



NEMIS

Sept. 2011

Quarterly update on

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

Published by the

*Centre for Migration Law (CMR)
Radboud University Nijmegen (NL) and
Steve Peers of University of Essex (UK)*

*register with: mrs Tineke Strik (CMR)
email: t.strik@jur.ru.nl*

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Editorial

Welcome to the 4th edition of NEMIS a newsletter designed for judges who need to keep up to date on EU developments in immigration and borders law. We would like to point out that every subsequent issue of NEMIS contains all the references present in the previous newsletter. Thus, no references will be lacking. Please bare in mind that all references are presented in a decreasing chronological order, i.e. any new reference will be put on top of the list under its corresponding header. The indication ‘New’ is put beside it in order to facilitate easy recognition.

*Some Highlights***Followup on McCarthy**

After the Zambrano and the McCarthy case, the Austrian Verwaltungsgerichtshof has continued the discussion on the implications of Article 20 TFEU for the right to family life for Union citizens with a third country national. On the 5th of May 2011, this court asked in a reference for a preliminary ruling the Court of Justice whether article 20 FTEU hinders Member States to deny third country national family members of Union citizens access to their territory, if those Union citizens did not make use of their right of free movement. If Article 20 TFEU allows Member States to do so, the subsequent question is under which conditions.

EC-Turkey Association Agreement

The German Verwaltungsgericht (Gießen) has requested a preliminary ruling on the definition of “family members of the beneficiaries” of Decision 1/80. The court has asked the Court of Justice for clarification of Article 7 (1) of Decision 1/80, in order to find out whether a third country national, after having lived together with a beneficiary for three years, could derive a right to a residence permit based on this Article.

Detention and Returns Directive

The Returns Directive continues to be a source for a reference for a preliminary ruling for national courts, in particular regarding the issue of detention. On 29 June 2011, a French higher court (Paris) asked the Court of Justice whether the directive precludes national legislation which provides for the imposition of a sentence of imprisonment on a third country national on the sole ground of illegal entry or residence. On 20th September 2011, the European Court of Human Rights decided that Article 5(1) ECHR was violated by Hungary, as it had continued the detention of some third country nationals on the ground of their illegal entry, despite the fact that they had submitted an application for asylum.

Invitation

The more national case law the editors receive from judges, the more relevant this newsletter will become. You are therefore more than welcome to provide us with your judgments, in which you as a national judge provide a relevant interpretation on the legal instruments NEMIS informs you about, or in which a request for a preliminary ruling on their interpretation is formulated. We will incorporate them in the next issue of NEMIS.

Nijmegen, 4 October 2011, Tineke Strik & Carolus Grütters

1 Legal Migration

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

Directive 2011/51

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

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

Regulation 1231/2010

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

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

Directive 2009/50

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

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

Decision 435/2007

Establishing European Integration Fund

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

Decision 688/2006

Asylum and Immigration Information Exchange

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

Recommendation 2005/762

Admission of Researchers

- * OJ 2005 L 289/26

Directive 2005/71

Admission of Researchers

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

Directive 2004/114

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

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

Directive 2003/109*Long-Term Residents*

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

Directive 2003/86*Family Reunification*

- * OJ 2003 L 251/12
- * impl. date Oct. 2005
- ☞ CJEU C-155/11 Imran [2011]
- ☞ UK: ZH (Tanzania) SC [2011]UKSC4 [2011]
- ☞ Germany: BVerwG 1 C 8.09 [2010]
- ☞ CJEU C-578/08 Chakroun [2010]
- ☞ CJEU C-540/03 EP v Council [2006]

Regulation 859/2003*Third-Country Nationals' Social Security*

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

UK, IRL opt in

Regulation 1030/2002*Residence Permit Format*

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

UK opt in

1.2 Legal Migration: Proposed Measures*(Unless stated otherwise, UK, DK & IRL opted out)***Directive***Admission of Seasonal Workers*

- * COM (2010) 379, 13 July 2010
- * Council working party began discussions, Sept. 2010
- Draft EP report, May 2011

Directive*Admission of Intra-Corporate Transferees*

- * COM (2010) 378, 13 July 2010
- * Council working party began discussions, Sept. 2010
- Draft EP report, May 2011

Directive

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

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

New After four years the Council and EP have finally reached a deal on the single permit Directive, which is likely to be formally adopted by the end of the year (2011). There is however, no sign of early agreement on the IT or seasonal workers' proposals.

1.3 *Legal Migration: Jurisprudence***CJEU Judgments**

- ☞ CJEU C-155/11 **Imran** [10 June 2011] (No adjudication)
- * interpr. of Dir. 2003/86 on **Family Reunification** Art. 7(2)
- * ref. from 'Rechtbank 's Gravenhage (zp) Zwolle' (Netherlands) 31-03-2011
- * *The Dutch court requested a preliminary ruling on the question whether art. 7(2) of allows a Member State to refuse entry and residence to a family member of a TCN lawfully residing in that Member State, exclusively on the ground that this family member has not passed the (national) civic integration examination abroad. In this particular case the father with his eight children already lawfully resided in The Netherlands. Just before the Court would rule on this case, the Dutch government finally granted a residence permit, which implied that the Court had to rule that it was not necessary to rule on this issue, also because no claim for compensation had been submitted. According to the Court, the mere intention to bring an action for damages does not constitute sufficient grounds for a ruling. The Commission took the position that this article does not allow Member States 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. See: <http://cmr.jur.ru.nl/nemis/Imran.EU.pdf>*

- ☞ CJEU C-434/09 **McCarthy** [5 May 2011]
 - * interpr. of TFEU **on Citizenship** Art. 21: EU Citizenship
 - * ref. from 'Supreme Court' (United Kingdom)
 - * *The SC requested a preliminary ruling on the right of a British citizen who also has Irish nationality and has always lived in the United Kingdom to move and reside freely within the territory of the Member States.*

The CJEU ruled that art. 21 TFEU is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State, provided that the situation of that citizen does not include the application of measures by a Member State that would have the effect of depriving him of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member States.

- ☞ CJEU C-34/09 **Zambrano** [8 Mar. 2011]
 - * interpr. of TFEU **on Citizenship** Art. 20
 - * ref. from 'Tribunal du travail de Bruxelles' (Belgium)
 - * *Citizenship of the Union entails a right of residence to a minor child on the territory of the Member State of which that child is a national, irrespective of the previous exercise by him of his right of free movement in the territory of the Member States. This also includes a derived right of residence and a right to work, to an ascendant relative, a third country national, upon whom the minor child is dependent.*

See also Q&A of EP :
<http://cmr.jur.ru.nl/nemis/Zambrano.QA.pdf>

- ☞ CJEU C-247/09 **Xhymshiti** [18 Nov. 2010]
 - * interpr. of Reg. 859/2003 on **Third-Country Nationals' Social Security**
 - * ref. from 'Finanzgericht Baden-Württemberg' (Germany)

- ☞ CJEU C-578/08 **Chakroun** [4 Mar. 2010]
 - * interpr. of Dir. 2003/86 on **Family Reunification** Art. 7(1)(c) and 2(d)
 - * ref. from 'Raad van State' (Netherlands)
 - * *The concept of family reunification allows no distinction based on the time of marriage.*

- ☞ CJEU C-523/08 **Commission v Spain** [11 Feb. 2010]
 - * non-transp. of Dir. 2005/71 on **Admission of Researchers**

- ☞ CJEU C-540/03 **EP v Council** [27 June 2006]
 - * interpr. of Dir. 2003/86 on **Family Reunification**
 - * challenge to validity of parts of Directive
 - * decided in favour of the Council

CJEU pending cases**New**

- ☞ CJEU C-256/11 **Dereci et al.**
 - * interpr. of TFEU **on Citizenship** Art. 20
 - * ref. from 'Verwaltungsgerichtshof' (Austria)
 - * *Does the obligation to grant residence to nationals of non-member countries relate to a right of residence which follows directly from European Union law, or is it sufficient that the Member State grants the right of residence to the national of a non-member country on the basis of its law establishing such a right?*
Subsequently: Under what conditions, exceptionally, does the right of residence which follows from European Union law not exist, or under what conditions may the national of a non-member country be deprived of the right of residence?

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

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

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

- ☞ CJEU C-508/10 **Commission vs Netherlands**
 - * incor. appl. of Dir. 2003/109 on **Long-Term Residents**
 - * *Charging € 201 to 830 for the processing of an application for LTR status is disproportionate if compared with the sum of EUR 30 which EU citizens are required to pay for a residence permit. Such a procedure cannot be regarded as 'fair'. Such high charges can be 'a means of hindering the exercise of the right of residence' within the meaning of recital 10 in the preamble to the directive, and thus have a deterrent effect on TCN.*

- ☞ CJEU C-502/10 **Singh**
- * interpr. of Dir. 2003/109 on **Long-Term Residents** Art. 3(2)(e)
- * ref. from 'Raad van State' (NL)
- * *Is the concept of formally limited residence permit within the meaning of [the LTR dir.] to be interpreted as including a fixed-period residence permit which, under Netherlands law, does not offer any prospect of a residence permit of indefinite duration, even if, under Netherlands law, the period of validity of the fixed-period residence permit can in principle be extended indefinitely and also if a particular group of people, such as spiritual leaders and religious teachers, are thereby excluded from the application of the Directive?*

National Judgments

New

- ☞ **Netherlands:** Rb den Haag zp Haarlem Awb 11-396 [14 July 2011]
- * interpr. of Dir. 2003/86 on **Family Reunification**
- * full text available at:
<http://cmr.jur.ru.nl/nemis/Netherlands/RbdenHaagzpHaarlemAwb11396.pdf>
- * *This case is (also) about the (high) amount charged for legal dues related to a residence permit in the context of Family Reunification. Although the court recognises that the Family Reunification Directive, does not contain any reference to legal dues as such, the court points out that the general introduction to the Family Directive indicates that any legal dues should be fair. Subsequently, the Dutch court stated that the Dutch government has given insufficient grounds for the (high) amount charged for legal dues in this Family Reunification case.*

New

- ☞ **Netherlands:** Rb Den Haag zp Amsterdam Awb 11/1410 [22 Apr. 2011]
- * interpr. of Dir. 2003/86 on **Family Reunification**
- * full text available at:
<http://cmr.jur.ru.nl/nemis/Netherlands/RbDenHaagzpAmsterdamAwb111410.pdf>
- * *This case is about the (high) amount charged for legal dues related to a residence permit in the context of Family Reunification. The Dutch court considers the outcome of pending case C-508/10 on (high) legal dues in the context of LTR relevant in this case. Particularly, because the European Commission has taken the position (in that pending case) that the Dutch procedure cannot be regarded as 'fair' if the difference in legal dues between EU-citizens and third country nationals is considered.*

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

- ☞ **Germany: Bundessozialgericht B 14 AS 23/10 R [19 Oct. 2010]**
 - * interpr. of Eur. Convention on **Social and Medical Assistance**
 - * full text available at:
<http://cmr.jur.ru.nl/nemis/Germany/BundessozialgerichtB14AS2310R.pdf>
 - * *A Frenchman lawfully residing as a 'jobseeker' in Germany was entitled to social assistance benefit (Arbeitslosengeld: similar to CJEU C-22/08 Vatsouras) during the period he retained his right as a worker on the basis of art. 7(3)(c) of the Dir. on Free Movement. The question in this case was whether he was still entitled to this benefit after these 6 months as German citizens are. Such a limitation for non-nationals is an implementation of art. 24(2) of the Dir. on Free Movement. However, the German Court decided that the European Convention on Social and Medical Assistance [1953] does not allow such a limitation.*

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

- ☞ **Germany: BVerwG 1 C 8.09 [30 Mar. 2010]**
 - * interpr. of Dir. 2003/86 on **Family Reunification**
 - * Art. 7(2)
 - * Art. 8 ECHR
 - * appeal from Berlin Administrative Court, 17 Feb. 2009, VG 35 V 47.08
 - * full text available at:
<http://cmr.jur.ru.nl/nemis/Germany/BVerwG1C809.pdf>
 - * *This decision is about the validity of integration measures of family members before arrival in the host Member State. (This case involved an illiterate applicant.)*

ECHR Judgments**New**

- ☞ Appl. No. 8000/08 *A.A. v UK* [20 Sep. 2011]
 - * violation of art. 8 ECHR
 - * *The applicant alleged, in particular, that his deportation to Nigeria would violate his right to respect for his family and private life and would deprive him of the right to education by terminating his university studies in the United Kingdom.*

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

2 Borders and Visas**2.1 Borders and Visas: Adopted Measures** *(Unless stated otherwise, UK, DK & IRL opted out)***Regulation 265/2010***Long-Stay Visas Code*

- * OJ 2010 L 85/1 (appl. 5 April 2010)
- * appl. 5 April 2010

Regulation 810/2009*Visa Code*

- * OJ 2009 L 243/1 (appl. 5 April 2010)
- * appl. 5 April 2010

Regulation 767/2008*Establishing Visa Information System*

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

Decision 586/2008*Transit through Switzerland*

- * OJ 2008 L 162/27

Decision 582/2008*Transit through Romania and Bulgaria*

- * OJ 2008 L 161/30

Decision 574/2007*Establishing European Borders Fund*

- * OJ 2007 L 144

Regulation 1931/2006**Local Border Traffic***Local border traffic within enlarged EU at external borders of EU*

- * OJ 2006 L 405/1

Decision 896/2006*Transit through new Member States, Switzerland*

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

Regulation 562/2006*Borders Code*

- * OJ 2006 L 105/1
- * amended by Reg. 296/2008 (OJ 2008 L 97/60)
amended by Reg. 81/2009 (OJ 2009 L 35/56)
Regarding the use of the VIS
- ☞ CJEU C-606/10 ANAFE [pending]
- ☞ CJEU C-430/10 Gaydarov [pending]
- ☞ CJEU C-355/10 EP v Council [pending]
- ☞ CJEU C-188/10 & C-189/10 Melki/Abdeli [2010]
- ☞ CJEU C-261/08 & C-348/08 Garcia/Cabrera [2000]

Recommendation 2005/761*Visa Issuing for Researchers*

- * OJ 2005 L 289/23

Regulation 2252/2004*Biometric Passports*

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

Regulation 2007/2004*Establishing External Borders Agency*

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

Decision 512/2004*Establishing Visa Information System (VIS)*

- * OJ 2004 L 213/5

Regulation 694/2003

Format for FTD and FRTD

- * OJ 2003 L 99/15

Regulation 693/2003

FTD and FRTD

- * OJ 2003 L 99/8

Regulation 333/2002

Visa stickers for persons coming from unrecognised entities

- * OJ 2002 L 53/4

UK opt in

Regulation 539/2001

Establishing Visa List

- * OJ 2001 L 81/1

- * amended by Reg. 2414/2001 (OJ 2001 L 327/1)

Moving Romania to 'white list'

amended by Reg. 453/2003 (OJ 2003 L 69/10)

Moving Ecuador to 'black list'

amended by Reg. 851/2005 (OJ 2005 L 141/3)

On reciprocity for visas

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

amended by Reg. 1244/2009 (OJ 2009 L 336/1)

Lifting visa req. for some Western Balkan countries

amended by Reg. 1091/2010 (OJ 2010 L 329/1)

Lifting visa req. for Albania and Bosnia; in force 5 April 2010

amended by Reg. 1211/2010 (OJ 2010 L 339/6)

Lifting visa req. for Taiwan

Regulation 1683/95

Common Visa Format

- * OJ 1995 L 164/1

UK opt in

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

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

2.2 *Borders and Visas: Proposed Measures*

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

New

Regulation amending Regulation

Visa Code

- * Com (2011) 516, 30 Aug. 2011

The EP and the Council agreed in June on major amendments to the Frontex Regulation, including a number of amendments relating to human rights issues. The Commission's two new proposals would make modest changes to two existing Regulations. As for the future, the Commission is planning a proposal in mid-September which would make it easier for Member States to reimpose internal border controls.

New**Regulation amending Regulation***Border Traffic*

- * COM (2011) 461, 27 July 2011

Regulation*amending visa list*

- * COM (2011) 290, May 2011
- * discussions underway in Council

The EP and the Council have agreed on two legislative proposals, but the difficult negotiations over the amendments to the Frontex Reg. are still ongoing, with operational human rights issues being particularly difficult. The Commission has proposed to amend the visa list legislation, not to amend the visa list as such, but to make sundry changes to the rules, in particular to allow for a fast-track reimposition of visas in the case of a major influx of people. Despite widespread press commentary on this issue, the Comm. has not yet officially proposed to amend the Borders Code in order to make it easier for Member States to reimpose internal border controls.

Regulation*amending Schengen Borders Code*

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

UK, IRL opt in

Decision*Travel documents*

- * COM (2010) 662, 12 Nov. 2010
 - * discussions underway in Council
- largely agreed between Council and EP

Regulation*Schengen evaluation*

- * COM (2010) 624, 16 Nov. 2010
 - * discussions underway in Council
- Draft report discussed by EP

UK opt in

Amendment*Visa List re Taiwan*

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

Amendment*Frontex Regulation*

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

Regulation

Establishing agency to manage VIS, SIS and Eurodac

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

UK opt in

Regulation

Codifying Regulations establishing EC visa list

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

2.3 *Borders and Visas: Forthcoming Topics*

Borders Code

Entry-exit programme and registered traveller programme (2011)

2.4 *Borders and Visas: Jurisprudence*

CJEU Judgments - annulment actions

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

CJEU Judgments - national court references

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

- ☞ CJEU C-261/08 & C-348/08 **Garcia/Cabrera** [22 Oct. 2000]
 - * interpr. of Reg. 562/2006 on **Borders Code** Art. 5, 11 and 13
 - * Member States are not obliged to expel a third-country national who is unlawfully present on the territory of a Member State because the conditions of duration of stay are not or no longer fulfilled
 - * ref. from 'Tribunal Superior de Justicia de Murcia' (Spain)

- ☞ CJEU C-139/08 **Kqiku** [2 Apr. 2009]
 - * interpr. of Dec. 896/2006 on **Transit through new Member States**, Art. 1 and 2
 - * on transit visa legislation for third-country nationals subject to a visa requirement
 - * ref. from 'Oberlandesgericht Karlsruhe' (Germany)

- ☞ CJEU C-241/05 **Bot** [4 Oct. 2006]
 - * interpr. of Schengen Art. 20(1)
 - * on the conditions of movement of third-country nationals not subject to a visa requirement; on the meaning of 'first entry' and successive stays
 - * ref. from 'Conseil d'Etat' (France)

CJEU pending cases

New

- ☞ CJEU C-254/11 **Shomodi**
 - * interpr. of Reg. 1931/2006 on **Local border traffic** Art. 2(a) and 3(3)
 - * ref. from 'Supreme Court' (Hungary)
 - * *On the meaning of "uninterrupted" stay and the method of counting in relation to the term of 3 months in art 5.*

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

- ☞ CJEU C-430/10 **Gaydarov**
 - * interpr. of Reg. 562/2006 on **Borders Code**
 - * *Is it allowed to restrict the movements of a convicted criminal during his rehabilitation period if this restriction is based on his criminal relevant behavior in an other State?*

- ☞ CJEU C-355/10 **EP v Council**
 - * interpr. of Reg. 562/2006 on **Borders Code** Art. 12(5)
 - * annulment of measure implementing Borders Code

National Judgments

New

- ☞ **Germany:** BVerwG 1 C 1.10 [11 Jan. 2011]
- * interpr. of Reg. 810/2009 on *Visa Code*
- * Art. * ECHR
- * appeal from Berlin-Brandenburg Higher Administrative Court, 18 Dec.
- * full text available at:
<http://cmr.jur.ru.nl/nemis/Germany/BVerwG1C110.pdf>
- * *A Moroccan national seeks a Schengen visa to visit her two minor children living with her father in Germany. The visa is denied, primarily based on the assumption that there is no specific credible prospect of return.
 Although the court states that the child’s personal contact and continuity of emotional bonds with both parents serve as a general rule toward developing the child’s personality, the court does not find the denial of the visa disproportionately because the maintenance of family ties can be realised through other means and visits outside Germany.*

3 Irregular Migration

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

Directive replacing Framework Dec.

Trafficking persons

- * OJ 2011 L 101/1 UK opt in
- * impl. date deadline 6 april 2012
- * The EU’s next focus in this area is the implementation of the new anti-trafficking Directive, which the UK intends to participate fully in.

Regulation amending Regulation

Immigration liaison officers

- * OJ 2011 L 141/13
- applies from 16 June 2011

Directive 2009/52

Sanctions for employers of irregular migrants

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

Directive 2008/115

Returns Directive

- * OJ 2008 L 348/98
- * impl. date 24 Dec. 2010
- ☞ CJEU C-169/11 Conteh [pending]
- ☞ CJEU C-144/11 Abdallah [pending]
- ☞ CJEU C-140/11 Ngagne [pending]
- ☞ CJEU C-120/11 Kwadwo [pending]
- ☞ CJEU C-94/11 Godwin [pending]
- ☞ CJEU C-61/11 El Dridi [2011]
- ☞ CJEU C-357/09 Kadzoev [2009]

Decision

European Return Programme

- * OJ 2007 L 144 UK opt in

Regulation 1988/2006

SIS II, amending Reg. 2424/2001

- * OJ 2006 L 411/1 UK opt in

Regulation 1987/2006

Establishing SIS II

- * OJ 2006 L 381/4

Decision

Early warning system

- * OJ 2005 L 83/48 UK opt in

Decision

Joint flights for expulsion

- * OJ 2004 L 261/28 UK opt in

Directive 2004/82

Transmission of passenger data

- * OJ 2004 L 261/64 UK opt in

Regulation 871/2004

New functionalities for SIS

- * OJ 2004 L 162/29

Directive 2004/81

Res. permits for trafficking victims

- * OJ 2004 L 261/19 UK opt in
- ☞ CJEU C-266/08 Commission v Spain [2009]

Decision

Costs of expulsion

- * OJ 2004 L 60/55 UK opt in

Regulation 377/2004

ILO network

* OJ 2004 L 64/1

UK opt in

Regulation 378/2004

Procedure for amendments to Sirene manual

* OJ 2004 L 64

UK opt in

Conclusions

Transit via land for expulsion

* adopted 22 Dec. 2003 by Council

UK opt in

Directive 2003/110

Assistance with transit for expulsion by air

* OJ 2003 L 321/26

Directive & Framework Decision

Facilitation of illegal entry and residence

* OJ 2002 L 328

UK opt in

Framework Decision

Trafficking in persons

* OJ 2002 L 203/1

UK opt in

Decision 886/JHA/2001

Funding SIS II

* OJ 2001 L 328/1

UK opt in

Regulation 2424/2001

Funding SIS II

* OJ 2001 L 328/4

UK opt in

Directive 2001/51

Carrier sanctions

* OJ 2001 L 187/45

* impl. date 11 Feb. 2003

UK opt in

Directive 2001/40

Mutual recognition of expulsion decisions

* OJ 2001 L 149/34

* impl. date 2 Oct. 2002

UK opt in

3.2 *Irregular Migration: Proposed Measures*

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

* nothing to report

3.3 Irregular Migration: Jurisprudence

CJEU Judgments

- ☞ CJEU C-61/11 *El Dridi* [28 Apr. 2011]
 - * interpr. of Dir. 2008/115 on *Returns Directive* Art. 15 and 16
 - * PPU: Urgency Procedure
 - * ref. from 'Corte D'Appello Di Trento' (Italy)
 - * *The Returns Dir. precludes that a Member State has legislation which provides for a sentence of imprisonment to be imposed on an illegally staying TCN on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.*
- ☞ CJEU C-357/09 *Kadzoev* [30 Nov. 2009]
 - * interpr. of Dir. 2008/115 on *Returns Directive* Art. 15(4), (5) and (6)
 - * the maximum duration of detention must include a period of detention completed in connection with a removal procedure commenced before the rules in the directive become applicable
 - * only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods
- ☞ CJEU C-266/08 *Commission v Spain* [14 May 2009]
 - * non-transp. of Dir. 2004/81 on *Res. permits for trafficking victims*
 - * on the status of victims of trafficking and smuggling

CJEU pending cases

New

- ☞ CJEU C-329/11 *Achughbabian*
 - * interpr. of Dir. 2008/115 on *Returns Directive*
 - * ref. from 'Court d'Appel de Paris' (France)
 - * *Does the Returns Directive preclude national legislation (such as Article L.621-1 of the code de l'entrée et du séjour des étrangers et du droit d'asile [Code on the entry and stay of foreign nationals and on the right to asylum] which provides for the imposition of a sentence of imprisonment on a third-country national on the sole ground of his illegal entry or residence in national territory?*

☞ CJEU C-169/11 **Conteh**

- * interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
- * ref. from 'Tribunale di Frosinone' (Italy)
- * *whether a Member State can apply to an illegally staying TCN who does not cooperate in the administrative return procedure measures involving deprivation of liberty, on the basis of measures which are other than detention measures and as defined by national law, without the pre-conditions and safeguards laid down in Art. 15 and 16, on grounds of failure to comply with a removal order.*

☞ CJEU C-144/11 **Abdallah**

- * interpr. of Dir. 2008/115 on **Returns Directive**
- * ref. from 'Giudice di pace di Mestre ' (Italy)
- * *whether a provision of national law, which categorises as a crime the mere act of entering, or of remaining in, the national territory, in breach of the provisions laid down in relation to immigration where the person who so enters or remains is a citizen of a third country.*

☞ CJEU C-140/11 **Ngagne**

- * interpr. of Dir. 2008/115 on **Returns Directive** Art. 15
- * *whether a Member State can order a non-national who is unlawfully present on its territory to depart from that territory when it is not possible to proceed by means of deportation, whether immediate or following detention, thereby reversing the priorities and the order of procedure laid down in those provisions.*

☞ CJEU C-120/11 **Kwadwo**

- * interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
- * ref. from 'Tribunale di Santa Maria Capua Vetere' (Italy)
- * *whether an illegally staying foreign national who has simply failed to comply with the deportation order and the removal order issued by the administrative authorities from incurring criminal liability and being sentenced to a term of imprisonment of up to four years if he fails to comply with the first removal order and up to five years if he fails to comply with subsequent orders issued by the Questore.*

☞ CJEU C-94/11 **Godwin**

- * interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
- * ref. from 'Tribunale di Bergamo' (Italy)
- * *whether the conduct of a third-country national illegally staying in a Member State may be categorised as punishable under criminal law - simply on account of his lack of cooperation in the deportation procedure, in particular his mere failure to comply with a removal order issued by the administrative authorities - by a sentence of imprisonment of up to four years for failure to comply with the initial order issued by the Questore and a term of imprisonment of up to five years for failure to comply with subsequent orders.*

- ☞ CJEU C-60/11 **Mrad**
 - * interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
 - * ref. from 'Tribunale di Ragusa' (Italy)
 - * *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*
- ☞ CJEU C-50/11 **Emegor**
 - * interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
 - * ref. from 'Tribunale di Ivrea' (Italy)
 - * *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*
- ☞ CJEU C-43/11 **Samb**
 - * interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
 - * ref. from 'Tribunale Ordinario Di Milano' (Italy)
 - * *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*

ECHR Judgments

New

- ☞ Appl. No. 10816/10 **Lokpo & Touré** [20 Sep. 2011]
Art. 5(1)
 - * Violation of Art. 5(1) ECHR
 - * *The applicants entered Hungary illegally. After their arrest and during subsequent detention they applied for asylum. They were kept however in detention.*
The Court ruled that Article 5 § 1 (right to liberty and security) was violated, stating that the absence of elaborate reasoning for an applicant's deprivation of liberty renders that measure incompatible with the requirement of lawfulness.

4 External Treaties

4.1 External Treaties: Readmission

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

Russia, Ukraine, Moldova

- * Council to approve mandate to renegotiate, Apr. 2011

Belarus

- * negotiation mandate approved by Council, Feb. 2011

Morocco, Algeria, Turkey and China

- * negotiations approved, 2010
agreed with Turkey, Jan. 2011

Georgia

- * Proposal to sign and conclude agreement: signed, (COM (2010) 199 and 200), 5 May 2010
concluded Jan. 2011; entered into force 1 March 2011

Pakistan

- * concluded, Sep. 2010 (OJ 2010 L 287/50)
into force 1 Dec. 2010

Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova

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

Russia

- * OJ 2007 L 129 (into force 1 June 2007 (TCN: June 2010)) UK opt in
- * into force 1 June 2007 (TCN: June 2010)

Cape Verde

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

Albania

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

Sri Lanka

- * OJ 2005 L 124/43 (into force 1 May 2005) UK opt in
- * into force 1 May 2005

Macao

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

Hong Kong

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

4.2 *External Treaties: Other*

Belarus

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

Brazil: Two visa waiver treaties

- * OJ 2011 L 66/1 & 2
- * into force 24 Feb. 2011

Mauritius, Antigua/Barbuda, Barbados, Seychelles, St. Kitts and Nevis and Bahamas: Visa abolition treaties agreed

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

Cape Verde: Visa facilitation agreement negotiations

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

Georgia: Visa facilitation agreement

- * proposal to sign and conclude, (COM (2010) 197 and 198), 5 May 2010
signed June 2010
concluded, Jan. 2011; entered into force 1 March 2011

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

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

Russia: Visa facilitation agreement

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

Denmark: Dublin II treaty

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

China: Approved Destination Status treaty

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

Switzerland: Schengen, Dublin

- (applied from Dec. 2008)
- * applied from Dec. 2008

Switzerland: Free Movement of Persons

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

Norway and Iceland: Dublin Convention

- * OJ 1999 L 176/36 (into force 1 March 2001)
- * into force 1 March 2001
- * Protocol in force 1 May 2006

EC-Turkey Association Agreement

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

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

- ☞ C-187/10 **Unal** [29 Sep. 2011]
- * interpr. of Dec. No 1/80 Art. 6(1)
- * ref. from 'Raad van State' (Netherlands)
- * *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.*

New

- ☞ C-186/10 **Tural Oguz** [21 July 2011]
- * interpr. of Add. Protocol Art. 41(1)
- * ref. from 'Court of Appeal (E&W)' (United Kingdom)
- * *Article 41(1) must be interpreted as meaning that it may be relied on by a Turkish national who, having leave to remain in a Member State on condition that he does not engage in any business or profession, nevertheless enters into self-employment in breach of that condition and later applies to the national authorities for further leave to remain on the basis of the business which he has meanwhile established.*
- ☞ C-484/07 **Pehlivan** [16 June 2011]
- * interpr. of Dec. No 1/80 & 3/80 Art. 7
- * ref. from 'Rechtbank 's Gravenhage' (Netherlands)
- * *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.*

- ☞ C-485/07 **Akdas** [26 May 2011]
 - * interpr. of Dec. 3/80 Art. 6(1)
 - * ref. from 'Centrale Raad van Beroep' (Netherlands)
 - * *Supplements to social security can not be withdrawn solely on the ground that the beneficiary has moved out of the Member State.*

- ☞ C-303/08 **Metin Bozkurt** [22 Dec. 2010]
 - * interpr. of Dec. No 1/80 Art. 7 and 14(1)
 - * ref. from 'Bundesverwaltungsgericht' (Germany)
 - * *Art. 7 means that a Turkish national who enjoys certain rights, does not lose those rights on account of his divorce, which took place after those rights were acquired.*
By contrast, Art. 14(1) does not preclude a measure ordering the expulsion of a Turkish national who has been convicted of criminal offences, provided that his personal conduct constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society. It is for the competent national court to assess whether that is the case in the main proceedings.

- ☞ C-300/09 & C-301/09 **Toprak/Oguz** [9 Dec. 2010]
 - * interpr. of Dec. No 1/80 Art. 13 (standstill clause)
 - * ref. from 'Raad van State' (Netherlands)
 - * *on the reference date regarding the prohibition to introduce new restrictions for Turkish workers and their family members*

- ☞ C-92/07 **Comm. v The Netherlands** [29 Apr. 2010]
 - * interpr. of Dec. No 1/80 Art. 10(1) and 13 (standstill clauses)
 - * *the obligation to pay charges in order to obtain or extend a residence permit, which are disproportionate compared to charges paid by citizens of the Union is in breach with the standstill clauses of Articles 10(1) and 13 of Decision No 1/80 of the Association*

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

- ☞ C-462/08 **Bekleyen** [21 Jan. 2010]
 - * interpr. of Dec. No 1/80 Art. 7(2)
 - * *the child of a Turkish worker has free access to labour and an independent right to stay in Germany, if this child is graduated in Germany and its parents have worked at least three years in Germany*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ☞ C-317/01 & C-369/01 **Abatay/Sahin** [21 Oct. 2003]
 - * interpr. of Dec. No 1/80 Art. 13 and 41(1)
 - * ref. from 'Bundessozialgericht' (Germany)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ☞ C-192/89 **Sevince** [20 Sep. 1990]
 - * interpr. of Dec. No 1/80 Art. 6(1) and 13
 - * ref. from 'Raad van State' (Netherlands)

- ☞ 12/86 **Demirel** [30 Sep. 1987]
 - * interpr. of Dec. No 1/80 Art. 7 and 12
 - * ref. from 'Verwaltungsgericht Stuttgart' (Germany)

CJEU pending cases on EEC-Turkey Association Agreement

New

- ☞ C-268/11 **Gühlbahce**
- * interpr. of Dec. 1/80 Art. 10(1) and 13 (standstill clauses)
- * ref. from 'Oberverwaltungsgericht Hamburg' (Germany) 19-05-2011
- * *Whether new and more restrictive legislation on work and residence permits are in breach with the standstill clause; with reference to C-300/09 (Toprak) and C-301/09 (Oguz).*

New

- ☞ C-221/11 **Demirkan**
- * interpr. of Add. Protocol Art. 41(1)
- * ref. from 'Oberverwaltungsgericht Berlin' (Germany) 13-4-2011
- * *The OVG asked whether Turkish nationals are recipients of service and whether they are covered by the standstill clause (Art. 41(1) Add. Protocol). The OVG, referring to the Soysal-Case, asked whether the freedom to 'provide services' also the freedom to 'receive' services in other EU Member States. Where EU nationals are concerned, the CJEU has consistently held (Cowan (C-186/87) and Bickel and Franz (C-274/96)), that the freedom to provide services "includes the freedom for the recipients of services to go to another Member State in order to receive a service there". If so, the question is whether Turkish nationals can invoke such a right if they do not wish to receive a specific service, but rather to visit relatives residing in the Member State (i.e. Germany) and during their stay will request and receive services, such as dining out in a restaurant.*

- ☞ C-7/10 & C-9/10 **Kahveci & Inan**
- * interpr. of Dec. No 1/80 Art. 7
- * ref. from 'Raad van State' (Netherlands)
- * *Is status of Art. 7 of Dec. 1/80 lost because worker acquires nationality of Member State of residence next to Turkish nationality?*

- ☞ C-436/09 **Belkiran**
- * interpr. of Dec. No 1/80
- * ref. from 'Bundesverwaltungsgericht' (Germany)
- * *Should Art. 14(1) of Dec. 1/80 (protection against expulsion) be interpreted as Art. 28(3) of the Free Movement Directive (2004/38/EC)?*

- ☞ C-420/08 **Erdil**
- * interpr. of Dec. No 1/80
- * ref. from 'Verwaltungsgericht Berlin' (Germany)
- * *Does the protection of Art 28(3) of Free Movement Directive (2004/38) apply to Turkish national with status Art. 7 of 1/80 born in a Member State?*

☞ C-371/08 *Ziebell or Örnek*

- * interpr. of Dec. No 1/80 Art. 14(1)
- * ref. from 'Verwaltungsgerichtshof Baden Württemberg' (Germany)
- * *Should Art. 14(1) of Dec. 1/80 (protection against expulsion) be interpreted as Art. 28(3) of the Free Movement Directive (2004/38/EC)?*

The AG concluded (14 April 2011) that a Turkish national who enjoys protection within the meaning of Art. 7(1) can only be expelled if his behaviour is an actual, real and sufficiently serious threat to a vital interest of the society. Whether that is the case is up to the national court to decide.

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

Fast-track system for urgent JHA cases

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

6 Miscellaneous**Information Note on references from national courts for a preliminary ruling**

- * OJ 2011 C 160/01
on preliminary rulings
- * full text available at:
<http://cmr.jur.ru.nl/nemis//onpreliminaryrulings.pdf>

COE Report on Rule 39

- * On 9 Nov. 2010, the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe, published a report on Rule 39
- * Preventing Harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights.
COE Rule 39
- * full text available at:
<http://cmr.jur.ru.nl/nemis//COERule39.pdf>