



NEMIS

Quarterly update on

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

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Editorial

Welcome to the first edition of NEMIS in 2013.

NEMIS is a newsletter designed for judges who need to keep up to date with EU developments in migration and borders law. This newsletter contains all European legislation and jurisprudence on access and residence rights of third country nationals, 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.

NEMIS does not cover asylum. We would like to refer to a separate Newsletter on that issue, the Newsletter on European Asylum Issues ([NEAIS](#)).

EFTA

Starting this issue, NEMIS will also include case law from the Court of the European Free Trade Association (EFTA). In § 1.3.3 you can find a judgement concerning the interpretation of the Family Reunification Directive.

Pre-entry test and language requirements

We would like to draw your attention to some recent developments concerning pre-entry tests and language requirements. The pre-entry test for family reunification has been introduced in four Member States who are bound by the Family Reunification Directive (Austria, Germany, France and the Netherlands). Whereas France does not require applicants to pass the test before they can be admitted, the three other Member States do impose passing the test as a condition for family reunification. Until now the Court of Justice did not have a chance to judge on the admissibility of this requirement with the Family Reunification Directive. The request for a preliminary ruling by a Dutch District Court in 2011 led to the issuance of a residence permit by the Dutch government, just after the European Commission had expressed its view on this topic (C-155/11 PPU). Nevertheless this request has led to clarification of the Commission; in this so-called Imran case, it took the position that the integration requirement is not in compliance with Article 7(2) Directive 2003/86, as it implies that family reunification is denied for the sole reason that the applicant had failed the test. According to the Commission, Article 7(2) aims to promote integration, but cannot be used to undermine the objective of the directive of promoting family reunification. At the end of last year, this view has led to two national judgments. The German Administrative Court of Berlin has requested a preliminary ruling on the admissibility of the language test abroad. It asked, first, whether the language test was in compliance with the standstill clauses in the EEC-Turkey Association law and, second, whether it was in compliance with Article 7(2) of the Family Reunification Directive. In the Netherlands, a Dutch District Court fully endorsed the position of the Commission. It judged that a request for a preliminary ruling was not necessary as the interpretation of the Commission was crystal clear: the integration test abroad is not in compliance with the Directive.

Request

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.

In order to improve the quality of this newsletter we will also open a special literature section containing relevant academic literature. We would therefore like to invite you to send us references of relevant academic work (in any EU language) that we might include in that section.

Nijmegen 21 January 2013, Carolus Grütters & Tineke Strik

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1 Regular Migration

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

Directive 2011/98 (Single Permit)

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

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

Directive 2011/51 (Long-Term Resident ext.)

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

- * OJ 2011 L 132/1 (April 2011) impl. date 20 May 2013
- * extending Dir. 2003/109 on LTR

Directive 2003/109 (Long-Term Resident)

Concerning the status of TCNs who are long-term residents

- * OJ 2004 L 16/44 impl. date 23 Jan. 2006
- * amended by Dir. 2011/51
- ☞ CJEU C-502/10, *Singh*, [18 Oct. 2012] [Art. 3(2)(e)]
- ☞ CJEU C-508/10, *Commission vs Netherlands*, [26 Apr. 2012]
- ☞ CJEU C-571/10, *Servet Kamberaj*, [24 Apr. 2012] [Art. 11(1)(d)]

Regulation 1231/2010 (Social Security)

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

- * OJ 2010 L 344/1 impl. date 1 Jan. 2011 IRL opt in
- * extending Reg. 883/2004 on Social Security

Directive 2009/50 (Blue Card)

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

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

Decision 435/2007 (Integration Fund)

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

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

Decision 688/2006 (Mutual Information)

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

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

Recommendation 2005/762 (Researchers)

To facilitate the admission of TCNs to carry out scientific research

- * OJ 2005 L 289/26

Directive 2005/71 (Researchers)

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

- * OJ 2005 L 289/15 impl. date 12 Oct. 2007
- ☞ CJEU C-523/08, *Commission v Spain*, [11 Feb. 2010]

Directive 2004/114 (Students)

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

- * OJ 2004 L 375/12 impl. date 12 Jan. 2007
- ☞ CJEU C-15/11, *Sommer*, [21 June 2012] [Art. 17(3)]
- ☞ CJEU C-568/10, *Commission vs Austria* [withdrawn] [Art. 17(1)]

Directive 2003/86 (Family Reunification)

On the right to Family Reunification

- * OJ 2003 L 251/12 impl. date Oct. 2005
- ☞ CJEU C-155/11, *Imran* [no adjud.] [Art. 7(2)]
- ☞ CJEU C-578/08, *Chakroun*, [4 Mar. 2010] [Art. 7(1)(c) + 2(d)]
- ☞ CJEU C-540/03, *EP v Council*, [27 June 2006] [Art. 8]
- ☞ CJEU C-513/12, *Ayalti* [pending] [Art. 7(2)]
- ☞ EFTA E-4/11, *Clauder*, [26 July 2011] [Art. 7(1)]

- ☞ NL: Rb Den Haag zp Den Bosch AWB 12/9408 [23 Nov. 2012] [Art. 7(2)]
- ☞ Ger: VerwG Berlin VG 29 K 138.12V [25 Oct. 2012] [Art. 7(2)]
- ☞ NL: Raad van State 201008782/1/V1 [9 Oct. 2012]
- ☞ Ger: BVerwG 10 C 12.12 [4 Sep. 2012] [Art. 8]
- ☞ Ger: BVerwG 1 C 9.10 [28 Oct. 2011]
- ☞ Ger: BVerwG 1 C 8.09 [30 Mar. 2010] [Art. 7(2)]

Regulation 859/2003 (Social Security TCNs)

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

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

Regulation 1030/2002 (Residence Permit Format)

Laying down a uniform format for residence permits for TCNs

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

ECHR

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

Art. 8 Family Life

Art. 12 Right to Marry

Art. 14 Prohibition of Discrimination

- * ETS 005 (4-11-50) impl. date 1950
- ☞ ECtHR Ap.no. 22251/07, *G.R.*, [10 Jan. 2012] [Art. 8 + 13]
- ☞ ECtHR Ap.no. 8000/08, *A.A. v UK*, [20 Sep. 2011] [Art. 8]
- ☞ ECtHR Ap.no. 55597/09, *Nunez*, [28 June 2011] [Art. 8]
- ☞ ECtHR Ap.no. 38058/09, *Osman*, [14 June 2011] [Art. 8]
- ☞ ECtHR Ap.no. 34848/07, *O'Donoghue v UK*, [14 Dec. 2010] [Art. 12 + 14]
- ☞ UK: Quila SC [2011]UKSC45 [12 Oct. 2011] [Art. 8]
- ☞ UK: MH Morocco [2010] UKUT 439 IAC [28 Sep. 2010] [Art. 8]
- ☞ ECtHR Ap.no. 22341/09, *Hode and Abdi v. UK*, [6 Nov. 2012] [Art. 14 + 8]

1.2 Regular Migration: Proposed Measures

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

Directive

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

- * COM (2010) 379, 13 July 2010
- * Council working party began discussions, Sept. 2010; Draft EP report, May 2011
- EP negotiating position adopted, 24 April 2012
- New** Council position agreed, Dec. 2012

Directive

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

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

1.3 Regular Migration: Jurisprudence

1.3.1 CJEU Judgments on Regular Migration

- ☞ CJEU C-502/10, *Singh*, [18 Oct. 2012]
- * interpr. of Dir. 2003/109, *Long-Term Resident* [Art. 3(2)(e)]
- * ref. from 'Raad van State' (NL)
- * *The concept of 'residence permit which has been formally limited' as referred to in Art. 3(2)(e), does not include a fixed-period residence permit, granted to a specific group of persons, if the validity of their permit can be extended indefinitely without offering the prospect of permanent residence rights. The referring national court has to ascertain if a formal limitation does not*

prevent the long-term residence of the third-country national in the Member State concerned. If that is the case, this national cannot be excluded from the personal scope of Directive 2003/109.

- ☞ CJEU C-15/11, **Sommer**, [21 June 2012]
- * interpr. of Dir. 2004/114, **Students** [Art. 17(3)]
- * ref. from 'Verwaltungsgerichtshof' (Austria)
- * *The conditions of access to the labour market by Bulgarian students, may not be more restrictive than those set out in the Directive*

- ☞ CJEU C-508/10, **Commission vs Netherlands**, [26 Apr. 2012]
- * incor. appl. of Dir. 2003/109, **Long-Term Resident**
- * *The Court rules that the Netherlands has failed to fulfil its obligations by applying excessive and disproportionate administrative fees which are liable to create an obstacle to the exercise of the rights conferred by the Long-Term Residents Directive: (1) to TCNs seeking long-term resident status in the Netherlands, (2) to those who, having acquired that status in a MS other than the Kingdom of the Netherlands, are seeking to exercise the right to reside in that MS, and (3) to members of their families seeking authorisation to accompany or join them.*

- ☞ CJEU C-571/10, **Servet Kamberaj**, [24 Apr. 2012]
- * interpr. of Dir. 2003/109, **Long-Term Resident** [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, **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** (no adjud.)
- * interpr. of Dir. 2003/86, **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.
*See also: C-53/12 **Ayalti***

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

- ☞ CJEU C-578/08, **Chakroun**, [4 Mar. 2010]
- * interpr. of Dir. 2003/86, **Family Reunification** [Art. 7(1)(c) + 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, **Researchers**

- ☞ CJEU C-540/03, **EP v Council**, [27 June 2006]
- * interpr. of Dir. 2003/86, **Family Reunification** [Art. 8]
- * *The derogation clauses (3 years waiting period and the age-limits for children) are not annulled, as they do not constitute a violation of article 8 ECHR. However, while applying these clauses and the directive as a whole, Member States are bound by the fundamental rights (including the rights of the child), the purpose of the directive and obligation to take all individual interests into account.*

1.3.2 CJEU pending cases on Regular Migration

- New**
- ☞ CJEU C-513/12, *Ayalti*
 - * interpr. of Dir. 2003/86, **Family Reunification** [Art. 7(2)]
 - * ref. from 'Verwaltungsgericht Berlin' (Germany) 25-10-2012
 - * *Is the introduction of the language requirement (that a family member of TCN before entry proves to have basic knowledge of the German language) compatible with the Directive?*

1.3.3 EFTA judgments on Regular Migration

- New**
- ☞ EFTA E-4/11, *Clauder*, [26 July 2011]
 - * interpr. of Dir. 2003/86, **Family Reunification** [Art. 7(1)]
 - * ref. from 'Verwaltungsgerichtshof' (Liechtenstein)
 - * *An EEA national with a right of permanent residence, who is a pensioner and in receipt of social welfare benefits in the host EEA State, may claim the right to family reunification even if the family member will also be claiming social welfare benefits.*

1.3.4 EFTA pending cases on Regular Migration

- * no cases

1.3.5 ECtHR Judgments on Regular Migration

- ☞ ECtHR Ap.no. 22251/07, **G.R.**, [10 Jan. 2012]
- * interpr. of, **ECHR** [Art. 8 + 13]
- * *The applicant did not have effective access to the administrative procedure by which he might, subject to fulfilling the conditions prescribed by domestic law, obtain a residence permit which would allow him to reside lawfully with his family in the Netherlands, due to the disproportion between the administrative charge in issue and the actual income of the applicant's family. The Court finds that the extremely formalistic attitude of the Minister – which, endorsed by the Regional Court, also deprived the applicant of access to the competent administrative tribunal – unjustifiably hindered the applicant's use of an otherwise effective domestic remedy. There has therefore been a violation of Article 8 and 13 of the Convention.*
- ☞ ECtHR 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. 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. 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. 34848/07, **O'Donoghue v UK**, [14 Dec. 2010]
- * violation of, **ECHR** [Art. 12 + 14]
- * Judgment of Fourth Section
- * *The UK Certificate of Approval required foreigners, except those wishing to marry in the Church of England, to pay large fees to obtain the permission from the Home Office to marry. The Court found that the conditions violated the right to marry (Article 12 of the Convention), that it was discriminatory in its application (Article 14 of the Convention) and that it was discriminatory on the ground of religion (Articles 9 and 14 of the Convention).*

1.3.6 National Judgments on Regular Migration

- New**
- ☞ **Netherlands:** Rb Den Haag zp Den Bosch AWB 12/9408 [23 Nov. 2012]
 - * interpretation of Dir. 2003/86: **Family Reunification** Art. 7(2)
 - * <http://cmr.jur.ru.nl/nemis/Netherlands/RbDenHaagzpDenBoschAWB129408.pdf>
 - * *Dutch District Court fully endorses the position of the European Commission taken in the **Imran** case (C-155/11) that the denial of family reunification for the sole reason that the applicant has failed the integration test abroad, is not in compliance with Article 7(2) of the Directive. According to this court, a request for a preliminary ruling was not necessary as the interpretation of the Commission was crystal clear.*
- New**
- ☞ **Germany:** VerwG Berlin VG 29 K 138.12V [25 Oct. 2012]
 - * interpretation of Dir. 2003/86: **Family Reunification** Art. 7(2)
 - * *The Verwaltungsgericht (Administrative Court) of Berlin asked, first, whether passing the language test as a condition for family reunification was in compliance with the standstill clauses in the EEC-Turkey Association law and, second, whether it was in compliance with Article 7(2) of the Family Reunification Directive.*
 - ☞ **Netherlands:** Raad van State 201008782/1/V1 [9 Oct. 2012]
 - * violation of Dir. 2003/86: **Family Reunification**
 - * <http://cmr.jur.ru.nl/nemis/Netherlands/RaadvanState2010087821V1.pdf>
 - * *The Dutch Council of State (highest administrative court) decided that the CJEU judgment on the Dutch fees for long term residents (26 April 2012, case C-508/10, Commission against the Netherlands), which the Court considered as 'extraordinary high', and therefore not in compliance with (the objective of) Directive 2003/109, also has repercussions for the level of fees for family reunification. According to the Council of State, the high level can also constitute an obstacle for the exercise of the right to family reunification and therefore violate Directive 2003/86, undermining its objective.*
 - ☞ **Germany:** BVerwG 10 C 12.12 [4 Sep. 2012]
 - * interpretation of Dir. 2003/86: **Family Reunification** Art. 8
 - * appeal from VG Berlin, 1 Aug. 2011, VG 22 K 340.09 V
 - * *The German pre-entry language requirement is in compliance with art. 6 German Constitution and art. 8 ECHR, as long as the measure is proportional in the individual case. In case of a third country national with a German partner, this principle of proportionality is violated earlier than in case of both partners being third country nationals, because the German Constitution guarantees the right to residence to German citizens. Even if the German has also the Afghan nationality he can't be expected to live with his family life outside Germany. Therefore the spouse may enter Germany even without passing the language test if he or she has shown efforts to learn the language, but has not succeeded within a year's time. This period of one year does not need to be fulfilled if there are no courses (or alternatives) available or if participation in a course implies a high security risk. A German citizen who did not use the EU right to free movement, cannot rely on art. 9 Charter of Fundamental Rights, as Union law is not applicable. In this regard the court refers to art. 3(3) Dir. 2003/86, which excludes Union citizens. According to the court, this explicit exclusion in the directive justifies a different interpretation of the personal scope than the scope of Decision 1/80, as interpreted by the CJEU in the case Kahveci and Inan (C-7/10 and C-9/10).*
 - ☞ **Germany:** BVerwG 1 C 9.10 [28 Oct. 2011]
 - * interpretation of Dir. 2003/86: **Family Reunification**
 - * appeal from Berlin-Brandenburg Higher Administrative Court, 25 Mar. 2010

- * <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 would have been necessary in this case. However it was finished by granting the claimed residence permits and the decision was only on the costs. But the importance of the decision lies in the fact that German Court - in difference from its previous judgment of 30 March 2010 (BVerwG 1 C 8.09) - now regards it necessary to make a reference to the CJEU on the question whether the language requirement is in compliance with the Family Reunification Directive.*
- ☞ **United Kingdom:** Quila SC [2011]UKSC45 [12 Oct. 2011]
- * interpretation of *ECHR* Art. 8
- * <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.*
- ☞ **United Kingdom:** ZH (Tanzania) SC [2011]UKSC4 [1 Feb. 2011]
- * interpretation of *UN Convention on the Rights of the Child*
- * <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]
- * interpretation of *European Convention on Social and Medical Assistance*
- * <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.*
- ☞ **United Kingdom:** MH Morocco [2010] UKUT 439 IAC [28 Sep. 2010]
- * interpretation of *ECHR* Art. 8
- * <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]
- * interpretation of Dir. 2003/86: *Family Reunification* Art. 7(2)
- * interpretation of *ECHR* Art. 8
- * appeal from Berlin Administrative Court, 17 Feb. 2009, VG 35 V 47.08
- * <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)

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

- * OJ 2011 L 287/9

Regulation 1077/2011 (Management Agency)

Establishing an Agency to manage VIS, SIS & Eurodac

- * OJ 2011 L 286/1

Regulation 265/2010 (Long Stay Visa Code)

On movement of persons with a long-stay Visa

- * OJ 2010 L 85/1

Regulation 810/2009 (Visa Code)

Establishing a Community Code on Visas

- * OJ 2009 L 243/1

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

- ☞ CJEU C-83/12, *Vo*,

[10 Apr. 2012] [Art. 21 + 34]

Regulation 767/2008 (VIS)

Establishing Visa Information System (VIS)

- * OJ 2008 L 218/60

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

Decision 586/2008 (Switzerland)

Transit through Switzerland and Liechtenstein

- * OJ 2008 L 162/27

Decision 582/2008 (Romania, Bulgaria, Cyprus)

Transit through Romania, Bulgaria and Cyprus

- * OJ 2008 L 161/30

Decision 574/2007 (Borders Fund)

Establishing European External Borders Fund

- * OJ 2007 L 144

Regulation 1987/2006 (SIS II)

Establishing second generation Schengen Information System

- * OJ 2006 L 381/4

Regulation 1988/2006 (SIS II)

Amending Reg. 2424/2001 second generation Schengen Information System

- * OJ 2006 L 411/1

UK opt in

Regulation 1931/2006 (Local Border traffic)

Local border traffic within enlarged EU at external borders of EU

- * OJ 2006 L 405/1

amd by Reg. 1342/2011 (OJ 2011 L 347/41)

Decision 896/2006 (Switzerland)

Transit through Switzerland and Liechtenstein

- * OJ 2006 L 167

impl. date see: OJ 2006 C

- ☞ CJEU C-139/08, *Kqiku*,

[2 Apr. 2009] [Art. 1 + 2]

Regulation 562/2006 (Borders Code)

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

- * OJ 2006 L 105/1

amd by Reg. 296/2008 (OJ 2008 L 97/60)

amd by Reg. 81/2009 (OJ 2009 L 35/56): *Regarding the use of the VIS*

- ☞ CJEU C-278/12 PPU, *Adil*,

[19 July 2012] [Art. 20 + 21]

- ☞ CJEU C-606/10, *ANAFE*,

[14 June 2012] [Art. 13 + 5(4)(a)]

- ☞ CJEU C-430/10, *Gaydarov*, [17 Nov. 2011]
- ☞ CJEU C-188/10 & C-189/10, *Melki & Abdeli*, [22 June 2010] [Art. 20 + 21]
- ☞ CJEU C-261/08 & C-348/08, *Garcia & Cabrera*, [22 Oct. 2009] [Art. 5, 11 + 13]

Recommendation 2005/761 (Researchers)

On uniform short-stay visas for researchers from third countries

- * OJ 2005 L 289/23

Regulation 2252/2004 (Passports)

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

- * OJ 2004 L 385/1
amd by Reg. 444/2009 (OJ 2009 L 142/1)
- ☞ CJEU C-446/12, *Willems* [pending] [Art. 4(3)]

Regulation 2007/2004 (Frontex)

Establishing External Borders Agency

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

Directive 2004/82 (Passenger Data)

On the obligation of carriers to communicate passenger data

- * OJ 2004 L 261/64 UK opt in

Decision 512/2004 (VIS)

Establishing Visa Information System (VIS)

- * OJ 2004 L 213/5

Regulation 871/2004 (SIS)

New functionalities for the Schengen Information System (SIS)

- * OJ 2004 L 162/29

Regulation 378/2004 (SIS)

Procedure for amendments to Sirene manual

- * OJ 2004 L 64 UK opt in

Regulation 694/2003 (Transit Documents)

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

- * OJ 2003 L 99/15

Regulation 693/2003 (Transit Documents)

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

- * OJ 2003 L 99/8

Regulation 333/2002 (Visa Stickers)

Uniform format for forms for affixing the visa

- * OJ 2002 L 53/4 UK opt in

Regulation 2424/2001 (SIS II)

On the development of the second generation Schengen Information System

- * OJ 2001 L 328/4 UK opt in

Decision 886/JHA/2001 (SIS II)

On the development of the second generation Schengen Information System

- * OJ 2001 L 328/1 UK opt in

Regulation 539/2001 (Visa List)

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

- * OJ 2001 L 81/1
amd by Reg. 2414/2001 (OJ 2001 L 327/1): *Moving Romania to 'white list'*
amd by Reg. 453/2003 (OJ 2003 L 69/10): *Moving Ecuador to 'black list'*
amd by Reg. 851/2005 (OJ 2005 L 141/3): *On reciprocity for visas*
amd by Reg. 1932/2006 (OJ 2006 L 405/23)
amd by Reg. 1244/2009 (OJ 2009 L 336/1): *Lifting visa req. for some Western Balkan countries*
amd by Reg. 1091/2010 (OJ 2010 L 329/1): *Lifting visa req. for Albania and Bosnia*

Regulation 1683/95 (Visa Format)*Uniform format for visas*

- * OJ 1995 L 164/1
- amd by Reg. 334/2002 (OJ 2002 L 53/7)
- amd by Reg. 856/2008 (OJ 2008 L 235/1)

UK opt in

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

Art. 3 Prohibition of Torture

Art. 13 Effective Remedy

- * ETS 005 (4-11-50) impl. date 1950
- ☞ ECtHR Ap.no. 22251/07, **G.R.**, [10 Jan. 2012] [Art. 8 + 13]
- ☞ UK: Quila SC [2011]UKSC45 [12 Oct. 2011] [Art. 8]
- ☞ UK: MH Morocco [2010] UKUT 439 IAC [28 Sep. 2010] [Art. 8]
- ☞ ECtHR Ap.no. 11463/09, **Samaras**, [28 Feb. 2012] [Art. 3]
- ☞ ECtHR Ap.no. 27765/09, **Hirsi**, [21 Feb. 2012] [Art. 3 + 13]

2.2 Borders and Visas: Proposed Measures

*(Unless stated otherwise, UK, DK & IRL opted out)***New****Regulation amending Regulation***Amending the Visa list*

- * Com (2012) 650, 7 Nov. 2012

Regulation*Establishing the European Border Surveillance System (Eurosur)*

- * COM (2011) 873, 12 Dec. 2011
- * discussions underway in Council and EP
- EP adopted negotiating position, Nov. 2012

New EP/Council talks underway**Regulation amending Regulation 562/2006 (Amended Borders Code)***Amending Borders Code*

- * COM (2011) 560, 16 Sep. 2011
- * discussions underway in Council and EP
- EP to agree negotiating position, 24 April 2012
- Council agreed text, June 2012; EP/Council talks resumed

Regulation amending Regulation 539/2001 (Visa)*Visa List*

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

New EP/Council deal, Dec. 2012**Regulation***amending Borders Code*

- * COM (2011) 118, 10 Mar. 2011
- * EP agreed negotiating position, March 2012
- Council agreed negotiating position, April 2012
- EP/Council deal, June 2012

New confirmed Dec. 2012**Regulation***Schengen Evaluation*

- * COM (2010) 624, 16 Nov. 2010
- * discussions underway in Council
- revised proposal: COM (2011) 559, 16 Sep. 2011
- EP adopted negotiation mandate, Nov 2011
- Council agreed text, June 2012; EP/Council talks resumed

UK, IRL 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-23/12, **Zakaria**
 - * interpr. of, **Reg. 562/2006 on Borders Code** [Art. 13(3)]
 - * ref. from 'Augstākās tiesas Senāts' (Latvia)
 - * *MSs are obliged to establish a means of obtaining redress only against decisions to refuse entry*
- ☞ CJEU C-355/10, **EP v Council**, [5 Sep. 2012]
 - * annulment of measure implementing Borders Code
 - * *The CJEU decided to annul Council Decision 2010/252 of 26 April 2010 supplementing the Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. According to the Court, this decision contains essential elements of the surveillance of the sea external borders of the Member States which go beyond the scope of the additional measures within the meaning of Art. 12(5) of the Borders Code. As only the European Union legislature was entitled to adopt such a decision, this could not have been decided by comitology. Furthermore the Court ruled that the effects of decision 2010/252 maintain until the entry into force of new rules within a reasonable time.*
- ☞ CJEU C-278/12 PPU, **Adil**, [19 July 2012]
 - * interpr. of Reg. 562/2006, **Borders Code** [Art. 20 + 21]
 - * ref. from 'Raad van State' (Netherlands)
 - * *The Schengen Borders Code must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which enables officials responsible for border surveillance and the monitoring of foreign nationals to carry out checks, in a geographic area 20 kilometres from the land border between a MS and the State parties to the CISA, with a view to establishing whether the persons stopped satisfy the requirements for lawful residence applicable in the MS concerned, **when** those checks are based on general information and experience regarding the illegal residence of persons at the places where the checks are to be made, when they may also be carried out to a limited extent in order to obtain such general information and experience-based data in that regard, and when the carrying out of those checks is subject to certain limitations concerning, *inter alia*, their intensity and frequency.*
- ☞ CJEU C-606/10, **ANAFE**, [14 June 2012]
 - * interpr. of Reg. 562/2006, **Borders Code** [Art. 13 + 5(4)(a)]
 - * annulment of national legislation on visa
 - * ref. from 'Ass. Nat.d'Ass. aux Frontières pour les Etrangers' (France)
 - * *Article 5(4)(a) must be interpreted as meaning that a MS which issues to a TCN a re-entry visa within the meaning of that provision cannot limit entry into the Schengen area solely to points of entry to its national territory.*
The principles of legal certainty and protection of legitimate expectations did not require the provision of transitional measures for the benefit of TCNs who had left the territory of a MS when they were holders of temporary residence permits issued pending examination of a first application for a residence permit or an application for asylum and wanted to return to that territory (after the entry into force of this Regulation)
- ☞ CJEU C-83/12, **Vo**, [10 Apr. 2012]
 - * interpr. of Reg. 810/2009, **Visa Code** [Art. 21 + 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, **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, **Borders Code** [Art. 20 + 21]
- * consistency of national law and European Union law, abolition of border control and the area of 20 kilometres from the land border
- * 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, **Borders Code** [Art. 5, 11 + 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, **Switzerland** [Art. 1 + 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 Agreement** [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-446/12, **Willems**
- * interpr. of Reg. 2252/2004, **Passports** [Art. 4(3)]
- * ref. from 'Raad van State' (Netherlands)
- * *Reference for a preliminary ruling about the question whether a person has a right to be issued with a passport without having his or her fingerprints stored*
- ☞ CJEU C-291/12, **Schwarz**
- * interpr. of, **Reg. 2252/2004 on Biometric Passports** [Art. 1(2)]
- * ref. from 'Verwaltungsgericht Gelsenkirchen' (Germany)

- ☞ CJEU C-88/12, **Jaao**
- * interpr. of, **Reg. 562/2006 on Borders Code** [Art. 20 + 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*
- ☞ CJEU C-84/12, **Koushkaki**
- * interpr. of, **Reg. 810/2009 on Visa Code** [Art. 21(1) + 32(1)]
- * ref. from 'Verwaltungsgericht Berlin' (Germany)
- * *On procedures and conditions for granting visas and the discretion of MS.*
- ☞ CJEU C-39/12, **Dang**
- * interpr. of, **Reg. 810/2009 on Visa Code** [Art. 21 + 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.*
- ☞ CJEU C-254/11, **Shomodi**
- * interpr. of, **Reg. 1931/2006 on Local border traffic** [Art. 2(a) + 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.*

2.3.5 ECtHR Judgments on Borders and Visas

- ☞ ECtHR Ap.no. 11463/09, **Samaras**, [28 Feb. 2012]
- * violation of, **ECHR** [Art. 3]
- * *The conditions of detention of the applicants – one Somali and twelve Greek nationals – at Ioannina prison were held to constitute degrading treatment in violation of ECHR art. 3.*
- ☞ ECtHR Ap.no. 27765/09, **Hirsi**, [21 Feb. 2012]
- * violation of, **ECHR** [Art. 3 + 13]
- * *The Court concluded that the decision of the Italian authorities to send TCNs - who were intercepted outside the territorial waters of Italy - back to Libya, had exposed them to the risk of ill-treatment there, as well as to the risk of ill-treatment if they were sent back to their countries of origin (Somalia and Eritrea). For the first time the Court applied Article 4 of Protocol no. 4 (prohibition of collective expulsion) in the circumstance of aliens who were not physically present on the territory of the State, but in the high seas. Italy was also held responsible for exposing the aliens to a treatment in violation with Article 3 ECHR, as it transferred them to Libya 'in full knowledge of the facts' and circumstances in Libya. The Court also concluded that they had had no effective remedy in Italy against the alleged violations (Art. 13).*

2.3.6 National Judgments on Borders and Visas

- ☞ **Germany: BVerwG 1 C 1.10** [11 Jan. 2011]
- * interpretation of **Reg. 810/2009 on Visa Code**
- interpretation of **ECHR** Art. 8
- * appeal from Berlin-Brandenburg Higher Administrative Court, 18 Dec. 2009
- * <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 2011/36 (Trafficking Persons)

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

- * OJ 2011 L 101/1 (Mar. 2011) impl. date deadline 6 april UK opt in
- * Replacing Framework Decision of 2002

Regulation amending Regulation 493/2011 (Liaison Officers)

On the creation of an immigration liaison officers network

- * OJ 2011 L 141/13 (Mar. 2011) UK opt in
- applies from 16 June 2011

Framework Decision

On combating trafficking in human beings

- * OJ 2002 L 203/1 UK opt in
- * Replaced by Directive 2011/36

Directive 2009/52 (Employers Sanctions)

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

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

Directive 2008/115 (Return Directive)

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

- * OJ 2008 L 348/98 impl. date 24 Dec. 2010
- ☞ CJEU C-430/11, *Sagor*, [6 Dec. 2012] [Art. 2, 15 + 16]
- ☞ CJEU C-73/12, *Ettaghi*, [4 July 2012] [Art. 2, 4, 6, 7, 8, 15 and 16]
- ☞ CJEU C-329/11, *Achughbabian*, [6 Dec. 2011]
- ☞ CJEU C-61/11, *El Dridi*, [28 Apr. 2011] [Art. 15 + 16]
- ☞ CJEU C-357/09, *Kadzoev*, [30 Nov. 2009] [Art. 15(4), (5) and (6)]
- ☞ CJEU C-297/12, *Filev & Osmani*, [pending]
- ☞ CJEU C-51/12, *Zhu*, [pending] [Art. 2, 4, 6, 7, 8, 15 and 16]
- ☞ CJEU C-534/11, *Arslan*, [pending]
- ☞ CJEU C-522/11, *Mbaye*, [pending] [Art. 2(2)(b)]
- ☞ Ger: BVerwG 1 C 19.11 [10 July 2012]

Decision 575/2007 (Return Programme)

Establishing the European Return Fund as part of the General Programme Solidarity and Management of Migration Flows

- * OJ 2007 L 144 UK opt in

Decision 267/2005 (Early Warning System)

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

- * OJ 2005 L 83/48 UK opt in

Decision 573/2004 (Joint flights for expulsion)

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

- * OJ 2004 L 261/28 UK opt in

Directive 2004/81 (Trafficking Victims)

Residence permits for TCNs who are victims of trafficking

- * OJ 2004 L 261/19 UK opt in
- ☞ CJEU C-266/08, *Commission v Spain*, [14 May 2009]

Decision 191/2004 (Costs of Expulsion)

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

- * OJ 2004 L 60/55 UK opt in

Regulation 377/2004 (Immigration Liaison Officers)

On the creation of an immigration liaison officers 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 (Expulsion by Air)

Assistance with transit for expulsion by air

- * OJ 2003 L 321/26

Directive & Framework Decision 2002/90 (Illegal Entry)

Facilitation of unauthorised entry, transit and residence

- * OJ 2002 L 328 UK opt in

Directive 2001/51 (Carrier sanctions)

Obligation of carriers to return TCNs when entry is refused

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

Directive 2001/40 (Expulsion Decisions)

Mutual recognition of expulsion decisions of TCNs

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

ECHR

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

Art. 5 Detention

Prot. 4 Art. 4 Collective Expulsion

- * ETS 005 (4-11-50) impl. date 1950
- ☞ UK: Quila SC [2011]UKSC45 [12 Oct. 2011] [Art. 8]
- ☞ UK: MH Morocco [2010] UKUT 439 IAC [28 Sep. 2010] [Art. 8]
- ☞ ECtHR Ap.no. 13058/11, *Abdelhakim v. Hungary*, [23 Oct. 2012] [Art. 5]
- ☞ ECtHR Ap.no. 13457/11, *Ali Said v. Hungary*, [23 Oct. 2012] [Art. 5]
- ☞ ECtHR Ap.no. 50520/09, *Ahmade*, [25 Sep. 2012] [Art. 5]
- ☞ ECtHR Ap.no. 14902/10, *Mahmundi*, [31 July 2012] [Art. 5]
- ☞ ECtHR Ap.no. 27765/09, *Hirsi*, [21 Feb. 2012] [Prot. 4 Art. 4]
- ☞ ECtHR Ap.no. 10816/10, *Lokpo & Touré*, [20 Sep. 2011] [Art. 5]

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

- New** ☞ CJEU C-430/11, *Sagor*, [6 Dec. 2012]
- * interpr. of Dir. 2008/115, *Return Directive* [Art. 2, 15 + 16]
- * ref. from 'Tribunale di Adria' (Italy)
- * *An illegal stay by a TCN in a MS:*
- (1) can be penalised by means of a fine, which may be replaced by an expulsion order;
- (2) can not be penalised by means of a home detention order unless that order is terminated as soon as the physical transportation of the TCN out of that MS is possible.
- ☞ CJEU C-73/12, *Ettaghi* (Inadmissible)
- * interpr. of Dir. 2008/115, *Return Directive* [Art. 2, 4, 6, 7, 8, 15 and 16]
- * ref. from 'Giudice di Pace di Revere' (Italy)
- ☞ CJEU C-329/11, *Achughbajian*, [6 Dec. 2011]
- * interpr. of Dir. 2008/115, *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-61/11, **El Dridi**, [28 Apr. 2011]
- * interpr. of Dir. 2008/115, **Return Directive** [Art. 15 + 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, **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, **Trafficking Victims**
- * on the status of victims of trafficking and smuggling

3.3.2 CJEU pending cases on Irregular Migration

- ☞ CJEU C-297/12, **Filev & Osmani**
- * interpr. of Dir. 2008/115, **Return Directive**
- * ref. from 'Amtsgericht Laufen' (Germany)
- ☞ CJEU C-51/12, **Zhu**
- * interpr. of Dir. 2008/115, **Return Directive** [Art. 2, 4, 6, 7, 8, 15 and 16]
- * ref. from 'Giudice di Pace di Revere' (Italy)
- * *Whether it is possible to substitute for the fine (for entering national territory illegally or staying there illegally) an order for immediate expulsion for a period of at least five years or a measure restricting freedom ('permanenza domiciliare').*
- ☞ CJEU C-534/11, **Arslan**
- * interpr. of Dir. 2008/115, **Return Directive**
- * ref. from 'Nejvyšší správní soud' (Czech) 22-10-2011
- * *On detention of migrants; opinion due 31 Jan. 2013*
- ☞ CJEU C-522/11, **Mbaye**
- * interpr. of Dir. 2008/115, **Return Directive** [Art. 2(2)(b)]
- * ref. from 'Ufficio del Giudice di Pace Lecce' (Italy)
- * *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?*

3.3.3 EFTA judgments on Irregular Migration

- * no cases

3.3.4 EFTA pending cases on Irregular Migration

- * no cases

3.3.5 ECtHR Judgments on Irregular Migration

New

- ☞ ECtHR Ap.no. 22341/09, **Hode and Abdi v. UK**, [6 Nov. 2012]
- * violation of, **ECHR** [Art. 14 + 8]
- * *Ms. Abdi was a Djibouti national who married Mr. Hode, a Somali refugee who had been granted asylum in the UK. Ms. Abdi's application for residence in the UK for the purpose of family*

reunification was rejected by the UK authorities as the marriage had been concluded after Mr. Hode left Somalia. Furthermore, the rejection was based on the fact that Mr. Hode had only been granted five years' Leave to Remain. The applicants claimed to be victims of discrimination as compared to the right to family reunification based on pre-flight marriages, as well as compared to students and workers who would have the right to family reunification already while holding a temporary Leave to Remain.

The Court considered ECHR art. 14 applicable because the decision obviously affected the home and family life of the applicants and their children, and thus fell within the scope of art. 8.

Immigration status was held to belong to the category 'other status' in the meaning of ECHR art. 14, regardless of the fact that this 'personal' characteristic is a status conferred by law.

Since the only relevant difference was the time at which the marriage had taken place, refugees who had married pre-flight and post-flight were considered to be in an analogous position (or 'relevantly similar situation'). Students and workers who were usually granted a limited period of Leave to Remain, and whose spouses were entitled to join them, were also held to be in an analogous position.

The Court found no objective and reasonable justification for the difference in treatment of the applicants in comparison with refugees having pre-flight spouses and with students and workers, respectively.

New

☞ ECtHR Ap.no. 13058/11, **Abdelhakim v. Hungary**, [23 Oct. 2012]

* violation of, **ECHR** [Art. 5]

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

New

☞ ECtHR Ap.no. 13457/11, **Ali Said v. Hungary**, [23 Oct. 2012]

* violation of, **ECHR** [Art. 5]

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

☞ ECtHR Ap.no. 50520/09, **Ahmade**, [25 Sep. 2012]

* violation of, **ECHR** [Art. 5]

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

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

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

☞ ECtHR Ap.no. 14902/10, **Mahmundi**, [31 July 2012]

* violation of, **ECHR** [Art. 5]

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

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

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

☞ ECtHR Ap.no. 27765/09, **Hirsi**, [21 Feb. 2012]

- * violation of, **ECHR** [Prot. 4 Art. 4]
- * *The Court concluded that the decision of the Italian authorities to send TCNs - who were intercepted outside the territorial waters of Italy - back to Libya, had exposed them to the risk of ill-treatment there, as well as to the risk of ill-treatment if they were sent back to their countries of origin (Somalia and Eritrea). They also had been subjected to collective expulsion prohibited by Art. 4 of Protocol No. 4. The Court also concluded that they had had no effective remedy in Italy against the alleged violations.*
- ☞ ECtHR Ap.no. 10816/10, **Lokpo & Touré**, [20 Sep. 2011]
- * violation of, **ECHR** [Art. 5]
- * *The applicants entered Hungary illegally. After their arrest and during subsequent detention they applied for asylum. They were kept however in detention. The Court ruled that Article 5 § 1 (right to liberty and security) was violated, stating that the absence of elaborate reasoning for an applicant's deprivation of liberty renders that measure incompatible with the requirement of lawfulness.*

3.3.6 National Judgments on Irregular Migration

New

- ☞ **Germany**: BVerwG 1 C 19.11 [10 July 2012]
- * interpretation of Dir. 2008/115: **Return Directive**
- * appeal from North Rhine-Westphalia Higher Administrative Court, 5 Sep. 2008
- * <http://cmr.jur.ru.nl/nemis/Germany/BVerwG1C1911.pdf>
- * *Foreigners are entitled to have the immigration authority, simultaneously with the issuance of an expulsion, set a time limit for the effects of the expulsion as mentioned in Section 11(1) first and second sentence of the German Residence Act.*

4 External Treaties

4.1 External Treaties: Association Agreements

EC-Turkey Association Agreement

- * into force 23 Dec. 1963
- ☞ NL: Centrale Raad van Beroep, LJN: BR4959 [16 Aug. 2011]

EC-Turkey Association Agreement Additional Protocol

- * into force 1 Jan. 1973
- ☞ C-186/10, **Tural Oguz**, [21 July 2011] [Art. 41(1)]
- ☞ C-228/06, **Soysal**, [19 Feb. 2009] [Art. 41(1)]
- ☞ C-16/05, **Tum & Dari**, [20 Sep. 2007] [Art. 41(1)]
- ☞ C-37/98, **Savas**, [11 May 2000] [Art. 41(1)]
- ☞ C-221/11, **Demirkan**, [pending] [Art. 41(1)]
- ☞ NL: Raad van State, 201102803/1/V3 [14 Mar. 2012] [Art. 41]

EC-Turkey Association Agreement Decision 1/80

- * Dec. 1/80 of 19 Sept. 1980 on the Development of the Association
- ☞ C-451/11, **Dülger**, [19 July 2012] [Art. 7]
- ☞ C-7/10 & C-9/10, **Kahveci & Inan**, [29 Mar. 2012] [Art. 7]
- ☞ C-420/08, **Erdil**, [27 Jan. 2012 - withdrawn]
- ☞ C-436/09, **Belkiran**, [13 Jan. 2012 - removed]
- ☞ C-256/11, **Dereci et al.**, [15 Nov. 2011] [Art. 13]
- ☞ C-371/08, **Ziebell or Örnek**, [8 Dec. 2011] [Art. 14(1)]
- ☞ C-187/10, **Unal**, [29 Sep. 2011] [Art. 6(1)]
- ☞ C-484/07, **Pehlivan**, [16 June 2011] [Art. 7]
- ☞ C-303/08, **Metin Bozkurt**, [22 Dec. 2010] [Art. 7 + 14(1)]
- ☞ C-300/09 & C-301/09, **Toprak/Oguz**, [9 Dec. 2010] [Art. 13]
- ☞ C-92/07, **Comm. v The Netherlands**, [29 Apr. 2010] [Art. 10(1) + 13]
- ☞ C-14/09, **Genc**, [4 Feb. 2010] [Art. 6(1)]
- ☞ C-462/08, **Bekleyen**, [21 Jan. 2010] [Art. 7(2)]
- ☞ C-242/06, **Sahin**, [17 Sep. 2009] [Art. 13]

☞ C-337/07, <i>Altun</i> ,	[18 Dec. 2008]	[Art. 7]
☞ C-453/07, <i>Er</i> ,	[25 Sep. 2008]	[Art. 7]
☞ C-294/06, <i>Payir</i> ,	[24 Jan. 2008]	[Art. 6(1)]
☞ C-349/06, <i>Polat</i> ,	[4 Oct. 2007]	[Art. 7 + 14]
☞ C-325/05, <i>Derin</i> ,	[18 July 2007]	[Art. 6, 7 and 14]
☞ C-4/05, <i>Güzeli</i> ,	[26 Oct. 2006]	[Art. 10(1)]
☞ C-502/04, <i>Torun</i> ,	[16 Feb. 2006]	[Art. 7]
☞ C-230/03, <i>Sedef</i> ,	[10 Jan. 2006]	[Art. 6]
☞ C-374/03, <i>Gürol</i> ,	[7 July 2005]	[Art. 9]
☞ C-383/03, <i>Dogan</i> ,	[7 July 2005]	[Art. 6(1) and (2)]
☞ C-373/03, <i>Aydinli</i> ,	[7 July 2005]	[Art. 6 + 7]
☞ C-136/03, <i>Dörr & Unal</i> ,	[2 June 2005]	[Art. 6(1) + 14(1)]
☞ C-467/02, <i>Cetinkaya</i> ,	[11 Nov. 2004]	[Art. 7 + 14(1)]
☞ C-275/02, <i>Ayaz</i> ,	[30 Sep. 2004]	[Art. 7]
☞ C-465/01, <i>Comm. v Austria</i> ,	[16 Sep. 2004]	
☞ C-317/01 & C-369/01, <i>Abatay/Sahin</i> ,	[21 Oct. 2003]	[Art. 13 + 41(1)]
☞ C-171/01, <i>Birlikte</i> ,	[8 May 2003]	[Art. 10(1)]
☞ C-188/00, <i>Kurz (Yuze)</i> ,	[19 Nov. 2002]	[Art. 6(1) + 7]
☞ C-89/00, <i>Bicakci</i> ,	[19 Sep. 2000]	
☞ C-65/98, <i>Eyüp</i> ,	[22 June 2000]	[Art. 7]
☞ C-329/97, <i>Ergat</i> ,	[16 Mar. 2000]	[Art. 7]
☞ C-340/97, <i>Nazli</i> ,	[10 Feb. 2000]	[Art. 6(1) + 14(1)]
☞ C-1/97, <i>Birden</i> ,	[26 Nov. 1998]	[Art. 6(1)]
☞ C-210/97, <i>Akman</i> ,	[19 Nov. 1998]	[Art. 7]
☞ C-98/96, <i>Ertanir</i> ,	[30 Sep. 1997]	[Art. 6(1) + 6(3)]
☞ C-36/96, <i>Günaydin</i> ,	[30 Sep. 1997]	[Art. 6(1)]
☞ C-285/95, <i>Kol</i> ,	[5 June 1997]	[Art. 6(1)]
☞ C-386/95, <i>Eker</i> ,	[29 May 1997]	[Art. 6(1)]
☞ C-351/95, <i>Kadiman</i> ,	[17 Apr. 1997]	[Art. 7]
☞ C-171/95, <i>Tetik</i> ,	[23 Jan. 1997]	[Art. 6(1)]
☞ C-434/93, <i>Ahmet Bozkurt</i> ,	[6 June 1995]	[Art. 6(1)]
☞ C-355/93, <i>Eroglu</i> ,	[5 Oct. 1994]	[Art. 6(1)]
☞ C-237/91, <i>Kus</i> ,	[16 Dec. 1992]	[Art. 6(1) + 6(3)]
☞ C-192/89, <i>Sevince</i> ,	[20 Sep. 1990]	[Art. 6(1) + 13]
☞ C-12/86 , <i>Demirel</i> ,	[30 Sep. 1987]	[Art. 7 + 12]
☞ C-225/12, <i>Demir</i>	[pending]	[Art. 13]
☞ C-268/11, <i>Gühlbahce</i>	[pending]	[Art. 6(1) + 10]
EC-Turkey Association Agreement Decision 3/80		
* Dec. 3/80 of 19 Sept. 1980 on Social Security		
☞ C-485/07, <i>Akdas</i> ,	[26 May 2011]	[Art. 6(1)]

4.2 External Treaties: Readmission

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

Armenia, Azerbaijan

- * mandate granted, Dec. 2011; proposal to sign and conclude, Nov 2012

Belarus

- * negotiation mandate approved by Council, Feb. 2011

Albania

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

Cape Verde

- * agreement proposed Nov. 2008; negotiation mandate approved by Council June 2009
proposal to sign and conclude, Sep. 2012

Georgia

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

Hong Kong

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

Macao

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

Morocco, Algeria, Turkey and China

- * negotiations approved, 2010; agreement with Turkey, signed June 2012

Pakistan

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

Russia

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

Sri Lanka

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

Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova

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

4.3 External Treaties: Other

Armenia, Azerbaijan

- * mandate granted, Dec. 2011; proposal to sign and conclude, Nov 2012

New Treaty signed, Dec. 2012

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

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

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

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

Cape Verde: Visa facilitation agreement negotiations

- * proposed Nov. 2008; negotiation mandate approved by Council June 2009 proposals to sign and conclude, Sep. 2012

China: Approved Destination Status treaty

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

Denmark: Dublin II treaty

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

Georgia: Visa facilitation agreement

- * OJ 2010 L 308/1 (into force 1 March 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

Norway and Iceland: Dublin Convention

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

Russia: Visa facilitation agreement

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

Switzerland: Implementation of Schengen, Dublin

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

Switzerland: Free Movement of Persons

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

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

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

Russia, Ukraine, Moldova

- * Council mandate to renegotiate visa facilitation treaties, April 2011 proposals to sign and conclude new treaty with Ukraine, July 2012; new treaty with Moldova signed, June 2012

4.4 External Treaties: Jurisprudence

4.4.1 CJEU Judgments on EEC-Turkey Association Agreement

- ☞ C-451/11, *Dülger*, [19 July 2012]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * *Art. 7 is also applicable to family members of Turkish nationals who can rely on the Regulation, who don't have the Turkish nationality themselves, but instead a nationality from a third country.*
- ☞ C-7/10 & C-9/10, *Kahveci & Inan*, [29 Mar. 2012]
- * interpr. of, *Dec. 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.*
- ☞ C-420/08, *Erdil*, [27 Jan. 2012] (withdrawn)
- * interpr. of, *Dec. 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.*
- ☞ C-436/09, *Belkiran*, [13 Jan. 2012] (removed)
- * interpr. of, *Dec. 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, *Dec. 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, *Dec. 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, *Dec. 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, *Prot.* [Art. 41(1)]
- * ref. from 'Court of Appeal (E&W)' (United Kingdom)

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. 1/80** [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. 1/80** [Art. 7 + 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. 1/80** [Art. 13]
- * 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. 1/80** [Art. 10(1) + 13]
- * *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. 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. 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. 1/80** [Art. 13]
- * ref. from 'Raad van State' (Netherlands)
- ☞ C-228/06, **Soysal**, [19 Feb. 2009]
- * interpr. of, **Prot.** [Art. 41(1)]
- ☞ C-337/07, **Altun**, [18 Dec. 2008]
- * interpr. of, **Dec. 1/80** [Art. 7]
- * ref. from 'Verwaltungsgericht Stuttgart' (Germany)

- ☞ C-453/07, *Er*, [25 Sep. 2008]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * ref. from 'Verwaltungsgericht Gießen' (Germany)
- ☞ C-294/06, *Payir*, [24 Jan. 2008]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- * ref. from 'Court of Appeal' (United Kingdom)
- ☞ C-349/06, *Polat*, [4 Oct. 2007]
- * interpr. of, *Dec. 1/80* [Art. 7 + 14]
- * ref. from 'Verwaltungsgericht Darmstadt' (Germany)
- ☞ C-16/05, *Tum & Dari*, [20 Sep. 2007]
- * interpr. of, *Prot.* [Art. 41(1)]
- ☞ C-325/05, *Derin*, [18 July 2007]
- * interpr. of, *Dec. 1/80* [Art. 6, 7 and 14]
- * ref. from 'Verwaltungsgericht Darmstadt' (Germany)
- ☞ C-4/05, *Güzeli*, [26 Oct. 2006]
- * interpr. of, *Dec. 1/80* [Art. 10(1)]
- * ref. from 'Verwaltungsgericht Aachen' (Germany)
- ☞ C-502/04, *Torun*, [16 Feb. 2006]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * ref. from 'Bundesverwaltungsgericht' (Germany)
- ☞ C-230/03, *Sedef*, [10 Jan. 2006]
- * interpr. of, *Dec. 1/80* [Art. 6]
- * ref. from 'Bundesverwaltungsgericht' (Germany)
- ☞ C-374/03, *Gürol*, [7 July 2005]
- * interpr. of, *Dec. 1/80* [Art. 9]
- * ref. from 'Verwaltungsgericht Sigmarinen' (Germany)
- ☞ C-383/03, *Dogan*, [7 July 2005]
- * interpr. of, *Dec. 1/80* [Art. 6(1) and (2)]
- * ref. from 'Verwaltungsgerichtshof' (Austria)
- ☞ C-373/03, *Aydinli*, [7 July 2005]
- * interpr. of, *Dec. 1/80* [Art. 6 + 7]
- * ref. from 'Verwaltungsgericht Freiburg' (Germany)
- ☞ C-136/03, *Dörr & Unal*, [2 June 2005]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 14(1)]
- * ref. from 'Verwaltungsgerichtshof' (Austria)
- ☞ C-467/02, *Cetinkaya*, [11 Nov. 2004]
- * interpr. of, *Dec. 1/80* [Art. 7 + 14(1)]
- * ref. from 'Verwaltungsgericht Stuttgart' (Germany)
- ☞ C-275/02, *Ayaz*, [30 Sep. 2004]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * ref. from 'Verwaltungsgericht Stuttgart' (Germany)
- ☞ C-465/01, *Comm. v Austria*, [16 Sep. 2004]
- * interpr. of, *Dec. 1/80*
- ☞ C-317/01 & C-369/01, *Abatay/Sahin*, [21 Oct. 2003]
- * interpr. of, *Dec. 1/80* [Art. 13 + 41(1)]
- * ref. from 'Bundessozialgericht' (Germany)
- ☞ C-171/01, *Birlikte*, [8 May 2003]
- * interpr. of, *Dec. 1/80* [Art. 10(1)]
- * ref. from 'Verfassungsgerichtshof' (Austria)
- ☞ C-188/00, *Kurz (Yuze)*, [19 Nov. 2002]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 7]

- ☞ C-89/00, *Bicakci*, [19 Sep. 2000]
- * interpr. of, *Dec. 1/80*
- ☞ C-65/98, *Eyüp*, [22 June 2000]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * ref. from 'Verwaltungsgerichtshof' (Austria)
- ☞ C-37/98, *Savas*, [11 May 2000]
- * interpr. of, *Prot.* [Art. 41(1)]
- ☞ C-329/97, *Ergat*, [16 Mar. 2000]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * ref. from 'Bundesverwaltungsgericht' (Germany)
- ☞ C-340/97, *Nazli*, [10 Feb. 2000]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 14(1)]
- * ref. from 'Verwaltungsgericht Ansbach' (Germany)
- ☞ C-1/97, *Birden*, [26 Nov. 1998]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- * ref. from 'Verwaltungsgericht Bremen' (Germany)
- ☞ C-210/97, *Akman*, [19 Nov. 1998]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * ref. from 'Verwaltungsgericht Köln' (Germany)
- ☞ C-98/96, *Ertanir*, [30 Sep. 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 6(3)]
- * ref. from 'Verwaltungsgericht Darmstadt' (Germany)
- ☞ C-36/96, *Günaydin*, [30 Sep. 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- * ref. from 'Bundesverwaltungsgericht' (Germany)
- ☞ C-285/95, *Kol*, [5 June 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- * ref. from 'Oberverwaltungsgericht Berlin' (Germany)
- ☞ C-386/95, *Eker*, [29 May 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- * ref. from 'Bundesverwaltungsgericht' (Germany)
- ☞ C-351/95, *Kadiman*, [17 Apr. 1997]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * ref. from 'Verwaltungsgericht München' (Germany)
- ☞ C-171/95, *Tetik*, [23 Jan. 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- * ref. from 'Bundesverwaltungsgericht' (Germany)
- ☞ C-434/93, *Ahmet Bozkurt*, [6 June 1995]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- * ref. from 'Raad van State' (Netherlands)
- ☞ C-355/93, *Eroglu*, [5 Oct. 1994]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- * ref. from 'Verwaltungsgericht Karlsruhe' (Germany)
- ☞ C-237/91, *Kus*, [16 Dec. 1992]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 6(3)]
- * ref. from 'Hessischer Verwaltungsgerichtshof' (Germany)
- ☞ C-192/89, *Sevince*, [20 Sep. 1990]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 13]
- * ref. from 'Raad van State' (Netherlands)
- ☞ C-12/86, *Demirel*, [30 Sep. 1987]
- * interpr. of, *Dec. 1/80* [Art. 7 + 12]

- * ref. from 'Verwaltungsgericht Stuttgart' (Germany)

4.4.2 CJEU pending cases on EEC-Turkey Association Agreement

New

- ☞ C-225/12, **Demir**
 - * interpr. of, **Dec. 1/80** [Art. 13]
 - * ref. from 'Raad van State' (Netherlands)
 - * *Is Art 13 to be interpreted as meaning that it is applicable to a substantive or formal condition governing first admission, even if such a condition - in the present case, the possession of a temporary residence permit - has as one of its objectives the prevention of illegal entry and illegal residence prior to the submission of an application for a residence permit and, to that extent, can be regarded as a measure, within the terms of par. 85 of the judgment in Joined Cases C-317/01 and C-369/01 (Abatay and Others) which may be made more stringent?*
- ☞ C-268/11, **Gühlbahce**
 - * interpr. of, **Dec. 1/80** [Art. 6(1) + 10]
 - * ref. from 'Oberverwaltungsgericht Hamburg' (Germany) 19-05-2011
 - * *The A-G concluded 21 June 2012: Art. 6 lid 1 Decision 1/80 implies that a Member State cannot withdraw the residence permit of a Turkish employee until the moment that the national ground for the permit has ceased to exist, if this Turkish national has not acted fraudulently and if the withdrawal takes place after a period of one year labour on legal grounds. Article 10 (1) Decision 1/80 concerning the right to renewal of the residence permit, is not applicable on the situation that a Turkish employee holding a work permit of indefinite duration does not meet the criteria of Article 6 (1) of Decision 1/80.*
- ☞ C-221/11, **Demirkan**
 - * interpr. of, **Prot.** [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

- ☞ **Netherlands:** Centrale Raad van Beroep, LJN: BR4959 [16 Aug. 2011]
 - * interpretation of **EC-Turkey Assn. Agr.**
 - * <http://www.ljn.nl/BR4959>
 - * *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.*
- ☞ **Netherlands:** Raad van State, 201102803/1/V3 [14 Mar. 2012]
 - * interpretation of **EC-Turkey Assn. Agr. Add. Protocol** Art. 41
 - * <http://cmr.jur.ru.nl/nemis/Netherlands/RaadvanState,2011028031V3.pdf>
 - * *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

Lives Lost 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, adopted Resolution 1872 (2012), based on the report: “Lives lost in the Mediterranean Sea: who is responsible?” This report was presented on 29 March 2012 by rapporteur Tineke Strik as a member of the Committee on Migration, Refugees and Population of the Assembly.

The starting point for the resolution and of the 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.

Inquiry started by European Ombudsman on the implementation by Frontex of its fundamental rights decisions

- * Letter, 6 March 2012

Information Note on references from national courts for a preliminary ruling

- * OJ 2011 C 160/01

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.

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