### § 1 Regular Migration

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Date</th>
<th>Party</th>
<th>Decision</th>
<th>Article(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-761/19</td>
<td>11 Jan. 2021</td>
<td>Com. / Hungary</td>
<td>Long-Term Residents</td>
<td>Art. 11(1)(a)</td>
</tr>
<tr>
<td>C-949/19</td>
<td>10 Mar. 2021</td>
<td>M.A. / Konsul</td>
<td>Researchers and Students</td>
<td>Art. 34(5)</td>
</tr>
<tr>
<td>C-624/20</td>
<td>2 Mar. 2021</td>
<td>E.K.</td>
<td>Long-Term Residents</td>
<td>Art. 3(2)(e)</td>
</tr>
<tr>
<td>C-94/20</td>
<td>10 Mar. 2021</td>
<td>Oberösterreich</td>
<td>Long-Term Residents</td>
<td>Art. 11</td>
</tr>
<tr>
<td>C-930/19</td>
<td>22 Mar. 2021</td>
<td>X. / Belgium</td>
<td>Family Reunification</td>
<td>Art. 15(3)</td>
</tr>
<tr>
<td>26957/19</td>
<td>12 Jan. 2021</td>
<td>Kahn</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>59006/18</td>
<td>8 Dec. 2020</td>
<td>M.M.</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>56803/18</td>
<td>12 Jan. 2021</td>
<td>Munir</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>43936/18</td>
<td>22 Dec. 2020</td>
<td>Usmanov</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
</tbody>
</table>

### § 2 Borders and Visas

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Date</th>
<th>Party</th>
<th>Decision</th>
<th>Article(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-949/19</td>
<td>10 Mar. 2021</td>
<td>M.A. / Konsul</td>
<td>Borders Code II</td>
<td>Art. 21(2)</td>
</tr>
<tr>
<td>C-193/19</td>
<td>4 Mar. 2021</td>
<td>Migrationsverket</td>
<td>Borders Code II</td>
<td>Art. 25(1)</td>
</tr>
<tr>
<td>6865/19</td>
<td>11 Mar. 2021</td>
<td>Felizao</td>
<td>ECHR</td>
<td>Art. 3+5(1)</td>
</tr>
<tr>
<td>36037/17</td>
<td>2 Mar. 2021</td>
<td>R.R. a.o.</td>
<td>ECHR</td>
<td>Art. 3+5(1)</td>
</tr>
</tbody>
</table>

### § 3 Irregular Migration

<table>
<thead>
<tr>
<th>Case No.</th>
<th>Date</th>
<th>Party</th>
<th>Decision</th>
<th>Article(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-808/18</td>
<td>17 Dec. 2020</td>
<td>Com. / Hungary</td>
<td>Return Directive</td>
<td>Art. 5+6+12+13</td>
</tr>
<tr>
<td>C-441/19</td>
<td>14 Jan. 2021</td>
<td>T.Q.</td>
<td>Return Directive</td>
<td>Art. 6+8+10</td>
</tr>
<tr>
<td>C-546/19</td>
<td>10 Feb. 2021</td>
<td>B.Z.</td>
<td>Return Directive</td>
<td>Art. 2(2)(b)+3(6)</td>
</tr>
<tr>
<td>C-69/21</td>
<td>(pending)</td>
<td>X. / Sscr</td>
<td>Return Directive</td>
<td>Art. 5+6+9</td>
</tr>
<tr>
<td>56751/16</td>
<td>10 Dec. 2020</td>
<td>Shiksaitov</td>
<td>ECHR</td>
<td>Art. 5(1)(f)</td>
</tr>
</tbody>
</table>

### § 4 External Treaties

New in this Issue of NEMIS

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About

NEMIS is designed for judges who need to keep up to date with EU developments in migration and borders law.

NEMIS contains all European legislation and jurisprudence on access and residence rights of third country nationals.

Thus, this newsletter highlights topical issues in the editorial and contains a reasonable complete overview of relevant case law.

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

This Newsletter is part of the CMR Jean Monnet Centre of Excellence Work Program 2018-2021.
**Contents**

<table>
<thead>
<tr>
<th>Section</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Editorial</td>
<td>2</td>
</tr>
<tr>
<td>Regular Migration</td>
<td></td>
</tr>
<tr>
<td>1.1 Adopted Measures</td>
<td>4</td>
</tr>
<tr>
<td>1.2 Proposed Measures</td>
<td>7</td>
</tr>
<tr>
<td>1.3 Jurisprudence</td>
<td>8</td>
</tr>
<tr>
<td>Borders and Visas</td>
<td></td>
</tr>
<tr>
<td>2.1 Adopted Measures</td>
<td>25</td>
</tr>
<tr>
<td>2.2 Proposed Measures</td>
<td>29</td>
</tr>
<tr>
<td>Irregular Migration</td>
<td></td>
</tr>
<tr>
<td>3.1 Adopted Measures</td>
<td>37</td>
</tr>
<tr>
<td>3.2 Proposed Measures</td>
<td>39</td>
</tr>
<tr>
<td>3.3 Jurisprudence</td>
<td>40</td>
</tr>
<tr>
<td>External Treaties</td>
<td></td>
</tr>
<tr>
<td>4.1 Association Agreements</td>
<td>51</td>
</tr>
<tr>
<td>4.2 Readmission</td>
<td>53</td>
</tr>
<tr>
<td>4.3 Other</td>
<td>54</td>
</tr>
<tr>
<td>4.4 Jurisprudence</td>
<td>55</td>
</tr>
</tbody>
</table>

**Editorial**

Welcome to the first issue of NEMIS in 2021. We would like to draw your attention to the following:

**Hungary**

On two occasions the European Commission started an infringement procedure against Hungary. In C-761/19 the Long-Term Residence Dir. was at stake. Hungary did not admit TCNs who are long-term residents as members of the College of Veterinary Surgeons, which prevented them to work in that profession. Only after the appeal was brought by the Commission before the CJEU, Hungary took the necessary measures and the case was removed from the register.

The second infringement procedure (C-808/18) was about the transit zones at the border with Serbia. The Hungarian authorities had established a system which denied asylum seekers access to Hungarian territory, and forced them to move to transit zones at the border (Röszke and Tompa) where they were detained without observing any of the guarantees provided for in Union law (such as the Asylum Procedures Dir., Reception Conditions Dir, and in particular the Return Directive). The CJEU underlines that the Hungarian practice was already qualified by the Special Representative of the SG of the CoE on Migration and Refugees, and the Eur. Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as unacceptable.

The ECtHR ruled on the same issue in R.R. (36037/17) on 2 March 2021. The ECtHR concludes that as a result of the failings of the Hungarian authorities in securing basic subsistence in the transit zone (such as food), the situation was incompatible with Art. 3. Also, the ECtHR finds the duration of the applicants’ stay (almost a hundred days) in view of the young age of the children and the pregnancy of the mother, a violation of Art. 3.

**Borders and Visas**

In M.A. (C-949/19) an applicant for a long-stay visa for the purpose of studies, could not appeal to the negative decision of the Polish Consul. The requested Polish administrative court dismissed the protest to this refusal stating that refusals by a Consul did not fall within the jurisdiction of Polish administrative courts. The CJEU ruled that the Borders Code itself is not the appropriate instrument to provide for a judicial appeal procedure in case a long-stay visa is refused. However, the CJEU refers to Art. 34(5) of the Researchers and Students Dir. (2016/801), which must be interpreted as meaning that it requires the MSs to provide for an appeal procedure against decisions refusing a visa for the purpose of studies, within the meaning of that directive, the procedural rules of which are a matter for the legal order of each Member State, in conformity with the principles of equivalence and effectiveness, and that procedure must, at a certain stage, guarantee a judicial appeal.

In Migrationsverket (C-193/19) the CJEU was asked also to rule on the scope of the Borders Code. At stake was the question whether a MS can make the renewal of a residence permit, issued to a third-country national for the purpose of family reunification, subject to the condition that that TCN establishes his or her identity with certainty by presenting a passport valid for the duration of the residence authorisation. As the identity of the Gambian TCN could not be established with certainty due to a number of different entries in SIS on account of multiple aliases and falsified passports, the renewal was rejected. The CJEU states that Union law does not preclude domestic legislation, which requires a valid passport for the purpose of examining an application for a residence permit. Also, the CJEU concludes that the Border Code is only applicable to TCNs crossing external borders of MSs. In this case, however, the TCN was already in the MS with a valid residence permit. Therefore, the Borders Code does not apply.

**Family Life**

The ECtHR ruled on the same day in two very similar cases, Kuhn v. Denmark (26957/19) and Munir v. Denmark (56803/18), on the question whether the expulsion of a TCN, who had been living legally for (two respectively three) decades in Denmark, in combination with an entry ban for six years was a breach of Art. 8 ECHR. The ECtHR noted in both cases that the expulsion of the applicant was not dispro-portionate in the light of all the circumstances of the case. It also noted that the Danish authorities had duly taken all aspects into consideration: no violation of Art. 8.

(continued on next page)
(editorial continued)

The ECtHR also ruled on the inverted situation of the expulsion of a Spanish national from Switzerland following his conviction and suspended twelve-month prison sentence in M.M. v. Switzerland (59006/18). The ECtHR concludes that the Swiss Courts had carried out a serious examination and had given very sound reasons to justify the applicant’s deportation from Switzerland for a limited period: no violation of Art. 8.

In W.M.C. (31/2017) the CIRC disagrees with the formalistic approach of the Danish authorities in a case where an unmarried Chinese woman, who has fled China because of a forced abortion, is denied asylum in Denmark. During the asylum procedure two of her children are born in Denmark. Although, different reports from American and British governmental agencies state that the opposite, the Danish authorities take the stand that the official policy of China provides for the same rights for children of single or unmarried women compared to children born to married parents.

Return

The CJEU has added five new judgments on the interpretation of the Return Dir, and another two pending. In M. a.o. (C-673/19) the CJEU restates that the RD is only applicable to illegally staying third-country nationals. Thus, the situation of a TCN who has refugee status and resides thereafter legally in one MS, but is not legally present in another MS, is not governed by the RD. As a consequence, it is impossible to issue a return decision. However, it is possible to forcefully transfer such a refugee from the MS where he is illegally present back to the MS, which granted him refugee status, where he is legally present.

Children

An important judgment was given in T.Q. (C-441/19) in which the CJEU was asked to qualify the Dutch practice to issue a return decision to an unaccompanied minor, followed by a period of inactivity until the minor became an adult, which gave the Dutch authorities the opportunity to return the adult, without having to check whether there was adequate reception. The CJEU makes clear that this is unacceptable. The best interests of the child should be the starting point. Thus, before issuing a return decision against an unaccompanied minor, the MS concerned must carry out a general and in-depth assessment of the situation of that minor, taking due account of the best interests of the child. Also, that MS must ensure that adequate reception facilities are available for the unaccompanied minor in question in the State of return.

Interesting is the conclusion of the CJEU in a case about the interpretation of the Return Directive. In M.A. (C-112/20) the CJEU rules that Art. 5 RD must be interpreted as meaning that MSs are required to take due account of the best interests of the child before adopting a return decision accompanied by an entry ban, even where the person to whom that decision is addressed is not a minor but his or her father.

The Swiss authorities were criticised by the CIRC in V.A. v. Switzerland (56/2018). The case concerns a family (parents and two children) which fled Azerbaijan and applied for asylum in Switzerland. After seven months of waiting for the asylum hearing the family became depressed. Although the family received support from different local NGOs, the overall situation was precarious and the family agreed to withdraw its asylum request and was voluntarily repatriated, based on the belief that the husband would not be incarcerated in Azerbaijan because a family member had bribed the local police. After 3 months, however, the husband was arrested, the mother was threatened and the children again traumatised. As a consequence, they again fled Azerbaijan. However, they were using Italian visa to enter Switzerland provided by a smuggler. This resulted in a decision of the Swiss authorities to send the family - based on the Dublin regulation - to Italy where they had never been. Due to a panic attack of the mother, the removal to Italy did not take place and the family was left at Zurich airport. The CIRC concludes that the Swiss authorities had violated Art. 3, 10 and 12 because they did not hear the two children. The CIRC also emphasizes that Art. 12 guarantees the right of the child to be heard in any judicial or administrative proceedings affecting the child, either directly, or through a representative. This article imposes no age limit and forbids States parties from introducing age limits.

Layout

Finally, we would like to mention that all judgments and adopted views are provided with direct links (ULR) to their sources. However, these links are only functional if the PDF is opened with a separate program such as Acrobat. If the PDF is opened in your browser, most if not all, links will not function.

To improve the quality of reading, we’ve tried to prevent putting parts of texts on two different pages. This implies that you will find at a number of pages empty spaces and in the end a slight increase in the total number of pages.

Nijmegen, March 2021, Carolus Grüters
# 1 Regular Migration

## 1.1 Regular Migration: Adopted Measures

### Directive 2009/50

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

**CJEU pending cases**
- C-462/20
  - ASGI
  - Art. 14(1)

See further: § 1.3

### Directive 2003/86

On the right to Family Reunification

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

**CJEU judgments**
- C-484/17
  - K.
  - Art. 9(2)
- C-257/13
  - Ymeraga
  - Art. 3(3)
- C-558/14
  - A. & S.
  - Art. 2(f)
- C-338/13
  - Noorzia
  - Art. 4(5)
- C-138/13
  - Dogan (Naime)
  - Art. 7(2)
- C-87/12
  - O. & S.
  - Art. 7(1)(c)
- C-155/11
  - Imran
  - Art. 7(2) - no adj.
- C-357/08
  - Chakroun
  - Art. 7(1)(c)+2(d)
- C-540/03
  - EP / Council
  - Art. 8

**CJEU pending cases**
- C-462/20
  - C.R. / L.Hptmn
  - Art. 10(3)+7(1)
- C-273/20
  - Germany / S.W.
  - Art. 10(3)+16(1)(a)
- C-279/20
  - Germany / X.C.
  - Art. 4+6(1)(b)
- C-355/20
  - Germany / B.L. & B.C.
  - Art. 10(3)+16(1)(a)
- C-930/19
  - X. / Belgium
  - Art. 15(3)

### Council Decision 2007/435

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

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

### Directive 2014/66

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

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

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*See further: § 1.3*

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See further: § 1.3
**Directive 2003/109**  
**Concerning the status of TCNs who are long-term residents**  
* OJ 2004 L 16/44  
* amended by Dir. 2011/51

**CJEU judgments**

* CJEU 11 Jan. 2021  
  C-761/19  
  [Com. / Hungary]  
  Art. 11(1)(a)

* CJEU 25 Nov. 2020  
  C-303/19  
  [INPS / V.R.]  
  Art. 11(1)(d)

* CJEU 3 Sep. 2020  
  C-503/19  
  [U.Q.]  
  Art. 4+6(1)

* CJEU 11 June 2020  
  C-448/19  
  [W.T.]  
  Art. 12

* CJEU 3 Oct. 2019  
  C-302/18  
  [X.]  
  Art. 5(1)(a)

* CJEU 14 Mar. 2019  
  C-557/17  
  [Y.Z. a.o.]  
  Art. 9(1)(a)

* CJEU 7 Dec. 2017  
  C-636/16  
  [Lopez Pastuzano]  
  Art. 12

* CJEU 2 Sep. 2015  
  C-309/15  
  [CGIL]  
  Art. 12

* CJEU 4 June 2015  
  C-579/13  
  [P. & S.]  
  Art. 5+11

* CJEU 5 Nov. 2014  
  C-311/13  
  [Tümer]  
  Art. 7(1)

* CJEU 17 July 2014  
  C-469/13  
  [Tahir]  
  Art. 7(1)+13

* CJEU 8 Nov. 2012  
  C-40/11  
  [Ida]  
  Art. 7(1)

* CJEU 18 Oct. 2012  
  C-502/10  
  [Singh]  
  Art. 3(2)(e)

* CJEU 26 Apr. 2012  
  C-508/10  
  [Com. / NL]  
  Art. 5+11

* CJEU 24 Apr. 2012  
  C-571/10  
  [Servet Kamberaj]  
  Art. 11(1)(d)

**CJEU pending cases**

* CJEU (pending)  
  C-462/20  
  [ASGI]  
  Art. 11(1)(d)

* CJEU (pending)  
  C-624/20  
  [E.K.]  
  Art. 3(2)(e)

* CJEU AG 2 Mar. 2021  
  C-94/20  
  [Oberösterreich]  
  Art. 11

* CJEU (pending)  
  C-432/20  
  [Z.K. / L.Hptmn]  
  Art. 3(2)(e)

See further: § 1.3

**Directive 2011/51**  
**Concerning the status of TCNs who are long-term residents**  
* OJ 2011 L 132/1  
* extending Dir. 2003/109 on LTR

**Council Decision 2006/688**  
**Mutual Information**  
* OJ 2006 L 283/40  
**impl. date 15 June 2002**  
* extending Dir. 2003/109 on LTR

**Directive 2005/71**  
**On a specific procedure for admitting TCNs for the purposes of scientific research**  
* OJ 2005 L 289/15  
* Directive is replaced by Dir. 2016/801 Researchers and Students

**Recommendation 762/2005**

**Researchers**  
* OJ 2005 L 289/26  

**Directive 2016/801**  
**On the conditions of entry and residence of Third-Country Nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes, educational projects and au pairing.**  
* OJ 2016 L 132/21  
* This directive replaces both Dir 2005/71 on Researchers and Dir 2004/114 on Students

**Regulation 1030/2002**

**Residence Permit Format**  
* OJ 2002 L 157/1  
  * amended by Reg. 330/2008 (OJ 2008 L 115/1)  
  * amended by Reg. 1954/2017 (OJ 2017 L 286/9)

**Directive 2014/36**  
**On the conditions of entry and residence of TCNs for the purposes of seasonal employment**  
* OJ 2014 L 94/375  
  * impl. date 30 Sep. 2016
## 1.1: Regular Migration: Adopted Measures

<table>
<thead>
<tr>
<th>Directive 2011/98</th>
<th>Single Permit</th>
</tr>
</thead>
<tbody>
<tr>
<td>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</td>
<td></td>
</tr>
<tr>
<td>- CJEU judgments</td>
<td></td>
</tr>
<tr>
<td>- CJEU 25 Nov. 2020 C-302/19</td>
<td>INPS / W.S.</td>
</tr>
<tr>
<td>- CJEU 21 June 2017 C-449/16</td>
<td>Martínez Silva</td>
</tr>
<tr>
<td>- CJEU pending cases</td>
<td></td>
</tr>
<tr>
<td>- CJEU (pending) C-462/20</td>
<td>ASGI</td>
</tr>
<tr>
<td>- CJEU (pending) C-350/20</td>
<td>INPS / O.D.</td>
</tr>
</tbody>
</table>

See further: § 1.3

<table>
<thead>
<tr>
<th>Regulation 859/2003</th>
<th>Social Security TCN I</th>
</tr>
</thead>
<tbody>
<tr>
<td>Third-Country Nationals’ Social Security extending Reg. 1408/71 and Reg. 574/72</td>
<td></td>
</tr>
<tr>
<td>- OJ 2003 L 124/1</td>
<td>replaced by Reg 1231/2010: Social Security TCN II</td>
</tr>
<tr>
<td>- Replaced by Reg 1231/2010: Social Security TCN II</td>
<td></td>
</tr>
<tr>
<td>- CJEU judgments</td>
<td></td>
</tr>
<tr>
<td>- CJEU 27 Oct. 2016 C-465/14</td>
<td>Wieland &amp; Rothwangl</td>
</tr>
<tr>
<td>- CJEU 18 Nov. 2010 C-247/09</td>
<td>Xhymshiti</td>
</tr>
</tbody>
</table>

See further: § 1.3

<table>
<thead>
<tr>
<th>Regulation 1231/2010</th>
<th>Social Security TCN II</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Security for EU Citizens and TCNs who move within the EU</td>
<td></td>
</tr>
<tr>
<td>- OJ 2010 L 344/1</td>
<td>impl. date 1 Jan. 2011</td>
</tr>
<tr>
<td>- Replacing Reg. 859/2003 on Social Security TCN</td>
<td></td>
</tr>
<tr>
<td>- CJEU judgments</td>
<td></td>
</tr>
<tr>
<td>- CJEU 24 Jan. 2019 C-477/17</td>
<td>Balandin</td>
</tr>
</tbody>
</table>

See further: § 1.3

<table>
<thead>
<tr>
<th>Directive 2004/114</th>
<th>Students</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admission of Third-Country Nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service</td>
<td></td>
</tr>
<tr>
<td>- OJ 2004 L 375/12</td>
<td>impl. date 12 Jan. 2007</td>
</tr>
<tr>
<td>- Directive is replaced by Dir. 2016/801 Researchers and Students</td>
<td></td>
</tr>
<tr>
<td>- CJEU judgments</td>
<td></td>
</tr>
<tr>
<td>- CJEU 4 Apr. 2017 C-544/15</td>
<td>Fahimian</td>
</tr>
<tr>
<td>- CJEU 10 Sep. 2014 C-491/13</td>
<td>Ben Alaya</td>
</tr>
<tr>
<td>- CJEU 21 June 2012 C-15/11</td>
<td>Sommer</td>
</tr>
<tr>
<td>- CJEU 24 Nov. 2008 C-294/06</td>
<td>Payir</td>
</tr>
</tbody>
</table>

See further: § 1.3

<table>
<thead>
<tr>
<th>CRC</th>
<th>Best interest of the Child</th>
</tr>
</thead>
<tbody>
<tr>
<td>UN Convention on the Rights of the Child</td>
<td></td>
</tr>
<tr>
<td>Art. 3 Best interests of the child</td>
<td></td>
</tr>
<tr>
<td>Art. 10 Family Life</td>
<td></td>
</tr>
<tr>
<td>* 1577 UNTS 27531</td>
<td>impl. date 2 Sep. 1990</td>
</tr>
<tr>
<td>* Optional Communications Protocol that allows for individual complaints entered into force 14-4-2014</td>
<td></td>
</tr>
<tr>
<td>CRC views</td>
<td></td>
</tr>
</tbody>
</table>

New
<table>
<thead>
<tr>
<th>CRC</th>
<th>V.A.</th>
<th>Art. 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>28 Sep. 2020 C/85/D/56/2018</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

New
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See further: § 1.3
### ECHR - European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

**Family - Marriage - Discrimination**

Art. 8 Family Life  
Art. 12 Right to Marry  
Art. 14 Prohibition of Discrimination  
*
ETS 005

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See further: § 1.3
1.2: Regular Migration: Proposed Measures

1.2.1 CJEU Judgments on Regular Migration

**Directive**

**Blue Card II**

* On the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment.
* COM (2016) 378, 7 June 2016

1.3 Regular Migration: Jurisprudence

* case law sorted in alphabetical order

1.3.1 CJEU Judgments on Regular Migration

- **CJEU 12 Apr. 2018, C-550/16**
  - A. & S.
  - AG 26 Oct. 2017
  - interpr. of Dir. 2003/86
  - Family Reunification Art. 2(f)
  - ref. from Raad van State, NL, 15 May 2017
  - Art. 2(f) (in conjunction with Art. 10(3)(a)) must be interpreted as meaning that a TCN or stateless person who is below the age of 18 at the time of his or her entry into the territory of a MS and of the introduction of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status must be regarded as a ‘minor’ for the purposes of that provision.

- **CJEU 10 Sep. 2014, C-491/13**
  - Ben Alaya
  - AG 12 June 2014
  - interpr. of Dir. 2004/114
  - Students Art. 6+7
  - ref. from Verwaltungsgericht Berlin, Germany, 13 Sep. 2013
  - The MS concerned is obliged to admit to its territory a third-country national who wishes to stay for more than three months in that territory for study purposes, where that national meets the conditions for admission exhaustively listed in Art. 6 and 7 and provided that that MS does not invoke against that person one of the grounds expressly listed by the directive as justification for refusing a residence permit.

- **CJEU 7 Nov. 2018, C-257/17**
  - C. & A.
  - AG 27 June 2018
  - interpr. of Dir. 2003/86
  - Family Reunification Art. 3(3)
  - ref. from Raad van State, NL, 15 May 2017
  - Article 15(1) and (4) does not preclude national legislation which permits an application for an autonomous residence permit, lodged by a TCN who has resided over five years in a MS by virtue of family reunification, to be rejected on the ground that he has not shown that he has passed a civic integration test on the language and society of that MS provided that the detailed rules for the requirement to pass that examination do not go beyond what is necessary to attain the objective of facilitating the integration of those third country nationals.
  - Article 15(1) and (4) does not preclude national legislation which provides that an autonomous residence permit cannot be issued earlier than the date on which it was applied for.

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

- **CJEU 14 Oct. 2020, C-250/19**
  - B.O.L.
  - AG 26 Oct. 2017
  - interpr. of Dir. 2003/86
  - Family Reunification Art. 4+18
  - ref. from Conseil d’Etat, Belgium, 25 Mar. 2019
  - withdrawn because of CJEU 16 Jul. 2020, C-133/19, B.M.M.
  - Must Article 4 be interpreted as meaning that the sponsor’s child is able to enjoy the right to family reunification where he becomes an adult during the court proceedings brought against the decision which refuses to grant him that right and was taken when he was still a minor?
Article 1 must be interpreted as meaning that third country nationals, who temporarily reside and work in different Member States in the service of an employer established in a Member State, may rely on the coordination rules (laid down by Reg. 883/2004 and Reg. 987/2009 and Reg. 883/2004), in order to determine the social security legislation to which they are subject, provided that they are legally staying and working in the territory of the Member States.

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.

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.

Hungary had failed to fulfil its obligations under Art. 11(1)(a) of Dir. 2003/109 by not admitting TCNs who are long-term residents as members of the College of Veterinary Surgeons, which prevents those TCNs ab initio from working as employed veterinarians or exercising that profession on a self-employed basis. Only after the Commission brought this case to the CJEU, Hungary took the necessary measures to fulfil its obligations.

The language requirement abroad is not in compliance with the standstill clauses of the Association Agreement. Although the question was also raised whether this requirement is in compliance with the Family Reunification Directive, the Court did not answer that question. However, paragraph 38 of the judgment could also have implications for its forthcoming answer on the compatibility of the language test with the Family Reunification: “on the assumption that the grounds set out by the German Government, namely the prevention of forced marriages and the promotion of integration, can constitute overriding reasons in the public interest, it remains the case that a national provision such as that at issue in the main proceedings goes beyond what is necessary in order to attain the objective pursued, in so far as the absence of evidence of sufficient linguistic knowledge automatically leads to the dismissal of the application for family reunification, without account being taken of the specific circumstances of each case”. In this context it is relevant that the European Commission has stressed in its Communication on guidance for the application of Dir 2003/86, “that the objective of such measures is to facilitate the integration of family members. Their admissibility depends on whether they serve this purpose and whether they respect the principle of proportionality” (COM (2014)210, § 4.5).
1.3: Regular Migration: Jurisprudence: CJEU Judgments

**CJEU 13 Mar. 2019, C-635/17**

E.

AG 29 Nov. 2018

* interpr. of Dir. 2003/86

Family Reunification Art. 3(2)(c)+11(2)

ref. from Rechtbank Den Haag (zp) Haarlem, NL, 14 Nov. 2017

* The CJEU has jurisdiction, on the basis of Art. 267 TFEU, to interpret Article 11(2) of Council Directive 2003/86 in a situation where a national court is called upon to rule on an application for family reunification lodged by a beneficiary of subsidiary protection, if that provision was made directly and unconditionally applicable to such a situation under national law.

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

**CJEU 27 June 2006, C-540/03**

EP / Council

AG 8 Sep. 2005

* interpr. of Dir. 2003/86

Family Reunification Art. 8

ref. from European Commission, EU, 22 Dec. 2013

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

**CJEU 4 Apr. 2017, C-544/15**

Fahimian

AG 29 Nov. 2016

* interpr. of Dir. 2004/114

Students Art. 6(1)(d)

ref. from Verwaltungsgericht Berlin, Germany, 19 Oct. 2015

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

**CJEU 12 Dec. 2019, C-381/18**

G.S.

AG 11 July 2019

* interpr. of Dir. 2003/86

Family Reunification Art. 6(1)+(2)

ref. from Raad van State, NL, 11 June 2018

* Joined case with C-382/18. Art. 6(1)+2 must be interpreted as not precluding a national practice under which the competent authorities may, on grounds of public policy: (1) reject an application, founded on that directive, for entry and residence, on the basis of a criminal conviction imposed during a previous stay on the territory of the Member State concerned, and (2) withdraw a residence permit founded on that directive or refuse to renew it where a sentence sufficiently severe in comparison with the duration of the stay has been imposed on the applicant, provided that that practice is applicable only if the offence which warranted the criminal conviction at issue is sufficiently serious to establish that it is necessary to rule out residence of that applicant and that those authorities carry out the individual assessment provided for in Art. 17.

**CJEU 8 Nov. 2012, C-40/11**

Ida

AG 15 May 2012

* interpr. of Dir. 2003/109

Long-Term Residents Art. 7(1)

ref. from Verwaltungsgerichtshof Baden-Württemberg, Germany, 28 Jan. 2011

* In order to acquire long-term resident status, the third-country national concerned must lodge an application with the competent authorities of the Member State in which he resides. If this application is voluntarily withdrawn, a residence permit can not be granted.

**CJEU 10 June 2011, C-155/11**

Imran

AG 22 Dec. 2010

* interpr. of Dir. 2003/86

Family Reunification Art. 7(2) - no adj.

ref. from Rechtbank Den Haag (zp) Zwolle, NL, 31 Mar. 2011

* The Commission took the position that Art. 7(2) does not allow MSs to deny a family member as meant in Art. 4(1)(a) of a lawfully residing TCN entry and admission on the sole ground of not having passed a civic integration examination abroad. However, as a residence permit was granted just before the hearing would take place, the Court decided it was not necessary to give a ruling.
ref. from Tribunal Superior de Justicia del Pais Vasco, Spain, 5 Dec. 2014

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

CJEU 21 Apr. 2016, C-302/19
AG 19 Mar. 2015, C-153/14
EU:C:2015:523
EU:C:2015:852

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

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

CJEU 21 Apr. 2016, C-558/14
AG 23 Dec. 2015
EU:C:2015:523
EU:C:2016:878
EU:C:2016:285

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

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

\[\text{Ref. from: Tribunal Superior de Justicia del Pais Vasco, Spain, 5 Dec. 2014}\]

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

* Art. 7(1)(c) must be interpreted as allowing the competent authorities of a MS to refuse an application for family reunification on the basis of a prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of that MS, in the year following the date of submission of that application, that assessment being based on the pattern of the sponsor’s income in the six months preceding that date.
1.3: Regular Migration: Jurisprudence: CJEU Judgments

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

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

- **CJEU 21 June 2017, C-449/16** Martinez Silva
  - EU:C:2017:485
  - Article 12 must be interpreted as precluding national legislation, under which a TCN holding a Single Permit cannot receive a benefit such as the benefit for households having at least three minor children as established by Legge n. 448 (national Italian legislation).

- **CJEU 17 July 2014, C-338/13** Noorzia
  - EU:C:2014:2092
  - ref. from Verwaltungsgerichtshof, Austria, 20 June 2013
  - Art. 4(5) does not preclude a rule of national law requiring that spouses and registered partners must have reached the age of 21 by the date when the application seeking to be considered family members entitled to reunification is lodged.

- **CJEU 6 Dec. 2012, C-356/11** O. & S.
  - EU:C:2012:776
  - ref. from Korkein hallinto-oikeus, Finland, 7 July 2011
  - When examining an application for family reunification, a MS has to do so in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of the directive.

- **CJEU 4 June 2015, C-579/13** P. & S.
  - EU:C:2015:369
  - ref. from Centrale Raad van Beroep, NL, 15 Nov. 2012
  - Article 5(2) and Article 11(1) do not preclude national legislation, such as that at issue in the main proceedings, which imposes on TCNs who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive, which is for the referring court to determine. Whether the long-term resident status was acquired before or after the obligation to pass a civic integration examination was imposed is irrelevant in that respect.

- **CJEU 24 Nov. 2008, C-294/06** Payir
  - EU:C:2008:36
  - ref. from Court of Appeal (England & Wales), UK, 24 Jan. 2008
  - The fact that a Turkish national was granted leave to enter the territory of a MS as an au pair or as a student cannot deprive him of the status of ‘worker’ and prevent him from being regarded as ‘duly registered as belonging to the labour force’ of that MS.

- **CJEU 24 Apr. 2012, C-571/10** Servet Kamberaj
  - EU:C:2012:233
  - ref. from Tribunale di Bolzano, Italy, 7 Dec. 2010
  - EU Law precludes a distinction on the basis of ethnicity or linguistic groups in order to be eligible for housing benefit.
The concept of ‘residence permit which has been formally limited’ as referred to in Art. 3(2)(e), does not include a fixed-period residence permit, granted to a specific group of persons, if the validity of their permit can be extended indefinitely without offering the prospect of permanent residence rights. The referring national court has to ascertain if a formal limitation does not prevent the long-term residence of the third-country national in the Member State concerned. If that is the case, this national cannot be excluded from the personal scope of this Dir.

* The conditions of access to the labour market by Bulgarian students, may not be more restrictive than those set out in the Directive

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### 1.3.2 CJEU pending cases on Regular Migration

<table>
<thead>
<tr>
<th>Case</th>
<th>Ref. Date</th>
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<tbody>
<tr>
<td>* interpr. of Reg. 859/2003</td>
<td></td>
<td>Article 2(1) and (2) of Regulation 859/2003, must be interpreted as not precluding legislation of a Member State which provides that a period of employment — completed pursuant to the legislation of that Member State by an employed worker who was not a national of a Member State during that period but who, when he requests the payment of an old-age pension, falls within the scope of Article 1 of that regulation — is not to be taken into consideration by that Member State for the determination of that worker’s pension rights.</td>
</tr>
<tr>
<td>* interpr. of Dir. 2003/109</td>
<td></td>
<td>Art. 5(1)(a) of LTR Dir. must be interpreted as meaning that the concept of ‘resources’ referred to in that provision does not concern solely the ‘own resources’ of the applicant for long-term resident status, but may also cover the resources made available to that applicant by a third party provided that, in the light of the individual circumstances of the applicant concerned, they are considered to be stable, regular and sufficient.</td>
</tr>
<tr>
<td>CJEU 20 Nov. 2019, C-706/18</td>
<td></td>
<td>X. ref. from Raad voor Vreemdelingenbetwistingen, Belgium, 4 May 2018</td>
</tr>
<tr>
<td>* interpr. of Dir. 2003/86</td>
<td></td>
<td>Long-Term Residents Art. 5(1)(a), ref. from Raad voor Vreemdelingenbetwistingen, Belgium, 14 Nov. 2018</td>
</tr>
<tr>
<td>* Dir. 2003/86 on family reunification must be interpreted as precluding national legislation under which, in the absence of a decision being adopted within six months of the date on which the application for family reunification was lodged, the competent national authorities must automatically issue a residence permit to the applicant, without necessarily having to establish in advance that the latter actually meets the requirements for residence in the host Member State in accordance with EU law.</td>
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<tr>
<td>CJEU 18 Nov. 2010, C-247/09</td>
<td>26 Sep. 2017</td>
<td>Social Security TCN I ref. from Finanzgericht Baden-Württemberg, Germany, 7 July 2009</td>
</tr>
<tr>
<td>* In the case in which a national of a non-member country is lawfully resident in a MS of the EU and works in Switzerland, Reg. 859/2003 does not apply to that person in his MS of residence, in so far as that regulation is not among the Community acts mentioned in section A of Annex II to the EU-Switzerland Agreement which the parties to that agreement undertake to apply.</td>
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<td></td>
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<tr>
<td>* interpr. of Dir. 2003/86</td>
<td></td>
<td>Family Reunification Art. 16(2)(a), ref. from Raad van State, NL, 22 Sep. 2017</td>
</tr>
<tr>
<td>* Art. 16(2)(a) of Dir. 2003/86 (on Family Reunification) must be interpreted as meaning that, where falsified documents were produced for the issuing of residence permits to family members of a third-country national, the fact that those family members did not know of the fraudulent nature of those documents does not preclude the Member State concerned, in application of that provision, from withdrawing those permits. In accordance with Article 17 of that directive, it is however for the competent national authorities to carry out, beforehand, a case-by-case assessment of the situation of those family members, by making a balanced and reasonable assessment of all the interests in play.</td>
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<tr>
<td>* interpr. of Dir. 2003/109</td>
<td></td>
<td>Long-Term Residents Art. 9(1)(a), ref. from Raad van State, NL, 22 Sep. 2017</td>
</tr>
<tr>
<td>* Art. 9(1)(a) of Dir. 2003/109 (on Long-Term Residents) must be interpreted as meaning that, where long-term resident status has been granted to third-country nationals on the basis of falsified documents, the fact that those nationals did not know of the fraudulent nature of those documents does not preclude the Member State concerned, in application of that provision, from withdrawing that status.</td>
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<tr>
<td>CJEU 8 May 2013, C-87/12</td>
<td>20 Feb. 2012</td>
<td>X. ref. from Cour Administrative, Luxembourg, 20 Feb. 2012</td>
</tr>
<tr>
<td>* interpr. of Dir. 2003/86</td>
<td></td>
<td>Family Reunification Art. 3(3), ref. from Cour Administrative, Luxembourg, 20 Feb. 2012</td>
</tr>
<tr>
<td>* Directives 2003/86 and 2004/38 are not applicable to third-country nationals who apply for the right of residence in order to join a family member who is a Union citizen and has never exercised his right of freedom of movement as a Union citizen, always having resided as such in the Member State of which he holds the nationality (see also: CJEU 15 Nov. 2011, C-256/11 Dereci, par. 58 in our other newsletter NEMIS).</td>
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1.3.2 CJEU pending cases on Regular Migration

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<tr>
<td>CJEU C-462/20</td>
<td></td>
<td>Does Art. 11(1)(e) or (f) of Directive 2003/109/EC preclude national legislation such as that under consideration here, which provides for the issue by the government of a Member State to nationals of that Member State or of other Member States of the European Union, but not to third-country nationals who are long-term residents, of a document which confers entitlement to discounts on supplies of goods and services by public and private entities that have entered into an agreement with the government of the Member State in question?</td>
</tr>
</tbody>
</table>
1.3: Regular Migration: Jurisprudence: CJEU pending cases

- **CJEU C-462/20**
  - **ASGI**
  - interp. of Dir. 2009/50
  - Blue Card I Art. 14(1)
  - Does Art. 14(1)(e), in conjunction with Art. 1(z) and Art. 3(1)(j)(i) of Reg. 883/2004, or Art. 14(1)(g) of Dir. 2009/50/EC, preclude national legislation, which provides for the issue by the government of a MS to nationals of that MS or of other MSs EU, but not to third-country nationals holding an ‘EU Blue Card’ within the meaning of Directive 2009/50/EC, of a document which confers entitlement to discounts on supplies of goods and services by public and private entities that have entered into an agreement with the government of the MS in question?

- **CJEU C-462/20**
  - **ASGI**
  - interp. of Dir. 2011/98
  - Single Permit Art. 12(1)(e)
  - Does Art. 12(1)(e) preclude national legislation, which provides for the issue by the government of a MS to nationals of that MS or of other MSs of the EU, but not to third-country nationals as referred to in Art. 31(1)(b) and (c), of a document which confers entitlement to discounts on supplies of goods and services by public and private entities that have entered into an agreement with the government of the MS in question?

- **CJEU C-560/20**
  - **C.R. / L.Hptmn**
  - interp. of Dir. 2003/86
  - Family Reunification Art. 10(3)+7(1)
  - On family reunification of refugees with their family members and medical care

- **CJEU C-624/20**
  - **E.K.**
  - interp. of Dir. 2003/109
  - Long-Term Residents Art. 3(2)(e)
  - ref. from Rechtbank Den Haag (zp) Amsterdam, NL, 24 Nov. 2020
  - At issue is whether a right of residence on the basis of Art. 20 of the TFEU is, by its nature, temporary and therefore precludes the acquisition of a long-term resident’s EU residence permit (Art. 3(2)(e))

- **CJEU C-273/20**
  - **Germany / S.W.**
  - interp. of Dir. 2003/86
  - Family Reunification Art. 10(3)+16(1)(a)
  - On the reunification with a minor refugee.

- **CJEU C-279/20**
  - **Germany / X.C.**
  - interp. of Dir. 2003/86
  - Family Reunification Art. 4+6(1)(b)
  - On the issue of a child of refugee becoming of age during asylum procedure.

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

- **CJEU C-350/20**
  - **INPS / O.D.**
  - interp. of Dir. 2011/98
  - Single Permit Art. 12(1)(e)
  - ref. from Corte Constituzionale, Italy, 30 July 2020
  - Is Art. 12(1)(e) to be interpreted as precluding national legislation which fails to extend the childcare and maternity allowances, which are already granted to foreign nationals holding a long-term resident permit, to foreign nationals who hold a single permit under that directive?

- **CJEU C-94/20**
  - **Oberösterreich**
  - AG 2 Mar. 2021
  - interp. of Dir. 2003/109
  - Long-Term Residents Art. 11
  - ref. from Landesgericht Linz, Austria, 25 Feb. 2020
  - Is the principle of non-discrimination on grounds of ethnic origin in accordance with Art. 21 of the Charter to be interpreted as precluding national legislation such as Par. 6(9) and (11) oöWFG, which allows EU citizens, EEA nationals and family members within the meaning of Directive 2004/38 to receive a social benefit (housing assistance in accordance with the oöWFG) without proof of language proficiency, while requiring third country nationals (including those with long-term resident status within the meaning of Directive 2003/109) to provide particular proof of a basic command of German?

- **CJEU C-930/19**
  - **X. / Belgium**
  - AG 22 Mar. 2021
  - interp. of Dir. 2003/86
  - Family Reunification Art. 15(3)
  - ref. from Conseil du contentieux des étrangers, Belgium, 20 Dec. 2019
  - Does Article 13(2) infringe Articles 20 and 21 of the Charter, in that it provides that divorce, annulment of marriage or termination of a registered partnership does not entail loss of the right of residence of a Union citizen’s family members who are not nationals of a MS where, inter alia, this is warranted by particularly difficult circumstances, such as having been a victim of domestic violence while the marriage or registered partnership was subsisting, but only on the condition that the persons concerned show that they are workers or self-employed persons or that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host MS during their period of residence and have comprehensive sickness insurance cover in the host MS, or that they are members of the family, already constituted in the host Member State, of a person satisfying these requirements, whereas Article 15(3), which makes the same provision for the right of residence to continue, does not make its continuation subject to that condition?

- **CJEU C-432/20**
  - **Z.K. / L.Hptmn**
  - interp. of Dir. 2003/109
  - Long-Term Residents Art. 3(2)(e)
  - Is the residence right ex art 20 TFEU in any way restricted?

*Z.K. / L.Hptmn*
### 1.3.3 ECHR Judgments on Regular Migration and Family Life (Art. 8, 12, 14)

<table>
<thead>
<tr>
<th>Date</th>
<th>Case</th>
<th>Opinion</th>
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<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 Sep. 2011, 8000/08</td>
<td>A.A. v UK</td>
<td>*</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>23 Oct. 2018</td>
<td>Abokar v SWE</td>
<td>*</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>12 Jan. 2017, 31183/13</td>
<td>Abuhmaid v UKR</td>
<td>*</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>29 June 2017, 33809/15</td>
<td>Alam v DEN</td>
<td>*</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>14 Feb. 2012, 26940/10</td>
<td>Antwi v NOR</td>
<td>*</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>23 Oct. 2018, 25593/14</td>
<td>Assem Hassan v DEN</td>
<td>*</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
<tr>
<td>24 May 2016, 38590/10 (GC)</td>
<td>Biao v DEN</td>
<td>*</td>
<td>ECHR</td>
<td>Art. 8</td>
</tr>
</tbody>
</table>

The applicant alleged, in particular, that his deportation to Nigeria would violate his right to respect for his family and private life and would deprive him of the right to education by terminating his university studies in the UK.

The applicant is a Somali national who was born in 1986. He was granted refugee status and a residence permit in Italy in 2013. Also in 2013, he is married in Sweden to A who holds a permanent resident status in Sweden. The couple has two children. The applicant applies under a different name also for asylum in Sweden. That request, however, is denied and Sweden sends him back to Italy.

Subsequently, the applicant applies for a regular residence permit based on family reunification in Sweden. Due to using false IDs the Swedish authorities conclude that the applicant could not make his identity probable. Also, the applicant could not prove that they had been living together prior to his moving to Sweden. As a result his application was denied.

The Court finds that the Swedish authorities have not failed to strike a fair balance between the applicant’s interests, on the one hand, and the State’s interest in effective implementation of immigration control, on the other. The Court further notes that since both the applicant and his wife have been granted residence permits in member States of the European Union (Italy and Sweden), the family can easily travel between Italy and Sweden and stay for longer periods in either of those countries.

The applicant is a Palestinian residing in Ukraine for over twenty years. In 2010 the temporary residence permit expired. Since then, the applicant has applied for asylum unsuccessfully. The Court found that the applicant does not face any real or imminent risk of expulsion from Ukraine since his new application for asylum is still being considered and therefore declared this complaint inadmissible.

The applicant is a Pakistani national who entered DK in 1984 when she was 2 years old. She has two children. In 2013 she is convicted of murder, aggravated robbery and arson to life imprisonment. She was also expelled from DK with a life-long entry ban. The Court states that it has no reason to call into question the conclusions reached by the domestic courts on the basis of the balancing exercise which they carried out. Those conclusions were neither arbitrary nor manifestly unreasonable. The Court is thus satisfied that the interference with the applicant’s private and family life was supported by relevant and sufficient reasons and that her expulsion would not be disproportionate given all the circumstances of the case.

A case similar to Nunez (ECHR 28 June 2011) except that the judgment is not unanimous (2 dissenting opinions). Mr Antwi from Ghana migrates in 1988 to Germany on a false Portuguese passport. In Germany he meets his future wife (also from Ghana) who lives in Norway and is naturalised to Norwegian nationality. Mr Antwi moves to Norway to live with her and their first child is born in 2001 in Norway. In 2003 the parents marry in Ghana and subsequently it is discovered that Mr Antwi travels on a false passport. In Norway Mr Antwi goes to trial and is expelled to Ghana with a five year re-entry ban. The Court does not find that the Norwegian authorities acted arbitrarily or otherwise transgressed the margin of appreciation which should be accorded to it in this area when seeking to strike a fair balance between its public interest in ensuring effective immigration control, on the one hand, and the applicants’ need that the first applicant be able to remain in Norway, on the other hand.

The case concerned the expulsion from Denmark of a Jordanian national, who has six children of Danish nationality. He was deported in 2014 following several convictions for drugs offences. The Court was not convinced that the best interests of the applicant’s six children had been so adversely affected by his deportation that they should outweigh the other criteria to be taken into account, such as the prevention of disorder or crime.

Initially, the Second Section of the Court decided on 25 March 2014 that there was no violation of Art. 8 in the Danish case where the Danish statutory amendment requires that the spouses’ aggregate ties with Denmark has to be stronger than the spouses’ aggregate ties with another country. However, after referral, the Grand Chamber reviewed that decision and decided otherwise. The Court ruled that the the so-called attachment requirement (the requirement of both spouses having stronger ties with Denmark than to any other country) is unjustified and constitutes indirect discrimination and therefore a violation of Art 8 and 14 ECHR.
The applicant did not enjoy the minimum degree of protection against arbitrariness inherent in the concept of lawfulness under the Convention. This means that the interference with his right to respect for family and private life was not “in accordance with the law”, as required by Art. 8(2).


Expulsion of one of the spouses is a serious obstacle to family life for the remaining spouse and children in the context of article 8. In this case the ECtHR establishes guiding principles in order to examine whether such a measure is necessary in a democratic society. Relevant criteria are:

- the nature and seriousness of the offence committed by the applicant;
- the length of the applicant’s stay in the country from which he is going to be expelled;
- the time elapsed since the offence was committed as well as the applicant’s conduct in that period;
- the nationalities of the various persons concerned;
- the applicant’s family situation, such as the length of the marriage;
- and other factors expressing the effectiveness of a couple’s family life;
- whether the spouse knew about the offence at the time when he or she entered into a family relationship;
- and whether there are children in the marriage, and if so, their age.

Not least, the Court will also consider the seriousness of the difficulties which the spouse is likely to encounter in the country of origin, though the mere fact that a person might face certain difficulties in accompanying her or his spouse cannot in itself exclude an expulsion.

At the age of 3 and 4, the Butt children enter Norway with their mother from Pakistan in 1989. They receive a residence permit on humanitarian grounds. After a couple of years the mother returns with the children to Pakistan without knowledge of the Norwegian authorities. After a couple years the mother travels - again - back to Norway to continue living there. The children are 10 an 11 years old. When the father of the children wants to live also in Norway, a new investigation shows that the family has lived both in Norway and in Pakistan and their residence permit is withdrawn. However, the expulsion of the children is not carried out. Years later, their deportation is discussed again. The mother has already died and the adult children still do not have any contact with their father in Pakistan. Their ties with Pakistan are so weak and reversely with Norway so strong that their expulsion would entail a violation of art. 8.

A Brazilian in French Guiana was removed to Brazil within 50 minutes after an appeal had been lodged against his removal order. In this case the Court considers that the haste with which the removal order was executed had the effect of rendering the available remedies ineffective in practice and therefore inaccessible. The brevity of that time lapse excludes any possibility that the court seriously examined the circumstances and legal arguments in favour of or against a violation of Article 8 of the Convention in the event of the removal order being enforced. Thus, while States are afforded some discretion as to the manner in which they conform to their obligations under Article 13 of the Convention, that discretion must not result, as in the present case, in an applicant being denied access in practice to the minimum procedural safeguards needed to protect him against arbitrary expulsion. Concerning the danger of overloading the courts and adversely affecting the proper administration of justice in French Guiana, the Court reiterates that, as with Article 6 of the Convention, Article 13 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet its requirements.

The ECtHR ruled that art. 6(1) also means that a national judge has an obligation to decide on a question which requests for a preliminary ruling on the interpretation of Union law. Either the national judge explicitly argues why such a request is pointless (or already answered) or the national judge requests the CJEU for a preliminary ruling on the issue. In this case the Italian Supreme Court did not answer the question at all.
The applicant is an Egyptian national, who applied for asylum in Switzerland leaving his son behind in Egypt. While his asylum application was rejected, the father obtained a residence permit and after having married a Swiss national also Swiss nationality. The couple have a daughter and eventually divorced. The father’s first request for family reunification with his son was accepted in 2003 but eventually his son returned to Egypt. The father’s second request for family reunification in 2006 was rejected. According to the Swiss Federal Supreme Court, the applicant’s son had closer ties to Egypt where he had been cared for by his mother and grandmother. Moreover, the father should have applied for family reunification immediately after arriving in Switzerland.

The Court finds that it would be unreasonable to ask the father to relocate to Egypt to live together with his son there, as this would entail a separation from the father’s daughter living in Switzerland. The son had reached the age of 15 when the request for family reunification was lodged and there were no other major threats to his best interests in the country of origin.

Based on these facts, the Court finds that no clear conclusion can be drawn whether or not the applicants’ interest in a family reunification outweighed the public interest of the respondent State in controlling the entry of foreigners into its territory. Nevertheless, the Court notes that the domestic court have merely examined the best interest of the child in a brief manner and put forward a rather summary reasoning. As such the child’s best interests have not sufficiently been placed at the centre of its balancing exercise. The Court therefore finds a violation of Art. 8.

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.

The applicant has lived in Switzerland for 23 years with a residence permit, the applicant decides to go back to Bosnia. Soon after, he gets seriously ill and wants to get back to his wife who stayed in Switzerland. However, this (family reunification) request is denied mainly because of the fact that he has been on welfare and had been fined (a total of 350 euros) and convicted for several offences (a total of 17 days imprisonment). The court rules that this rejection, given the circumstances of the case, is disproportionate and a violation of article 8.

After living in Switzerland for 23 years with a residence permit, the applicant decides to go back to Bosnia. Soon after, he gets seriously ill and wants to get back to his wife who stayed in Switzerland. However, this (family reunification) request is denied mainly because of the fact that he has been on welfare and had been fined (a total of 350 euros) and convicted for several offences (a total of 17 days imprisonment). The court rules that this rejection, given the circumstances of the case, is disproportionate and a violation of Article 8.

The applicant is a stateless person who came to Croatia at the age of seventeen and has lived and worked there for almost forty years. The applicant has filed several requests for Croatian nationality and permanent residence status; these, however, were all denied. The Court does consider that, in the particular circumstances of the applicant’s case, the respondent State has not complied with its positive obligation to provide an effective and accessible procedure or a combination of procedures enabling the applicant to have the issues of his further stay and status in Croatia determined with due regard to his private-life interests.

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

**ECtHR 15 May 2018, 32248/12**  
Ibrogimov v RUS  
ECtHR: Art. 8+14

* The applicant was born in Uzbekistan. After the death of this grandfather he wanted to move to his family (father, mother, brother and sister) who already lived in Russia and held Russian nationality. After a mandatory blood test he was found HIV-positive and therefore declared 'undesirable'. The exclusion order was upheld by a District court and in appeal. The ECtR held unanimously that the applicant has been a victim of discrimination on account of his health.

**ECtHR 3 Oct. 2014, 12738/10**  
Jeunesse v NL  
ECtHR: Art. 8

* The central issue in this case is whether, bearing in mind the margin of appreciation afforded to States in immigration matters, a fair balance has been struck between the competing interests at stake, namely the personal interests of the applicant, her husband and their children in maintaining their family life in the Netherlands on the one hand and, on the other, the public order interests of the respondent Government in controlling immigration. In view of the particular circumstances of the case, it is questionable whether general immigration policy considerations of themselves can be regarded as sufficient justification for refusing the applicant residence in the Netherlands.

**ECtHR 7 July 2020, 62130/15**  
K.A. v CH  
ECtHR: Art. 8

* The applicant national of Kosovo who did not reside legally in Switzerland, married in 1999 a Bangladeshi woman with a residence permit in Switzerland. As a result K.A. received a residence permit on the basis of family life. The couple had a son in 2002 which was in foster care since 2010. In 2010 the applicant was convicted of a drug-related offence to 26 months imprisonment of which 20 were suspended. Until 2012 another 18 sentences were ordered. As a result his residence permit was not renewed in 2012 and he was ordered to leave the country. In 2015 his appeals were dismissed and he was refused entry for a period of seven years.

The ECtHR ruled that, although both his wife and son were ill, he did not participate in their care on a daily basis, and he had lived with his wife only intermittently. The Swiss authorities had carried out an adequate and convincing analysis of the relevant facts and considerations, and a thorough weighing up of the competing interests involved. Thus, the contested measures of expulsion and an entry ban of seven years, were considered proportionate.
### New ECtHR Decisions

<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Applicant</th>
<th>Decision</th>
<th>Relevant Article(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Levakovic v DEN</td>
<td>23 Oct. 2018, 7841/14</td>
<td>no violation of ECHR: Art. 8</td>
<td>This case concerns a decision to expel the applicant to Croatia, with which he had no ties apart from nationality, after he was tried and convicted for crimes committed in Denmark, where he had lived most of his life. The Court found that the domestic courts had made a thorough assessment of his personal circumstances, balancing the competing interests and taking Strasbourg case-law into account. The domestic courts had been aware that very strong reasons were necessary to justify the expulsion of a migrant who has been settled for a long time, but had found that his crimes were serious enough to warrant such a measure.</td>
<td>ECHR: Art. 8</td>
</tr>
<tr>
<td>M.M. v CH</td>
<td>8 Dec. 2020, 59006/18</td>
<td>no violation of ECHR: Art. 8</td>
<td>The applicant, a Spanish national who was born in Switzerland in 1980 was deported from Switzerland to Spain and banned for five years, the minimum term under the Criminal Code, following his conviction and suspended twelve-month prison sentence for committing indecent assault on a minor and taking drugs. The ECtHR rules that the Swiss Courts had sound reasons justifying deportation.</td>
<td>ECHR: Art. 8</td>
</tr>
<tr>
<td>Maslov v AUT</td>
<td>22 Mar. 2007, 1638/03</td>
<td>violation of ECHR: Art. 8</td>
<td>In addition to the criteria set out in Boulif (54273/00) and Üner (46410/99) the ECtHR considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.</td>
<td>ECHR: Art. 8</td>
</tr>
<tr>
<td>Mayeka v BEL</td>
<td>12 Oct. 2006, 13178/03</td>
<td>no violation of ECHR: Art. 8</td>
<td>Mrs Mayeka, a Congolese national, arrived in Canada in September 2000, where she was granted refugee status in July 2001 and obtained indefinite leave to remain in March 2003. After being granted asylum, she asked her brother, a Dutch national living in the Netherlands, to collect her daughter Tabitha, who was then five years old, from the Democratic Republic of the Congo at the airport of Brussels and to look after her until she was able to join her mother in Canada. Shortly after arriving at Brussels airport on 18 August 2002, Tabitha was detained because she did not have the necessary documents to enter Belgium. An application for asylum that had been lodged on behalf of Tabitha was declared inadmissible by the Belgian Aliens Office. A request to place Tabitha in the care of foster parents was not answered. Although the Brussels Court of First instance held on 16 October 2002 that Tabitha’s detention was unjust and ordered her immediate release, the Belgian authorities deported the five year old child to Congo on a plane. The Court considered that owing to her very young age, the fact that she was an illegal alien in a foreign land, that she was unaccompanied by her family from whom she had become separated and that she had been left to her own devices, Tabitha was in an extremely vulnerable situation. The Court ruled that the measures taken by the Belgian authorities were far from adequate and that Belgium had violated its positive obligations to take restrictive measures and preventive action. Since there was no risk of Tabitha’s seeking to evade the supervision of the Belgian authorities, her detention in a closed centre for adults served no purpose and other measures more conducive to the higher interest of the child guaranteed by Article 3 of the Convention on the Rights of the Child, could have been taken. Since Tabitha was an unaccompanied alien minor, Belgium was under an obligation to facilitate the reunion of the family. However, Belgium had failed to comply with these obligations and had disproportionately interfered with the applicants’ rights to respect for their family life.</td>
<td>ECHR: Art. 8</td>
</tr>
<tr>
<td>Mugenzi v FRA</td>
<td>10 July 2014, 52701/09</td>
<td>violation of ECHR: Art. 8</td>
<td>The Court noted the particular difficulties the applicant encountered in their applications, namely the excessive delays and lack of reasons or explanations given throughout the process, despite the fact that he had already been through traumatic experiences.</td>
<td>ECHR: Art. 8</td>
</tr>
<tr>
<td>Munir v DEN</td>
<td>12 Jan. 2021, 56803/18</td>
<td>no violation of ECHR: Art. 8</td>
<td>Similar to ECtHR 12 Jun 2021, 56803/18, Kahn v. DK. The applicant is an Iraqi national who entered Denmark in 1999 at the age of four. He was granted permanent residence. In 2011, he was convicted of two violent offences. In 2014 he was again convicted of a violent offence. In 2015 he was convicted of being in possession of cocaine and in 2016 he was convicted of particularly aggressive and violent offences while in prison. He was sentenced to six months imprisonment with an expulsion order for six years. He had not finished secondary school nor completed an apprenticeship as a mechanic. The ECtHR concludes that the interference with the applicant's private life was supported by relevant and sufficient reasons. It is satisfied that “very serious reasons” were adequately adduced by the national authorities when assessing his case, and that his expulsion was not disproportionate given all the circumstances of the case. It notes that all levels of court, including the Supreme Court, explicitly and thoroughly assessed whether the expulsion order could be considered to be contrary to Denmark’s international obligations. The Court points out in this connection that, in accordance with the principle of subsidiarity, although opinions may differ on the outcome of a judgment, “where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court’s case-law, the Court would require strong reasons to substitute its view for that of the domestic courts”</td>
<td>ECHR: Art. 8</td>
</tr>
</tbody>
</table>
NEMIS 2021/1

1.3: Regular Migration: Jurisprudence: ECtHR Judgments

- ECtHR 14 Sep. 2017, 41215/14
  - Ndzi v UK
  - CE: ECHR:2017:0914JUD004121514
  - No violation of Art. 8
  - This case concerns a Nigerian national’s complaint about his deportation from the UK. Mr Ndzi, the applicant, arrived with his mother in the UK aged two. He had an escalating history of offending from the age of 12, with periods spent in institutions for young offenders. He was released in March 2011, aged 24, and served with a deportation order. All his appeals were unsuccessful. The Court pointed out in particular that there would have to be strong reasons for it to carry out a fresh assessment of this balancing exercise, especially where independent and impartial domestic courts had carefully examined the facts of the case, applying the relevant human rights standards consistently with the European Convention and its case-law.

- ECtHR 6 July 2010, 41615/07
  - Neuling v CH
  - CE: ECHR:2010:0706JUD004161507
  - No violation of Art. 8
  - The child’s best interests, from a personal development perspective, will depend on a variety of individual circumstances, in particular his age and level of maturity, the presence or absence of his parents and his environment and experiences. For that reason, those best interests must be assessed in each individual case. To that end they enjoy a certain margin of appreciation, which remains subject, however, to a European supervision whereby the Court reviews under the Convention the decisions that those authorities have taken in the exercise of that power. In this case the Court notes that the child has Swiss nationality and that he arrived in the country in June 2005 at the age of two. He has been living there continuously ever since. He now goes to school in Switzerland and speaks French. Even though he is at an age where he still has a certain capacity for adaptation, the fact of being uprooted again from his habitual environment would probably have serious consequences for him, especially if he returns on his own, as indicated in the medical reports. His return to Israel cannot therefore be regarded as beneficial.

- ECtHR 28 June 2011, 55597/09
  - Nunez v NOR
  - CE: ECHR:2011:0628JUD005559709
  - No violation of 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 14 Dec. 2010, 34848/07
  - O’Donoghue v UK
  - CE: ECHR:2010:1214JUD003484807
  - No violation of Art. 12-14
  - The UK Certificate of Approval required foreigners, except those wishing to marry in the Church of England, to pay large fees to obtain the permission from the Home Office to marry. The Court found that the conditions violated the right to marry (Article 12 of the Convention), that it was discriminatory in its application (Article 14 of the Convention) and that it was discriminatory on the ground of religion (Articles 9 and 14 of the Convention).

- ECtHR 14 June 2011, 38058/09
  - Osman v DEN
  - CE: ECHR:2011:0614JUD003805809
  - No violation of 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 the 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 28 July 2020, 25402/14
  - Porras v NL
  - CE: ECHR:2020:0728JUD002540214
  - No violation of Art. 8
  - The applicant was born in Indonesia and travelled at the age of 4 to the Netherlands where he was raised by a Dutch family with 4 other children, close friends of his presumed Dutch father. Only at the age of 13 it became clear that the applicant might not have Dutch nationality and without a legal status in the Netherlands. Still being a minor, he was convicted of several indecent assaults, criminal offences. In that period he also applied for a temporary residence permit on the basis of family reunion with the Dutch family he grew up with. This application was rejected. Although a District Court ruled in favour of the applicant the Council of State, the highest administrative judge, quashed that decision and upheld the original decision to refuse a residence permit. The ECtHR declared, having regard in particular to the nature, seriousness and number of the offences committed by the applicant, including at a time when he knew that his residence status in the Netherlands was precarious, that the domestic authorities did not attribute excessive weight to the general interest in the prevention of disorder or crime and have not overstepped the margin of appreciation afforded to them in the circumstances of the present case.

- ECtHR 21 June 2016, 76136/12
  - Ramadan v MAL
  - CE: ECHR:2016:0621JUD007613612
  - No violation of Art. 8
  - Mr Ramadan, originally an Egyptian citizen, acquired Maltese citizenship after marrying a Maltese national. It was revoked by the Minister of Justice and Internal Affairs following a decision by a domestic court to annul the marriage on the ground that Mr Ramadan’s only reason to marry had been to remain in Malta and acquire Maltese citizenship. Meanwhile, the applicant remarried a Russian national. The Court found that the decision depriving him of his citizenship, which had had a clear legal basis under the relevant national law and had been accompanied by hearings and remedies consistent with procedural fairness, had not been arbitrary.
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

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

  

* ECtHR 1 Dec. 2016, 77063/11 **Salem v DEN** CE:ECHR:2016:1201JUD007706311
  * no violation of
  * The applicant is a stateless Palestinian from Lebanon. In 1994, having married a Danish woman he is granted a residence permit, and in 2000 he is also granted asylum. In June 2010 the applicant - by then father of 8 children - is convicted of drug trafficking and dealing, coercion by violence, blackmail, theft, and the possession of weapons. He is sentenced to five years imprisonment, which decision is upheld by the Supreme Court in 2011 adding a life-long ban on his return. Appeals against his expulsion are refused and at the end of 2014 he is deported to Lebanon.
  * The ECtHR rules that although the applicant has 8 children in Denmark, he has an extensive and serious criminal record. Also, he is not well-integrated into Danish society (still being illiterate and not being able to speak Danish).

  

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

  

* ECtHR 16 Apr. 2013, 12020/09 **Udeh v CH** CE:ECHR:2013:0416JUD001202009
  * violation of
  * In 2001 a Nigerian national, was sentenced to four months’ imprisonment for possession of a small quantity of cocaine. In 2003 he married a Swiss national who had just given birth to their twin daughters. By virtue of his marriage, he was granted a residence permit in Switzerland. In 2006 he was sentenced to forty-two months’ imprisonment in Germany for a drug-trafficking offence. The Swiss Office of Migration refused to renew his residence permit, stating that his criminal conviction and his family’s dependence on welfare benefits were grounds for his expulsion. An appeal was dismissed. In 2009 he was informed that he had to leave Switzerland. In 2011 he was made the subject of an order prohibiting him from entering Switzerland until 2020. Although he is divorced in the meantime and custody of the children has been awarded to the mother, he has been given contact rights. The court rules that deportation and exclusion orders would prevent the immigrant with two criminal convictions from seeing his minor children: deportation would constitute a violation of article 8.

  

  * violation of
  * The expulsion of an alien raises a problem within the context of art. 8 ECHR if that alien has a family whom he has to leave behind. In Boutilif (54273/00) the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. In this judgment the Court adds two additional criteria:
    – the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
    – the solidarity of social, cultural and family ties with the host country and with the country of destination.

  

* ECtHR 24 Nov. 2020, 80343/17 **Usaowe v UK** CE:ECHR:2020:1124JUD008034317
  * violation of
  * The applicant, a Nigerian national, was deported after a conviction for offences relating to falsification of immigration documents. The applicant appealed unsuccessfully. His Nigerian partner was convicted of the same offence and, along with their three minor children, was initially subject to a deportation order as well. Unlike the applicant, their appeals were allowed, in light of the best interests of the children, and they remained in the United Kingdom. However, the seriousness of the particular offence(s) committed by the applicant were not of a nature or degree capable of outweighing the best interests of the children so as to justify his expulsion. The applicant’s deportation had therefore been disproportionate to the legitimate aim pursued.

  

**New**

* ECtHR 22 Dec. 2020, 43936/18 **Usmanov v RUS** CE:ECHR:2020:1222JUD004393618
  * violation of
  * The applicant, who was born in Tajikistan, settled in Russia with his wife and children and obtained Russian citizenship. Ten years later, after discovering that the applicant had omitted information about his siblings when applying for citizenship, the authorities annulled his citizenship and passports (an “internal” and “travel” passport), leaving him without identity documents. They also imposed an entry ban, preventing him from entering Russia, and administratively removed him from the territory. The applicant appealed unsuccessfully. The ECtHR ruled that the annulment of citizenship for omitting information about siblings after a period of ten years was disproportionate and arbitrary.
The applicant, Anna Ustinova, is a national of Ukraine who was born in 1984. She moved to live in Russia at the beginning of 2000. In March 2013 Ms Ustinova was denied re-entry to Russia after a visit to Ukraine with her two children. This denial was based on a decision issued by the Consumer Protection Authority (CPA) in June 2012, that, during her pregnancy in 2012, Ms Ustinova had tested positive for HIV and therefore her presence in Russia constituted a threat to public health.

This decision was challenged but upheld by a district court, a Regional Court and the Supreme Court. Only the Constitutional Court declared this incompatible with the Russian Constitution. Although Ms Ustinova has since been able to re-enter Russia via a border crossing with no controls, her name has not yet been definitively deleted from the list of undesirable individuals maintained by the Border Control Service.

Mr Yurdaer, a Turkish national, was born in Germany (1973) and moved to Denmark when he was 5 years old. He married in Denmark (1995) and got three children. These children are also Turkish nationals. The applicant was convicted twice of drug offences and sentenced to 8 years imprisonment. By then, he had stayed for almost 28 years lawfully in Denmark. Subsequently, the Danish immigration service advised for expulsion and ultimately the High Court upheld this expulsion order, which was implemented in 2017 and combined with a permanent ban on re-entry. The ECtHR recognised that the Danish Courts carefully balanced the competing interests and explicitly took into account the criteria set out in the Court’s case-law, including the applicant’s family situation. Thus, the Court found that the interference was supported by relevant and sufficient reasons, and was proportionate.

In this case an application for Russian nationality of a Kazakh national married to a Russian national was rejected based on information from the Secret Service implicating that the applicant posed a treat to Russia’s national security.

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

CtRC 27 Sep., 2018, CRC/C/79/D/12/2017 C.E. v BEL

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

**New**

CtRC 28 Sep., 2020, CRC/C/85/D/56/2018 V.A. v CH

The author and her husband are journalists and owners of the Ilkxeber Info newspaper. In March 2017, they fled Azerbaijan with their sons E.A. and U.A., as the situation facing opposition journalists in Azerbaijan was becoming increasingly critical and the life of the author’s husband was seriously in danger. The family applied for asylum in Kreuzlingen, Switzerland. In the absence of interpreters, their communication with officials was almost non-existent. Their requests to be allowed to cook for themselves, to be transferred to an apartment and to obtain medical treatment for the author’s husband for a shoulder injury were not taken seriously. The “precarious and degrading” accommodation conditions and the linguistic isolation had repercussions on the mental and physical well-being of the family members. The author’s husband became depressed. After 7 months the family reluctantly agreed to withdraw its asylum claim and to be voluntarily repatriated. Since the author’s father-in-law had bribed the Azerbaijani police to ensure that his son was not incarcerated, they believed they would be safe and left Switzerland. However, the author’s husband was arrested, and the author was beaten and threatened. The author and her two children returned to Switzerland using a smuggler which offered them Italian visa. Back in Switzerland the Swiss authorities stated that the new asylum request had to be handled by Italy on the basis of Dublin III. Although a request was made to the Swiss authorities to take charge of her asylum request, this was denied. An effort to transfer the mother and children to Italy was aborted due to heavy panic attacks of the mother.

The Committee is of the view that the facts of which it has been apprised amount to a violation of articles 3 and 12 of the Convention. Consequently, the State party is under an obligation to reconsider the author’s request to apply article 17 of the Dublin III Regulation in order to process E.A. and U.A.’s asylum application as a matter of urgency, ensuring that the best interests of the children are a primary consideration and that E.A. and U.A. are heard. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, the Committee recommends that the State party ensure that children are systematically heard in the context of asylum procedures and that national protocols applicable to the return of children are in line with the Convention.
The author, who is unmarried, is from the Fujian Province of China. She escaped China after the Chinese authorities performed a forced abortion on her. Her father was killed in the incident during the scuffle with the police and her mother died later from the shock, owing to a heart condition. In March 2012, the author arrived in Denmark using a false passport. In October 2012, she was detained by the police for staying in Denmark without valid travel documents. In November 2012, she applied for asylum. On 7 March 2014, she gave birth to her first child, X.C. The father of the child, also an asylum seeker in Denmark, does not appear on the child’s birth certificate. On 9 November 2015, her second child, L.G., was born, allegedly while the author was in administrative detention. The author contends that she initially sought asylum in Denmark on the grounds that she feared being forced to have an abortion if she were returned to China and got pregnant again. On 7 September 2015, X.C. and her mother were denied asylum by the Danish Immigration Service. She appealed to the Refugees Appeals Board, which upheld the the decision of the Danish Immigration Service. The Committee takes note of a 2019 (US) report, according to which, although under both civil law and marriage law the children of single women are entitled to the same rights as those born to married parents, in practice children born to single mothers or unmarried couples are considered outside of the policy and are subject to the social compensation fee and the denial of legal documents, such as birth documents and the hukou. The Committee also takes note of a 2018 report of the UK Home Office, in which it is stated that many children born to single or unmarried parents had been denied a household registration document, preventing them from accessing public services, medical treatment and education. The Committee therefore concludes that the State party failed to duly consider the best interests of the child when assessing the alleged risk that the author’s children would face of not being registered in the hukou if deported to China and to take proper safeguards to ensure the child’s well-being upon return, in violation of Art. 3.
## 2 Borders and Visas

### 2.1 Borders and Visas: Adopted Measures

#### Regulation 2016/1624

*Creating a Borders and Coast Guard Agency*

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

#### Regulation 562/2006

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

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

#### Regulation 2016/399

*On the rules governing the movement of persons across borders. Codification of all previous amendments of the (Schengen) Borders Code*

- OJ 2016 L 77/1
- This Regulation replaces Reg. 562/2006 Borders Code I
  - and by Reg. 458/2017 (OJ 2017 L 74): on the reinforcement of checks against relevant dBases and ext. borders
  - and by Reg. 2225/2017 (OJ 2017 L 327/1): on the use of the EES

#### Decision 574/2007

*Establishing European External Borders Fund*

- OJ 2007 L 144
- This Regulation is repealed by Reg. 515/2004 (Borders Fund II)
2.1: Borders and Visas: Adopted Measures

**Regulation 515/2014**  
Internal Security Fund  
* OJ 2014 L 150/143  
* This Regulation repeals Decision No 574/2007 (Borders Fund I)

**Regulation 2017/2226**  
Establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders  
* OJ 2017 L 327/20  
Impl. date 29 Dec. 2017

**Regulation 2018/1240**  
Establishing a European Travel Information and Authorisation System  
* OJ 2018 L 236/1  

**Regulation 2018/1726**  
Establishing a European Information and Authorisation System (ETIAS)  
* OJ 2018 L 295/99  
* Replacing Reg. 1077/2011 (VIS Management Agency)  
* amd by Reg. 817/2019 (OJ 2019 L 135/27)

**Regulation 1052/2013**  
Establishing the European Border Surveillance System (Eurosur)  
* OJ 2013 L 295/11  
* This Regulation is repealed by Reg. 2019/1896 (Frontex II).  
* CJEU judgments  
  Spain / EP & Council  
  8 Sep. 2015 C-44/14 See further: § 2.3

**Regulation 2007/2004**  
Establishing External Borders Agency  
* OJ 2004 L 349/1  
* This Regulation is replaced by Reg. 2016/1624 Border and Coast Guard Agency.  
* In 2019 replaced by Regulation 2019/1896 (Frontex II).  
* amd by Reg. 1077/2011 (VIS Management Agency)  

**Regulation 2019/1896**  
Establishing a European Border Surveillance System (Eurosur)  
* OJ 2019 L 295/1  
* This Regulation repeals Reg. 1052/2013 (Eurosur) and Reg. 2016/1624 (Border and Coast Guard Agency).

**Regulation 1931/2006**  
Local Border traffic within enlarged EU at external borders of EU  
* OJ 2006 L 405/1  
* amd by Cor. 1931/2006 (OJ 2006 L 029): Corrigendum  
* CJEU judgments  
  Shomodi  
  21 Mar. 2013 C-254/11 Art. 2(a)+3(3) See further: § 2.3

**Regulation 656/2014**  
Rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex  
* OJ 2014 L 189/93  
Impl. date 17 July 2014

**Directive 2004/82**  
On the obligation of carriers to communicate passenger data  
* OJ 2004 L 261/24  
Impl. date 5 Sep. 2006  
UK opt in
## 2.1: Borders and Visas: Adopted Measures

**Passports**

*Regulation 2252/2004*

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

- *OJ 2004 L 385/1* implicated date 18 Jan. 2005

**CJEU judgments**

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

See further: § 2.3

**Recommendation 761/2005**

On uniform short-stay visas for researchers from third countries

- *OJ 2005 L 289/23*

**Convention**

*Schengen Acquis*

Implementing the Schengen Agreement of 14 June 1985

- *OJ 2000 L 239*

**CJEU judgments**

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

See further: § 2.3

**Regulation 1053/2013**

*Schengen Evaluation*

- *OJ 2013 L 295/27*

**Regulation 1987/2006**

*Establishing 2nd generation Schengen Information System*

- Replacing:
  - Reg. 378/2004 (OJ 2004 L 64)
  - Reg. 2424/2001 (OJ 2001 L 328/4)
- Ending validity of:

**Council Decision 2016/268**

*SIS II Access*

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

- *OJ 2016 C 268/1*

**Council Decision 2016/1209**

*SIS II Manual*

On the SIRENE Manual and other implementing measures for SIS II

- *OJ 2016 L 203/35*

**Regulation 2018/1860**

*SIS II usage on returns*

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

- *OJ 2018 L 312/1*

**Council Decision 2017/818**

*Temporary Internal Border Control*

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

- *OJ 2017 L 122/73*

**Decision 565/2014**

*Transit Bulgaria a.o. countries*

Transit through Bulgaria, Croatia, Cyprus and Romania

- *OJ 2014 L 157/23*

**Regulation 693/2003**

*Transit Documents*

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

- *OJ 2003 L 99/8*
2.1: Borders and Visas: Adopted Measures

Regulation 694/2003

Transit Documents Format

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

* OJ 2003 L 99/15

Decision 896/2006

Transit Switzerland

Transit through Switzerland and Liechtenstein

* OJ 2006 L 167/8


CJEU judgments

CJEU 2 Apr. 2009 C-139/08 Kqiku

Art. 1+2

See further: § 2.3

Decision 1105/2011

Travel Documents

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

* OJ 2011 L 287/9

impl. date 25 Nov. 2011

Regulation 767/2008

VIS

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

* OJ 2008 L 218/60

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

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

Decision 512/2004

VIS (start)

Establishing Visa Information System (VIS)

* OJ 2004 L 213/5

CJEU pending cases

CJEU 24 Nov. 2020 C-225/19 R.N.N.S. / BuZa

Art. 32

CJEU 29 July 2019 C-680/17 Vethanayagam

Art. 8(4)+32(3)

CJEU 13 Dec. 2017 C-403/16 El Hassani

Art. 32

CJEU 7 Mar. 2017 C-638/16 PPU X. & X.

Art. 25(1)(a)

CJEU 4 Sep. 2014 C-575/12 Air Baltic

Art. 24(1)+34

CJEU 19 Dec. 2013 C-84/12 Koushkaki

Art. 23(4)+32(1)

CJEU 10 Apr. 2012 C-83/12 Vo

Art. 21+34

CJEU pending cases

CJEU (pending) C-121/20 V.G.

Art. 22

See further: § 2.3

Regulation 1683/95

Visa Format

Uniform format for visas

* OJ 1995 L 164/1

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

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

and by Reg 517/2013 (OJ 2013 L158/1): accession of Croatia

and by Reg 610/2013 (OJ 2013 L 182/1)

and by Reg 1370/2017 (OJ 2017 L 198/24)

Regulation 539/2001

Visa List I

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

* OJ 2001 L 81/1

This Regulation is replaced by Regulation 2018/1806 Visa List II
2.1: Borders and Visas: Adopted Measures

**Regulation 2018/1806**
Listing the third countries whose nationals must be in possession of visas

* OJ 2018 L 303/39

This Regulation replaces Regulation 539/2001 Visa List I and by Reg 592/2019 (OJ 2019 L 103/1): Waive visas for UK in the context of Brexit

**Regulation 333/2002**
Uniform format for forms for affixing the visa

* OJ 2002 L 53/4

UK opt in

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

Art. 3 Prohibition of Torture, Degrading Treatment

impl. date 31 Aug. 1954

**ECtHR Judgments**

* New ➕ ECtHR 11 Mar. 2021 6865/19 Feilazo Art. 3+5(1)

* New ➕ ECtHR 2 Mar. 2021 36037/17 R.R. a.o. Art. 3+5(1)

* ECtHR 25 June 2020 9347/14 Moustahi Art. 3

* ECtHR 4 Dec. 2018 43639/12 Khanh Art. 3

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

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

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

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

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

See further: § 2.3

**2.2 Borders and Visas: Proposed Measures**

**Regulation amending Regulation**
On temporary reintroduction of checks at internal borders

* COM (2017) 571, 27 Sep 2017

* amending Borders Code (Reg. 2016/399)

Council and EP could not agree before EP elections

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

* COM (2016) 277, 4 May 2016

Visa List amendment

* Discussions within Council

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

* COM (2016) 279, 4 May 2016

Visa List amendment

**Regulation**
New funding programme for borders and visas

* COM (2018) 473, 12 June 2018

Council and EP agreed

**Regulation**
ETIAS access to law enforcement databases

* COM (2019) 3, 7 Jan 2019

Council position agreed. no EP position yet

**Regulation**
ETIAS access to immigration databases

* COM (2019) 4, 7 Jan 2019

Council position agreed. no EP position yet

**Regulation**
Amending Reg. on Visa Information System

* COM (2018) 302, 16 May 2018

Council and EP could not agree before EP elections
2.3 Borders and Visas: Jurisprudence: CJEU Judgments

2.3.1 CJEU Judgments on Borders and Visas

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EU:C:2017:483
CJEU 21 June 2017, C-9/16
**A.**

ref. from Amtsgericht Kehl, Germany, 7 Jan. 2016

* interpr. of Reg. 562/2006
Borders Code I Art. 20+21

Art. 20 and 21 must be interpreted as not precluding national legislation, which confers on the police authorities of a MS the power to check the identity of any person, within an area of 30 kilometres from that MS’s land border with other Schengen States, with a view to preventing or terminating unlawful entry into or residence in the territory of that Member State or preventing certain criminal offences which undermine the security of the border, irrespective of the behaviour of the person concerned and of the existence of specific circumstances, unless that legislation lays down the necessary framework for that power ensuring that the practical exercise of it cannot have an effect equivalent to that of border checks, which is for the referring court to verify.

Also, Art. 20 and 21 must be interpreted as not precluding national legislation, which permits the police authorities of the MS to carry out, on board trains and on the premises of the railways of that MS, identity or border crossing document checks on any person, and briefly to stop and question any person for that purpose, if those checks are based on knowledge of the situation or border police experience, provided that the exercise of those checks is subject under national law to detailed rules and limitations determining the intensity, frequency and selectivity of the checks, which is for the referring court to verify.

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EU:C:2012:508
CJEU 19 July 2012, C-278/12 (PPU)
Adil

ref. from Conseil d’Etat, France, 22 Dec. 2010

* interpr. of Reg. 562/2006
Borders Code I Art. 20+21


permits - measures

The ref. from Conseil d’Etat, France, 22 Dec. 2010

The ref. from Amtsgericht Kehl, Germany, 7 Jan. 2016

permits - measures

The ref. from Administrat AG 21 May 2014

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EU:C:2014:2155
CJEU 19 July 2012, C-278/12 (PPU)
Air Baltic

ref. from Raad van State, NL, 4 June 2012

* interpr. of Reg. 562/2006
Borders Code I Art. 5

The ref. from Raad van State, NL, 4 June 2012

The ref. from Administrat AG 21 May 2014

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EU:C:2014:2155
CJEU 4 Sep. 2014, C-575/12
Air Baltic

AG 21 May 2014

ref. from Administratīvā apgabaltiesa, Latvia, 7 Dec. 2012

* interpr. of Reg. 562/2006
Borders Code I Art. 5

The ref. from Administratīvā apgabaltiesa, Latvia, 7 Dec. 2012

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EU:C:2014:2155
CJEU 4 Sep. 2014, C-575/12
Air Baltic

AG 21 May 2014

ref. from Administratīvā apgabaltiesa, Latvia, 7 Dec. 2012

* interpr. of Reg. 810/2009
Visa Code Art. 24(1)+34

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EU:C:2014:2155
CJEU 4 Sep. 2014, C-575/12
Air Baltic

AG 21 May 2014

ref. from Administratīvā apgabaltiesa, Latvia, 7 Dec. 2012

* The ref. from Administratīvā apgabaltiesa, Latvia, 7 Dec. 2012

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EU:C:2012:348
CJEU 14 June 2012, C-606/10
ANAFA

AG 29 Nov. 2011

ref. from Conseil d’Etat, France, 22 Dec. 2010

* interpr. of Reg. 562/2006
Borders Code I Art. 13+5(4)(a)

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EU:C:2012:348
CJEU 14 June 2012, C-606/10
ANAFA

AG 29 Nov. 2011

ref. from Conseil d’Etat, France, 22 Dec. 2010

* annulment of national legislation on visa

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EU:C:2019:220
CJEU 19 Mar. 2019, C-444/17
Arib

AG 17 Oct. 2018

ref. from Cour de Cassation, France, 21 July 2017

* interpr. of Reg. 2016/399
Borders Code II Art. 32

Art. 2(2)(a) of Directive 2008/115 read in conjunction with Art. 32 of Regulation 2016/399 must be interpreted as not applying to the situation of an illegally staying third-country national who was apprehended in the immediate vicinity of an internal border of a Member State, even where that Member State has reintroduced border control at that border, pursuant to Article 25 of the regulation, on account of a serious threat to public policy or internal security in that Member State.
Art. 13 should be interpreted as precluding an air carrier (relying on the refusal of the authorities of the MS of destination to grant a TCN access to that State) to refuse boarding without this refusal of entry is laid down in a reasoned written decision of which the third-country national has been notified in advance.

Art. 2(f) should be interpreted as meaning that a refusal by an air carrier to board a passenger due to the alleged inadequacy of his travel documents does not automatically deprive the passenger of the protection provided for in that Regulation. Indeed, when that passenger disputes that denied boarding, it is for the competent judicial authority to assess, taking into account the circumstances of the case, whether that refusal is based on reasonable grounds under that provision.

Art. 15 is to be interpreted as precluding a clause applicable to passengers in the pre-published general terms and conditions for the operation or provision of services of an air carrier that limit or exclude the liability of that air carrier when a passenger is refused access to a flight based on the alleged inadequacy of his travel documents, thereby depriving that passenger of any right to compensation.

The Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications and border checks and surveillance is upheld.

The Commission had requested an annulment of an amendment of the visa list by Regulation 1289/2013. The Court dismisses the action.

Art 25(1) must be interpreted as meaning that it is open to the Contracting State which intends to issue a return decision accompanied by a ban on entry and stay in the Schengen Area to a TCN who holds a valid residence permit issued by another Contracting State to initiate the consultation procedure laid down in that provision even before the issue of the return decision. That procedure must, in any event, be initiated as soon as such a decision has been issued.

Art 25(2) must be interpreted as meaning that it does not preclude the return decision accompanied by an entry ban issued by a Contracting State to a TCN who is the holder of a valid residence permit issued by another Contracting State being enforced even though the consultation procedure laid down in that provision is ongoing, if that TCN is regarded by the Contracting State issuing the alert as representing a threat to public order or national security.

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

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<td>* The concept of crossing an external border of the Union is defined differently in the ‘Cash Regulation’ (1889/2005) compared to the Borders Code.</td>
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<tr>
<td>* Article 32(3) must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal.</td>
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<tr>
<td>* annulment of measure supplementing Borders Code</td>
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<tr>
<td>* 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.</td>
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<tr>
<td>interpr. of Reg. 2016/399</td>
<td>Borders Code II Art. 22+23</td>
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<tr>
<td>* Artts. 22 and 23 must be interpreted as not opposing national legislation which confers on the police authorities of the MS concerned the power to check the identity of any person in an area of 30 kilometres from the land border of that MS with other Schengen States, with the aim of preventing or stopping illegal entry or stay on the territory of that MS or of preventing certain offences which jeopardise border security, regardless of the behaviour of the person concerned and the existence of special circumstances, provided that this competence appears to be framed by sufficiently detailed details and limitations as to the intensity, frequency and selectivity of the checks carried out, thus ensuring that the practical exercise of the said competence cannot have an effect equivalent to that of border checks, which however, is for the referring court to verify.</td>
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<td>* joined case with C-348/08</td>
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<td>* Articles 6b and 23 must be interpreted as meaning that where a TCN is unlawfully present on the territory of a MS because he or she does not fulfil, or no longer fulfils, the conditions of duration of stay applicable there, that MS is not obliged to adopt a decision to expel that person.</td>
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<tr>
<th>CJEU 17 Nov. 2011, C-430/10</th>
<th>Gaydarov</th>
<th>EU:C:2011:749</th>
<th>AG 17 Nov. 2011</th>
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<tr>
<td>interpr. of Reg. 562/2006</td>
<td>Borders Code I</td>
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<td>ref. from Administrativen sad Sofia-grad, Bulgaria, 2 Sep. 2010</td>
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<tr>
<td>* 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.</td>
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<td>interpr. of Reg. 2016/399</td>
<td>Borders Code II Art. 11</td>
<td>EU:C:2019:882</td>
<td>ref. from Raad van State, NL, 24 May 2018</td>
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<td>* AG: 17 Oct. 2019</td>
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<tr>
<td>* Article 11(1) must be interpreted as meaning that, when a seaman who is a TCN signs on with a ship in long-term mooring in a sea port of a State forming part of the Schengen area, for the purpose of working on board, before leaving that port on that ship, an exit stamp must, where provided for by that code, be affixed to that seaman’s travel documents not at the time of his signing on, but when the master of that ship notifies the competent national authorities of the ship’s imminent departure.</td>
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Fraudulent use of passports. Although taking and storing of fingerprints in passports constitutes an infringement of the rights to respect for private life and the protection of personal data, such measures are nonetheless justified for the purpose of preventing any fraudulent use of passports.
2.3: Borders and Visas: Jurisprudence: CJEU Judgments

**CJEU 21 Mar. 2013, C-254/11**

Shomodi

AG 6 Dec. 2012

EU:C:2012:773

* interp. of Reg. 1931/2006

Local Border traffic Art. 2(a)+3(3)

ref. from Supreme Court, Hungary, 25 May 2011

* The holder of a local border traffic permit must be able to move freely within the border area for a period of three months if his stay is uninterrupted and to have a new right to a three-month stay each time that his stay is interrupted. There is such an interruption of stay upon the crossing of the border irrespective of the frequency of such crossings, even if they occur several times daily.

**CJEU 8 Sep. 2015, C-44/14**

Spain / EP & Council

AG 13 May 2015

EU:C:2015:554

* non-transp. of Reg. 1052/2013

EUROSUR

ref. from Government, Spain, 27 Jan. 2014

* Limited forms of cooperation do not constitute a form of taking part within the meaning of Article 4 of the Schengen Protocol. Consequently, Article 19 of the Eurosur Regulation cannot be regarded as giving the Member States the option of concluding agreements which allow Ireland or the United Kingdom to take part in the provisions in force of the Schengen acquis in the area of the crossing of the external borders.

**CJEU 13 Dec. 2018, C-412/17**

Touring Tours a.o.

AG 6 Sep. 2018

EU:C:2018:1005

* interp. of Reg. 562/2006

Borders Code I Art. 22+23

ref. from Bundesverwaltungsgericht, Germany, 10 July 2017

* Joined Cases C-412/17 and C-474/17

EU:C:2014:296

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

**CJEU 2 Oct. 2014, C-101/13**

U.

AG 30 Apr. 2014

EU:C:2014:2249

* interp. of Reg. 2252/2004

Passports

ref. from Verwaltungsgerichtshof Baden-Württemberg, Germany, 28 Feb. 2013

* About the recording and spelling of names, surnames and family names in passports. Where a MS whose law provides that a person’s name comprises his forenames and surname chooses nevertheless to include (also) the birth name of the passport holder in the machine readable personal data page of the passport, that State is required to state clearly in the caption of those fields that the birth name is entered there.

**CJEU 29 July 2019, C-680/17**

Vethanayagam

AG 28 Mar. 2019

EU:C:2019:278

* interp. of Reg. 810/2009

Visa Code Art. 8(4)+32(3)

ref. from Rechtbank Den Haag (zp) Utrecht, NL, 5 Dec. 2017

* Art. 32(3) of the Visa Code, must be interpreted as not allowing the sponsor to bring an appeal in his own name against a decision refusing a visa.

Art. 8(4)(d) and Art. 32(3), must be interpreted as meaning that, when there is a bilateral representation arrangement providing that the consular authorities of the representing MS are entitled to take decisions refusing visas, it is for the competent authorities of that MS to decide on appeals brought against a decision refusing a visa. A combined interpretation of Art. 8(4)(d) and Art. 32(3) according to which an appeal against a decision refusing a visa must be conducted against the representing State, is compatible with the fundamental right to effective judicial protection.

**CJEU 10 Apr. 2012, C-83/12**

Vo

AG 26 Mar. 2012

EU:C:2012:202

* interp. of Reg. 810/2009

Visa Code Art. 21+34

ref. from Bundesgerichtshof, Germany, 17 Feb. 2012

* First substantive decision on Visa Code. The Court rules that the Visa Code does not preclude that national legislation of one MS penalises migration-related identity fraud with genuine visa issued by another MS.

**CJEU 16 Apr. 2015, C-446/12**

Willems a.o.

AG 26 Mar. 2012

EU:C:2015:238

* interp. of Reg. 2252/2004

Passports Art. 4(3)

ref. from Raad van State, NL, 3 Oct. 2012

* Article 4(3) does not require the Member States to guarantee, in their legislation, that biometric data collected and stored in accordance with that regulation will not be collected, processed and used for purposes other than the issue of the passport or travel document, since that is not a matter which falls within the scope of that regulation.
2.3.3 ECtHR Judgments on Borders and Visas and Degrading Treatment (Art. 3, 13)

2.3.2 CJEU pending cases on Borders and Visas

- **CJEU 7 Mar. 2017, C-638/16 PPU**
  - X. & X.
  - AG 7 Feb. 2017
  - interpr. of Reg. 810/2009
  - Visa Code Art. 25(1)(a)
  - ref. from Conseil du contentieux des étrangers, Belgium, 12 Dec. 2016
  - Contrary to the opinion of the AG, the Court ruled that Article 1 of the Visa Code, must be interpreted as meaning that an application for a visa with limited territorial validity made on humanitarian grounds by a TCN, on the basis of Article 25 of the code, to the representation of the MS of destination that is within the territory of a third country, with a view to lodging, immediately upon his or her arrival in that MS, an application for international protection and, thereafter, to staying in that MS for more than 90 days in a 180-day period, does not fall within the scope of that code but, as EU law currently stands, solely within that of national law.

- **CJEU 17 Jan. 2013, C-23/12**
  - Zakaria
  - interpr. of Reg. 562/2006
  - Borders Code I Art. 13(3)
  - MSs are obliged to establish a means of obtaining redress only against decisions to refuse entry.

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

- **ECtHR 23 July 2013, 55352/12**
  - Aden Ahmed v MAL
  - interpr. of Reg. 810/2009
  - ECHR: Art. 25+21
  - CE:ECHR:2013:0723JUD005535212
  - The case concerns a migrant who had entered Malta in an irregular manner by boat. The ECtHR found a violation of art. 5(1), mainly due to the failure of the Maltese authorities to pursue deportation or to do so with due diligence, and of art. 5(4) due to absence of an effective and speedy domestic remedy to challenge the lawfulness of their detention.
  - Also, the ECtHR requested the Maltese authorities (Art. 46) to establish a mechanism allowing a determination of the lawfulness of immigration detention within a reasonable time-limit. In this case the Court for the first time found Malta in violation of art. 3 because of the immigration detention conditions. Those conditions in which the applicant had been living for 14½ months were, taken as a whole, amounted to degrading treatment.

- **ECtHR 19 Dec. 2013, 53608/11**
  - B.M. v GRE
  - interpr. of Reg. 810/2009
  - ECHR: Art. 3+13
  - CE:ECHR:2013:1219JUD005360811
  - The applicant was an Iranian journalist who alleged to have been arrested and tortured due to his involvement in protests against the government. After his arrival in Greece a decision had been taken to return him to Turkey, and he had been held in custody in a police station and in various detention centres. His application for asylum was first not registered by the Greek authorities, and later they dismissed the application.
  - The application mainly concerned the conditions of detention, in particular overcrowding, unhygienic conditions, lack of external contact, and lack of access to telephone, translators and any kind of information. Referring to its previous case law, the ECtHR held these conditions to be in violation of Art. 3. As there had been no effective domestic remedy against that situation, Art. 13 in combination with art. 3 had also been violated.
2.3: Borders and Visas: Jurisprudence: ECHR Judgments

New

ECtHR 11 Mar. 2021, 6865/19 Fellaz v MAL
* violation of ECHR: Art. 3+5(1)
* The applicant, a Nigerian national, was placed in immigration detention pending deportation. His detention lasted for around fourteen months. He alleged that he had not had the opportunity to correspond with the Court without interference by the prison authorities, and had been denied access to materials intended to substantiate his application. The ECtHR was particularly struck by the fact that the applicant had been held alone in a container for nearly seventy-five days without access to natural light or air, and that during the first forty days he had had no opportunity to exercise. Furthermore, during that period, and particularly the first forty days, the applicant had been subjected to a de facto isolation. The applicant had been put in isolation for his own protection, upon his request. However, the stringency and duration of the measure put in place, namely, that for at least forty days the applicant had had barely any contact with anyone, seemed excessive in the circumstances. No measures appeared to have been taken by the authorities to ensure that the applicant’s physical and psychological condition had allowed him to remain in isolation, nor did it appear that, in the specific circumstances of the case, any other alternatives to that isolation had been envisaged.

Furthermore, following that period, the applicant had been moved to other living quarters where new arrivals (of asylum seekers) had been kept in Covid-19 quarantine. There was no indication that the applicant had been in need of such quarantine – particularly after an isolation period which had lasted for nearly seven weeks. Thus, placing him, for several weeks, with other persons who could have posed a risk to his health, in the absence of any relevant consideration to that effect, could not be considered as a measure complying with basic sanitary requirements.

Unanimously the ECtHR held a violation of Art. 3 on the conditions of detention. Also, unanimously the ECtHR held a violation of Art. 3(1) as the grounds for the applicant’s detention had not remained valid for the whole period.

ECtHR 21 Feb. 2012, 27765/09 Hiri v ITA
* violation of ECHR: Art. 3
* 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 circumstances of aliens who were not physically present on the territory of the State, but in the high seas. Italy was also held responsible for exposing the aliens to a treatment in violation with Article 3 ECHR, as it transferred them to Libya ‘in full knowledge of the facts’ and circumstances in Libya. The Court also concluded that they had had no effective remedy in Italy against the alleged violations (Art. 13).

ECtHR 4 Dec. 2018, 43639/12 Khanh v CYP
* violation of ECHR: Art. 3
* The applicant Vietnamese woman had been held in pre-release detention at a police station for a period of approximately five months. The Court restated that police stations and similar establishments are designed to accommodate people for very short duration, and the CPT as well as the national Ombudsman had deemed the police station where she was held as unsuitable for accommodating people for longer periods. As the Government had failed to submit information capable of refuting the applicant’s allegations about overcrowding, the Court concluded that the conditions of detention had amounted to degrading treatment prohibited by art. 3.

ECtHR 25 June 2020, 9347/14 Moustahli v FRA
* violation of ECHR: Art. 3
* Two children, 3 and 5 years old in 2013, left the Comoros on a makeshift boat heading for Mayotte, where their father was living, as a legal resident. Having been intercepted at sea, their names were added to a removal order issued against one of the adults in the group. Subsequently, they were placed in administrative detention in a police station. Although their father came to meet them there he was not allowed to see them and the children were placed with the ‘stranger’ adult on a ferry bound for the Comoros.

An hour later, the father lodged an application for urgent proceedings in the Administrative Court. While noting that the decision in question was “manifestly unlawful”, the judge rejected the application for lack of urgency. The urgent applications judge of the Conseil d’État dismissed an appeal, finding that it was up to the father to follow the appropriate procedure in order to apply for family reunification. In 2014 the two children were granted a long-stay visa in this context.

New

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

ECtHR 28 Feb. 2012, 11463/09 Samaras v GRE
* 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 20 Dec. 2016, 19356/07 Shioshivili a.o. v RUS
* violation of ECHR: Art. 3+13
* Applicant with Georgian nationality, is expelled from Russia with her four children after living there for 8 years and being eight months pregnant. While leaving Russia they are taken off a train and forced to walk to the border. A few weeks later she gives birth to a dead child. Violation (also) of article 2 and 4 Protocol nr. 4.
### 3 Irregular Migration and Border Detention

#### 3.1 Irregular Migration: Adopted Measures

<table>
<thead>
<tr>
<th><strong>Directive 2001/51</strong></th>
</tr>
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<tbody>
<tr>
<td>Carrier sanctions</td>
</tr>
<tr>
<td>* Obligation of carriers to return TCNs when entry is refused</td>
</tr>
<tr>
<td>* OJ 2001 L 187/45</td>
</tr>
<tr>
<td>impl. date 11 Feb. 2003</td>
</tr>
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<td>UK opt in</td>
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<tr>
<th><strong>Decision 267/2005</strong></th>
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<tbody>
<tr>
<td>Early Warning System</td>
</tr>
<tr>
<td>* Establishing a secure web-based Information and Coordination Network for MS’ Migration Management Services</td>
</tr>
<tr>
<td>* OJ 2005 L 83/48</td>
</tr>
<tr>
<td>* Repealed by Reg. 2016/1624 (Borders and Coast Guard).</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th><strong>Directive 2009/52</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Employers Sanctions</td>
</tr>
<tr>
<td>* Minimum standards on sanctions and measures against employers of illegally staying TCNs</td>
</tr>
<tr>
<td>* OJ 2009 L 168/24</td>
</tr>
<tr>
<td>impl. date 20 July 2011</td>
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<tr>
<th><strong>Directive 2003/110</strong></th>
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<tbody>
<tr>
<td>Expulsion by Air</td>
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<tr>
<td>* Assistance with transit for expulsion by air</td>
</tr>
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<td>* OJ 2003 L 321/26</td>
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<th><strong>Decision 191/2004</strong></th>
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<tr>
<td>Expulsion Costs</td>
</tr>
<tr>
<td>* On the compensation of the financial imbalances resulting from the mutual recognition of decisions on the expulsion of TCNs</td>
</tr>
<tr>
<td>* OJ 2004 L 60/55</td>
</tr>
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<td>UK opt in</td>
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<th><strong>Directive 2001/40</strong></th>
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<tr>
<td>Expulsion Decisions</td>
</tr>
<tr>
<td>* Mutual recognition of expulsion decisions of TCNs</td>
</tr>
<tr>
<td>* OJ 2001 L 149/34</td>
</tr>
<tr>
<td>impl. date 2 Oct. 2002</td>
</tr>
<tr>
<td>UK opt in</td>
</tr>
<tr>
<td><strong>CJEU judgments</strong></td>
</tr>
<tr>
<td>* C-448/19 11 June 2020</td>
</tr>
<tr>
<td>* C-456/14 3 Sep. 2015</td>
</tr>
<tr>
<td><strong>W.T.</strong> in full</td>
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<tr>
<td><strong>Orrego Arias</strong> Art. 3(1)(a)</td>
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<tr>
<th><strong>Decision 573/2004</strong></th>
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<tr>
<td>Expulsion Joint Flights</td>
</tr>
<tr>
<td>* On the organisation of joint flights for removals from the territory of two or more MSs, of TCNs</td>
</tr>
<tr>
<td>* OJ 2004 L 261/28</td>
</tr>
<tr>
<td>UK opt in</td>
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<tr>
<th><strong>Conclusion</strong></th>
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<tr>
<td>Transit via land for expulsion</td>
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<tr>
<td>* adopted 22 Dec. 2003 by Council</td>
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<td>UK opt in</td>
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<th><strong>Regulation 2019/1240</strong></th>
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<tr>
<td>Immigration Liaison Network</td>
</tr>
<tr>
<td>* On the creation of a European network of immigration liaison officers</td>
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<tr>
<td>* OJ 2019 L 198/88</td>
</tr>
<tr>
<td>* Replaces by Reg 377/2004 (Liaison Officers)</td>
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<tr>
<td>UK opt in</td>
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<th><strong>Recommendation 2017/432</strong></th>
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<tbody>
<tr>
<td>Return Dir. Implementation</td>
</tr>
<tr>
<td>* Making returns more effective when implementing the Returns Directive</td>
</tr>
<tr>
<td>* OJ 2017 L 66/15</td>
</tr>
</tbody>
</table>
### 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 judgments*

- New CJEU 11 Mar. 2021 C-112/20 M.A. Art. 5+13
- New CJEU 24 Feb. 2021 C-673/19 M. a.o. Art. 3+6+15
- New CJEU 14 Jan. 2021 C-441/19 T.O. Art. 6+8+10
- New CJEU 17 Dec. 2020 C-808/18 Com. / Hungary Art. 5+6+12+13
- CJEU 8 Oct. 2020 C-568/19 M.O. / Toledo Art. 6(1)+8(1)
- CJEU 30 Sep. 2020 C-233/19 B. / CPAS Art. 16(1)
- CJEU 30 Sep. 2020 C-402/19 L.M. / CPAS Art. 5+13
- CJEU 17 Sep. 2020 C-806/18 J.Z. Art. 11(2)
- CJEU 2 July 2020 C-18/19 W.M. Art. 16(1)
- CJEU 19 Mar. 2019 C-444/17 Arib Art. 2(2)(a)
- CJEU 26 Sep. 2018 C-175/17 X. Art. 13
- CJEU 19 June 2018 C-181/16 Gnandi Art. 5
- CJEU 8 May 2018 C-82/16 K.A. a.o. Art. 5+11+13
- CJEU 14 Sep. 2017 C-184/16 Petrea Art. 6(1)
- CJEU 26 July 2017 C-225/16 Ouhrami Art. 11(2)
- CJEU 7 June 2016 C-47/15 Affum Art. 2(1)+3(2)
- CJEU 1 Oct. 2015 C-290/14 Celaj Art. 16(1)
- CJEU 11 June 2015 C-554/13 Zh. & O. Art. 7(4)
- CJEU 23 Apr. 2015 C-38/14 Zaizoune Art. 4(2)+6(1)
- CJEU 18 Dec. 2014 C-562/13 Abdida Art. 5+13
- CJEU 11 Dec. 2014 C-249/13 Boudjila Art. 6
- CJEU 5 Nov. 2014 C-166/13 Mukarubega Art. 3+7
- CJEU 17 July 2014 C-473/13 Bero & Bouzalmate Art. 16(1)
- CJEU 17 July 2014 C-474/13 Pham Art. 16(1)
- CJEU 5 June 2014 C-146/14 (PPU) Mahdi Art. 15
- CJEU 19 Sep. 2013 C-297/12 Filev & Osmani Art. 2(2)(b)+11
- CJEU 10 Sep. 2013 C-383/13 (PPU) G. & R. Art. 15(2)+6
- CJEU 30 May 2013 C-534/11 Arslan Art. 2(1)
- CJEU 21 Mar. 2013 C-522/11 Mbaye Art. 2(2)(b)+7(4)
- CJEU 6 Dec. 2012 C-430/11 Sagog Art. 2+15+16
- CJEU 6 Dec. 2011 C-329/11 Achughbabian Art. 15+16
- CJEU 28 Apr. 2011 C-61/11 (PPU) El Dridi Art. 15+16
- CJEU 30 Nov. 2009 C-357/09 (PPU) Kadzoev Art. 15(4), (5) + (6)

*CJEU pending cases*

- New CJEU (pending) C-924/19 F.M.S. & F.N.Z. Art. 13
- New CJEU AG 10 Feb. 2021 C-546/19 B.Z. Art. 2(2)(b)+3(6)
- New CJEU (pending) C-39/21 (PPU) X. / Stscr Art. 3(9)+15(2)(b)
- New CJEU (pending) C-69/21 X. / Stscr Art. 5+6+9

See further: § 3.3

### Decision 575/2007

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

* OJ 2007 L 144 impl. date 6 Aug. 2014

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

### Directive 2011/36

**Trafficking Persons**

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

* OJ 2011 L 101/1 impl. date 6 Apr. 2013

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

### Directive 2004/81

**Trafficking Victims**

Residence permits for TCNs who are victims of trafficking

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

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**CJEU pending cases**

- New CJEU (pending) C-924/19 F.M.S. & F.N.Z. Art. 13
- New CJEU AG 10 Feb. 2021 C-546/19 B.Z. Art. 2(2)(b)+3(6)
- New CJEU (pending) C-39/21 (PPU) X. / Stscr Art. 3(9)+15(2)(b)
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**Trafficking Victims**

Residence permits for TCNs who are victims of trafficking

* OJ 2004 L 261/19 impl. date 6 Aug. 2004
# 3.1 Irregular Migration: Adopted Measures

## Directive 2002/90

**Facilitation of unauthorised entry, transit and residence**

<table>
<thead>
<tr>
<th>Directive</th>
<th>Article</th>
<th>Implement date</th>
<th>UK opt in</th>
</tr>
</thead>
<tbody>
<tr>
<td>OJ 2002 L 328</td>
<td></td>
<td>impl. date 5 Dec. 2002</td>
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</tbody>
</table>

**CJEU judgments**

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

See further: § 3.3

## CRC

**UN Convention on the Rights of the Child**

- Art. 8 Identity
- Art. 20 Guardian

<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Reference</th>
<th>Article</th>
</tr>
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<tbody>
<tr>
<td>* 1577 UNTS 27531</td>
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<tr>
<td>* Optional Communications Protocol that allows for individual complaints entered into force 14-4-2014</td>
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</tbody>
</table>

**CtRC views**

- CtRC | 28 Sep. 2020 | C/85/D/26/2017 | M.B.S. | Art. 8+20 |
- CtRC | 28 Sep. 2020 | C/85/D/40/2018 | S.M.A. | Art. 8+20 |
- CtRC | 7 Feb. 2020 | C/83/D/24/2017 | M.A.B. | Art. 8+20 |
- CtRC | 31 May 2019 | C/81/D/16/2017 | A.L. | Art. 8 |
- CtRC | 31 May 2019 | C/81/D/22/2017 | J.A.B. | Art. 8+20 |

See further: § 3.3

## ECHR

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

- Art. 5 Detention
- Prot. 4 Art. 4 Collective Expulsion

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<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Reference</th>
<th>Article</th>
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<tr>
<td>* ETS 005</td>
<td></td>
<td>impl. date 31 Aug. 1954</td>
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</tbody>
</table>

**ECtHR Judgments**

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

See further: § 3.3

## 3.2 Irregular Migration: Proposed Measures

**Directive**

**Amending Return Directive**

* COM (2018) 634, 12 Sep 2018
  Council agreed position in June 2019; no EP position yet
3.3 Irregular Migration: Jurisprudence: CJEU judgments

3.3.1 CJEU judgments on Irregular Migration

**Case Law Sorted in Alphabetical Order**

### CJEU 30 Sep. 2020, C-402/19

**L.M. / CPAS**

*interp. of Dir. 2008/115*

Return Directive Art. 5+13

Ref. from Cour du Travail de Liege, Belgium, 17 May 2019

The Directive precludes national legislation permitting the imprisonment of an illegally staying third-country national who has not (yet) been subject to the coercive measures provided for in the Directive and has not, if detained with a view to be returned, reached the expiry of the maximum duration of that detention. The Directive does not preclude penal sanctions being imposed after full application of the return procedure.

### CJEU 18 Dec. 2014, C-562/13

**Abdida**

*interp. of Dir. 2008/115*

Return Directive Art. 5+13

Ref. from Cour du Travail de Bruxelles, Belgium, 31 Oct. 2013

### CJEU 6 Dec. 2011, C-329/11

**Achughbabian**

*interp. of Dir. 2008/115*

Return Directive

Ref. from Court d’Appel de Paris, France, 29 June 2011

### CJEU 7 June 2016, C-47/15

**Affum**

*interp. of Dir. 2008/115*

Return Directive Art. 2(1)+3(2)

Ref. from Cour de Cassation, France, 6 Feb. 2015

### CJEU 19 Mar. 2019, C-444/17

**Arib**

*interp. of Dir. 2008/115*

Return Directive Art. 2(2)(a)

Ref. from Cour de Cassation, France, 21 July 2017

### CJEU 30 May 2013, C-534/11

**Arslan**

*interp. of Dir. 2008/115*

Return Directive Art. 2(1)

Ref. from Nejvyssší správní soud, Czech, 20 Oct. 2011

The Directive does not apply during the period from the making of the (asylum) application to the adoption of the decision at first instance on that application or, as the case may be, until the outcome of any action brought against that decision is known.
**CJEU 30 Sep. 2020, C-233/19**
AG 28 May 2020
* interpr. of Dir. 2008/115
  Return Directive Art. 16(1)
  ref. from Cour du Travail de Liege, Belgium, 18 Mar. 2019
* Art. 5 and 13, read in the light of Art. 19(2) and 47 of the Charter, must be interpreted as meaning that a national court, hearing a dispute on social assistance, the outcome of which is linked to the possible suspension of the effects of a return decision taken in respect of a TCN suffering from a serious illness, must hold that an action for annulment and suspension of that decision leads to automatic suspension of that decision, even though suspension of that decision does not result from the application of national legislation, where:
  (1) that action contains arguments seeking to establish that the enforcement of that decision would expose that third-country national to a serious risk of grave and irreversible deterioration in his or her state of health, which does not appear to be manifestly unfounded, and that
  (2) that legislation does not provide for any other remedy, governed by precise, clear and foreseeable rules, which automatically entail the suspension of such a decision.

**CJEU 17 July 2014, C-473/13**
AG 30 Apr. 2014
* interpr. of Dir. 2008/115
  Return Directive Art. 16(1)
  ref. from Bundesgerichtshof, Germany, 3 Sep. 2013
* joined case with C-514/13
* As a rule, a MS is required to detain illegally staying TCNs for the purpose of removal in a specialised detention facility of that State even if the MS has a federal structure and the federated state competent to decide upon and carry out such detention under national law does not have such a detention facility.

**CJEU 11 Dec. 2014, C-249/13**
AG 25 June 2014
* interpr. of Dir. 2008/115
  Return Directive Art. 6
  ref. from Tribunal administratif de Pau, France, 6 May 2013
* The right to be heard in all proceedings (in particular, Art 6), must be interpreted as extending to the right of an illegally staying third-country national to express, before the adoption of a return decision concerning him, his point of view on the legality of his stay, on the possible application of Art 5 and 6(2) to (5) and on the detailed arrangements for his return.

**CJEU 1 Oct. 2015, C-290/14**
AG 28 Apr. 2015
* interpr. of Dir. 2008/115
  Return Directive
  ref. from Tribunale di Firenze, Italy, 12 June 2014
* The Directive must be interpreted as not, in principle, precluding legislation of a MS which provides for the imposition of a prison sentence on an illegally staying third-country national who, after having been returned to his country of origin in the context of an earlier return procedure, unlawfully re-enters the territory of that State in breach of an entry ban, at least in cases of re-entry in breach of an entry ban.

**CJEU 17 Dec. 2020, C-808/18**
AG 25 June 2020
* non-transp. of Dir. 2008/115
  Return Directive Art. 5+6+12+13
  ref. from European Commission, EU, 21 Dec. 2018
* Hungary has failed to fulfil its obligations:
  * in providing that applications for international protection from third-country nationals or stateless persons who, arriving from Serbia, wish to access, in its territory, the international protection procedure, may be made only in the transit zones of Röszke (Hungary) and Tompa (Hungary), while adopting a consistent and generalised administrative practice drastically limiting the number of applicants authorised to enter those transit zones daily;
  * in establishing a system of systematic detention of applicants for international protection in the transit zones of Röszke and Tompa, without observing the guarantees provided for in Art. 24(3) and Art. 43 of Dir. 2013/32 and Arts 8, 9 and 11 of Dir. 2013/33;
  * in allowing the removal of all third-country nationals staying illegally in its territory, with the exception of those of them who are suspected of having committed a criminal offence, without observing the procedures and safeguards laid down in Art. 5, 6(1), 12(1)+13(1) of Dir. 2008/115;
  * in making the exercise by applicants for international protection who fall within the scope of Art. 46(5) of Dir. 2013/32 of their right to remain in its territory subject to conditions contrary to EU law.

**CJEU 28 Apr. 2011, C-61/11 (PPL)**
AG 28 Apr. 2011
* interpr. of Dir. 2008/115
  Return Directive Art. 15+16
  ref. from Corte D'Appello Di Trento, Italy, 10 Feb. 2011
* The Return Directive precludes that a Member State has legislation which provides for a sentence of imprisonment to be imposed on an illegally staying TCN on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.
### 3.3: Irregular Migration: Jurisprudence: CJEU Judgments

#### CJEU 19 Sep. 2013, C-297/12
**Filev & Osmani**
- **Case Ref.** EU:C:2013:569
- **Decision:** CJEU 30 Nov. 2009, C-357/09 (PPU)
- **Ref. from** Administrativen sad Sofia-grad, Bulgaria, 7 Sep. 2009
- **Ref. from** Amtsgericht Laufen, Germany, 18 June 2012
- **Decision:** National court must interpret the law in the light of the case law of the CJEU since the Member State is bound by the Court’s jurisdiction.
- **Provision:** Article 18 and Article 60 of the TFEU and Articles 2(2) and 7 of the Charter of Fundamental Rights of the EU.
- **Relevant Case:** C-357/09 (PPU).
- **Analysis:** If the national court has to decide on a case involving an alien who has overstayed his residence permit, it must interpret national law in light of EU law.

#### CJEU 10 Sep. 2013, C-383/13 (PPU)
**G. & R.**
- **Case Ref.** EU:C:2013:533
- **Ref. from** Raad van State, NL, 5 July 2013
- **Decision:** Return Directive Art. 15(2)+6
- **Provision:** Art. 2(2)(b) + 11
- **Relevant Case:** Return Directive Art. 11(2).
- **Analysis:** The entry ban may be extended if the national court considers that such an extension is necessary to ensure the effective enforcement of the return decision.

#### CJEU 19 June 2018, C-181/16
**Gnandi**
- **Case Ref.** EU:C:2018:465
- **Ref. from** Conseil d’Etat, Belgium, 31 Mar. 2016
- **Decision:** Return Directive Art. 5
- **Provision:** Art. 5
- **Relevant Case:** Return Directive Art. 11(2).
- **Analysis:** The national court must consider whether the applicant has been in the territory of the Member State for a continuous period of five years or more, or the period between the date on which that directive should have been implemented and the date on which it was implemented, including any period since that date if that national court has not yet made an entry ban.

#### CJEU 17 Sep. 2020, C-806/18
**J.Z.**
- **Case Ref.** EU:C:2020:724
- **Ref. from** Hoge Raad, NL, 23 Nov. 2018
- **Decision:** Return Directive Art. 11(2)
- **Provision:** Art. 11(2)
- **Relevant Case:** Return Directive Art. 11(6).
- **Analysis:** The national court must determine whether the applicant has been in the territory of the Member State for a continuous period of five years or more, or the period between the date on which that directive should have been implemented and the date on which it was implemented, including any period since that date if that national court has not yet made an entry ban.

#### CJEU 8 May 2018, C-82/16
**K.A. a.o.**
- **Case Ref.** EU:C:2018:308
- **Decision:** Return Directive Art. 5+11+13
- **Provision:** Art. 5 and 11
- **Relevant Case:** Return Directive Art. 11(2).
- **Analysis:** The national court must determine whether the applicant has been in the territory of the Member State for a continuous period of five years or more, or the period between the date on which that directive should have been implemented and the date on which it was implemented, including any period since that date if that national court has not yet made an entry ban.

#### CJEU 30 Nov. 2009, C-357/09 (PPU)
**Kadzove**
- **Case Ref.** EU:C:2009:741
- **Ref. from** Administrativen sad Sofia-grad, Bulgaria, 7 Sep. 2009
- **Decision:** Return Directive Art. 15(4), (5) + (6)
- **Provision:** Art. 15(4), (5) + (6)
- **Relevant Case:** Return Directive Art. 11(2).
- **Analysis:** The national court must determine whether the applicant has been in the territory of the Member State for a continuous period of five years or more, or the period between the date on which that directive should have been implemented and the date on which it was implemented, including any period since that date if that national court has not yet made an entry ban.

#### CJEU 10 Nov. 2009
**Kadzove**
- **Case Ref.** EU:C:2009:691
- **Ref. from** Administrativen sad Sofia-grad, Bulgaria, 7 Sep. 2009
- **Decision:** Return Directive Art. 15(4), (5) + (6)
- **Provision:** Art. 15(4), (5) + (6)
- **Relevant Case:** Return Directive Art. 11(2).
- **Analysis:** The national court must determine whether the applicant has been in the territory of the Member State for a continuous period of five years or more, or the period between the date on which that directive should have been implemented and the date on which it was implemented, including any period since that date if that national court has not yet made an entry ban.
The Return Directive must be interpreted as meaning that, where national legislation makes provision, in the event of a TCN staying illegally in the territory of a MS, for either a fine or removal, and the latter measure may be adopted only if there are aggravating circumstances concerning that national, additional to his or her illegal stay, the competent national authority may not rely directly on the provisions of that directive in order to adopt a return decision and to enforce that decision, even in the absence of such aggravating circumstances.

Third-country nationals prosecuted for or convicted of the offence of illegal residence provided for in the legislation of a Member State cannot, on account solely of that offence of illegal residence, be excluded from the scope of Directive 2008/115. Directives 2008/115 does not preclude legislation of a Member State penalising the illegal residence of third-country nationals by a fine which may be replaced by expulsion. However, it is only possible to have recourse to that option to replace the fine where the situation of the person concerned corresponds to one of those referred to in Article 7(4) of that directive.

This case concerns the exact meaning of the term ‘offence punishable by a penalty involving deprivation of liberty of at least one year’, set out in Art 3(1)(a). However, the question was incorrectly formulated. Consequently, the Court ordered that the case was inadmissible.
<table>
<thead>
<tr>
<th>Date</th>
<th>Case Name</th>
<th>Judgment</th>
<th>Jurisdiction</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 2017</td>
<td>Ouhrami</td>
<td>CJEU 26</td>
<td>Return Directive Art. 11(2)</td>
<td>EU:C:2017:590</td>
</tr>
<tr>
<td>18 May 2017</td>
<td></td>
<td>AG 18</td>
<td></td>
<td>EU:C:2017:398</td>
</tr>
<tr>
<td>May 2016</td>
<td>Paoletti a.o.</td>
<td>CJEU 25</td>
<td>Unauthorized Entry Art. 1</td>
<td>EU:C:2016:748</td>
</tr>
<tr>
<td></td>
<td></td>
<td>AG 26</td>
<td></td>
<td>EU:C:2016:370</td>
</tr>
<tr>
<td></td>
<td></td>
<td>AG 27</td>
<td></td>
<td>EU:C:2017:324</td>
</tr>
<tr>
<td>July 2014</td>
<td>Pham</td>
<td>CJEU 17</td>
<td>Return Directive Art. 16(1)</td>
<td>EU:C:2014:2096</td>
</tr>
<tr>
<td></td>
<td></td>
<td>AG 30</td>
<td></td>
<td>EU:C:2014:336</td>
</tr>
<tr>
<td></td>
<td></td>
<td>AG 6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 July 2020</td>
<td></td>
<td>T.O.</td>
<td></td>
<td>EU:C:2020:515</td>
</tr>
<tr>
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<td></td>
<td>AG 24</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 Apr. 2012</td>
<td>Vo</td>
<td>CJEU 10</td>
<td>Unauthorized Entry Art. 1</td>
<td>EU:C:2012:202</td>
</tr>
</tbody>
</table>

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**New**

- **Interpretation of** Dir. 2008/115
  - **Return Directive Art. 11(2)**
- **Article 11(2)** must be interpreted as meaning that the starting point of the duration of an entry ban, as referred to in that provision, which in principle may not exceed five years, must be calculated from the date on which the person concerned actually left the territory of the Member States.
- **Interpretation of** Dir. 2002/90
  - Unauthorized Entry Art. 1
- **Article 6** TEU and Article 49 of the Charter of Fundamental Rights of the European Union must be interpreted as meaning that the accession of a State to the European Union does not preclude another Member State imposing a criminal penalty on persons who committed, before the accession, the offence of facilitation of illegal immigration for nationals of the first State.
- **Interpretation of** Dir. 2008/115
  - Return Directive Art. 6(1)
- **The Return Directive does not preclude a decision to return a EU citizen from being adopted by the same authorities and according to the same procedure as a decision to return a third-country national staying illegally referred to in Article 6 (1), provided that the transposition measures of Directive 2004/38 (Citizens Directive) which are more favourable to that EU citizen are applied.**
- **Interpretation of** Dir. 2008/115
  - Return Directive Art. 16(1)
- **The Dir. does not permit a MS to detain a TCN for the purpose of removal in prison accommodation together with ordinary prisoners even if the TCN consents there to.**
- **Interpretation of** Dir. 2008/115
  - Return Directive Art. 2+15+16
- **An illegal stay by a TCN in a MS:**
  1. can be penalised by means of a fine, which may be replaced by an expulsion order;
  2. cannot 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.
- **Art. 6(1)** must be interpreted as meaning that, before issuing a return decision against an unaccompanied minor, the MS concerned must carry out a general and in-depth assessment of the situation of that minor, taking due account of the best interests of the child. In this context, that MS must ensure that adequate reception facilities are available for the unaccompanied minor in question in the State of return.
- **Art. 6(1) read in conjunction with Art. 5(a) and in the light of Art. 24(2) of the Charter, must be interpreted as meaning that a MS may not distinguish between unaccompanied minors solely on the basis of the criterion of their age for the purpose of ascertaining whether there are adequate reception facilities in the State of return.**
- **Art. 8(1) must be interpreted as precluding a MS, after it has adopted a return decision in respect of an unaccompanied minor and has been satisfied, in accordance with Art. 10(2), that that minor will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return, from refraining from subsequently removing that minor until he or she reaches the age of 18 years.**
3.3.2 CJEU pending cases on Irregular Migration

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

* interpr. of Dir. 2008/115  
  Return Directive Art. 16(1)

  ref. from Bundesgerichtshof, Germany, 11 Jan. 2019

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

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

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

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

* CJEU 26 Sep. 2018, C-175/17  
  X.  
  EU:C:2018:776  
  EU:C:2018:834

  ref. from Raad van State, NL, 6 Apr. 2017

  * joined case with C-180/17

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

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

  ref. from Tribunal Superior de Justicia del Pais Vasco, Spain, 27 Jan. 2014

  * Articles 6(1) and 8(1), read in conjunction with Article 4(2) and 4(3), must be interpreted as precluding legislation of a MS, which provides, in the event of TCNs illegally staying in the territory of that Member State, depending on the circumstances, for either a fine or removal, since the two measures are mutually exclusive.

* CJEU 11 June 2015, C-554/13  
  Zh. & O.  
  EU:C:2015:377  
  EU:C:2015:94

  ref. from Raad van State, NL, 28 Oct. 2013

  * Art. 7(4) must be interpreted as precluding a national practice whereby a third-country national, who is staying illegally within the territory of a Member State, is deemed to pose a risk to public policy within the meaning of that provision on the sole ground that that national is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law.

  (2) Art. 7(4) must be interpreted to the effect that, in the case of a TCN who is staying illegally within the territory of a MS and is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law, other factors, such as the nature and seriousness of that act, the time which has elapsed since it was committed and the fact that that national was in the process of leaving the territory of that MS when he was detained by the national authorities, may be relevant in the assessment of whether he poses a risk to public policy within the meaning of that provision. Any matter which relates to the reliability of the suspicion that the third-country national concerned committed the alleged criminal offence, as the case may be, is also relevant to that assessment.

  (3) Art. 7(4) must be interpreted as meaning that it is not necessary, in order to make use of the option offered by that provision to refrain from granting a period for voluntary departure when the TCN poses a risk to public policy, to conduct a fresh examination of the matters which have already been examined in order to establish the existence of that risk. Any legislation or practice of a MS on this issue must nevertheless ensure that a case-by-case assessment is conducted of whether the refusal to grant such a period is compatible with that person’s fundamental rights.

3.3.2 CJEU pending cases on Irregular Migration

* CJEU C-546/19  
  B.Z.  
  EU:C:2021:105

  ref. from Bundesverwaltungsgericht, Germany,

  * On the issue whether an absence ban falls within the scope of the Return Directive if the reasons for this ban are not related to migration. And what is the consequence of lifting a return decision on the legitimacy of the corresponding entry ban?
3.3: Irregular Migration: Jurisprudence: CJEU pending cases

**CJEU C-924/19**
F.M.S. & F.N.Z.
* interp. of Dir. 2008/115
Return Directive Art. 13
ref. from Szegedi Közigazgatási és Munkaügyi Bíróság, Hungary, 18 Dec. 2019
* 1. Art. 13 Return Directive, must be interpreted as precluding legislation of a MS under which the amendment by an administrative authority of the country of destination stated in an earlier return decision can be contested by the HCN concerned only by means of an action brought before an administrative authority, without a subsequent judicial review of the decision of that authority being guaranteed. In such a situation, the principle of primacy of EU law and the right to effective judicial protection, guaranteed by Art. 47 of the Charter, must be interpreted as requiring the national court dealing with an action contesting the legality, under EU law, of the return decision consisting in such an amendment of the country of destination to declare that it has jurisdiction to hear that action.

(…) 7. Art. 15 must be interpreted as precluding: (1) a TCN being detained for the sole reason that he or she is the subject of a return decision and is unable to provide for his or her needs; (2) such detention taking place without a reasoned decision ordering detention having first been adopted and without the necessity and proportionality of such a measure having been examined; (3) there being no judicial review of the lawfulness of the administrative decision ordering detention; and, (4) such detention being capable of exceeding 18 months and being maintained when the removal arrangements are no longer in progress or are no longer being executed with due diligence.

**New**

**CJEU C-39/21 (PPL)**
* interp. of Dir. 2008/115
Return Directive Art. 3(9)+15(2)(b)
ref. from Rechtbank Den Haag (zp) Den Bosch, NL, 26 Jan. 2021
* Joined case with C-704/20.
De issue is whether EU law requires the court to review ex officio the lawfulness of all the conditions pertaining to administrative detention for foreign nationals. That question has already been raised in C-704/20. However, according to the referring court, that order for reference is incomplete. In its view, it is particularly important to ascertain whether the Netherlands procedure for the prevention of administrative detention of foreign nationals, which does not permit an ex officio review of the lawfulness of detention, still constitutes an effective remedy within the meaning of Art. 47 of the Charter.

**New**

**CJEU C-69/21**
* interp. of Dir. 2008/115
Return Directive Art. 5+6+9
ref. from Rechtbank Den Haag (zp) Den Bosch, NL, 4 Feb. 2021
* On the issue of the prevention of expulsion on medical grounds.

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

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

**ECtHR 23 Oct. 2012, 13058/11**
Abdelhakim v HUN
* 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 by the Hungarian border control for using a forged passport.

**ECtHR 23 July 2013, 55352/12**
Aden Ahmed v MAL
* violation of
ECHR: Art. 5
* The case concerns a migrant who had entered Malta in an irregular manner by boat. The ECtHR found a violation of art. 5(1), mainly due to the failure of the Maltese authorities to pursue deportation or to do so with due diligence, and of art. 5(4) due to absence of an effective and speedy domestic remedy to challenge the lawfulness of their detention.
Also, the ECtHR requested the Maltese authorities (Art. 46) to establish a mechanism allowing a determination of the lawfulness of immigration detention within a reasonable time-limit. In this case the Court for the first time found Malta in violation of art. 3 because of the immigration detention conditions. Those conditions in which the applicant had been living for 14½ months were, taken as a whole, amounted to degrading treatment.
null
3.3: Irregular Migration: Jurisprudence: ECtHR Judgments

**ECHR 31 July 2012, 14902/10**

Mahnundi v GRE

CE:ECHR:2012:0731JUD001490210

* violation of

ECHR: Art. 5

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

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

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

**ECHR 25 June 2020, 9347/14**

Moustahil v FRA

CE:ECHR:2020:0625JUD00934714

* violation of

ECHR: Art. 5+4. Prot. 4

Two children, 3 and 5 years old in 2013, left the Comoros on a makeshift boat heading for Mayotte, where their father was living, as a legal resident. Having been intercepted at sea, their names were added to a removal order issued against one of the adults in the group. Subsequently, they were placed in administrative detention in a police station. Although their father came to meet them there he was not allowed to see them and the children were placed with the ‘stranger’ adult on a ferry bound for the Comoros.

An hour later, the father lodged an application for urgent proceedings in the Administrative Court. While noting that the decision in question was “manifestly unlawful”, the judge rejected the application for lack of urgency. The urgent applications judge of the Conseil d’État dismissed an appeal, finding that it was up to the father to follow the appropriate procedure in order to apply for family reunification. In 2014 the two children were granted a long-stay visa in this context.

**ECHR 4 Apr. 2017, 23707/15**

Muzamba Oyew v BEL

CE:ECHR:2017:0404JUD002370715

* no violation of

ECHR: Art. 5

* inadmissible

The applicant is a Congolese national who is in administrative detention awaiting his deportation while his (Belgian) partner is pregnant. The ECtHR found his complaint under Article 5 § 1 manifestly ill-founded since his detention was justified for the purposes of deportation, the domestic courts had adequately assessed the necessity of the detention and its duration (less than three months) had not been excessive.

**ECHR 3 Oct. 2017,**

N.D. & N.T. v ESP

CE:ECHR:2017:1003JUD

* violation of

ECHR: Art. 4 Prot 4

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

**ECHR 13 Feb. 2020, (GC)**

N.D. & N.T. v ESP

CE:ECHR:2020:0213UD

* no violation of

ECHR: Art. 4 Prot 4

* See for the facts, the Court’s judgment of 3 Oct. 2017. Contrary to the judgment of the Court, the Grand Chamber holds no violation of Art. 4 of the 4th Protocol on collective expulsion. The Court considered that the applicants had placed themselves in an unlawful situation when they had deliberately attempted to enter Spain by crossing the Melilla border protection structures as part of a large group and at an unauthorised location, taking advantage of the group’s large numbers and using force. They had thus chosen not to use the legal procedures (to apply for asylum) which existed in order to enter Spanish territory lawfully. Consequently, the Court considered that the lack of individual removal decisions could be attributed to the fact that the applicants – assuming that they had wished to assert rights under the Convention – had not made use of the official entry procedures existing for that purpose, and that it had thus been a consequence of their own conduct.

In so far as it had found that the lack of an individualised procedure for their removal had been the consequence of the applicants’ own conduct, the Court could not hold the respondent State responsible for the lack of a legal remedy in Melilla enabling them to challenge that removal.
The case concerns the placement in detention of four Ghanaian nationals pending their removal from Italy. The applicants arrived in Italy in June 2008 after fleeing inter-religious clashes in Ghana. On 20 November 2008 deportation orders were issued with a view to their removal. This order for detention was upheld on 24 November 2008 by the justice of the peace and extended, on 17 December 2008, by 30 days without the applicants or their lawyer being informed. They were released on 14 January 2009 and the deportation order was withdrawn in June 2010. In June 2010 the Court of Cassation declared the detention order of 17 December 2008 null and void on the ground that it had been adopted without a hearing and in the absence of the applicants and their lawyer.

Their subsequent claims for compensation for the damage were dismissed by the Rome District Court.

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

The case concerned an Egyptian asylum-seeker who was detained in Belgium awaiting his deportation after his asylum request was rejected. After a maximum administrative detention period of 3 months he was released. With this (majority) judgment the Court acquires the Belgian State of the charge of having breached the right to liberty under article 5(1) by systematically detaining asylum seekers at its external border at the national airport.

The applicant claims to have entered the UK illegally in 2003. On offences of cruelty towards her son, she is sentenced to twelve months imprisonment and the recommendation to be deported. After the end of her criminal sentence she was detained under immigration powers with the intention to deport her. She first complained with the ECtHR in 2012 about her detention (of 34 months) and the ECtHR found (in 2016) a violation of Art. 5(1) in the light of the authorities’ delay in considering the applicant’s further representations in the context of her claim for asylum. In the end she is not deported but released.

This procedure is her second complaint with the ECtHR and concerns the latter part of her detention under different litigation proceedings which had not yet ended during the first judgment of the Court. The applicant complained under Article 5 of the Convention that her detention had been arbitrary as the authorities had failed to act with appropriate “due diligence”. Although six reviews of the applicant’s detention were written by the applicant’s ‘caseworker’ and several reports by doctors supporting an immediate release, these requests were filed as “yet another psychiatric report” which were treated as a further request to revoke the deportation order.

The Court rules that the applicant was unlawfully detained due to the deficiencies in her detention reviews: the need to redress that unlawfulness was not lessened because the State did not make appropriate arrangements for her release during that period.

The age-determination procedure undergone by the author, who claimed to be a child, was not accompanied by the safeguards needed to protect his rights under the Convention. In particular the failure to consider the author’s originals of official identity documents issued by a sovereign country, the declaration of adulthood in response to the author’s refusal to undergo age-determination tests, and the State’s refusal to allow his representative to assist him during this process, the Committee is of the view that the best interests of the child were not a prime consideration in the age-determination procedure to which the author was subjected, in breach of articles 3 and 12 of the Convention.

The Committee further notes that the State party violated his rights under article 8 of the Convention insofar as it altered elements of his identity by attributing to him a date of birth that did not correspond to the information in the official documents issued by his country of origin, including his original passport. The Committee further notes that the State’s failure to provide protection in response to his situation as an unprotected, highly vulnerable unaccompanied child migrant who was ill, as well as the contradiction inherent in declaring the author to be an adult while at the same time requiring him to have a guardian in order to receive medical treatment and vaccinations. This constitutes a violation of Art. 20(1) and 24.
3.3: Irregular Migration: Jurisprudence: CtRC views

**CtRC 7 Feb. 2020, CRC/C/83/D/24/2017**  
M.A.B v ESP  
* violation of  
* The Committee considers that the age determination procedure undergone by the author, who claimed to be a child and provided evidence to support this claim, was not accompanied by the safeguards needed to protect his rights under the Convention. Given the circumstances of the present case, in particular the examination used to determine the author’s age, the fact that he was not assisted by a representative during the age determination procedure and the fact that the State party almost automatically rejected as evidence the birth certificate that he provided, without even formally assessing the information that it contained and clearing up any doubts with the Guinean consular authorities, the Committee is of the view that the best interests of the child were not a primary consideration in the age determination procedure undergone by the author, contrary to artt. 3 and 12. The Committee also considers that a child’s date of birth forms part of his or her identity and that States parties have an obligation to respect the right of the child to preserve his or her identity without depriving him or her of any elements thereof. Although the author provided the Spanish authorities with a copy of his birth certificate, the State party failed to respect the identity of the author by rejecting the certificate as evidence, without first asking a competent authority to formally assess the information that it contained or asking the authorities of the author’s country of origin to verify that information.

**CtRC 31 May 2019, CRC/C/81/D/16/2017**  
A.L. v ESP  
* violation of  
* The examination used to determine the author’s age, the absence of a representative to assist him during this process and the almost automatic dismissal of the probative value of the birth certificate provided by the author, without the State party having even formally assessed the data and, in the event of uncertainty, having that data confirmed by the Algerian consular authorities, the Committee is of the view that the best interests of the child were not a primary consideration in the age determination process undergone by the author, in breach of art. 3 and 12. The Committee also notes that the State party violated his rights insofar as it altered elements of his identity by attributing to him an age and a date of birth that did not match the information on his birth certificate, even after the author had presented a copy of the certificate to the Spanish authorities.

**CtRC 28 Sep. 2020, CRC/C/85/D/28/2017**  
M.B. v ESP  
* violation of  
* The Committee considers that the lack of a process to assess the age of the author, who claimed to be a minor, the failure to take proper account of the official documents submitted by the author and issued by his country of origin, and the failure to appoint a guardian, constitute a violation of the author’s Convention rights. Consequently, the Committee is of the view that the best interests of the child were not a primary consideration in the procedures in which the author took part, contrary to artt. 3 and 12 of the Convention. The Committee also notes the author’s claims that the State party violated his rights under art. 8 of the Convention insofar as it altered elements of his identity by attributing to him an age that did not match the information contained in the official document issued by his country of origin.

**CtRC 28 Sep. 2020, CRC/C/85/D/26/2017**  
M.B.S v ESP  
* violation of  
* The Committee considers that the age determination procedure undergone by the author, who claimed to be a minor, was not accompanied by the safeguards needed to protect his rights under the Convention. In the present case, this is due to the failure to take proper account of the original copy of the official birth certificate issued by his country of origin and the failure to appoint a guardian to assist him during the age determination procedure. Consequently, the Committee is of the view that the best interests of the child were not a primary consideration in the age determination procedure, contrary to artt. 3 and 12 of the Convention.

**CtRC 18 Sep. 2019, CRC/C/82/D/27/2017**  
R.K. v ESP  
* violation of  
* The Committee considers that the age assessment procedure undergone by the author lacked the safeguards necessary to protect his rights under the Convention. This is a result of the test used (X-ray) to assess the author’s age, the failure to appoint a representative to assist him during this process and the almost automatic dismissal of the probative value of the birth certificate provided by the author, without the State party having even formally assessed the information that it contained and, in the event of uncertainty, having confirmed that information with the consular authorities of Guinea. The Committee notes that the State party failed to respect the author’s identity by denying that the birth certificate had any probative value, without a competent authority having conducted a prior formal assessment of the information contained therein and without, alternatively, the State party having checked that information with the authorities of the author’s country of origin.

**CtRC 28 Sep. 2020, CRC/C/85/D/40/2018**  
S.M.A. v ESP  
* violation of  
* The Committee is therefore of the view that the age determination procedure undergone by the author, who claimed to be a minor, did not offer the safeguards needed to protect his rights under the Convention. In this case, the author underwent the age determination procedure without the necessary safeguards because his official birth certificate, issued by his country of origin, was not given proper consideration and because a guardian was not appointed to assist him during the procedure. The Committee is therefore of the view that the best interests of the child were not a primary consideration in the age determination procedure, in violation of artt. 3 and 12 of the Convention.
4 External Treaties

4.1 External Treaties: Association Agreements

**EEC-Turkey Association Agreement**
- OJ 1964 217/3687
- into force 23 Dec. 1963

**EEC-Turkey Association Agreement Additional Protocol**
- OJ 1972 L 293
- into force 1 Jan. 1973

<table>
<thead>
<tr>
<th>CJEU judgments</th>
<th>Date</th>
<th>Case</th>
<th>Name</th>
<th>Art. 41(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU</td>
<td>10 July</td>
<td>C-138/13</td>
<td>Dogan (Naime)</td>
<td></td>
</tr>
<tr>
<td>CJEU</td>
<td>24 Sep.</td>
<td>C-221/11</td>
<td>Demirkan</td>
<td></td>
</tr>
<tr>
<td>CJEU</td>
<td>21 July</td>
<td>C-186/10</td>
<td>Tural Oguz</td>
<td></td>
</tr>
<tr>
<td>CJEU</td>
<td>19 Feb.</td>
<td>C-228/06</td>
<td>Soysal</td>
<td></td>
</tr>
<tr>
<td>CJEU</td>
<td>20 Sep.</td>
<td>C-16/05</td>
<td>Tum &amp; Dari</td>
<td></td>
</tr>
<tr>
<td>CJEU</td>
<td>11 May</td>
<td>C-37/98</td>
<td>Savas</td>
<td></td>
</tr>
</tbody>
</table>

See further: § 4.4

**EEC-Turkey Association Agreement Decision 2/76**
- Dec. 2/76 of 20 December 1976 on the implementation of Article 12 of the Ankara Agreement
EEC-Turkey Association Agreement Decision 1/80


**CJEU judgments**

- CJEU 10 July 2019 C-89/18 A. / Ud/Min. Art. 13
- CJEU 7 Aug. 2018 C-123/17 Yön Art. 13
- CJEU 12 Apr. 2016 C-561/14 Genc (Caner) Art. 13
- CJEU 7 Nov. 2013 C-225/12 Demir Art. 13
- CJEU 8 Nov. 2012 C-268/11 Gülbahce Art. 6(1)+10
- CJEU 19 July 2012 C-451/11 Dülger Art. 7
- CJEU 29 Mar. 2012 C-7/10 Kalveci & Inan Art. 7
- CJEU 8 Dec. 2011 C-371/08 Ziebell or Örnek Art. 14(1)
- CJEU 15 Nov. 2011 C-256/11 Dereci et al. Art. 13
- CJEU 29 Sep. 2011 C-187/10 Unal Art. 6(1)
- CJEU 16 June 2011 C-484/07 Pehlivan Art. 7
- CJEU 22 Dec. 2010 C-303/08 Metin Bozkurt Art. 7+14(1)
- CJEU 9 Dec. 2010 C-300/09 Toprak & Oğuz Art. 13
- CJEU 29 Apr. 2010 C-92/07 Com. / NL Art. 10(1)+13
- CJEU 4 Feb. 2010 C-14/09 Genc (Hava) Art. 6(1)
- CJEU 21 Jan. 2010 C-462/08 Bekleyen Art. 7(2)
- CJEU 17 Sep. 2009 C-242/06 Sahin Art. 13
- CJEU 18 Dec. 2008 C-337/07 Altu Art. 7
- CJEU 25 Sep. 2008 C-453/07 Er Art. 7
- CJEU 24 Jan. 2008 C-294/06 Payir Art. 6(1)
- CJEU 4 Oct. 2007 C-349/06 Polat Art. 7+14
- CJEU 18 July 2007 C-325/05 Derin Art. 6, 7 and 14
- CJEU 26 Oct. 2006 C-4/05 Güzel Art. 6
- CJEU 16 Feb. 2006 C-502/04 Torun Art. 7
- CJEU 10 Jan. 2006 C-230/03 Sedef Art. 6
- CJEU 7 July 2005 C-373/03 Aydinli Art. 6+7
- CJEU 7 July 2005 C-383/03 Dogan (Ergül) Art. 6(1) + (2)
- CJEU 7 July 2005 C-374/03 Gürrol Art. 9
- CJEU 2 June 2005 C-136/03 Dorr & Unal Art. 6(1)+14(1)
- CJEU 11 Nov. 2004 C-467/02 Cetinkaya Art. 7+14(1)
- CJEU 30 Sep. 2004 C-275/02 Ayaz Art. 7
- CJEU 16 Sep. 2004 C-465/01 Com. / Austria Art. 10(1)
- CJEU 8 May 2003 C-171/01 Birlikte Art. 10(1)
- CJEU 19 Nov. 2002 C-188/00 Kurz (Yuze) Art. 6(1)+7
- CJEU 19 Sep. 2000 C-89/00 Bicakci Art. 7(1)
- CJEU 22 June 2000 C-65/98 Eyüp Art. 7
- CJEU 16 Mar. 2000 C-329/97 Ergat Art. 7
- CJEU 10 Feb. 2000 C-340/97 Nazli Art. 6(1)+14(1)
- CJEU 26 Nov. 1998 C-1/97 Birden Art. 6(1)
- CJEU 19 Nov. 1998 C-210/97 Akman Art. 7
- CJEU 30 Sep. 1997 C-98/96 Ertanir Art. 6(1)+6(3)
- CJEU 30 Sep. 1997 C-36/96 Gündaylin Art. 6(1)
- CJEU 5 June 1997 C-285/95 Kol Art. 6(1)
- CJEU 29 May 1997 C-386/95 Eker Art. 6(1)
- CJEU 17 Apr. 1997 C-351/95 Kadıman Art. 7
- CJEU 23 Jan. 1997 C-171/95 Tetik Art. 6(1)
- CJEU 6 June 1995 C-434/93 Ahmet Bozkurt Art. 6(1)
- CJEU 5 Oct. 1994 C-355/93 Ergolu Art. 6(1)
- CJEU 16 Dec. 1992 C-237/91 Kus Art. 6(1)+6(3)
- CJEU 20 Sep. 1990 C-192/89 Sevinc Art. 6(1)+13
- CJEU 30 Sep. 1987 C-12/86 Demirel Art. 7+12

**CJEU pending cases**
4.1: External Treaties: Association Agreements

EEC-Turkey Association Agreement Decision 3/80
* Dec. 3/80 of 19 Sept. 1980 on Social Security

CJEU judgments

<table>
<thead>
<tr>
<th>Institution</th>
<th>Date</th>
<th>Case</th>
<th>Art.</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU</td>
<td>13 Feb. 2020</td>
<td>C-258/18</td>
<td>Art. 6</td>
</tr>
<tr>
<td>CJEU</td>
<td>15 May 2019</td>
<td>C-677/17</td>
<td>Çoban Art. 6(1)</td>
</tr>
<tr>
<td>CJEU</td>
<td>14 Jan. 2015</td>
<td>C-171/13</td>
<td>Demirci a.o. Art. 6(1)</td>
</tr>
<tr>
<td>CJEU</td>
<td>26 May 2011</td>
<td>C-485/07</td>
<td>Akdas Art. 6(1)</td>
</tr>
</tbody>
</table>

See further: § 4.4

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

EEC-Turkey Association Agreement Decision 3/80

CJEU judgments

See further: § 4.4

4.2 External Treaties: Readmission

Albania
* into force for TCN: May 2008

Armenia

Azerbaijan

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

Bosnia and Herzegovina
* into force for TCN: Jan. 2010

Cape Verde

Georgia
* OJ 2011 L 52/47 into force 1 Mar. 2011

Hong Kong
* OJ 2004 L 17/23 into force 1 May 2004

Macao
* OJ 2004 L 143/97 into force 1 June 2004

Macedonia
* OJ 2007 L 334/7 into force 1 Jan. 2008
* into force for TCN: Jan. 2010

Moldova
* into force for TCN: Jan. 2010

Montenegro
* into force for TCN: Jan. 2010

Morocco, Algeria, and China
* negotiation mandate approved by Council

Pakistan
* OJ 2010 L 287/52 into force 1 Dec. 2010

Russia
* OJ 2007 L 129 into force 1 June 2007
* into force for TCN: Jun. 2010

Serbia
* into force for TCN: Jan. 2010

UK opt in
### 4.2: External Treaties: Readmission

**Sri Lanka**
- OJ 2005 L 124/43 into force 1 May 2005

**Turkey**
  - Additional provisions as of 1 June 2016

**Ukraine**
- * into force for TCN: Jan. 2010

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

CJEU [judgments](#)
- CJEU 27 Feb. 2017 T-192/16
- N.F. / European Council
  - See further: § 4.4

### 4.3 External Treaties: Other

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

**Armenia: visa**

**Azerbaijan: visa**
- OJ 2013 L 320/7 into force 1 Sep. 2014

**Belarus: visa**
- OJ 2020 L 180/3 into force 1 July 2020

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

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

**Cape Verde: visa**

**China: Approved Destination Status treaty**
- OJ 2004 L 83/12 into force 1 May 2014

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

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

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

**Moldova: visa**
- OJ 2013 L 168/3 into force 1 July 2013

**Morocco: visa**
- proposals to negotiate - approved by council Dec. 2013

**Norway and Iceland: Dublin Convention**
- Protocol into force 1 May 2006

**Russia: Visa facilitation**
- Council mandate to renegotiate visa facilitation treaties, April 2011

**Switzerland: Free Movement of Persons**
- OJ 2002 L 114 into force 1 June 2002

**Switzerland: Implementation of Schengen, Dublin**
Ukraine: visa

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

### 4.4 External Treaties: Jurisprudence

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

<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU 10 July 2019, C-89/18</td>
<td>A. / Udl.Min.</td>
<td>EU:C:2019:580</td>
</tr>
<tr>
<td></td>
<td>ref. from Ostre Landsret, Denmark, 8 Feb. 2018</td>
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<tr>
<td></td>
<td>Art. 13 Dec. 1/80, must be interpreted as meaning that a national measure which makes family reunification between a Turkish worker legally resident in the MS concerned and his spouse conditional upon their overall attachment to that MS being greater than their overall attachment to a third country, constitutes a 'new restriction', within the meaning of that provision. Such a restriction is unjustified.</td>
<td></td>
</tr>
<tr>
<td>AG 13 May 2003</td>
<td>* interpr. of</td>
<td>EEC-Turkey Dec. 1/80: Art. 13+41(1)</td>
</tr>
<tr>
<td></td>
<td>ref. from Bundessozialgericht, Germany, 13 Aug. 2001</td>
<td></td>
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<td></td>
<td>* joined case with C-369/01</td>
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<tr>
<td></td>
<td>* Art. 41(1) Add. Protocol and Art. 13 Dec. 1/80 have direct effect and prohibit generally the introduction of new national restrictions on the right of establishment and the freedom to provide services and freedom of movement for workers from the date of the entry into force of the host Member State of the legal measure of which those articles are part (scope standstill obligation).</td>
<td></td>
</tr>
<tr>
<td>AG 28 Mar. 1995</td>
<td>* interpr. of</td>
<td>EEC-Turkey Dec. 1/80: Art. 6(1)</td>
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<tr>
<td></td>
<td>ref. from Raad van State, NL., 4 Nov. 1993</td>
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<td>* In order to ascertain whether a Turkish worker belongs to the legitimate labour force of a Member State, for the purposes of Art. 6(1) of Dec. 1/80 it is for the national court to determine whether the applicant's employment relationship retained a sufficiently close link with the territory of the Member State, and, in so doing, to take account, in particular, of the place where he was hired, the territory on which the paid employment is based and the applicable national legislation in the field of employment and social security law.</td>
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<td>The existence of legal employment in a Member State within the meaning of Art. 6(1) of Dec. 1/80 can be established in the case of a Turkish worker who was not required by the national legislation concerned to hold a work permit or a residence permit issued by the authorities in the host State in order to carry out his work. The fact that such employment exists necessarily implies the recognition of a right of residence for the person concerned.</td>
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<tr>
<td>CJEU 26 May 2011, C-485/07</td>
<td>Akdas</td>
<td>EU:C:2011:346</td>
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<tr>
<td>AG 11 Sep. 2008</td>
<td>* interpr. of</td>
<td>EEC-Turkey Dec. 3/80: Art. 6(1)</td>
</tr>
<tr>
<td></td>
<td>ref. from Centrale Raad van Beroep, NL., 5 Nov. 2007</td>
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<td></td>
<td>* Supplements to social security can not be withdrawn solely on the ground that the beneficiary has moved out of the Member State.</td>
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<tr>
<td>CJEU 19 Nov. 1998, C-210/97</td>
<td>Akman</td>
<td>EU:C:1998:555</td>
</tr>
<tr>
<td></td>
<td>ref. from Verwaltungsgericht Köln, Germany, 2 June 1997</td>
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<td></td>
<td>* A Turkish national is entitled to respond to any offer of employment in the host Member State after having completed a course of vocational training there, and consequently to be issued with a residence permit, when one of his parents has in the past been legally employed in that State for at least three years.</td>
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<td>However, it is not required that the parent in question should still work or be resident in the Member State in question at the time when his child wishes to gain access to the employment market there.</td>
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<td>ref. from Verwaltungsgericht Stuttgart, Germany, 20 July 2007</td>
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<td></td>
<td>* Art. 7(1) of Dec. 1/80 is to be interpreted as meaning that the child of a Turkish worker may enjoy rights arising by virtue of that provision where, during the three-year period when the child was co-habiting with that worker, the latter was working for two and a half years before being unemployed for the following six months.</td>
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<td>The fact that a Turkish worker has obtained the right of residence in a Member State and, accordingly, the right of access to the labour market of that State as a political refugee does not prevent a member of his family from enjoying the rights arising under the first paragraph of Art. 7 of Dec. 1/80.</td>
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<td>Art. 7(1) of Dec. 1/80 is to be interpreted as meaning that when a Turkish worker has obtained the status of political refugee on the basis of false statements, the rights that a member of his family derives from that provision cannot be called into question if the latter, on the date on which the residence permit issued to that worker is withdrawn, fulfills the conditions laid down therein.</td>
<td></td>
</tr>
</tbody>
</table>
**4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association**

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

- **CJEU 7 July 2005, C-373/03**
  * Aydindi*  
  AG 11 July 2003  
  **EU:C:2005:434**  
  ref. from Verwaltungsgericht Freiburg, Germany, 12 Mar. 2003  
  * A long detention is no justification for loss of residence permit.

- **CJEU 21 Jan. 2010, C-462/08**
  * Bekleyen*  
  AG 29 Oct. 2009  
  **EU:C:2010:30**  
  ref. from Verwaltungsgericht Berlin, Germany, 8 Mar. 2000  
  * Art 14 does not refer to a preventive expulsion measure.

- **CJEU 26 Nov. 1998, C-1/97**
  * Birden*  
  AG 28 May 1998  
  **EU:C:1998:568**  
  **EU:C:1998:262**  
  ref. from Verwaltungsgericht Berlin-Brandenburg, Germany, 27 Oct. 2008  
  * The child of a Turkish worker has free access to labour and an independent right to stay in Germany, if this child is graduated in Germany and its parents have worked at least three years in Germany.

- **CJEU 8 May 2003, C-171/01**
  * Birlikte*  
  AG 12 Dec. 2002  
  **EU:C:2003:260**  
  **EU:C:2002:758**  
  ref. from Verfassungsgerichtshof, Austria, 19 Apr. 2001  
  * Art 10 precludes the application of national legislation which excludes Turkish workers duly registered as belonging to the labour force of the host MS from eligibility for election to organisations such as trade unions.

- **CJEU 11 Nov. 2004, C-467/02**
  * Cetinkaya*  
  AG 10 June 2004  
  **EU:C:2004:708**  
  **EU:C:2004:366**  
  ref. from Verwaltungsgericht Stuttgart, Germany, 19 Dec. 2002  
  * The meaning of a “family member” is analogous to its meaning in the Free Movement Regulation.

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

- **CJEU 29 Apr. 2010, C-92/07**
  * Com. / NL*  
  AG 30 Apr. 2007  
  **EU:C:2010:228**  
  ref. from Commission, EU, 16 Feb. 2007  
  * The obligation to pay charges in order to obtain or extend a residence permit, which are disproportionate compared to charges paid by citizens of the Union is in breach with the standstill clauses of Articles 10(1) and 13 of Decision No 1/80 of the Association.

- **CJEU 16 Sep. 2004, C-465/01**
  * Com. / Austria*  
  AG 20 Apr. 2004  
  **EU:C:2004:530**  
  ref. from Commission, EU, 4 Dec. 2001  
  * Austria has failed to fulfil its obligations by denying workers who are nationals of other MS the right to stand for election for workers’ chambers: art. 10(1) prohibition of all discrimination based on nationality.

- **CJEU 7 Nov. 2013, C-225/12**
  * Demir*  
  AG 11 July 2013  
  **EU:C:2013:725**  
  **EU:C:2013:475**  
  ref. from Raad van State, NL, 14 May 2012  
  * Holding a temporary residence permit, which is valid only pending a final decision on the right of residence, does not fall within the meaning of ‘legally resident’.
On the meaning of “same employer”.

ref. from Bundesverwaltungsgericht, Germany, 11 Dec. 1995
AG 6 Mar. 1997
CJEU 29 May 1997, C-386/95

Turkish nationality themselves, but instead a nationality from a third country.

ref. from Verwaltungsgericht Gießen, Germany, 1 Sep. 2011
AG 7 June 2012

The procedural guarantees set out in the Dir. on Free Movement also apply to Turkish workers.

ref. from Verwaltungsgerichtshof, Austria, 4 Sep. 2003
CJEU 7 July 2005, C-383/03

territory of the MS concerned for a significant length of time without legitimate reason.

AG 11 Jan. 2007
CJEU 30 Sep. 1987, C-12/86

There is no right to family reunification. Art. 12 EEC-Turkey and Art. 36 of the Additional Protocol, do not constitute rules of Community law which are directly applicable in the internal legal order of the Member States.

ref. from Verwaltungsgerichtshof, Austria, 25 May 2011
AG 29 Sep. 2011
CJEU 15 Nov. 2011, C-256/11

The freedom to ‘provide services’ does not encompass the freedom to ‘receive’ services in other EU Member States.

ref. from Centrale Raad van Beroep, NL, 8 Apr. 2013
AG 10 July 2014
EU:C:2015:8
Demirci a.o.

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

*interp. of*

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

EEC-Turkey Dec. 1/80: Art. 6(1)+14(1)

EEC-Turkey Add.Prot.: Art. 41(1)

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

EEC-Turkey Add.Prot.: Art. 41(1)

EEC-Turkey Dec. 1/80: Art. 13

EEC-Turkey Dec. 1/80: Art. 6(1) + (2)

EEC-Turkey Dec. 1/80: Art. 6(1) +14(1)

EEC-Turkey Dec. 1/80: Art. 7+12

EEC-Turkey Add.Prot.: Art. 41(1)

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

EEC-Turkey Dec. 1/80: Art. 7+12

EEC-Turkey Dec. 1/80: Art. 6, 7 and 14

EEC-Turkey Dec. 1/80: Art. 6 (1) + (2)

EEC-Turkey Dec. 1/80: Art. 6(1) +14(1)

EEC-Turkey Add.Prot.: Art. 41(1)

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

EEC-Turkey Add.Prot.: Art. 41(1)

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

EEC-Turkey Dec. 3/80: Art. 7

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

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

EEC-Turkey Dec. 1/80: Art. 6(1)
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

**CJEU 25 Sep. 2008, C-453/07**

* Er

ref. from Verwaltungsgericht Gießen, Germany, 4 Oct. 2007

A Turkish national, who was authorised to enter the territory of a Member State as a child in the context of a family reunion, and who has acquired the right to take up freely any paid employment of his choice under the second indent of Art. 7(1) of Dec. 1/80 does not lose the right of residence in that State, which is the corollary of that right of free access, even though, at the age of 23, he has not been in paid employment since leaving school at the age of 16 and has taken part in government job-support schemes without, however, completing them.

**CJEU 16 Mar. 2000, C-329/97**

* Ergat

AG 3 June 1999

ECC-Turkey Dec. 1/80: Art. 7

ref. from Bundesverwaltungsgericht, Germany, 22 Sep. 1997

No loss of residence right in case of application for renewal residence permit after expiration date.

**CJEU 5 Oct. 1994, C-355/93**

* Eroglu

AG 12 July 1994

ECC-Turkey Dec. 1/80: Art. 6(1)

ref. from Verwaltungsgericht Karlsruhe, Germany, 26 May 1993

On the meaning of “same employer”. The first indent of Art. 6(1) is to be construed as not giving the right to the renewal of his permit to work for his first employer to a Turkish national who is a university graduate and who worked for more than one year for his first employer and for some ten months for another employer, having been issued with a two-year conditional residence authorization and corresponding work permits in order to allow him to deepen his knowledge by pursuing an occupational activity or specialized practical training.

**CJEU 30 Sep. 1997, C-98/96**

* Ertenir

AG 29 Apr. 1997

ECC-Turkey Dec. 1/80: Art. 6(1)+6(3)

ref. from Verwaltungsgericht Darmstadt, Germany, 26 Mar. 1996

Art. 6(3) of Dec. 1/80 is to be interpreted as meaning that it does not permit Member States to adopt national legislation which excludes at the outset whole categories of Turkish migrant workers, such as specialist chefs, from the rights conferred by the three indents of Art. 6(1).

A Turkish national who has been lawfully employed in a Member State for an uninterrupted period of more than one year… is duly registered as belonging to the labour force of that Member State and is legally employed within the meaning of Art. 6(1) of Dec. 1/80.

A Turkish national in that situation may accordingly seek the renewal of his permit to reside in the host Member State notwithstanding the fact that he was advised when the work and residence permits were granted that they were for a maximum of three years and restricted to specific work, in this case as a specialist chef, for a specific employer. Art. 6(1) of Dec. 1/80 is to be interpreted as requiring account to be taken, for the purpose of calculating the periods of legal employment referred to in that provision, of short periods during which the Turkish worker did not hold a valid residence or work permit in the host Member State and which are not covered by Article 6(2) of that decision, where the competent authorities of the host Member State have not called in question on that ground the legality of the residence of the worker in the country but have, on the contrary, issued him with a new residence or work permit.

**CJEU 11 Sep. 2014, C-91/13**

* Essent

AG 8 May 2014

ECC-Turkey Dec. 1/80: Art. 13

ref. from Raad van State, NL, 25 Feb. 2013

The posting by a German company of Turkish workers in the Netherlands to work in the Netherlands is not affected by the standstill-clauses. However, this situation falls within the scope of art. 56 and 57 TFEU precluding such making available is subject to the condition that those workers have been issued with work permits.

**CJEU 22 June 2000, C-65/98**

* Eyüp

AG 18 Nov. 1999

ECC-Turkey Dec. 1/80: Art. 7(1)

ref. from Verwaltungsgerichtshof, Austria, 5 Mar. 1998

Art. 7(1) of Dec. 1/80 must be interpreted as covering the situation of a Turkish national who, like the applicant in the main proceedings, was authorised in her capacity as the spouse of a Turkish worker duly registered as belonging to the labour force of the host Member State to join that worker there, in circumstances where that spouse, having divorced before the expiry of the three-year qualification period laid down in the first indent of that provision, still continued in fact to live uninterruptedly with her former spouse until the date on which the two former spouses remarried. Such a Turkish national must therefore be regarded as legally resident in that Member State within the meaning of that provision, so that she may rely directly on her right, after three years, to respond to any offer of employment, and, after five years, to enjoy free access to any paid employment of her choice.

**CJEU 21 Oct. 2020, C-720/19**

* G.R. / Duisburg

ref. from Verwaltungsgericht Gießen, Germany, 4 Oct. 2007

A Turkish national, who was authorised to enter the territory of a Member State as a child in the context of a family reunion, and who has acquired the right to take up freely any paid employment of his choice under the second indent of Art. 7(1) of Dec. 1/80 does not lose the right of residence in that State, which is the corollary of that right of free access, even though, at the age of 23, he has not been in paid employment since leaving school at the age of 16 and has taken part in government job-support schemes without, however, completing them.

However, the fact that the child concerned has not been in paid employment since leaving school at the age of 16 is not, by itself, a ground for challenging the validity of the decision adopting the residence permit, since the period of study may be regarded as an interruption of the period of paid employment.
F  CJEU 12 Apr. 2016, C-561/14  Genc (Caner)  EU:C:2016:247
* interpr. of  EEC-Turkey Dec. 1/80: Art. 13
ref. from Verwaltungsgericht Aachen, Germany, 12 Jan. 2005
* A national measure, making family reunification between a Turkish worker residing lawfully in the MS concerned and his minor child subject to the condition that the latter have, or have the possibility of establishing, sufficient ties with Denmark to enable him successfully to integrate, when the child concerned and his other parent reside in the State of origin or in another State, and the application for family reunification is made more than two years from the date on which the parent residing in the MS concerned obtained a permanent residence permit or a residence permit with a possibility of permanent residence constitutes a 'new restriction', within the meaning of Art. 13 of Decision 1/80. Such a restriction is not justified.
F  CJEU 4 Feb. 2010, C-14/09  Genc (Hava)  EU:C:2010:57
* interpr. of  EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Verwaltungsgericht Berlin, Germany, 12 Jan. 2009
* A Turkish worker, within the meaning of Art. 6(1) of Dec. 1/80, may rely on the right to free movement which he derives from the Assn. Agreement even if the purpose for which he entered the host Member State no longer exists. Where such a worker satisfies the conditions set out in Art. 6(1) of that decision, his right of residence in the host Member State cannot be made subject to additional conditions as to the existence of interests capable of justifying residence or as to the nature of the employment.
F  CJEU 8 Nov. 2012, C-268/11  Gülbahce  EU:C:2012:695
AG 21 June 2012
* interpr. of  EEC-Turkey Dec. 1/80: Art. 6(1)+10
ref. from Oberverwaltungsgericht Hamburg, Germany, 31 May 2011
* A MS cannot withdraw the residence permit of a Turkish employee with retroactive effect.
AG 29 Apr. 1997
* interpr. of  EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Bundesverwaltungsgericht, Germany, 12 Feb. 1996
* A Turkish national who has been lawfully employed in a Member State for an uninterrupted period of more than three years in a genuine and effective economic activity for the same employer and whose employment status is not objectively different to that of other employee employed by the same employer or in the sector concerned and exercising identical or comparable duties, is duly registered.
F  CJEU 7 July 2005, C-374/03  Güroğlu  EU:C:2005:435
AG 2 Dec. 2004
* interpr. of  EEC-Turkey Dec. 1/80: Art. 9
ref. from Verwaltungsgericht Siegen, Germany, 31 July 2003
* Art. 9 of Dec. 1/80 has direct effect in the Member States. The condition of residing with parents in accordance with the first sentence of Art. 9 is met in the case of a Turkish child who, after residing legally with his parents in the host Member State, establishes his main residence in the place in the same Member State in which he follows his university studies, while declaring his parents’ home to be his secondary residence only.
* The second sentence of Art. 9 of Dec. No 1/80 has direct effect in the Member States. That provision guarantees Turkish children a non-discriminatory right of access to education grants, such as that provided for under the legislation at issue in the main proceedings, that right being theirs even when they pursue higher education studies in Turkey.
AG 23 Mar. 2006
* interpr. of  EEC-Turkey Dec. 1/80: Art. 6
ref. from Verwaltungsgericht Aachen, Germany, 6 Jan. 2005
* The first indent of Art. 6(1) of Dec. 1/80 must be interpreted as meaning that a Turkish worker can rely on the rights conferred upon him by that provision only where his paid employment with a second employer complies with the conditions laid down by law and regulation in the host Member State governing entry into its territory and employment. It is for the national court to make the requisite findings in order to establish whether that is the case in respect of a Turkish worker who changed employer prior to expiry of the period of three years provided for in the second indent of Art. 6(1) of that decision.
* The second sentence of Art. 6(2) of Dec. No 1/80 must be interpreted as meaning that it is intended to ensure that periods of interruption of legal employment on account of involuntary unemployment and long-term sickness do not affect the rights that the Turkish worker has already acquired owing to preceding periods of employment the length of which is fixed in each of the three indents of Art. 6(1) respectively.
F  CJEU 17 Apr. 1997, C-351/95  Kadiman  EU:C:1997:205
AG 16 Jan. 1997
* interpr. of  EEC-Turkey Dec. 1/80: Art. 7
ref. from Verwaltungsgericht München, Germany, 13 Nov. 1995
* The first indent of Art. 7(1) of Dec. 1/80 is to be interpreted as meaning that the family member concerned is in principle required to reside uninterruptedly for three years in the host Member State. However, account must be taken, for the purpose of calculating the three year period of legal residence within the meaning of that provision, of an involuntary stay of less than six months by the person concerned in his country of origin. The same applies to the period during which the person concerned was not in possession of a valid residence permit, where the competent authorities of the host Member State did not claim on that ground that the person concerned was not legally resident within national territory, but on the contrary issued a new residence permit to him.
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

**CJEU 29 Mar. 2012, C-7/10**
Kahveci & İnan
AG 20 Oct. 2011
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Raad van State, NL, 8 Jan. 2010
* joined case with C-9/10
* The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.

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

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

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

**CJEU 22 Dec. 2010, C-303/08**
Metin Bözkurt
AG 8 July 2010
* interpr. of EEC-Turkey Dec. 1/80: Art. 7+14(1)
ref. from Bundesverwaltungsgericht, Germany, 8 July 2008
* Art. 7 means that a Turkish national who enjoys certain rights, does not lose those rights on account of his divorce, which took place after those rights were acquired.
By contrast, Art. 14(1) does not preclude a measure ordering the expulsion of a Turkish national who has been convicted of criminal offences, provided that his personal conduct constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society. It is for the competent national court to assess whether that is the case in the main proceedings.

**CJEU 10 Feb. 2000, C-340/97**
Nazli
AG 8 July 1999
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)+14(1)
ref. from Verwaltungsgericht Ansbach, Germany, 1 Oct. 1997
* A Turkish national who has been in legal employment in a Member State for an uninterrupted period of more than four years but is subsequently detained pending trial for more than a year in connection with an offence for which he is ultimately sentenced to a term of imprisonment suspended in full has not ceased, because he was not in employment while detained pending trial, to be duly registered as belonging to the labour force of the host Member State if he finds a job again within a reasonable period after his release, and may claim there an extension of his residence permit for the purposes of continuing to exercise his right of free access to any paid employment of his choice under the third indent of Art. 6(1) of Dec. 1/80.
Art. 14(1) of Dec. 1/80 is to be interpreted as precluding the expulsion of a Turkish national who enjoys a right granted directly by that decision when it is ordered, following a criminal conviction, as a deterrent to other aliens without the personal conduct of the person concerned giving reason to consider that he will commit other serious offences prejudicial to the requirements of public policy in the host Member State.
### 4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

<table>
<thead>
<tr>
<th>Date</th>
<th>Citation</th>
<th>Case</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>24 Jan. 2008, C-294/06</td>
<td>Payir</td>
<td>AG 18 July 2007</td>
<td>EEC-Turkey Dec. 1/80: Art. 6(1); ref. from Court of Appeal, United Kingdom, 30 June 2006; The fact that a Turkish national was granted leave to enter the territory of a Member State as an au pair or as a student cannot deprive him of the status of ‘worker’ and prevent him from being regarded as ‘duly registered as belonging to the labour force’ of that Member State within the meaning of Art. 6(1) of Dec. 1/80. Accordingly, that fact cannot prevent that national from being able to rely on that provision for the purposes of obtaining renewed permission to work and a corollary right of residence.</td>
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<tr>
<td>16 June 2011, C-484/07</td>
<td>Pehlivan</td>
<td>AG 8 July 2010</td>
<td>EEC-Turkey Dec. 1/80: Art. 7; ref. from Rechtbank Den Haag (zp) Roermond, NL, 31 Oct. 2007; Family member marries in first 3 years but continues to live with Turkish worker. Art. 7 precludes legislation under which a family member properly authorized 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.</td>
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<tr>
<td>4 Oct. 2007, C-349/06</td>
<td>Polat</td>
<td>EEC-Turkey Dec. 1/80: Art. 7+14; ref. from Verwaltungsgericht Darmstadt, Germany, 21 Aug. 2006; Multiple convictions for small crimes do not lead to expulsion. Art. 14(1) of Dec. 1/80 must be interpreted as not precluding the taking of an expulsion measure against a Turkish national who has been the subject of several criminal convictions, provided that his behaviour constitutes a genuine and sufficiently serious threat to a fundamental interest of society.</td>
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<td>17 Sep. 2009, C-242/06</td>
<td>Sahin</td>
<td>EEC-Turkey Dec. 1/80: Art. 13; ref. from Raad van state, NL, 29 May 2006; Art. 13 of Dec. 1/80 must be interpreted as precluding the introduction, from the entry into force of that decision in the Member State concerned, of national legislation, such as that at issue in the main proceedings, which makes the granting of a residence permit or an extension of the period of validity thereof conditional on payment of administrative charges, where the amount of those charges payable by Turkish nationals is disproportionate as compared with the amount required from Community nationals.</td>
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<tr>
<td>11 May 2000, C-37/98</td>
<td>Savas</td>
<td>EEC-Turkey Add.Prot.: Art. 41(1); ref. from High Court of England and Wales, UK, 16 Feb. 1998; Art. 41(1) of the Additional Protocol prohibits the introduction of new national restrictions on the freedom of establishment and right of residence of Turkish nationals as from the date on which that protocol entered into force in the host Member State. It is for the national court to interpret domestic law for the purposes of determining whether the rules applied to the applicant in the main proceedings are less favourable than those which were applicable at the time when the Additional Protocol entered into force.</td>
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<td>10 Jan. 2006, C-230/03</td>
<td>Sedef</td>
<td>EEC-Turkey Dec. 1/80: Art. 6; ref. from Bundesverwaltungsgericht, Germany, 26 May 2003; Art. 6 of Dec. 1/80 is to be interpreted as meaning that: enjoyment of the rights conferred on a Turkish worker by the third indent of paragraph 1 of that article presupposes in principle that the person concerned has already fulfilled the conditions set out in the second indent of that paragraph; a Turkish worker who does not yet enjoy the right of free access to any paid employment of his choice under that third indent must be in legal employment without interruption in the host Member State unless he can rely on a legitimate reason of the type laid down in Art. 6(2) to justify his temporary absence from the labour force. Art. 6(2) of Dec. 1/80 covers interruptions in periods of legal employment, such as those at issue in the main proceedings, and the relevant national authorities cannot, in this case, dispute the right of the Turkish worker concerned to reside in the host Member State.</td>
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<td>20 Sep. 1990, C-192/89</td>
<td>Sevince</td>
<td>EEC-Turkey Dec. 1/80: Art. 6(1)+13; ref. from Raad van state, NL, 8 June 1989; The term 'legal employment' in Art. 2(1)(b) of Dec. 2/76 and Art. 6(1) of Dec. 1/80, does not cover the situation of a Turkish worker authorized to engage in employment for such time as the effect of a decision refusing him a right of residence, against which he has lodged an appeal which has been dismissed, is suspended.</td>
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</tbody>
</table>
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

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

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

**CJEU 3 Oct. 2019, C-70/18**  
* Stscr. / A. a.o.  
  ref. from Raad van State, NL, 2 Feb. 2018  
  * Also on Art. 7 Dec. 2/76.

**CJEU 29 Mar. 2017, C-652/15**  
* Tekdemir  
  ref. from Verwaltungsgericht Darmstadt, Germany, 7 Dec. 2015  
  * Art. 13 must be interpreted as meaning that the objective of efficient management of migration flows may constitute an overriding reason in the public interest capable of justifying a national measure, introduced after the entry into force of that decision in the Member State in question, requiring nationals of third countries under the age of 16 years old to hold a residence permit in order to enter and reside in that Member State. Such a measure is not, however, proportionate to the objective pursued where the procedure for its implementation as regards child nationals of third countries born in the MS in question and one of whose parents is a Turkish worker lawfully residing in that MS, such as the applicant in the main proceedings, goes beyond what is necessary for attaining that objective.

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

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

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

- **CJEU 20 Sep. 2007, C-16/05**  
  *interp. of* EEC-Turkey Add.Prot.: Art. 41(1)  
  ref. from House of Lords, UK, 19 Jan. 2005

- **Art. 41(1) of the Add. Protocol is to be interpreted as prohibiting the introduction, as from the entry into force of that protocol with regard to the Member State concerned, of any new restrictions on the exercise of freedom of establishment, including those relating to the substantive and/or procedural conditions governing the first admission into the territory of that State, of Turkish nationals intending to establish themselves in business there on their own account.**

- **CJEU 21 July 2011, C-186/10**  
  *interp. of* EEC-Turkey Add.Prot.: Art. 41(1)  
  ref. from Court of Appeal (E&W), UK, 15 Apr. 2010

- **Art. 41(1) must be interpreted as meaning that it may be relied on by a Turkish national who, having leave to remain in a Member State on condition that he does not engage in any business or profession, nevertheless enters into self-employment in breach of that condition and later applies to the national authorities for further leave to remain on the basis of the business which he has meanwhile established.**

- **CJEU 21 Dec. 2016, C-508/15**  
  *interp. of* EEC-Turkey Add.Prot.: Art. 41(1)  
  ref. from Bundesverwaltungsgericht Leipzig, Germany, 10 Mar. 2017

- **Art 7 must be interpreted as meaning that the provision confers a right of residence in the host MS on a family member of a Turkish worker, who has been authorised to enter that MS, for purposes of family reunification, and who, from his entry into the territory of that MS, has lived with that Turkish worker, even if the period of at least three years during which the latter is duly registered as belonging to the labour force does not immediately follow the arrival of the family member concerned in the host MS, but is subsequent to it.**

- **CJEU 29 Sep. 2011, C-187/10**  
  *interp. of* EEC-Turkey Dec. 1/80: Art. 7  
  ref. from Raad van State, NL, 16 Apr. 2010

- **Art. 6(1) must be interpreted as precluding the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the point in time at which there was no longer compliance with the ground on the basis of which his residence permit had been issued under national law if there is no question of fraudulent conduct on the part of that worker and that withdrawal occurs after the expiry of the one-year period of legal employment.**

- **CJEU 7 Aug. 2018, C-123/17**  
  *interp. of* EEC-Turkey Dec. 1/80: Art. 13  
  ref. from Bundesverwaltungsgericht Leipzig, Germany, 10 Mar. 2017

- **Meaning of the standstill clause of Art 13 Dec 1/80 and Art 7 Dec 2/76 in relation to the language requirement of visa for retiring spouses. A national measure, taken during the period from 20 December 1976 to 30 November 1980, which makes the grant, for the purposes of family reunification, of a residence permit to third-country nationals who are family members of a Turkish worker residing lawfully in the Member State concerned, subject to such nationals obtaining, before entering national territory, a visa for the purpose of that reunification, constitutes a 'new restriction' within the meaning of that provision. Such a measure may nevertheless be justified on the grounds of the effective control of immigration and the management of migratory flows, but may be accepted only provided that the detailed rules relating to its implementation do not go beyond what is necessary to achieve the objective pursued, which it is for the national court to verify.**

- **CJEU 8 Dec. 2011, C-371/08**  
  *interp. of* EEC-Turkey Dec. 1/80: Art. 14(1)  
  ref. from Verwaltungsgerichtshof Baden Württemberg, Germany, 14 Aug. 2008

- **Decision No 1/80 does not preclude an expulsion measure based on grounds of public policy from being taken against a Turkish national whose legal status derives from the second indent of the first paragraph of Article 7 of that decision, in so far as the personal conduct of the individual concerned constitutes at present a genuine and sufficiently serious threat affecting a fundamental interest of the society of the host Member State and that measure is indispensable in order to safeguard that interest. It is for the national court to determine, in the light of all the relevant factors relating to the situation of the Turkish national concerned, whether such a measure is lawfully justified in the main proceedings.**

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**4.4.2 CJEU pending cases on EEC-Turkey Association Agreement**

- **CJEU C-379/20**  
  *interp. of* EEC-Turkey Dec. 1/80: Art. 13  
  ref. from Ostre Landsret, Denmark, 11 Aug. 2020

- **Does Art. 13 of Dec. 1/80, preclude the introduction and application of a new national measure under which family reunification between an economically active Turkish national who is lawfully resident in the MS in question and that person’s child who is 15 years of age is subject to the condition that very specific grounds, including the consideration of family unity and the consideration of the best interests of the child, support such reunification?**
### 4.4: External Treaties: Jurisprudence: CJEU pending cases on EEC-Turkey

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision Date</th>
<th>Parties</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU C-194/20</td>
<td>B.Y. / Duisburg</td>
<td>EEC-Turkey Dec. 1/80: Art. 9</td>
<td>Does the right of residence of Turkish children, as indicated under the first sentence of Art. 9 Dec. 1/80, also entail, without the need to fulfil further conditions, a right of residence for one or both parents with custody?</td>
</tr>
</tbody>
</table>

#### 4.4.3 CJEU Judgments on Readmission Treaties

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision Date</th>
<th>Parties</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU 27 Feb. 2017, T-192/16</td>
<td>N.F. / European Council</td>
<td>EU-Turkey Statement</td>
<td>Applicant claims that the EU-Turkey Statement constitutes an agreement that produces legal effects adversely affecting applicants rights and interests as they risk refoulement to Turkey and subsequently to Pakistan. The action is dismissed on the ground of the Court’s lack of jurisdiction to hear and determine it. Two other identical cases T-193/16 (N.G.) and T-257/16 (N.M.) were also declared inadmissible.</td>
</tr>
</tbody>
</table>