his marriage has been dissolved.*

☞ CJEU 22 Dec. 2010, C-303/08 ***Metin Bozkurt*** EU:C:2010:800
AG 8 July 2010 EU:C:2010:413

* interpr. of EEC-Turkey Dec. 1/80: Art. 7+14(1)
ref. from Bundesverwaltungsgericht, Germany, 8 July 2008

* *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.*

☞ CJEU 10 Feb. 2000, C-340/97 ***Nazli*** EU:C:2000:77
AG 8 July 1999 EU:C:1999:371

* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)+14(1)
ref. from Verwaltungsgericht Ansbach, Germany, 1 Oct. 1997

* *A Turkish national who has been in legal employment in a Member State for an uninterrupted period of more than four years but is subsequently detained pending trial for more than a year in connection with an offence for which he is ultimately sentenced to a term of imprisonment suspended in full has not ceased, because he was not in employment while detained pending trial, to be duly registered as belonging to the labour force of the host Member State if he finds a job again within a reasonable period after his release, and may claim there an extension of his residence permit for the purposes of continuing to exercise his right of free access to any paid employment of his choice under the third indent of Art. 6(1) of Dec. 1/80.*
*Art. 14(1) of Dec. 1/80 is to be interpreted as precluding the expulsion of a Turkish national who enjoys a right granted directly by that decision when it is ordered, following a criminal conviction, as a deterrent to other aliens without the personal conduct of the person concerned giving reason to consider that he will commit other serious offences prejudicial to the requirements of public policy in the host Member State.*

☞ CJEU (GC) 28 Apr. 2004, C-373/02 ***Öztürk*** EU:C:2004:232
AG 12 Feb. 2004 EU:C:2004:95

* interpr. of EEC-Turkey Dec. 3/80: Art. 3
ref. from Oberst Gerichtshof, Austria, 17 Oct. 2002

* *Art 3(1) Dec. 3/80 must be interpreted as precluding the application of legislation of a MS which makes entitlement to an early old-age pension in the event of unemployment conditional upon fulfilment of the requirement that the person concerned has received, within a certain period prior to his application for the pension, unemployment insurance benefits from that MS alone.*

☞ CJEU 24 Jan. 2008, C-294/06 ***Payir*** EU:C:2008:36
AG 18 July 2007 EU:C:2007:455

* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Court of Appeal, United Kingdom, 30 June 2006

* *The fact that a Turkish national was granted leave to enter the territory of a Member State as an au pair or as a student cannot deprive him of the status of 'worker' and prevent him from being regarded as 'duly registered as belonging to the labour force' of that Member State within the meaning of Art. 6(1) of Dec. 1/80. Accordingly, that fact cannot prevent that national from being able to rely on that provision for the purposes of obtaining renewed permission to work and a corollary right of residence.*

☞ CJEU 16 June 2011, C-484/07 ***Pehlivan*** EU:C:2011:395
AG 8 July 2010 EU:C:2010:410

* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Rechtbank Den Haag (zp) Roermond, NL, 31 Oct. 2007

* *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.*

☞ CJEU 4 Oct. 2007, C-349/06 ***Polat*** EU:C:2007:581

* interpr. of EEC-Turkey Dec. 1/80: Art. 7+14
ref. from Verwaltungsgericht Darmstadt, Germany, 21 Aug. 2006

* *Multiple convictions for small crimes do not lead to expulsion. Art. 14(1) of Dec. 1/80 must be interpreted as not precluding the taking of an expulsion measure against a Turkish national who has been the subject of several criminal convictions, provided that his behaviour constitutes a genuine and sufficiently serious threat to a fundamental interest of society.*

☞ CJEU 17 Sep. 2009, C-242/06 ***Sahin*** EU:C:2009:554

* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Raad van State, NL, 29 May 2006

* *Art. 13 of Dec. 1/80 must be interpreted as precluding the introduction, from the entry into force of that decision in the Member State concerned, of national legislation, such as that at issue in the main proceedings, which makes the granting of a residence permit or an extension of the period of validity thereof conditional on payment of administrative charges, where the amount of those charges payable by Turkish nationals is disproportionate as compared with the amount required from Community nationals.*

☞ CJEU 11 May 2000, C-37/98 ***Savas*** EU:C:2000:224
AG 25 Nov. 1999 EU:C:1999:579
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
ref. from High Court of England and Wales, UK, 16 Feb. 1998
* *Art. 41(1) of the Additional Protocol prohibits the introduction of new national restrictions on the freedom of establishment and right of residence of Turkish nationals as from the date on which that protocol entered into force in the host Member State. It is for the national court to interpret domestic law for the purposes of determining whether the rules applied to the applicant in the main proceedings are less favourable than those which were applicable at the time when the Additional Protocol entered into force.*

☞ CJEU 10 Jan. 2006, C-230/03 ***Sedef*** EU:C:2006:5
AG 6 Sep. 2005 EU:C:2005:499
* interpr. of EEC-Turkey Dec. 1/80: Art. 6
ref. from Bundesverwaltungsgericht, Germany, 26 May 2003
* *Art. 6 of Dec. 1/80 is to be interpreted as meaning that:*
*– enjoyment of the rights conferred on a Turkish worker by the third indent of paragraph 1 of that article presupposes in principle that the person concerned has already fulfilled the conditions set out in the second indent of that paragraph;*
*– a Turkish worker who does not yet enjoy the right of free access to any paid employment of his choice under that third indent must be in legal employment without interruption in the host Member State unless he can rely on a legitimate reason of the type laid down in Art. 6(2) to justify his temporary absence from the labour force.*
*Art. 6(2) of Dec. 1/80 covers interruptions in periods of legal employment, such as those at issue in the main proceedings, and the relevant national authorities cannot, in this case, dispute the right of the Turkish worker concerned to reside in the host Member State.*

☞ CJEU 20 Sep. 1990, C-192/89 ***Sevince*** EU:C:1990:322
AG 15 May 1990 EU:C:1990:205
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)+13
ref. from Raad van State, NL, 8 June 1989
* *The term 'legal employment' in Art. 2(1)(b) of Dec. 2/76 and Art. 6(1) of Dec. 1/80,*
*does not cover the situation of a Turkish worker authorized to engage in employment for such time as the effect of a decision refusing him a right of residence, against which he has lodged an appeal which has been dismissed, is= suspended.*

☞ CJEU 13 Feb. 2020, C-258/18 ***Solak*** EU:C:2020:98
* interpr. of EEC-Turkey Dec. 3/80: Art. 6
ref. from Centrale Raad van Beroep, NL, 13 Apr. 2018
* *Art. 6(1) must be interpreted as not precluding a domestic measure under which the payment of a benefit in addition to disability benefits to ensure a minimum income granted under that scheme is terminated in respect of a Turkish national entering the regular labour market of a MS and who, having renounced the nationality of that MS acquired during his stay in that MS, has returned to his country of origin.*

☞ CJEU 19 Feb. 2009, C-228/06 ***Soysal*** EU:C:2009:101
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
ref. from Oberverwaltungsgericht Berlin-Brandenburg, Germany, 19 May 2006
* *Art. 41(1) of the Add. Protocol is to be interpreted as meaning that it precludes the introduction, as from the entry into force of that protocol, of a requirement that Turkish nationals such as the appellants in the main proceedings must have a visa to enter the territory of a Member State in order to provide services there on behalf of an undertaking established in Turkey, since, on that date, such a visa was not required.*

☞ CJEU 3 Oct. 2019, C-70/18 ***Stscr. / A. a.o. (NL)*** EU:C:2019:823
AG 2 May 2019 EU:C:2019:361
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Raad van State, NL, 2 Feb. 2018
* Also on Art. 7 Dec. 2/76.
* *Art. 13 of Dec. No 1/80 must be interpreted as meaning that a national rule, such as that at issue in the main proceedings, which makes the issuance of a temporary residence permit to third-country nationals, including Turkish nationals, conditional upon the collection, recording and retention of their biometric data in a central filing system does constitute a 'new restriction' within the meaning of that provision. Such a restriction is, however, justified by the objective of preventing and combating identity and document fraud.*

☞ CJEU 29 Mar. 2017, C-652/15 ***Tekdemir*** EU:C:2017:239
AG 15 Dec. 2016 EU:C:2016:960
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Verwaltungsgericht Darmstadt, Germany, 7 Dec. 2015
* *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.*

☞ CJEU 23 Jan. 1997, C-171/95 ***Tetik*** EU:C:1997:31
AG 14 Nov. 1996 EU:C:1996:438
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Bundesverwaltungsgericht, Germany, 7 June 1995
* *Art. 6(1) of Dec. 1/80 must be interpreted as meaning that a Turkish worker who has been legally employed for more than four years in a Member State, who decides voluntarily to leave his employment in order to seek new work in the same Member State and is unable immediately to enter into a new employment relationship, enjoys in that State, for a reasonable period, a right of residence for the purpose of seeking new paid employment there, provided that he continues to be duly registered as belonging to the labour force of the Member State concerned, complying where appropriate with the requirements of the legislation in force in that State, for instance by registering as a person seeking employment and making himself available to the employment authorities. It is for the Member State concerned and, in the absence of legislation to that end, for the national court before which the matter has been brought to fix such a reasonable period, which must, however, be sufficient not to jeopardize in fact the prospects of his finding new employment.*

☞ CJEU 9 Dec. 2010, C-300/09 ***Toprak & Oguz*** EU:C:2010:756
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Raad van State, NL, 30 July 2009
* joined cases: C-300/09 + C-301/09
* *Art. 13 of Dec. 1/80 must be interpreted as meaning that a tightening of a provision introduced after 1 December 1980, which provided for a relaxation of the provision applicable on 1 December 1980, constitutes a 'new restriction' within the meaning of that article, even where that tightening does not make the conditions governing the acquisition of that permit more stringent than those which resulted from the provision in force on 1 December 1980.*

☞ CJEU 16 Feb. 2006, C-502/04 ***Torun*** EU:C:2006:112
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Bundesverwaltungsgericht, Germany, 7 Dec. 2004
* *The child, who has reached the age of majority, of a Turkish migrant worker who has been legally employed in a Member State for more than three years, and who has successfully finished a vocational training course in that State and satisfies the conditions set out in Art. 7(2) of Dec. 1/80, does not lose the right of residence that is the corollary of the right to respond to any offer of employment conferred by that provision except in the circumstances laid down in Art. 14(1) of that provision or when he leaves the territory of the host Member State for a significant length of time without legitimate reason.*

☞ CJEU 20 Sep. 2007, C-16/05 ***Tum & Dari*** EU:C:2007:530
AG 12 Sep. 2006 EU:C:2006:550
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
ref. from House of Lords, UK, 19 Jan. 2005
* *Art. 41(1) of the Add. Protocol is to be interpreted as prohibiting the introduction, as from the entry into force of that protocol with regard to the Member State concerned, of any new restrictions on the exercise of freedom of establishment, including those relating to the substantive and/or procedural conditions governing the first admission into the territory of that State, of Turkish nationals intending to establish themselves in business there on their own account.*

☞ CJEU 21 July 2011, C-186/10 ***Tural Oguz*** EU:C:2011:509
AG 14 Apr. 2011 EU:C:2011:259
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
ref. from Court of Appeal (E&W), UK, 15 Apr. 2010
* *Art. 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.*

☞ CJEU 21 Dec. 2016, C-508/15 ***Ucar a.o.*** EU:C:2016:986
AG 15 Sep. 2016 EU:C:2016:697
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Verwaltungsgericht Berlin, Germany, 24 Sep. 2015
* *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 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 29 Sep. 2011, C-187/10 ***Unal*** EU:C:2011:623
AG 21 July 2011 EU:C:2011:510
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Raad van State, NL, 16 Apr. 2010
* *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 7 Aug. 2018, C-123/17 ***Yön*** EU:C:2018:632
AG 19 Apr. 2018 EU:C:2018:267
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Bundesverwaltungsgericht Leipzig, Germany, 10 Mar. 2017
* *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. A national measure, taken during the period from 20 december 1976 to 30 November 1980, which makes the grant, for the purposes of family reunification, of a residence permit to third-country nationals who are family members of a Turkish worker residing lawfully in the Member State concerned, subject to such nationals obtaining, before entering national territory, a visa for the purpose of that reunification, constitutes a 'new restriction' within the meaning of that provision.*
*Such a measure may nevertheless be justified on the grounds of the effective control of immigration and the management of migratory flows, but may be accepted only provided that the detailed rules relating to its implementation do not go beyond what is necessary to achieve the objective pursued, which it is for the national court to verify.*

☞ CJEU 8 Dec. 2011, C-371/08 ***Ziebell or Örnek*** EU:C:2011:809
AG 14 Apr. 2011 EU:C:2011:244
* interpr. of EEC-Turkey Dec. 1/80: Art. 14(1)
ref. from Verwaltungsgerichtshof Baden Württemberg, Germany, 14 Aug. 2008
* *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

☞ CJEU C-402/21 ***E.C. / Stscr (NL)***
* interpr. of EEC-Turkey Dec. 1/80: Art. 6+7+13
* *Can the new restriction whereby the right of residence of Turkish nationals may be terminated even after 20 years on grounds of public policy be justified by reference to the changed social perceptions which gave rise to that new restriction? Is it sufficient that the new restriction serves the public policy objective, or is it also required that the restriction be suitable for achieving that objective and not go beyond what is necessary to attain it? Is this consistent with Art. 13 Dec. 1/80?*

☞ CJEU C-279/21 ***X. / Udlændingen (DK)***
AG 8 Sep. 2022 EU:C:2022:652
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
* *Does the general prohibition of discrimination laid down in Art. 9 of the Ass. Agr. preclude a national rule in a situation in which the Turkish worker has acquired the right of permanent residence in the EU Member State concerned under the rules previously in force, which did not require that a language test in the official language of the host Member State be successfully taken as a precondition for the acquisition of that right, when such a requirement is not imposed on nationals of the Nordic Member State concerned (in this case, Denmark) and of the other Nordic countries, or on others who are nationals of an EU country (and is thus not imposed on EU/EEA nationals)?*

☞ CJEU C-689/21 ***X. / Udlæn. Min. (DK)***
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Østre Landsret, Denmark, 16 Nov. 2021
* *Not yet known.*

### 4.4.3 CJEU Judgments on Readmission Treaties

☞ CJEU 27 Feb. 2017, T-192/16 ***N.F. / European Council*** EU:C:2017:128
* validity of EU-Turkey Statement:
* inadmissable
* *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 inadmissable.*