



NEMIS

Quarterly update on

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

Editorial Board

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Contents

Editorial	2
1. Legal Migration	3
1.1 Adopted Measures	3
1.2 Proposed Measures	4
1.3 Jurisprudence	5
CJEU judgments, CJEU pending cases, ECtHR judgments, National judgments	
2. Borders and Visas	9
2.1 Adopted Measures	9
2.2 Proposed Measures	11
2.3 Jurisprudence	12
CJEU judgments, CJEU pending cases, ECtHR judgments, National judgments	
3. Irregular Migration	15
3.1 Adopted Measures	15
3.2 Proposed Measures	16
3.3 Jurisprudence	17
CJEU judgments, CJEU pending cases, ECtHR judgments, National judgments	
4. External Treaties	19
4.1 Association Agreements	19
4.2 Readmission	19
4.3 Other	20
4.4 Jurisprudence	21
CJEU judgments, CJEU pending cases, ECtHR judgments, National judgments	
5. Miscellaneous	27

Editorial

Welcome to the 2nd edition in 2012 of NEMIS, a newsletter designed for judges who need to keep up to date with EU developments in migration and borders law. This newsletter contains all European legislation and jurisprudence on access and residence rights of third country nationals, as well as relevant national judgments on the interpretation of this legislation. NEMIS does not include jurisprudence on free movement of EU citizens and their third country national family members.

In order to maintain a complete overview, every issue of NEMIS includes all references present in the previous newsletter. Thus, no references will be lacking. Please bear in mind that all references are presented in a descending chronological order, i.e. any new reference will be put on top of the list under its corresponding heading. The indication 'New' is put beside it in order to facilitate easy recognition.

Asylum

When we started NEMIS we intended to give a clear overview of the developments on European migration issues thus we did not include any references to asylum. The responses we have received from judges so far confirms this starting point. There is, however, an increasing demand for relevant, concise and up-to-date information on questions regarding asylum in the European context. Therefore, we have decided to produce a new newsletter that will cover these issues, called:

NEAIS a Newsletter on European Asylum Issues - for judges.

Along with this issue of NEMIS, we are also sending you the first issue of **NEAIS**.

Special Judgments

The Hirsi judgment of the ECtHR of 23 Feb. 2012 is a milestone. For the first time the Court applied Article 4 of Protocol no. 4 (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.

On 10 April 2012 the CJEU decided the first substantive case (C-83/12) on the Visa Code Regulation (810/2009) about migration-related identity fraud with genuine visa issued by another Member State.

The Kahveci case (C-7/10) on dual nationality underlines that a Turkish national can still invoke the EEC-Turkey Ass. once he has acquired a second nationality (e.g. of The Netherlands).

On 26 April the CJEU decided that a MS, i.e. The Netherlands, cannot impose excessive and disproportionate charges for the granting of residence permits to TCNs who are long-term residents and to members of their family.

Your input

The more national jurisprudence the editors receive from judges, the more relevant this newsletter will become. You are therefore more than welcome to provide us with your judgments, providing 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.

Nijmegen, 26 April 2012, Carolus Grütters & Tineke Strik

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1 Legal Migration

1.1 Legal Migration: Adopted Measures

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

Directive 2011/98

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

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

Directive 2011/51

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

- * OJ 2011 L 132/1
- * impl. date 20 May 2013
- * This Directive replaces Dir. 2003/109

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 [11 Feb. 2010]

Directive 2004/114

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

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

☞ CJEU C-568/10 Commission vs Austria [withdrawn]
 ☞ CJEU C-15/11 Sommer [pending - opinion 1 Mar. 2012]

Directive 2003/109

Long-Term Residents

- * OJ 2004 L 16/44
- * impl. date 23 Jan. 2006
- * This Directive has been replaced by Dir. 2011/51
- ☞ CJEU C-508/10 Commission vs Netherlands [26 Apr. 2012]
- ☞ CJEU C-571/10 Servet [24 Apr. 2012]
- ☞ 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 [10 June 2011 - No adjudication]
- ☞ CJEU C-578/08 Chakroun [4 Mar. 2010]
- ☞ CJEU C-540/03 EP v Council [27 June 2006]

Regulation 859/2003

Third-Country Nationals' Social Security

- * OJ 2003 L 124/1 UK, IRL opt in
- ☞ CJEU C-247/09 Xhymshiti [18 Nov. 2010]

Regulation 1030/2002

Residence Permit Format

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

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
- New** EP negotiating position to be adopted, 24 April 2012

Directive

Admission of Intra-Corporate Transferees

- * COM (2010) 378, 13 July 2010
- * Council working party began discussions, Sept. 2010
Draft EP report, May 2011
- New** EP negotiating position adopted Feb. 2012

1.3 Legal Migration: Jurisprudence

1.3.1 CJEU Judgments on Legal Migration

- New** ☞ CJEU C-508/10, *Commission vs Netherlands*, [26 Apr. 2012]
 * incor. appl. of Dir. 2003/109 on **Long-Term Residents**
 * *The Court rules that the Netherlands has failed to fulfil its obligations by applying excessive and disproportionate administrative charges which are liable to create an obstacle to the exercise of the rights conferred by the Long-Term Residents Directive: (i) to TCNs seeking long-term resident status in the Netherlands, (ii) 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 (iii) to members of their families seeking authorisation to accompany or join them.*
- New** ☞ CJEU C-571/10, *Servet*, [24 Apr. 2012]
 * interpr. of Dir. 2003/109 on **Long-Term Residents** Art. 11(1)(d)
 * ref. from 'Tribunale di Bolzano' (Italy)
 * *EU Law precludes 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* (withdrawn)
 * 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-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 Commission took the position that Art. 7(2) 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>
However, as a residence permit was granted just before the hearing would take place, the Court decided it was not necessary to give a ruling.
- ☞ CJEU C-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. Furthermore, Member States may not require an income as a condition for family reunification, which is higher than the national minimum wage level. Admission conditions allowed by the directive, serve as indicators, but should not be applied rigidly, i.e. all individual circumstances should be taken into account.*
- ☞ CJEU C-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** Art. 8
 * *The derogation clauses (3 years waiting period and the age-limits for children) are not annulled, as they do not constitute a violation of article 8 ECHR. However, while applying these clauses and the directive as a whole, Member States are bound by the fundamental rights (including the rights of the child), the purpose of the directive and obligation to take all individual interests into account.*

1.3.2 CJEU pending cases on Legal Migration

- ☞ CJEU C-15/11, **Sommer** (opinion 1 Mar. 2012)
- * 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-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 a formally limited residence permit within the meaning of the Directive 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?*

1.3.3 ECtHR Judgments on Legal Migration

- ☞ ECtHR Ap.no. 22251/07, **G.R.**, [10 Jan. 2012]
- * interpr. of ECHR Art. 8 and 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 13 of the Convention*

- ☞ ECtHR Ap.no. 38058/09, **Osman**, [14 June 2011]
- * violation of ECHR Art. 8
- * *The Court concluded that the denial of admission of a 17 years old Somali girl to Denmark, where she had lived from the age of seven until the age of fifteen, violated Article 8. For a settled migrant who has lawfully spent all of the major part of his or her childhood and youth in a host country, very serious reasons are required to justify expulsion'. The Danish Government had argued that the refusal was justified because the applicant had been taken out of the country by her father, with her mother's permission, in exercise of their rights of parental responsibility. The Court agreed 'that the exercise of parental rights constitutes a fundamental element of family life', but concluded that 'in respecting parental rights, the authorities cannot ignore the child's interest including its own right to respect for private and family life'.*

- ☞ ECtHR Ap.no. 55597/09, **Nunez**, [28 June 2011]
- * violation of ECHR Art. 8
- * *Although Ms Nunez was deported from Norway in 1996 with a two-year ban on her re-entry into Norway, she returned to Norway, got married and had two daughters born in 2002 and 2003. It takes until 2005 for the Norwegian authorities to revoke her permits and to decide that mrs Nunez should be expelled. The Court rules that the authorities had not struck a fair balance between the public interest in ensuring effective immigration control and Ms Nunez's need to remain in Norway in order to continue to have contact with her children.*

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

- ☞ ECtHR Ap.no. 34848/07, *O'Donoghue and others v UK*, [14 Dec. 2010]
- * violation of ECHR Art. 9, 12 and 14
- * Judgment of Fourth Section
- * *The UK Certificate of Approval required foreigners, except those wishing to marry in the Church of England, to pay large fees to obtain the permission from the Home Office to marry. The Court found that the conditions violated the right to marry (Article 12 of the Convention), that it was discriminatory in its application (Article 14 of the Convention) and that it was discriminatory on the ground of religion (Articles 9 and 14 of the Convention).*

1.3.4 National Judgments on Legal Migration

- ☞ **Germany:** BVerwG 1 C 9.10 [28 Oct. 2011]
- * interpr. of Dir. 2003/86 **Family Reunification**
- * appeal from Berlin-Brandenburg Higher Administrative Court, 25 Mar. 2010
- * full text available at:
<http://cmr.jur.ru.nl/nemis/Germany/BVerwG1C910.pdf>
- * *Regarding the position of the European Commission taken in the case Imran (see CJEU 155/11 in the previous section) that a certain language level as a condition for admission is not in compliance with the directive, a preliminary ruling of the Court of Justice should have been requested. Although this judgment has only financial consequences, the German Court has distanced itself from its previous judgment of 30 March 2010 (BVerwG 1 C 8.09) that the language requirement was in compliance with the Family Reunification Directive.*

- ☞ **United Kingdom:** Quila SC [2011]UKSC45 [12 Oct. 2011]
- * interpr. of Art. 8 ECHR
- * full text available at:
<http://cmr.jur.ru.nl/nemis/UK/QuilaSC.2011.UKSC45.pdf>
- * *These two cases concern the application of Rule 277 of the Immigration Rules (HC 395) under which the spouse or civil partner of a British national or someone settled in the UK is prevented from entering and settling in the UK if either party is under the age of 21. A parallel rule applies to fiancés and unmarried or same-sex partners. Although it was clear that the marriage was not a forced marriage, the applicants had to leave the UK in order to have a family life. The Supreme Court held that the rule was “rationally connected to the objective of deterring forced marriages (...) but the number of forced marriages which it deters is highly debatable. What seems clear is that the number of unforced marriages which it obstructs from their intended development for up to three years vastly exceeds the number of forced marriages which it deters”. The Court concluded that the Secretary of State had failed to establish that the interference with the rights of the respondents under Article 8, which protects the right to private life, that had been caused by the rule was justified.*

- ☞ **Netherlands:** Rb den Haag zp Haarlem Awb 11-396 [14 July 2011]
- * interpr. of Dir. 2003/86 **Family Reunification**
- * full text available at:
<http://cmr.jur.ru.nl/nemis/Netherlands/RbdenHaagzpHaarlemAwb11396.pdf>
- * *This case is about the (high) amount charged for legal dues related to a residence permit in the context of Family Reunification. Although the Dutch court recognises that the Family Reunification Directive, does not contain any reference to legal dues as such, the court points out that paragraph 13 of the Preamble of the 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.*

- ☞ **Netherlands:** Rb Den Haag zp Amsterdam Awb 11/1410 [22 Apr. 2011]
- * interpr. of Dir. 2003/86 **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 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 European Convention on **Social and Medical Assistance**
 - * full text available at:
<http://cmr.jur.ru.nl/nemis/Germany/BundessozialgerichtB14AS2310R.pdf>
 - * *A Frenchman lawfully residing as a 'jobseeker' in Germany was entitled to social assistance benefit (Arbeitslosengeld: similar to CJEU C-22/08 Vatsouras) during the period he retained his right as a worker on the basis of art. 7(3)(c) of the Dir. on Free Movement. The question in this case was whether he was still entitled to this benefit after these 6 months as German citizens are. Such a limitation for non-nationals is an implementation of art. 24(2) of the Dir. on Free Movement. However, the German Court decided that the European Convention on Social and Medical Assistance [1953] does not allow such a limitation.*
- ☞ **UK:** MH Morocco [2010] UKUT 439 IAC [28 Sep. 2010]
- * interpr. of 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 **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.) See also BVerwG 1 C 9.10.*

2 Borders and Visas**2.1 Borders and Visas: Adopted Measures***(Unless stated otherwise, UK, DK & IRL opted out)***Decision 1105/2011***Travel documents*

- * OJ 2011 L 287/9

Regulation 1077/2011*Establishing agency to manage VIS, SIS & Eurodac*

- * OJ 2011 L 286/1

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

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

☞ CJEU C-83/12 Vo

[10 Apr. 2012]

☞ CJEU C-84/12 Koushkaki

[pending]

☞ CJEU C-39/12 Dang

[pending]

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 1987/2006*Establishing SIS II*

- * OJ 2006 L 381/4

Regulation 1988/2006*SIS II, amending Reg. 2424/2001*

- * OJ 2006 L 411/1

UK opt in

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

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

Decision 896/2006

Transit through new Member States, Switzerland

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

☞ CJEU C-139/08 Kqiku [2 Apr. 2009]

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-430/10 Gaydarov	[17 Nov. 2011]
☞ CJEU C-188/10 & C-189/10 Melki/Abdeli	[22 June 2010]
☞ CJEU C-261/08 & C-348/08 Garcia/Cabrera	[22 Oct. 2009]
☞ CJEU C-88/12 Jaoo	[pending]
☞ CJEU C-23/12 Zakaria	[pending]
☞ CJEU C-606/10 ANAFE	[pending]
☞ CJEU C-355/10 EP v Council	[pending]

Recommendation 2005/761

Visa Issuing for Researchers

- * OJ 2005 L 289/23

Regulation 2252/2004

Biometric Passports

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

Regulation 2007/2004

Establishing External Borders Agency

- * OJ 2004 L 349/1
- * amended by Reg. 863/2007 (OJ 2007 L 199/30)
- Border guard teams*
- amended by Reg. 1168/2011 (OJ 2011 L 304/1)

Directive 2004/82

Transmission of passenger data

- * OJ 2004 L 261/64 UK opt in

Decision 512/2004

Establishing Visa Information System (VIS)

- * OJ 2004 L 213/5

Regulation 871/2004

New functionalities for SIS

- * OJ 2004 L 162/29

Regulation 378/2004

Procedure for amendments to Sirene manual

- * OJ 2004 L 64 UK opt in

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 2424/2001

Funding SIS II

- * OJ 2001 L 328/4

UK opt in

Decision 886/JHA/2001

Funding SIS II

- * OJ 2001 L 328/1

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

establishing Eurosur

- * COM (2011) 873, 12 Dec. 2011
- * discussions underway in Council

Regulation amending Regulation

Schengen Borders Code

- * COM (2011) 560, 16 Sep. 2011
- * discussions underway in Council and EP

New EP to agree negotiating position, 24 April 2012

Regulation

amending visa list

- * COM (2011) 290, May 2011
- * Council agreed negotiating position, 24 April 2012

New EP to agree negotiating position, 24 April 2012

Regulation*amending Schengen Borders Code*

- * COM (2011) 118, 10 Mar. 2011
- * EP agreed negotiating position, March 2012

UK, IRL opt in

New Council agreed negotiating position, April 2012**Regulation***Schengen evaluation*

- * COM (2010) 624, 16 Nov. 2011
- * discussions underway in Council
- revised proposal: COM (2011) 559, 16 Sep. 2011
- EP adopted negotiation mandate, Nov 2011

UK opt in

Regulation*Codifying Regulations establishing EU visa list*

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

2.3 Borders and Visas: Jurisprudence

2.3.1 CJEU Judgments on Borders and Visas

New

- ☞ CJEU C-83/12, *Vo*, [10 Apr. 2012]
 - * interpr. of Reg. 810/2009 on **Visa Code** Art. 21 and 34
 - * ref. from 'Bundesgerichtshof' (Germany)
 - * *First substantive decision on Visa Code. The Court rules that the Visa Code does not preclude that national legislation of one MS penalises migration-related identity fraud with genuine visa issued by another MS.*
- ☞ CJEU C-430/10, *Gaydarov*, [17 Nov. 2011]
 - * interpr. of Reg. 562/2006 on **Borders Code**
 - * ref. from 'Administrativen sad Sofia-grad' (Bulgaria)
 - * *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 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-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)
 - * *The French 'stop and search' law, which allowed for controls behind the internal border, is in violation of article 20 and 21 of the Borders code, due to the lack of requirement of "behaviour and of specific circumstances giving rise to a risk of breach of public order". According to the Court, controls may not have an effect equivalent to border checks.*

- ☞ CJEU C-261/08 & C-348/08, **Garcia/Cabrera**, [22 Oct. 2009]
 - * 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, Switzerland** Art. 1 and 2
 - * on transit visa legislation for third-country nationals subject to a visa requirement
 - * ref. from 'Oberlandesgericht Karlsruhe' (Germany)

- ☞ 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-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 C-257/01, **Commission v Council**, [18 Jan. 2005]
 - * challenge to Regs. 789/2001 and 790/2001
 - * upholding validity of Regs.

2.3.2 CJEU pending cases on Borders and Visas

- New** ☞ CJEU C-88/12, **Jaoo**
 - * interpr. of Reg. 562/2006 on **Borders Code** Art. 20 and 21
 - * ref. from 'Rechtbank Roermond' (Netherlands)
 - * *On statutory provision authorising, in the context of countering illegal residence after borders have been crossed, police checks in the area between the land border of the Netherlands with Belgium or Germany and a line situated within 20 kilometres of that border*

- New** ☞ CJEU C-84/12, **Koushkaki**
 - * interpr. of Reg. 810/2009 on **Visa Code** Art. 21(1) and 32(1)
 - * ref. from 'Verwaltungsgericht Berlin' (Germany)
 - * *On procedures and conditions for granting visas and the discretion of MS.*

- New** ☞ CJEU C-39/12, **Dang**
 - * interpr. of Reg. 810/2009 on **Visa Code** Art. 21 and 34
 - * ref. from 'Bundesgerichtshof' (Germany)
 - * *Whether penalties can be applied in the case of foreign nationals in possession of a visa which was obtained by deception from a competent authority of another Member State but has not yet been annulled pursuant to the regulation.*

- New** ☞ CJEU C-23/12, **Zakaria**
 - * interpr. of Reg. 562/2006 on **Borders Code** Art. 13(3)
 - * ref. from 'Augstākās tiesas Senāts' (Latvia)
 - * *On the right of appeal of third country nationals in relation to a refusal of entry.*

- ☞ 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
- * ref. from 'Ass. Nat.d'Ass. aux Frontières pour les Etrangers' (France)
- * *Is it allowed to issue temporary permits that prohibits entry into other Member States? Opinion of A.G.: Yes (29 Nov. 2011)*
- ☞ CJEU C-355/10, *EP v Council*
- * interpr. of Reg. 562/2006 on **Borders Code** Art. 12(5)
- * annulment of measure implementing Borders Code

2.3.3 ECtHR Judgments on Borders and Visas

- ☞ ECtHR Ap.no. 27765/09, *Hirsi*, [21 Feb. 2012]
- * violation of ECHR Art. 3 and 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.*

2.3.4 National Judgments on Borders and Visas

- ☞ **Germany:** BVerwG 1 C 1.10 [11 Jan. 2011]
- * interpr. of Reg. 810/2009 **Visa Code**
- * Art. * ECHR
- * appeal from Berlin-Brandenburg Higher Administrative Court, 18 Dec. 2009
- * 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 disproportionate 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 2013
- * 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

Return Directive

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

- ☞ CJEU C-329/11 Achughbadian [6 Dec. 2011]
- ☞ CJEU C-144/11 Abdallah [8 Sep. 2011 - inadmissible]
- ☞ CJEU C-120/11 Kwadwo [13 July 2011 - removed]
- ☞ CJEU C-169/11 Conteh [7 July 2011 - removed]
- ☞ CJEU C-43/11 Samb [6 July 2011 - removed]
- ☞ CJEU C-140/11 Ngagne [29 June 2011 - removed]
- ☞ CJEU C-50/11 Emegor [21 June 2011 - removed]
- ☞ CJEU C-94/11 Godwin [21 June 2011 - removed]
- ☞ CJEU C-60/11 Mrad [21 June 2011 - removed]
- ☞ CJEU C-61/11 El Dridi [28 Apr. 2011]
- ☞ CJEU C-357/09 Kadzoev [30 Nov. 2009]
- ☞ CJEU C-534/11 Arslan [pending]
- ☞ CJEU C-522/11 Mbaye [pending]
- ☞ CJEU C-430/11 Sagor [pending]

Decision

European Return Programme

- * OJ 2007 L 144 UK opt in

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 2004/81

Res. permits for trafficking victims

* OJ 2004 L 261/19

UK opt in

☞ CJEU C-266/08 Commission v Spain

[14 May 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

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

Directive 2001/51

Carrier sanctions

* OJ 2001 L 187/45

UK opt in

* impl. date 11 Feb. 2003

Directive 2001/40

Mutual recognition of expulsion decisions

* OJ 2001 L 149/34

UK opt in

* impl. date 2 Oct. 2002

3.2 Irregular Migration: Proposed Measures

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

* nothing to report

3.3 Irregular Migration: Jurisprudence

3.3.1 CJEU Judgments on Irregular Migration

- ☞ CJEU C-329/11, *Achughbadian*, [6 Dec. 2011]
 - * interpr. of Dir. 2008/115 on **Return Directive**
 - * ref. from 'Court d'Appel de Paris' (France)
 - * *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 established by that directive*

- ☞ CJEU C-144/11, *Abdallah*, [8 Sep. 2011] (inadmissible)
 - * interpr. of Dir. 2008/115 on **Return 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-120/11, *Kwadwo*, [13 July 2011] (removed)
 - * interpr. of Dir. 2008/115 on **Return 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-169/11, *Conteh*, [7 July 2011] (removed)
 - * interpr. of Dir. 2008/115 on **Return 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-43/11, *Samb*, [6 July 2011] (removed)
 - * interpr. of Dir. 2008/115 on **Return 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*

- ☞ CJEU C-140/11, *Ngagne*, [29 June 2011] (removed)
 - * interpr. of Dir. 2008/115 on **Return 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-50/11, *Emegor*, [21 June 2011] (removed)
 - * interpr. of Dir. 2008/115 on **Return 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-94/11, **Godwin**, [21 June 2011] (removed)
- * interpr. of Dir. 2008/115 on **Return 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**, [21 June 2011] (removed)
- * interpr. of Dir. 2008/115 on **Return 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-61/11, **El Dridi**, [28 Apr. 2011]
- * interpr. of Dir. 2008/115 on **Return Directive** Art. 15 and 16
- * PPU: Urgency Procedure
- * ref. from 'Corte D'Appello Di Trento' (Italy)
- * *The Return Directive precludes that a Member State has legislation which provides for a sentence of imprisonment to be imposed on an illegally staying TCN on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.*

- ☞ CJEU C-357/09, **Kadzoev**, [30 Nov. 2009]
- * interpr. of Dir. 2008/115 on **Return 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

3.3.2 CJEU pending cases on Irregular Migration

- ☞ CJEU C-534/11, **Arslan**
- * interpr. of Dir. 2008/115 on **Return Directive**
- * ref. from 'Nejvyšší správní soud' (Czech) 22-10-2011
- * *On detention of migrants*

- ☞ CJEU C-522/11, **Mbaye**
- * interpr. of Dir. 2008/115 on **Return Directive** Art. 2(2)(b)
- * *Does the Community directive on the return of third-country nationals preclude criminal sanctions where a foreign national is merely unlawfully present on national territory, regardless of whether the administrative return procedure provided for by the national legislation and by the directive itself has been completed?*

- ☞ CJEU C-430/11, **Sagor**
- * interpr. of Dir. 2008/115 on **Return Directive** Art. 2, 15 and 16
- * ref. from 'Tribunale di Adria' (Italy)
- * *Does the principle of sincere cooperation established in Article 4(3) TEU preclude national rules adopted during the period prescribed for transposition of a directive in order to circumvent or, in any event, limit the scope of the directive, and what measures must the national court adopt in the event that it concludes that there was such an objective?*

3.3.3 ECtHR Judgments on Irregular Migration

- ☞ ECtHR Ap.no. 27765/09, **Hirsi**, [21 Feb. 2012]
- * violation of ECHR Art. 4 of Protocol 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 Article 4 of Protocol No. 4. The Court also concluded that they had had no effective remedy in Italy against the alleged violations.*
- ☞ ECtHR Ap.no. 10816/10, **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.*

3.3.4 National Judgments on Irregular Migration

- * no cases yet

4 External Treaties

4.1 External Treaties: Association Agreements

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

4.2 External Treaties: Readmission

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

Armenia, Azerbaijan

- * mandate granted, Dec. 2011

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

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

Pakistan

- * OJ 2010 L 287/52 (into force 1 Dec. 2010)
- * 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

New agreement reached, late 2011

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

4.3 External Treaties: Other**Armenia, Azerbaijan**

- * mandate granted, Dec. 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

New agreement reached, late 2011

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

4.4 External Treaties: Jurisprudence

4.4.1 CJEU Judgments on EEC-Turkey Association Agreement

New ☞ C-7/10 & C-9/10, *Kahveci & Inan*, [29 Mar. 2012]
 * interpr. of Decision No 1/80 Art. 7
 * ref. from 'Raad van State' (Netherlands)
 * *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.*

New ☞ C-420/08, *Erdil*, [27 Jan. 2012] (withdrawn)
 * interpr. of Decision No 1/80
 * ref. from 'Verwaltungsgericht Berlin' (Germany)
 * *Case withdrawn because of judgment C-371/08 (Ziebell). Art. 14(1) of Dec. 1/80 does not have the same scope as art. 28(3)(a) of the Directive on Free Movement.*

New

- ☞ C-436/09, **Belkiran**, [13 Jan. 2012] (removed)
 - * interpr. of Decision No 1/80
 - * ref. from 'Bundesverwaltungsgericht' (Germany)
 - * *Case withdrawn because of judgment C-371/08 (Ziebell). Art. 14(1) of Dec. 1/80 does not have the same scope as art. 28(3)(a) of the Directive on Free Movement.*

- ☞ C-256/11, **Dereci et al.**, [15 Nov. 2011]
 - * interpr. of Decision No 1/80 Art. 13
 - * ref. from 'Verwaltungsgerichtshof' (Austria)
 - * *Right of residence of nationals of third countries who are family members of Union citizens - Refusal based on the citizen's failure to exercise the right to freedom of movement - Possible difference in treatment compared with EU citizens who have exercised their right to freedom of movement - EEC-Turkey Association Agreement - Article 13 of Decision No 1/80 of the Association Council - Article 41 of the Additional Protocol - 'Standstill' clauses*

- ☞ C-371/08, **Ziebell or Örnek**, [8 Dec. 2011]
 - * interpr. of Decision No 1/80 Art. 14(1)
 - * ref. from 'Verwaltungsgerichtshof Baden Württemberg' (Germany)
 - * *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.*

- ☞ C-187/10, **Unal**, [29 Sep. 2011]
 - * interpr. of Decision 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.*

- ☞ 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 Decision 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 Decision 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 Decision 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 Decision 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 Decision 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 Decision 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 Decision 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 Decision 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 Decision No 1/80 Art. 7
 - * ref. from 'Verwaltungsgericht Stuttgart' (Germany)
- ☞ C-453/07, **Er**, [25 Sep. 2008]
- * interpr. of Decision No 1/80 Art. 7
 - * ref. from 'Verwaltungsgericht Gießen' (Germany)
- ☞ C-294/06, **Payir**, [24 Jan. 2008]
- * interpr. of Decision No 1/80 Art. 6 (1)
 - * ref. from 'Court of Appeal' (United Kingdom)

- ☞ C-349/06, **Polat**, [4 Oct. 2007]
 - * interpr. of Decision 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 Decision No 1/80 Art. 6, 7 and 14
 - * ref. from 'Verwaltungsgericht Darmstadt' (Germany)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- ☞ C-65/98, **Eyüp**, [22 June 2000]
 - * interpr. of Decision 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 Decision No 1/80 Art. 7
 - * ref. from 'Bundesverwaltungsgericht' (Germany)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.4.2 CJEU pending cases on EEC-Turkey Association Agreement

- ☞ C-268/11, *Gühlbahce*
- * interpr. of Decision. 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).

- ☞ 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.*

4.4.3 National Judgments on External Treaties

- New** ☞ **Netherlands:** Centrale Raad van Beroep, LJN: BR4959 [16 Aug. 2011]
- * interpr. of EC-Turkey Ass. Agr.
- * *The Dutch Court decided that the recently introduced 'civic integration examinations' is in breach with the standstill clauses and therefor do not apply to Turkish nationals.*

- New** ☞ **Netherlands:** Raad van State, 201102803/1/V3 [14 Mar. 2012]
- * interpr. of EC-Turkey Ass. Agr.
- * Additional Protocol, art. 41
- * *The Standstill clauses preclude a visa requirement for Turkish nationals for a short (less than 3 months) stay. It also precludes visa requirements for self-employed Turkish national or Turkish service providers. The Dutch court refers to several CJEU judgments:*
 - * C-92/07, *Cie. v. Netherlands*
 - * C-228/06, *Soysal*
 - * C-101/05, *Skatteverket*.

5 Miscellaneous

- New** **Report of Parliamentary Assembly of COE on dead boat people**
- * On 29 Mar. 2012, the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe, published a report: “Lives lost in the Mediterranean Sea: who is responsible?”
 - * The starting point for this report is that at least 1500 people are known to have lost their lives attempting to cross the Mediterranean in 2011. This report however focuses on one particularly harrowing case in which a small boat left Tripoli with 72 people on board and after two weeks at sea drifted back to Libya with only nine survivors. No one went to the aid of this boat, despite a distress call logged by the Italian Maritime Rescue Coordination Centre, which pinpointed the boat’s position.
- New** ☞ **COE: Lives Lost Report**
- * full text available at:
<http://cmr.jur.ru.nl/nemis/COE/LivesLostReport.pdf>
- New** **Inquiry started by European Ombudsman on the implementation by Frontex of its fundamental rights decisions**
- * Letter, 6 March 2012
- New** ☞ **European Ombudsman: Frontex Inquiry**
- * full text available at:
<http://cmr.jur.ru.nl/nemis/EO/FrontexInquiry.pdf>
- Information Note on references from national courts for a preliminary ruling**
- * OJ 2011 C 160/01
 - ☞ **OJ: on preliminary rulings**
 - * full text available at:
<http://cmr.jur.ru.nl/nemis/OJ/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/COE/Rule39.pdf>
- 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