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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.
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Welcome to the third issue of NEMIS in 2021. We would like to draw your attention to the following. Interestingly, four out of the seven new cases are Danish case law and they all concern family issues.

Equal Treatment
The CJEU ruled in O.D. a.o. / INPS, C-350/20, that Art. 12(1)(c) Single Permit Dir. precludes national legislation which excludes the third-country nationals referred to in Art. 3(1)(b) and (c) from entitlement to a childbirth allowance and a maternity allowance provided for by that legislation.

Family Issues
In X. v. Belgium, C-930/19, the CJEU was asked whether Art. 13(2) of the Family Reunification Dir. infringes Art. 20 and 21 of the Charter. In particular, the question was whether by making, in the event of divorce, the retention of the right of residence by third-country nationals who have been the victims of acts of domestic violence committed by their spouses who are Union citizens subject to the conditions laid down in the second subparagraph of Article 13(2) of Dir. 2004/38, including, in particular, the condition relating to the sufficiency of resources, whereas Art. 15(3) of Dir. 2003/86 does not impose such conditions for the purpose of granting, in the same circumstances, an autonomous residence permit to third-country nationals who have been the victims of acts of violence committed by their spouses who are also third-country nationals, the EU legislature has introduced a difference in treatment between those two categories of third-country nationals who have been the victims of acts of domestic violence, to the detriment of the first category, in breach of Art. 20 and 21 of the Charter.

The CJEU concludes that their consideration of the question has disclosed no factor of a kind such as to affect the validity of Art. 13 (2) of Dir. 2004/38 in the light of Art. 20 of the Charter.

In Abdi v Denmark (ECHR 14 Sep. 2021, 41643/19), the ECHR had to decide on a Somali national who was born in 1993 and lived in Denmark as of 1997. The Danish authorities decided in 2018 to expel the applicant, with a permanent ban on his re-entry to the country, following his conviction for possession of a firearm. The Danish Courts ruled that this was a proportionate measure to prevent disorder and crime. The question before the ECHR was whether this was correct. The ECHR, however, noted that prior to the case at hand, apart from the crimes committed as a minor, the offenses committed mainly concerned traffic offenses and violations of the legislation on controlled substances, none of which indicated that in general the applicant posed a threat to public order. The ECHR also observed that the applicant had not previously been warned of expulsion or had a conditional expulsion order imposed. Seen in the light that the applicant arrived in Denmark at a very young age (4) and had lawfully resided there for approximately twenty years, he thus had very strong ties with Denmark, whereas his ties with Somalia were virtually non-existing. The ECHR was therefore of the view that the expulsion of the applicant combined with a life-long ban on returning was disproportionate.

In M.A. v Denmark (ECHR GC 9 July 2021, 6697/18) the Grand Chamber was asked to rule on the Danish statutory three-year waiting period for family reunification of persons benefitting from temporary subsidiary protection status. In an almost unanimous decision (16 to 1) the ECHR considered that MSs should be accorded a wide margin of appreciation in deciding whether to impose a waiting period for family reunification requested by persons who had not been granted refugee status but who enjoyed subsidiary protection or, like the applicant, temporary protection. Nevertheless, the discretion enjoyed by the States in this field could not be unlimited and fell to be examined in the light of the proportionality of the measure. While the Court saw no reason to question the rationale of a waiting period of two years as that underlying Art. 8 of the Family Reunification Directive, beyond such duration the insurmountable obstacles to enjoying family life in the country of origin progressively assumed more importance in the fair balance assessment. Although Art. 8 could not be considered to impose on a State a general obligation to authorise family reunification on its territory, the requirements of the Convention had to be practical and effective, not theoretical and illusory in their application to the particular case.
In B. / Udlændingenævnet (Denmark) (CJEU 2 Sep. 2021, C-379/20) the CJEU ruled that Art. 13 of Dec. 1/80 must be interpreted as meaning that a national measure lowering from 18 to 15 years the age below which the child of a Turkish worker residing legally in the territory of the host MS may submit an application for family reunification constitutes a ‘new restriction’ within the meaning of that provision. Such a restriction may, however, be justified by the objective of ensuring the successful integration of the third-country nationals concerned, on condition that the detailed rules for its implementation do not go beyond what is necessary to attain the objective pursued.

The remaining two new pending cases E.C. / Stscr (NL) (C-402/21) and X. / Udlændingenævnet (Denmark) (C-279/21) are also on the interpretation of Art. 13 Dec. 1/80.

The Danish cases compared
Abdi v Denmark illustrates how the very strict expulsion rules may be applied too mechanically by national courts, thus failing to exercise the minimum level of thorough examination and careful balancing of the individual circumstances in the light of the criteria established by the ECtHR that will normally allow the State a significant margin of appreciation, according to the Court's caselaw in recent years as reflected in the 2018 Copenhagen Declaration.

M.A. v Denmark is formally about restrictive family reunification rules, but in reality rather deals with the restrictions of asylum law and policy that were adopted in 2015-16. The key notion here is temporary subsidiary protection status as introduced in 2015 with a primary focus on certain categories of Syrian asylum seekers. Interestingly, the ECtHR specified some procedural requirements for the domestic examination of family reunification cases (<https://eumigrationlawblog.eu> blog of 27 Sep. 2021).

The two CJEU cases on Decision 1/80 (B., C-379/20 and X., C-279/21) also illustrate the increasing restrictions of Danish family reunification rules, yet perhaps even more the lack of attention paid by Danish authorities to the standstill clause when adopting and implementing these restrictions during the past two decades. Notably, the CJEU ruling in B. v. Udlændingenævnet was somewhat more lenient than the previous case on the standstill clause, CJEU 10 July 2019, C-89/18, A. v. Udlændingeevnet.

Nijmegen, September 2021, Carolus Grütters and Jens Vedsted-Hansen
# 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 19 June 2005**

**CJEU judgments**

#### New

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

**CJEU pending cases**

- **CJEU (pending) 2021** C-355/20 B.L. & B.C. Art. 10(3)+16(1)(a)
- **CJEU (pending) 2021** C-360/20 C.R. / L.Hptmn Art. 10(3)+7(1)
- **CJEU (pending) 2021** C-273/20 Germany / S.W. (GER) Art. 10(3)+16(1)(a)
- **CJEU (pending) 2021** C-279/20 Germany / X.C. (GER) Art. 4+6(1)(b)
- **CJEU (pending) 2021** C-230/21 X. / Belgium Art. 10(3)(a)+2(f)

See further: § 1.3

### 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**

**Intra-Corporate Transferees**

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

See further: § 1.3
**Directive 2003/109**  
*Concerning the status of TCNs who are long-term residents*

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

* amended by Dir. 2011/51

**CJEU judgments**

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See further: § 1.3

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**Directive 2011/51**  
*Long-Term Resident status for refugees and persons with subsidiary protection*

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

* extending Dir. 2003/109 on LTR

**Council Decision 2006/688**  
*On the establishment of a mutual information mechanism in the areas of asylum and immigration*

* OJ 2006 L 283/40

**UK, IRL opt in**

**Directive 2005/71**  
*On a specific procedure for admitting TCNs for the purposes of scientific research*

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

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

**Recommendation 762/2005**  
*To facilitate the admission of TCNs to carry out scientific research*

* OJ 2005 L 289/26

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

* OJ 2016 L 132/21  
* impl. date 24 May 2018

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

**CJEU judgments**

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See further: § 1.3

**Regulation 1030/2002**  
*Laying down a uniform format for residence permits for TCNs*

* OJ 2002 L 157/1  
* impl. date 15 June 2002

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

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

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

* OJ 2014 L 94/375  
* impl. date 30 Sep. 2016
1.1: Regular Migration: adopted measures

**Directive 2011/98**  
Single Application Procedure: for a single permit for TCNs to reside and work in the territory of a MS and on a common set of rights for third-country workers legally residing in a MS  
* OJ 2011 L 343/1  
impl. date 25 Dec. 2013

**CJEU judgments**

New  
CJEU 2 Sep. 2021 C-350/20 O.D. a.o. / INPS (ITA)  
Art. 12(1)(c)+3(1)

CJEU 25 Nov. 2020 C-302/19 INPS / W.S. (ITA)  
Art. 12(1)(c)

CJEU 21 June 2017 C-449/16 Martinez Silva  
Art. 12(1)(c)

CJEU pending cases

CJEU (pending) C-462/20 ASGI  
Art. 12(1)(c)

See further: § 1.3

**Regulation 859/2003**  
Third-Country Nationals’ Social Security extending Reg. 1408/71 and Reg. 574/72  
* OJ 2003 L 124/1  
UK, IRL opt in

CJEU judgments

CJEU 27 Oct. 2016 C-465/14 Wieland & Rothwangl  
Art. 1

CJEU 18 Nov. 2010 C-247/09 Xhymshiti  
See further: § 1.3

**Regulation 1231/2010**  
Social Security TCN II  
Social Security for EU Citizens and TCNs who move within the EU  
* OJ 2010 L 344/1  
impl. date 1 Jan. 2011

CJEU judgments

CJEU 24 Jan. 2019 C-477/17 Balandin  
Art. 1

See further: § 1.3

**Directive 2004/114**  
Students  
Admission of Third-Country Nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service  
* OJ 2004 L 375/12  
impl. date 12 Jan. 2007

CJEU judgments

CJEU 4 Apr. 2017 C-544/15 Fahimian  
Art. 6(1)(d)

CJEU 10 Sep. 2014 C-491/13 Ben Alaya  
Art. 6+7

CJEU 21 June 2012 C-15/11 Sommer  
Art. 17(3)

CJEU 24 Nov. 2008 C-294/06 Payir  
See further: § 1.3

**CRC**  
Best interest of the Child  
UN Convention on the Rights of the Child  
Art. 3 Best interests of the child  
Art. 10 Family Life

* 1577 UNTS 27531  
impl. date 2 Sep. 1990

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

**CRC views**

CtRC 28 Sep. 2020 56/2018 V.A.  
Art. 3

CtRC 28 Sep. 2020 31/2017 W.M.C.  
Art. 3

CtRC 27 Sep. 2018 12/2017 C.E.  
Art. 3+10

See further: § 1.3
### NEMIS 2021/3

#### 1.1: Regular Migration: Adopted Measures

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<td>De Souza Ribeiro v UK</td>
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<td>Hode and Abdi v UK</td>
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<td>ECtHR 14 Feb. 2012 26940/10</td>
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<td>ECtHR 10 Jan. 2012 22251/07</td>
<td>G.R. v NL</td>
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<td>ECtHR 20 Sep. 2011 8000/08</td>
<td>A.A. v UK</td>
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<td>ECtHR 14 Dec. 2010 34848/07</td>
<td>O'Donoghue v UK</td>
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<td>ECtHR 22 Mar. 2007 1638/03</td>
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<td>ECtHR 18 Oct. 2006 46410/99</td>
<td>Úner v NL</td>
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<td>ECtHR 2 Aug. 2001 54273/00</td>
<td>Boultif v CH</td>
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See further: § 1.3
1.3.1 CJEU Judgments on Regular Migration

**Directive**

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

* COM (2016) 378, 7 June 2016

**Regular Migration: Blue Card II**

* 883/2004, 15(1), (c) Art. 1

**Family Reunification**

* Art. 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.

### 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**
  - AG 26 Oct. 2017
  - interpr. of Dir. 2003/86
  - 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**
  - AG 12 June 2014
  - interpr. of Dir. 2004/114
  - 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**
  - AG 27 June 2018
  - interpr. of Dir. 2003/86
  - 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.
  - Art. 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**
  - AG 19 Mar. 2020
  - interpr. of Dir. 2003/86
  - 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 24 Jan. 2019, C-477/17**
  - AG 27 Sep. 2018
  - interpr. of Reg. 1231/2010
  - ref. from Centrale Raad van Beroep, NL, 4 Aug. 2017
  - Article 1 must be interpreted as meaning that third country nationals, who temporarily reside and work in different Member States in the service of an employer established in a Member State, may rely on the coordination rules (laid down by Reg. 883/2004 and Reg. 987/2009 and Reg. 883/2004), in order to determine the social security legislation to which they are subject, provided that they are legally staying and working in the territory of the Member States.
after fleeing their country of origin. Specific evidence has been presented in the light of the objective pursued by the directive and is liable to create an obstacle to the exercise of the rights conferred by the directive.

AG 10 Dec. 2009
* interpr. of Dir. 2003/86
ref. from Raad van State, NL, 29 Dec. 2008
* The concept of family reunification allows no distinction based on the time of marriage. Furthermore, Member States may not require an income as a condition for family reunification, which is higher than the national minimum wage level. Admission conditions allowed by the directive, serve as indicators, but should not be applied rigidly, i.e. all individual circumstances should be taken into account.

CJEU 11 Jan. 2021, C-761/19
* incor. appl. of Dir. 2003/109
ref. from European Commission, EU, 25 Oct. 2010
* 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 from working as employed veterinarians or exercising that profession on a self-employed basis.

AG 10 Jan. 2012
* interpr. of Dir. 2003/109
ref. from European Commission, EU, withdrawn
* The Court rules that the Netherlands has failed to fulfil its obligations by applying excessive and disproportionate administrative fees which are liable to create an obstacle to the exercise of the rights conferred by the Long-Term Residents Directive: (1) to TCNs seeking long-term resident status in the Netherlands, (2) to those who, having acquired that status in a MS other than the Kingdom of the Netherlands, are seeking to exercise the right to reside in that MS, and (3) to members of their families seeking authorisation to accompany or join them.

CJEU 10 July 2014, C-138/13
* interpr. of Dir. 2003/86
ref. from Verwaltungsgericht Berlin, Germany, 19 Mar. 2013
* The language requirement abroad is not in compliance with the standstill clauses of the Association Agreement. Although the question was also raised whether this requirement is in compliance with the Family Reunification Directive, the Court did not answer that question. However, paragraph 38 of the judgment could also have implications for its forthcoming answer on the compatibility of the language test with the Family Reunification: “on the assumption that the grounds set out by the German Government, namely the prevention of forced marriages and the promotion of integration, can constitute overriding reasons in the public interest, it remains the case that a national provision such as that at issue in the main proceedings goes beyond what is necessary in order to attain the objective pursued, in so far as the absence of evidence on sufficient linguistic knowledge automatically leads to the dismissal of the application for family reunification, without accounting 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).

AG 29 Nov. 2018
* interpr. of Dir. 2003/86
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.
1.3: Regular Migration: Jurisprudence: CJEU Judgments

CJEU 27 June 2006, C-540/03
AG 8 Sep. 2005
* interpr. of Dir. 2003/86
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
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
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
Iida
AG 15 May 2012
* interpr. of Dir. 2003/109
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 8 Sep. 2005
* interpr. of Dir. 2003/86
ref. from Rechtbank Den Haag (zp) Zwolle, NL, 31 Mar. 2011
* The Commission took the position that Art. 7(2) does not allow MSs to deny a family member as meant in Art. 4(1)(a) of a lawfully residing TCN entry and admission on the sole ground of not having passed a civic integration examination abroad. However, as a residence permit was granted just before the hearing would take place, the Court decided it was not necessary to give a ruling.

CJEU 25 Nov. 2020, C-303/19
INPS / V.R. (ITA)
AG 11 June 2020
* interpr. of Dir. 2003/109
ref. from Corte Suprema di cassazione, Italy, 11 Apr. 2019
* Art. 11(1)(d) must be interpreted as precluding legislation of a MS under which, for the purposes of determining entitlement to a social security benefit, the family members of a long-term resident, within the meaning of Art. 2(b) thereof, who do not reside in the territory of that MS, but in a third country are not taken into account, whereas the family members of that MS who reside in a third country are taken into account, where that MS has not expressed its intention of relying on the derogation to equal treatment permitted by Art. 11(2) of that directive by transposing it into national law.

CJEU 25 Nov. 2020, C-302/19
INPS / W.S. (ITA)
AG 11 June 2020
* interpr. of Dir. 2011/98
ref. from Corte Suprema di cassazione, Italy,
* Art. 12(1)(c) must be interpreted as precluding the legislation of a MS under which, for the purpose of determining entitlement to a social security benefit, the family members of the holder of a single permit, within the meaning of Art. 2(c) thereof, who do not reside in the territory of that MS but in a third country are not taken into account, whereas account is taken of family members of nationals of that MS residing in a third country.
The CJEU has ruled that the LTR directive precludes legislation of a MS which, as interpreted by some domestic courts, does not provide for the application of the requirements of protection against the expulsion of a third-country national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it.

The CJEU declares that the LTR directive precludes legislation of a MS which, as interpreted by some domestic courts, does not provide for the application of the requirements of protection against the expulsion of a third-country national who is a long-term resident to all administrative expulsion decisions, regardless of the legal nature of that measure or of the detailed rules governing it.

Thus, the principle of non-discrimination on grounds of ethnic origin precludes national legislation which allows for different requirements for EU citizens, EEA nationals and their family members on the one hand and third country nationals (including those with long-term resident status within the meaning of Directive 2003/109) on the other hand.
1.3. Regular Migration: Jurisprudence: CJEU Judgments

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

**CJEU 21 June 2017, C-449/16**
* Martinez-Silva EU:C:2017:485
* interpr. of Dir. 2011/98 Single Permit Art. 12(1)(e)  
* 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 (Italian national legislation).

**CJEU 17 July 2014, C-338/13**
* Noorzia EU:C:2014:2092
  AG 30 Apr. 2014
* interpr. of Dir. 2003/86 Family Reunification Art. 4(5)  
  ref. from Verwaltungsgerichtshof, Austria, 20 June 2013
* Art. 4(5) does not preclude a rule of national law requiring that spouses and registered partners must have reached the age of 21 by the date when the application seeking to be considered family members entitled to reunification is lodged.

**CJEU 6 Dec. 2012, C-356/11**
* O. & S. EU:C:2012:776
  AG 27 Sep. 2012
* interpr. of Dir. 2003/86 Family Reunification Art. 7(1)(c)  
  ref. from Korkein hallinto-oikeus, Finland, 7 July 2011
* When examining an application for family reunification, a MS has to do so in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of the directive.

**CJEU 2 Sep. 2021, C-350/20**
* O.D. a.o. / INPS (ITA) EU:C:2021:659
  AG 28 Jan. 2015
* interpr. of Dir. 2011/98 Single Permit Art. 12(1)(e)+3(1)  
  ref. from Corte Costituzionale, Italy, 30 July 2020
* Art. 12(1)(e) Dir. 2011/98 must be interpreted as precluding national legislation which excludes the third-country nationals referred to in Art. 3(1)(b) and (c) of that directive from entitlement to a childbirth allowance and a maternity allowance provided for by that legislation.

**CJEU 4 June 2015, C-579/13**
* P. & S. EU:C:2015:369
  AG 28 Jan. 2015
* interpr. of Dir. 2003/109 Long-Term Residents Art. 5+11  
  ref. from Centrale Raad van Beroep, NL, 15 Nov. 2012
* Article 5(2) and Article 11(1) do not preclude national legislation, such as that at issue in the main proceedings, which imposes on TCNs who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive, which it is for the referring court to determine. Whether the long-term resident status was acquired before or after the obligation to pass a civic integration examination was imposed is irrelevant in that respect.

**CJEU 24 Nov. 2008, C-294/06**
* Payir EU:C:2008:36
  AG 18 July 2007
* interpr. of Dir. 2004/114 Students  
  ref. from Court of Appeal (England & Wales), UK, 24 Jan. 2008
* The fact that a Turkish national was granted leave to enter the territory of a MS as an au pair or as a student cannot deprive him of the status of ‘worker’ and prevent him from being regarded as ‘duly registered as belonging to the labour force’ of that MS.

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

**CJEU 18 Oct. 2012, C-502/10**
* Singh EU:C:2012:636
  AG 15 May 2012
* interpr. of Dir. 2003/109 Long-Term Residents Art. 3(2)(e)  
  ref. from Raad van State, NL, 20 Oct. 2010
* The concept of ‘residence permit which has been formally limited’ as referred to in Art. 3(2)(e), does not include a fixed-period residence permit, granted to a specific group of persons, if the validity of their permit can be extended indefinitely without offering the prospect of permanent residence rights. The referring national court has to ascertain if a formal limitation does not prevent the long-term residence of the third-country national in the Member State concerned. If that is the case, this national cannot be excluded from the personal scope of this Dir.
The conditions of access to the labour market by Bulgarian students, may not be more restrictive than those set out in the Directive

While Art. 10(2) must be interpreted as not precluding a MS State from authorising the family reunion of a refugee’s sister only if she is, on account of her state of health, unable to provide for her own needs, provided that:

(1) that inability is assessed having regard to the special situation of refugees and at the end of a case-by-case examination taking into account all the relevant factors, and

(2) that it may be ascertained, having regard to the special situation of refugees and at the end of a case-by-case examination taking into account all the relevant factors, that the material support of the person concerned is actually provided by the refugee, or that the refugee appears as the family member most able to provide the material support required.

Family members of a person who has already acquired LTR status may not be exempted from the condition laid down in Article 4(1), under which, in order to obtain that status, a TCN must have resided legally and continuously in the MS concerned for five years immediately prior to the submission of the relevant application. Art. 13 of the LTR Directive does not allow a MS to issue family members, as defined in Article 2(e) of that directive, with LTR EU residence permits on terms more favourable than those laid down by that directive.

While the LTR provided for equal treatment of long-term resident TCNs, this ‘in no way precludes other EU acts, such as’ the insolvent employers Directive, “from conferring, subject to different conditions, rights on TCNs with a view to achieving individual objectives of those acts”.

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

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.
1.3 Regular Migration: Jurisprudence: CJEU Judgments

**CJEU 3 Oct. 2019, C-302/18**

AG 6 June 2019

* interpr. of Dir. 2003/109

Ref. from Raad voor Vreemdelingenbewaringen, Belgium, 4 May 2018

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

**CJEU 20 Nov. 2019, C-706/18**

AG 14 Mar. 2019, C-557/17

* interpr. of Dir. 2003/86

Ref. from Raad voor Vreemdelingenbewaringen, Belgium, 14 Nov. 2018

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

**CJEU 2 Sep. 2021, 2005/19**

AG 22 Mar. 2021

* interpr. of Dir. 2003/86

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

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

**CJEU 18 Nov. 2010, C-247/09**

AG 7 Feb. 2011

* interpr. of Reg. 859/2003

Ref. from Finanzgericht Baden-Württemberg, Germany, 7 July 2009

* In the case in which a national of a non-member country is lawfully resident in a MS of the EU and works in Switzerland, Reg. 859/2003 does not apply to that person in his MS of residence, in so far as that regulation is not among the Community acts mentioned in section A of Annex II to the EU-Switzerland Agreement which the parties to that agreement undertake to apply.

**CJEU 14 Mar. 2019, C-557/17**

AG 4 Oct. 2018

* interpr. of Dir. 2003/86

Ref. from Raad van State, NL, 22 Sep. 2017

* Art. 16(2)(a) of Dir. 2003/86 (Family Reunification) must be interpreted as meaning that, where falsified documents were produced for the issuing of residence permits to family members of a third-country national, the fact that those family members did not know of the fraudulent nature of those documents does not preclude the Member State concerned, in application of that provision, from withdrawing those permits. In accordance with Article 17 of that directive, it is however for the competent national authorities to carry out, beforehand, a case-by-case assessment of the situation of those family members, by making a balanced and reasonable assessment of all the interests in play.

**CJEU 14 Mar. 2019, C-557/17**

AG 4 Oct. 2018

* interpr. of Dir. 2003/109

Ref. from Raad van State, NL, 22 Sep. 2017

* Art. 9(1)(a) of Dir. 2003/109 (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.
1.3.2 CJEU pending cases on Regular Migration

**CJEU C-462/20**
* interpr. of Dir. 2003/109
  * Does Art. 11(1)(d) 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?

**CJEU C-462/20**
* interpr. of Dir. 2009/50
  * Does Art. 14(1)(e), in conjunction with Art. 1(2) and Art. 3(f)(j) 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-355/20**
* interpr. of Dir. 2003/86
  * On the reunification with a minor refugee.

**CJEU C-560/20**
* interpr. of Dir. 2003/86
  * On family reunification of refugees with their family members and medical care

**CJEU C-624/20**
* interpr. of Dir. 2003/109
  * 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**
* interpr. of Dir. 2003/86
  * On the reunification with a minor refugee.

**CJEU C-279/20**
* interpr. of Dir. 2003/86
  * On the issue of a child of refugee becoming of age during asylum procedure.

**CJEU C-432/20**
* interpr. of Dir. 2003/109
  * Is the residence right ex art 20 TFEU in any way restricted?

**CJEU C-230/21**
* interpr. of Dir. 2003/86
  * Should Art. 2(f) read in conjunction with Art. 10(3)(a) of Family Reunification Directive be interpreted as meaning that a refugee who is an ‘unaccompanied minor’, and who resides in a MS, must be ‘unmarried’ under national law in order to enjoy the right to family reunification with relatives in the direct ascending line? If so, can a refugee minor whose marriage contracted abroad is not recognised for public policy reasons be regarded as an ‘unaccompanied minor’ within the meaning of Arts. 2(f) and 10(3)?

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No Interpreting of Directives.

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**N E M I S 2021/3**

1.3: Regular Migration: Jurisprudence: CJEU Judgments

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**CJEU 8 May 2013, C-87/12**
* interpr. of Dir. 2003/86
  * Family Reunification Art. 3(3)
  * ref. from Cour Administrative, Luxembourg, 20 Feb. 2012
  * Directives 2003/86 and 2004/38 are not applicable to third-country nationals who apply for the right of residence in order to join a family member who is a Union citizen and has never exercised his right of freedom of movement as a Union citizen, always having resided as such in the Member State of which he holds the nationality (see also: CJEU 15 Nov. 2011, C-256/11 Dereci, par. 58 in our other newsletter NEFIS).

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**If refugee enjoys the right to family reunification with relatives in the direct ascending line?**

**CJEU C-230/21**
* interpr. of Dir. 2003/86
  * Family Reunification Art. 10(3)(a)+2(f)
  * ref. from Raad voor Vreemdelingenbetwistingen, Belgium, 6 Apr. 2021
  * Should Art. 2(f) read in conjunction with Art. 10(3)(a) of Family Reunification Directive be interpreted as meaning that a refugee who is an ‘unaccompanied minor’, and who resides in a MS, must be ‘unmarried’ under national law in order to enjoy the right to family reunification with relatives in the direct ascending line? If so, can a refugee minor whose marriage contracted abroad is not recognised for public policy reasons be regarded as an ‘unaccompanied minor’ within the meaning of Arts. 2(f) and 10(3)?
1.3.3 ECHR Judgments on Regular Migration and Family Life (Art. 8, 12, 14)

- **ECtHR 20 Sep. 2011, 8000/08**
  - **A.A. v UK**
  - ECHR: Art. 8
  - *The applicant alleged, in particular, that his deportation to Nigeria would violate his right to respect for his family and private life and would deprive him of the right to education by terminating his university studies in the UK.*

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

- **ECtHR 14 May 2019, 23270/16**
  - **Abokar v SWE**
  - ECHR: Art. 8
  - *The applicant is a Somali national who was born in 1986. He was granted refugee status and a residence permit in Italy in 2013. Also in 2013, he is married in Sweden to A who holds a permanent resident status in Sweden. The couple has two children. The applicant applies under a different name also for asylum in Sweden. That request, however, is denied and Sweden sends him back to Italy. Subsequently, the applicant applies for a regular residence permit based on family reunification in Sweden. Due to using false IDs the Swedish authorities conclude that the applicant could not make his identity plausible. Also, the applicant could not prove that they had been living together prior to his moving to Sweden. As a result his application was denied. The Court finds that the Swedish authorities have not failed to strike a fair balance between the applicant’s interests, on the one hand, and the State’s interest in effective implementation of immigration control, on the other. The Court further notes that since both the applicant and his wife have been granted residence permits in member States of the European Union (Italy and Sweden), the family can easily travel between Italy and Sweden and stay for longer periods in either of those countries.*

- **ECtHR 12 Jan. 2017, 31183/13**
  - **Abuhmaid v UKR**
  - ECHR: Art. 8+13
  - *The applicant is a Palestinian residing in Ukraine for over twenty years. In 2010 the temporary residence permit expired. Since then, the applicant has applied for asylum unsuccessfully. The Court found that the applicant does not face any real or imminent risk of expulsion from Ukraine since his new application for asylum is still being considered and therefore declared this complaint inadmissible.*

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

- **ECtHR 14 Feb. 2012, 26940/10**
  - **Antwi v NOR**
  - ECHR: Art. 8
  - *A case similar to Nunez (ECtHR 28 June 2011) except that the judgment is not unanimous (2 dissenting opinions). Mr Antwi from Ghana migrates in 1988 to Germany on a false Portuguese passport. In Germany he meets his future wife (also from Ghana) who lives in Norway and is naturalised to Norwegian nationality. Mr Antwi moves to Norway to live with her and their first child is born in 2001 in Norway. In 2005 the parents marry in Ghana and subsequently it is discovered that Mr Antwi travels on a false passport. In Norway Mr Antwi goes to trial and is expelled to Ghana with a five year re-entry ban. The Court does not find that the Norwegian authorities acted arbitrarily or otherwise transgressed the margin of appreciation which should be accorded to it in this area when seeking to strike a fair balance between its public interest in ensuring effective immigration control, on the one hand, and the applicants’ need that the first applicant be able to remain in Norway, on the other hand.*

- **ECtHR 23 Oct. 2018, 25593/14**
  - **Assem Hassan v DEN**
  - ECHR: Art. 8
  - *The case concerned the expulsion from Denmark of a Jordanian national, who has six children of Danish nationality. He was deported in 2014 following several convictions for drugs offences. The Court was not convinced that the best interests of the applicant’s six children had been so adversely affected by his deportation that they should outweigh the other criteria to be taken into account, such as the prevention of disorder or crime.*
In this case the Italian Supreme Court did not answer the question at all. for ECtHR 8 Apr. 2014, 17120/09 https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2217120/09%22%5D%7D such a way that their courts can meet its requirements.

Article 8 excludes of Pakistan are so weak and reversely with Norway so strong that their expulsion would entail a violation of art. 8. However, investigation living knowledge of the applicant’s family situation, such as the length of the marriage; 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.

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.
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

ECtHR 8 Nov. 2016, 56971/10  
* El Ghatet v CH  
ECHR: Art. 8  
CE: ECHR:2016:1108JUD005697110

The applicant is an Egyptian national, who applied for asylum in Switzerland leaving his son behind in Egypt. While his asylum application was rejected, the father obtained a residence permit and after having married a Swiss national also Swiss nationality. The couple have a daughter and eventually divorced. The father’s first request for family reunification with his son was accepted in 2003 but eventually his son returned to Egypt. The father’s second request for family reunification in 2006 was rejected. According to the Swiss Federal Supreme Court, the applicant’s son had closer ties to Egypt where he had been cared for by his mother and grandmother. Moreover, the father should have applied for family reunification immediately after arriving in Switzerland.

The Court first considers that it would be unreasonable to ask the father to relocate to Egypt to live together with his son there, as this would entail a separation from the father’s daughter living in Switzerland. The son had reached the age of 13 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 has merely examined the best interest of the child in a brief manner and put forward a rather summary reasoning. As such the child’s best interests have not sufficiently been placed at the centre of its balancing exercise. The Court therefore finds a violation of Art. 8.

ECtHR 10 Jan. 2012, 22251/07  
* G.R. v NL  
ECHR: Art. 8+13  
CE: ECHR:2012:0110JUD002225107

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 regional – unjustifiably hindered the applicant’s use of an otherwise effective domestic remedy.

There has therefore been a violation of Article 8 and 13 of the Convention.

ECtHR 12 June 2018, 23038/15  
* Gaspar v RUS  
ECHR: Art. 8  
CE: ECHR:2018:0612JUD002303815

Request for referral to the Grand Chamber pending. In this case a residence permit of a Czech national married to a Russian national was withdrawn based on a no further motivated report implicating that the applicant was considered a danger to national security.

ECtHR 11 June 2013, 52166/09  
* Hasanbasic v CH  
ECHR: Art. 8  
CE: ECHR:2013:0611JUD005216609

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

ECtHR 6 Nov. 2012, 22341/09  
* Hode and Abdi v UK  
ECHR: Art. 8+14  
CE: ECHR:2012:1106JUD002234109

Discrimination on the basis of date of marriage has no objective and reasonable justification.

ECtHR 26 Apr. 2018, 63311/14  
* Hoti v CRO  
ECHR: Art. 8  
CE: ECHR:2018:0426JUD006331114

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

ECtHR 9 Apr. 2019, 23887/16  
* J.M. v CH  
ECHR: Art. 8  
CE: ECHR:2019:0409JUD002388716

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 2013 his final appeal against the expulsion order was dismissed: the Federal Administrative Court held that the authorities had to be afforded a wide margin of discretion under the subsidiarity principle. Consequently, the applicant lost his disability allowance and was now dependent on his children.

The ECtHR ruled that the Swiss authorities had only examined the proportionality of the expulsion order superficially, briefly considered the risk of reoffending and mentioned the difficulties which the applicant would have faced on his return to Kosovo. Other aspects had been either overlooked or considered very superficially even though they had been relevant criteria under the Court’s case-law, including the solidity of the applicant’s social, cultural and family links with the host country and the country of destination, medical evidence, the applicant’s situation of dependence on his adult children, the change in the applicant’s behaviour twelve years after the commission of the offence, and the impact of his seriously worsening state of health on the risk of his reoffending.
1.3 Regular Migration: Jurisprudence: ECtHR Judgments

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

**ECtHR 3 Oct. 2014, 12738/10**  
Jeannes v NL  
* violation of  
ECHR: Art. 8  
* The central issue in this case is whether, bearing in mind the margin of appreciation afforded to States in immigration matters, a fair balance has been struck between the competing interests at stake, namely the personal interests of the applicant, her husband and their children in maintaining their family life in the Netherlands on the one hand and, on the other, the public order interests of the respondent Government. In 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  
* no violation of  
ECHR: Art. 8  
* The applicant national of Kosovo who did not reside legally in Switzerland, married in 1999 a Bangladeshi woman with a residence permit in Switzerland. As a result K.A. received a residence permit on the basis of family life. The couple had a son in 2002 which was in foster care since 2010. In 2010 the applicant was convicted of a drug-related offence to 26 months imprisonment of which 20 were suspended. Until 2012 another 18 sentences were ordered. As a result his residence permit was not renewed in 2012 and he was ordered to leave the country. In 2015 his appeals were dismissed and he was refused entry for a period of seven years.

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

**ECtHR 12 Jan. 2021, 26957/19**  
Kahn v DEN  
* no violation of  
ECHR: Art. 8  
* Similar to ECtHR 12 Jan 2021, 56803/18, Munir v. DK.

The applicant is a Pakistani national who was born in Denmark in 1986. He has a criminal record and was once subject to a conditional expulsion order. By a final Supreme Court judgment of 20 November 2018, the applicant was convicted, inter alia, of threatening a police inspector on duty. He was sentenced to 3 months’ imprisonment and an order for expulsion with a ban on re-entry for 6 years was imposed on him. In total the applicant has been imprisoned for almost ten years. The ECtHR concludes that the interference with the applicant’s private life was supported by relevant and sufficient reasons. It is satisfied that “very serious reasons” were adequately adduced by the Supreme Court when assessing the applicant’s case, and that his expulsion was not disproportionate in the light of all the circumstances of the case. It notes that the Supreme Court, explicitly and thoroughly assessed whether the expulsion order could be deemed to be contrary to Denmark’s international obligations. The ECtHR points out in that regard that, in accordance with the principle of subsidiarity, although opinions may differ on the outcome of a judgment, “where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court’s case-law, the Court would require strong reasons to substitute its view for that of the domestic courts.”

**ECtHR 24 July 2018, 32504/11**  
Kaplan a.o. v NOR  
* violation of  
ECHR: Art. 8  
* A Turkish father’s application for asylum is denied in 1998. After a conviction for aggravated burglary in 1999 he gets an expulsion order and an indefinite entry ban. On appeal this entry ban is reduced to 5 years. Finally he is expelled in 2011. His wife and children arrived in Norway in 2003 and were granted citizenship in 2012. Given the youngest daughter special care needs (related to chronic and serious autism), the bond with the father and the long period of inactivity of the immigration authorities, the Court states that it is not convinced in the concrete and exceptional circumstance of the case that sufficient weight was attached to the best interests of the child.

**ECtHR 21 Sep. 2016, 38303/12 (GC)**  
Khan v GER  
* interpr. of  
ECHR: Art. 8  
* This case is about the applicant’s (Khan) imminent expulsion to Pakistan after she had committed manslaughter in Germany in a state of mental incapacity. On 23 April 2015 the Court ruled that the expulsion would not give rise to a violation of Art. 8. Subsequently the case was referred to the Grand Chamber. The Grand Chamber was informed by the German Government that the applicant would not be expelled and granted a ‘Duldung’. These assurances made the Grand Chamber to strike the application out of the list.

**ECtHR 25 Apr. 2017, 41697/12**  
Krasniqi v AUT  
* no violation of  
ECHR: Art. 8  
* The applicant is from Kosovo and entered Austria in 1994 when he was 19 years old. Within a year he was arrested for working illegally and was issued a five-year residence ban. He lodged an asylum application, which was dismissed, and returned voluntarily to Kosovo in 1997. In 1998 he went back to Austria and filed a second asylum request with his wife and daughter. Although the asylum claim was dismissed they were granted subsidiary protection. The temporary residence permit was extended a few times but expired in December 2009 as he had not applied for its renewal. After nine convictions on drugs offences and aggravated threat, he was issued a ten-year residence ban. Although the applicant is well integrated in Austria, the Court concludes that the Austrian authorities have not overstepped the margin of appreciation accorded to them in immigration matters by expelling the applicant.
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

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

**New**  
**ECtHR 9 July 2021, 6697/18 (GC)**  
M.A. v. DEN  
(violation of ECHR: Art. 8)  
The applicant is a Syrian national who fled the country in 2015 and entered Denmark where he was granted “temporary protection status” for one year under the Alien Act. The Danish Immigration Service did not find that he had fulfilled the requirements for being granted special “Convention status” or “protection status”, for which residence permits were normally granted for five years. After five months of residing in Denmark, the applicant requested family reunification with his wife and two adult children. His request was rejected because he had not been in possession of a residence permit for the last three years, as required in law, and because there were no exceptional reasons to otherwise justify family reunification. The applicant unsuccessfully appealed against the refusal to grant him family reunification with his wife up to the Supreme Court, which handed down its decision in 2016. In 2018, having resided in Denmark for just over two years and ten months, the applicant submitted a new request for family reunification. After submitting the correct documentation, the applicant’s wife was granted a permit and entered the country. The Court considered that MSs should be accorded a wide margin of appreciation in deciding whether to impose a waiting period for family reunification requested by persons who had not been granted refugee status but who enjoyed subsidiary protection or, like the applicant, temporary protection. Nevertheless, the discretion enjoyed by the States in this field could not be unlimited and fell to be examined in the light of the proportionality of the measure. While the Court saw no reason to question the rationale of a waiting period of two years as that underlying Art. 8 of the Family Reunification Directive, beyond such duration the insurmountable obstacles to enjoying family life in the country of origin progressively assumed more importance in the fair balance assessment. Although Art. 8 could not be considered to impose on a State a general obligation to authorise family reunification on its territory, the requirements of the Convention had to be practical and effective, not theoretical and illusory, in their application to the particular case. Violation: sixteen votes to one.

**ECtHR 8 Dec. 2020, 59006/18**  
M.M. v CH  
(no violation of ECHR: Art. 8)  
The applicant, a Spanish national who was born in Switzerland in 1980 was deported from Switzerland to Spain and banned for five years, the minimum term under the Criminal Code, following his conviction and suspended twelve-month prison sentence for committing indecent assault on a minor and taking drugs. The ECtHR rules that the Swiss Courts had sound reasons justifying deportation.

**ECtHR 22 Mar. 2007, 1638/03**  
Maxlov v AUT  
(violation of ECHR: Art. 8)  
In addition to the criteria set out in Boulitf (54273/00) and Uner (46410/99) the ECtHR considers that for a settled migrant who has lawfully spent all or the major part of his or her childhood and youth in the host country very serious reasons are required to justify expulsion. This is all the more so where the person concerned committed the offences underlying the expulsion measure as a juvenile.

**ECtHR 12 Oct. 2006, 13178/03**  
Mayeka v BEL  
(no violation of ECHR: Art. 5+8+13)  
Mrs Mayeka, a Congolese national, arrived in Canada in September 2000, where she was granted refugee status in July 2001 and obtained indefinite leave to remain in March 2003. After being granted asylum, she asked her brother, a Dutch national living in the Netherlands, to collect her daughter Tabitha, who was then five years old, from the Democratic Republic of the Congo at the airport of Brussels and to look after her until she was able to join her mother in Canada. Shortly after arriving at Brussels airport on 18 August 2002, Tabitha was detained because she did not have the necessary documents to enter Belgium. An application for asylum that had been lodged on behalf of Tabitha was declared inadmissible by the Belgian Aliens Office. A request to place Tabitha in the care of foster parents was not answered. Although the Brussels Court of First instance held on 16 October 2002 that Tabitha’s detention was unjust and ordered her immediate release, the Belgian authorities deported the five year old child to Congo on a plane. The Court considered that owing to her very young age, the fact that she was an illegal alien in a foreign land, that she was unaccompanied by her family from whom she had become separated and that she had been left to her own devices, Tabitha was in an extremely vulnerable situation. The Court ruled that the measures taken by the Belgian authorities were far from adequate and that Belgium had violated its positive obligations to take requisite measures and preventive action. Since there was no risk of Tabitha’s seeking to evade the supervision of the Belgian authorities, her detention in a closed centre for adults served no purpose and other measures more conducive to the higher interest of the child guaranteed by Article 3 of the Convention on the Rights of the Child, could have been taken. Since Tabitha was an unaccompanied alien minor, Belgium was under an obligation to facilitate the reunion of the family. However, Belgium had failed to comply with these obligations and had disproportionately interfered with the applicants’ rights to respect for their family life.

**ECtHR 10 July 2014, 52701/09**  
Mugenzi v FRA  
(violation of ECHR: Art. 8)  
The Court noted the particular difficulties the applicant encountered in their applications, namely the excessive delays and lack of reasons or explanations given throughout the process, despite the fact that he had already been through traumatic experiences.
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| ECtHR 12 Jan. 2021, 56803/18 | Munir v DEN | **no violation of**

Similar to ECtHR 12 Jan 2021, 56803/18, Kahn v. DK. The applicant is an Iraqi national who entered Denmark in 1999 at the age of four. He was granted permanent residence. In 2011, he was convicted of two violent offences. In 2014 he was again convicted of a violent offence. In 2015 he was convicted of being in possession of cocaine and in 2016 he was convicted of particularly aggressive and violent offences while in prison. He was sentenced to six months of imprisonment with an expulsion order for six years. He had not finished secondary school nor completed an apprenticeship as a mechanic.

The ECtHR concludes that the interference with the applicant’s private life was supported by relevant and sufficient reasons. It is satisfied that ‘very serious reasons’ were adequately adduced by the national authorities when assessing his case, and that his expulsion was not disproportionate given all the circumstances of the case. It notes that all levels of court, including the Supreme Court, explicitly and thoroughly assessed whether the expulsion order could be considered to be contrary to Denmark’s international obligations. The Court points out in this connection that, in accordance with the principle of subsidiarity, although opinions may differ on the outcome of a judgment, “where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court’s case-law, the Court would require strong reasons to substitute its view for that of the domestic courts.”

| ECtHR 14 Sep. 2017, 41215/14 | Ndidi v UK | **no violation of**

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

| ECtHR 6 July 2010, 41615/07 | Neuling v CH | **violation of**

* 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 | **violation of**

* 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 | **violation of**

* 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 | **violation of**

* The Court concluded that the denial of admission of a 17 years old Somali girl to Denmark, where she had lived from the age of seven until the age of fifteen, violated Article 8. For a settled migrant who has lawfully spent all of the major part of his or her childhood and youth in a host country, very serious reasons are required to justify expulsion’. The Danish Government had argued that the refusal was justified because the applicant had been taken out of the country by her father, with her mother’s permission, in exercise of their rights of parental responsibility. The Court agreed ‘that the exercise of parental rights constitutes a fundamental element of family life’, but concluded that ‘in respecting parental rights, the authorities cannot ignore the child’s interest including its own right to respect for private and family life’.
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

**ECtHR 28 July 2020, 25402/14**  
*Pormes v NL*  
EC: ECHR:2020:0728JUD002540214  
*no violation of*  
ECHR: Art. 8  
*The applicant was born in Indonesia and travelled at the age of 4 to the Netherlands where he was raised by, a Dutch family with 4 other children, close friends of his presumed Dutch father. Only at the age of 13 it became clear that the applicant might not have Dutch nationality and without a legal status in the Netherlands. Still being a minor, he was convicted of several indecent assaults, criminal offences. In that period he also applied for a temporary residence permit on the basis of family reunion with the Dutch family he grew up with. This applications was rejected. Although a District Court ruled in favour of the applicant the Council of State, the highest administrative judge, quashed that decision and upheld the original decision to refuse a residence permit. The ECtHR declared, having regard in particular to the nature, seriousness and number of the offences committed by the applicant, including at a time when he knew that his residence status in the Netherlands was precarious, that the domestic authorities did not attribute excessive weight to the general interest in the prevention of disorder or crime and that 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*  
EC: ECHR:2016:0621JUD007613612  
*no violation of*  
ECHR: Art. 8  
*Mr Ramadan, originally an Egyptian citizen, acquired Maltese citizenship after marrying a Maltese national. It was revoked by the Minister of Justice and Internal Affairs following a decision by a domestic court to annul the marriage on the ground that Mr Ramadan’s only reason to marry had been to remain in Malta and acquire Maltese citizenship. Meanwhile, the applicant remarried a Russian national. The Court found that the decision depriving him of his citizenship, which had had a clear legal basis under the relevant national law and had been accompanied by hearings and remedies consistent with procedural fairness, had not been arbitrary.*

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

**ECtHR 1 Dec. 2016, 77063/11**  
*Salem v DEN*  
EC: ECHR:2016:1201JUD007706311  
*no violation of*  
ECHR: Art. 8  
*The applicant is a stateless Palestinian from Lebanon. In 1994, having married a Danish woman he is granted a residence permit, and in 2000 he is also granted asylum. In June 2010 the applicant - by then father of 8 children - is convicted of drug trafficking and dealing, coercion by violence, blackmail, theft, and the possession of weapons. He is sentenced to five years imprisonment, which decision is upheld by the Supreme Court in 2011 adding a life-long ban on his return. Appeals against his expulsion are refused and at the end of 2014 he is deported to 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, 43231/15**  
*Suditia v HUN*  
EC: ECHR:2020:0512JUD004232115  
*violation of*  
ECHR: Art. 8  
*The applicant, a stateless person of Somali and Nigerian descent, arrived in Hungary in 2002. His attempts to regularise his status were unsuccessful due to a domestic provision which required “lawful stay in the country” as a precondition for granting stateless status. In 2013, 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*  
EC: ECHR:2013:0416JUD001202009  
*violation of*  
ECHR: Art. 8  
*In 2001 a Nigerian national, was sentenced to four months’ imprisonment for possession of a small quantity of cocaine. In 2003 he married a Swiss national who had just given birth to their twin daughters. By virtue of his marriage, he was granted a residence permit in Switzerland. In 2006 he was sentenced to forty-two months’ imprisonment in Germany for a drug-trafficking offence. The Swiss Office of Migration refused to renew his residence permit, stating that his criminal conviction and his family’s dependence on welfare benefits were grounds for his expulsion. An appeal was dismissed. In 2009 he was informed that he had to leave Switzerland. In 2011 he was made the subject of an order prohibiting him from entering Switzerland until 2020. Although he is divorced in the meantime and custody of the children has been awarded to the mother, he has been given contact rights. The court rules that deportation and exclusion orders would prevent the immigrant against two criminal convictions from seeing his minor children: deportation would constitute a violation of article 8.*

**ECtHR 18 Oct. 2006, 46410/99**  
*Üner v NL*  
EC: ECHR:2006:1018JUD004641099  
*violation of*  
ECHR: Art. 8  
*The expulsion of an alien raises a problem within the context of art. 8 ECHR if that alien has a family whom he has to leave behind. In Boultif (54273/00) the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. In this judgment the Court adds two additional criteria:  
– the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and  
– the solidarity of social, cultural and family ties with the host country and with the country of destination.*
1.3.4 CtRC views on Regular Migration and Best Interests of the Child (Art. 3)

**ECtHR 24 Nov. 2020, 80343/17**

Violation of
ECHR: Art. 8

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

**ECtHR 22 Dec. 2020, 43936/18**

Violation of
ECHR: Art. 8

The applicant, who was born in Tajikistan, settled in Russia with his wife and children and obtained Russian citizenship. Ten years later, after discovering that the applicant had omitted information about his siblings when applying for citizenship, the authorities annulled his citizenship and passports (an “internal” and “travel” passport), leaving him without identity documents. They also imposed an entry ban, preventing him from entering Russia, and administratively removed him from the territory. The applicant appealed unsuccessfully.

The ECtHR ruled that the annulment of citizenship for omitting information about siblings after a period of ten years was disproportionate and arbitrary.

**ECtHR 8 Nov. 2016, 7994/14**

Violation of
ECHR: Art. 8

The applicant, Anna Ustinova, is a national of Ukraine who was born in 1984. She moved to live in Russia at the beginning of 2000. In March 2013 Ms Ustinova was denied re-entry to Russia after a visit to Ukraine with her two children. This denial was based on a decision issued by the Consumer Protection Authority (CPA) in June 2012, that, during her pregnancy in 2012, Ms Ustinova had tested positive for HIV and 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.

**ECtHR 20 Nov. 2018, 42517/15**

No violation of
ECHR: Art. 8

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

**ECtHR 12 June 2018, 47781/10**

Violation of
ECHR: Art. 8

In this case an application for Russian nationality of a Kazakh national married to a Russian national was rejected based on information from the Secret Service implicating that the applicant posed a threat 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**

Violation of
CRC: Art. 3+10

C.E. is an in Morocco abandoned child, which was entrusted by the Marrakesh Court of First Instance under ‘kafala’ (care of abandoned children) to two Belgian-Moroccan married nationals. Kafala establishes a sort of guardianship but does not give the child any family rights. Thus, the Belgian authorities refused a visa on the basis of family reunification. Also a long-stay visa on humanitarian grounds was refused based on the argument that kafala does not count as adoption and that a visa on humanitarian grounds is no replacement of (an application for) adoption.

The Committee recalls that it is not its role to replace national authorities in the interpretation of national law and the assessment of facts and evidence, but to verify the absence of arbitrariness or denial of justice in the assessment of authorities, and to ensure that the best interests of the child have been a primary consideration in this assessment. Subsequently, the Committee notes that the term ‘family’ should be interpreted broadly including also adoptive or foster parents. In view of the fact that no consideration was given to the de facto family ties that existed in this case, and since it has been more than seven years since the authors submitted an application for a visa, the Committee concludes that the States 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.
1.3: Regular Migration: Jurisprudence: CtRC views

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

The Committee is of the view that the facts of which it has been apprised amount to a violation of articles 3 and 12 of the Convention. Consequently, the State party is under an obligation to reconsider the author’s request to apply article 17 of the Dublin III Regulation in order to process E.A. and U.A.’s asylum application as a matter of urgency, ensuring that the best interests of the children are a primary consideration and that E.A. and U.A. are heard. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, the Committee recommends that the State party ensure that children are systemically 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 decision of the Danish Immigration Service. The Committee takes note of a 2019 (US) report, according to which, although under both civil law and marriage law the children of single women are entitled to the same rights as those born to married parents, in practice children born to single mothers or unmarried couples are considered outside of the policy and are subject to the social compensation fee and the denial of legal documents, such as birth documents and the hukou. The Committee also takes note of a 2018 report of the UK Home Office, in which it is stated that many children born to single or unmarried parents had been denied a household registration document, preventing them from accessing public services, medical treatment and education. The Committee therefore concludes that the State party failed to duly consider the best interests of the child when assessing the alleged risk that the author’s children would face of not being registered in the hukou if deported to China and to take proper safeguards to ensure the child’s well-being upon return, in violation of Art. 3.
2 Borders and Visas

2.1 Borders and Visas: Adopted Measures

case law sorted in chronological order

New

**Regulation 2021/1133**

* Access to VISA and EUROPAD

Amending Reg. access to Visa Information System

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

**Regulation 2016/1624**

* Border and Coast Guard Agency

Creating a Borders and Coast Guard Agency

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

**Regulation 562/2006**

* Borders Code I

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

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

**Regulation 2016/399**

* Borders Code II

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

* OJ 2016 L 77/1
* This Regulation replaces Reg. 562/2006 Borders Code I

See further: § 2.3

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**CJEU judgments**

- CJEU 21 June 2017 C-9/16 A. Art. 20+21
- CJEU 4 May 2017 C-17/16 El Dakkak Art. 4(1)
- CJEU 4 Sep. 2014 C-575/12 Air Baltic Art. 5
- CJEU 17 Jan. 2013 C-23/12 Zakaria Art. 13(3)
- CJEU 19 July 2012 C-278/12 (PPU) Adil Art. 20+21
- CJEU 14 June 2012 C-606/10 ANAFE Art. 13+5(4)(a)
- CJEU 17 Nov. 2011 C-430/10 Gaydarov
- CJEU 22 June 2010 C-188/10 Melki & Abdeli Art. 20+21
- CJEU 22 Oct. 2009 C-261/08 Garcia & Cabrera Art. 5+11+13

See further: § 2.3

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**CJEU pending cases**

- CJEU (pending) C-368/20 N.W. / Steiermark (AUT) Art. 25+29
- CJEU AG 3 June 2021 C-35/20 Syyttäjä Art. 20+21

See further: § 2.3

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**See further: § 2.3**
### 2.1: Borders and Visas: Adopted Measures

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**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

**Regulation 2252/2004**
On standards for security features and biometrics in passports and travel documents
- OJ 2004 L 385/1
  - impl. date 18 Jan. 2005

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See further: § 2.3

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On uniform short-stay visas for researchers from third countries
- OJ 2005 L 289/23

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2.1: Borders and Visas: Adopted Measures

**Regulation 693/2003**

Establishing a specific Facilitated Transit Document (FTD) and a Facilitated Rail Transit Document (FRTD)
- OJ 2003 L 99/8

**Regulation 694/2003**

Format for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD)
- OJ 2003 L 99/15

**Decision 896/2006**

Transit through Switzerland and Liechtenstein
- OJ 2006 L 167/8
- CJEU judgments
  - CJEU 2 Apr. 2009 C-139/08 Kqiku
- See further: § 2.3

**Decision 1105/2011**

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**

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)

**Decision 512/2004**

Establishing Visa Information System (VIS)
- OJ 2004 L 213/5

**Council Decision 2008/633**

Access for consultation of the Visa Information System (VIS) by designated authorities of Member States and Europol
- OJ 2008 L 218/129

**Regulation 1077/2011**

Establishing an Agency to manage VIS, SIS & Eurodac
- OJ 2011 L 286/1
- Repealed and replaced by Reg. 2018/1726 (EU-LISA)

**Regulation 810/2009**

Establishing a Community Code on Visas
- OJ 2009 L 243/1
  - impl. date 5 Apr. 2010
  - and by Reg. 154/2012 (OJ 2012 L 58/3): On the relation with the Schengen acquis
  - and by Reg. 1155/2019 (OJ 2019 L 188/55)
  - CJEU judgments
  - CJEU 26 Mar. 2021 C-121/20 V.G.
  - Art. 22
  - CJEU 24 Nov. 2020 C-225/19 R.N.N.S. / BuZa (NL)
  - Art. 32
  - CJEU 29 July 2019 C-680/17 Vethanayagam
  - Art. 8(4)+32(3)
  - CJEU 13 Dec. 2017 C-403/16 El Hassani
  - Art. 32
  - CJEU 7 Mar. 2017 C-638/16 PPU X. & X.
  - Art. 25(1)(a)
  - CJEU 4 Sep. 2014 C-575/12 Air Baltic
  - Art. 24(1)+34
  - CJEU 19 Dec. 2013 C-84/12 Koushkaki
  - Art. 23(4)+32(1)
  - CJEU 10 Apr. 2012 C-83/12 Vo
  - Art. 21+34
- See further: § 2.3

**Regulation 1683/95.**

Establishing a specific Facilitated Transit Document (FTD) and a Facilitated Rail Transit Document (FRTD)
- OJ 1995 L 164/1
  - 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**

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 103E/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**
Anti-torture
European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols

Art. 3 Prohibition of Torture, Degrading Treatment

ETS 005 impl. date 31 Aug. 1954

**ECtHR Judgments**

- ECtHR 11 Mar. 2021 6865/19 Feilazo v MAL Art. 3+5(1)
- ECtHR 2 Mar. 2021 36037/17 R.R. a.o. v HUN Art. 3+5(1)
- ECtHR 25 June 2020 9347/14 Moustahi v FRA Art. 3
- ECtHR 4 Dec. 2018 43639/12 Khanh v CYP Art. 3
- ECtHR 20 Dec. 2016 19356/07 Shioshvili a.o. v RUS Art. 3+13
- ECtHR 19 Dec. 2013 53608/11 B.M. v GRE Art. 3+13
- ECtHR 23 July 2013 55352/12 Aden Ahmed v MAL Art. 3
- ECtHR 28 Feb. 2012 11463/09 Samaras v GRE Art. 3
- ECtHR 21 Feb. 2012 27765/09 Hirsi v ITA 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)


**New**

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

* COM (2016) 277, 4 May 2016
* Discussions within Council

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

* COM (2016) 279, 4 May 2016
* Discussions within Council
2.3 Borders and Visas: Jurisprudence: CJEU Judgments

case law sorted in alphabetical order

2.3.1 CJEU Judgments on Borders and Visas

CJEU 21 June 2017, C-9/16

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

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

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

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

CJEU 4 Mar. 2021, C-193/19

A. / Migrationsverket (SWE)
Borders Code I Art. 25(1)+6(1)(a)

ref. from Administrative Court for Immigration Matters, Sweden,

Art. 25(1) Borders Code must be interpreted as not precluding legislation of a MS which permits the issue, extension or renewal of a residence permit for the purposes of family reunification, requested from within the territory of that MS by a third-country national who is the subject of an alert in the Schengen Information System for the purposes of refusing entry in the Schengen area and whose identity has not been able to be established by means of a valid travel document, only where the interests of the MS which issued the alert and which has first been consulted have been taken into account and where the residence permit is issued, extended or renewed only for ‘substantive reasons’ within the meaning of that provision. The Borders Code must be interpreted as meaning that it does not apply to a third-country national who is in such a situation.

CJEU 19 July 2012, C-278/12 (PPU)

Adil
Borders Code I Art. 20+21

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

The Schengen Borders Code must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which enables officials responsible for border surveillance and the monitoring of foreign nationals to carry out checks, in a geographic area 20 kilometres from the land border between a MS and the State parties to the CISA, with a view to establishing whether the persons stopped satisfy the requirements for lawful residence applicable in the MS concerned, when those checks are based on general information and experience regarding the illegal residence of persons at the places where the checks are to be made, when they may also be carried out to a limited extent in order to obtain such general information and experience-based data in that regard, and when the carrying out of those checks is subject to certain limitations concerning, inter alia, their intensity and frequency.

CJEU 4 Sep. 2014, C-575/12

Air Baltic
Borders Code I Art. 5

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

The Borders Code precludes national legislation, which makes the entry of TCNs to the territory of the MS concerned subject to the condition that, at the border check, the valid visa presented must necessarily be affixed to a valid travel document.

CJEU 4 Sep. 2014, C-575/12

Air Baltic
Visa Code Art. 24(1)+34

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

The cancellation of a travel document by an authority of a third country does not mean that the uniform visa affixed to that document is automatically invalidated.
dismisses the action.

AG 27 Apr. 2004
Com. / Council
EU:C:2004:226
AG 27 Apr. 2004
validity of
ref. from Commission, EC, 3 July 2001
challenge to Regs. 789/2001 and 790/2001
The Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications and border checks and surveillance is upheld.

CJEU 13 Feb. 2014, C-139/13
Com. / Belgium
EU:C:2014:80
ref. from European Commission, EU, 19 Mar. 2013
Failure to implement biometric passports containing digital fingerprints within the prescribed periods.

CJEU 16 July 2015, C-88/14
Com. / EP
EU:C:2015:499
AG 7 May 2015
validity of
ref. from European Commission, EU, 21 Feb. 2014
The Commission had requested an annulment of an amendment of the visa list by Regulation 1289/2013. The Court dismisses the action.

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

CJEU 30 Apr. 2020, C-584/18
Blue Air
EU:C:2020:324
EU:C:2019:1003
* interpr. of Reg. 2016/399
ref. from Eparchiako Dikastirio Larnakas, Cyprus, 19 Sep. 2018
* AG: 21 Nov. 2019
* Art. 13 should be interpreted as precluding an air carrier (relying on the refusal of the authorities of the MS of destination to grant a TCN access to that State) to refuse boarding without this refusal of entry is laid down in a reasoned written decision of which the third-country national has been notified in advance.

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

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

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

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### 2.3: Borders and Visas: Jurisprudence: CJEU Judgments

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<td>CJEU 16 Jan. 2018, C-240/17</td>
<td>E.</td>
<td>EU:C:2018:8</td>
<td>interpr. of Schengen Acquis: Art. 25(1)+25(2)</td>
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<td>AG 13 Dec. 2017</td>
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<td>EU:C:2017:963</td>
<td>ref. from Korkein hallinto-oikeus, Finland, 10 May 2017</td>
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<td></td>
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<td>* 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.</td>
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<td>* 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.</td>
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<tr>
<td>AG 11 July 2019</td>
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<td>EU:C:2019:1071</td>
<td>interpr. of Reg. 2016/399</td>
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<td>EU:C:2019:609</td>
<td>Borders Code II Art. 6(1)(e)</td>
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<td>ref. from Raad van State, NL, 11 June 2018</td>
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<td>* 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.</td>
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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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<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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<td>EU:C:2012:207</td>
<td>Borders Code I</td>
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<td>ref. from European Parliament, EU, 14 July 2010</td>
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<td>* annulment of measure supplementing Borders Code</td>
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<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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<td>Borders Code II Art. 22+23</td>
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<td>* Artr. 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>EU:C:2009:207</td>
<td>Borders Code I Art. 5+11+13</td>
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<td>ref. from Tribunal Superior de Justicia de Murcia, Spain, 19 June 2008</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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</table>
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.

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.

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

The French ‘stop and search’ law, which allowed for controls behind the internal border, is in violation of article 20 and 21 of the Borders code, due to the lack of requirement of “behaviour and of specific circumstances giving rise to a risk of breach of public order”. According to the Court, controls may not have an effect equivalent to border checks.
Although the taking and storing of fingerprints in passports constitutes an infringement of the rights to respect for private life and the protection of personal data, such measures are nonetheless justified for the purpose of preventing any fraudulent use of passports.

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.

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.

Article 6(2) TFEU and Article 21 Borders Code must be interpreted to the effect that they preclude legislation of a Member State, which requires every coach transport undertaking providing a regular cross-border service within the Schengen area to the territory of that Member State 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.

About the recording and spelling of names, surnames and family names in passports. Where a Member State’s 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.

With reference to CJEU 24 Nov. 2020, C-225/19 and C-226/19, this prejudicial question is withdrawn.

First substantive decision on Visa Code. The Court rules that the Visa Code does not preclude that national legislation of one Member State penalises migration-related identity fraud with genuine visa issued by another Member State.
2.3. Borders and Visas: Jurisprudence: CJEU Judgments

<table>
<thead>
<tr>
<th>Date</th>
<th>Number</th>
<th>Case Name</th>
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<th>Case Name</th>
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<td>16 Apr. 2015</td>
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<td>Willems a.o.</td>
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<td>23 July 2013</td>
<td>55352/12</td>
<td>Aden Ahmed v MAL</td>
<td>CE:ECHR:2013:0723JUD005535212</td>
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2.3.2 CJEU pending cases on Borders and Visas

- **NEMIS 2021/3 (Sep.)**

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

- **NEMIS 2021/3 (Sep.)**

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2.3: Borders and Visas: Jurisprudence: ECtHR Judgments

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

* ECHR 21 Feb. 2012, 27765/09  
** violation of  
** 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).

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

* ECHR 25 June 2020, 9347/14  
** violation of  
** 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 2 Mar. 2021, 36037/17  
** violation of  
** An Iranian-Afghan family including three minor children, were confined in the Röszke transit zone at the border of Hungary and Serbia for almost four months while awaiting the outcome of their requests for asylum. The ECtHR found, in particular, that the lack of food provided to R.R. and the conditions of stay of the other applicants (a pregnant woman and children) had led to a violation of Art. 3. It also found that that the applicants’ stay in the transit zone had amounted to a deprivation of liberty and that the absence of any formal decision of the authorities and any proceedings by which the lawfulness of their detention could have been decided speedily by a court had led to violations of Art. 5.

* ECHR 28 Feb. 2012, 11463/09  
** violation of  
** 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.

* ECHR 20 Dec. 2016, 19356/07  
** violation of  
** 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>
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<th>Obligation of carriers to return TCNs when entry is refused</th>
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</thead>
<tbody>
<tr>
<td>* OJ 2001 L 187/45</td>
<td>impl. date 11 Feb. 2003</td>
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<thead>
<tr>
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<th>Establishing a secure web-based Information and Coordination Network for MS’ Migration Management Services</th>
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<tbody>
<tr>
<td>* OJ 2005 L 83/48</td>
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<td>* Repealed by Reg. 2016/1624 (Borders and Coast Guard).</td>
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</tbody>
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<thead>
<tr>
<th>Directive 2009/52</th>
<th>Employers Sanctions</th>
<th>Minimum standards on sanctions and measures against employers of illegally staying TCNs</th>
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<tbody>
<tr>
<td>* OJ 2009 L 168/24</td>
<td>impl. date 20 July 2011</td>
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<th>Directive 2003/110</th>
<th>Expulsion by Air</th>
<th>Assistance with transit for expulsion by air</th>
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<td>* OJ 2003 L 321/26</td>
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<tr>
<th>Decision 191/2004</th>
<th>Expulsion Costs</th>
<th>On the compensation of the financial imbalances resulting from the mutual recognition of decisions on the expulsion of TCNs</th>
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<tbody>
<tr>
<td>* OJ 2004 L 60/55</td>
<td>UK opt in</td>
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<table>
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<tr>
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<td>* OJ 2001 L 149/34</td>
<td>impl. date 2 Oct. 2002</td>
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<td>CJEU 11 June 2020 C-448/19</td>
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See further: § 3.3

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<th>Decision 573/2004</th>
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<tbody>
<tr>
<td>* OJ 2004 L 261/28</td>
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<th>Conclusion</th>
<th>Expulsion via Land</th>
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<td>* adopted 22 Dec. 2003 by Council</td>
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<th>Regulation 2019/1240</th>
<th>Immigration Liaison Network</th>
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<tr>
<td>* OJ 2019 L 198/88</td>
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<tr>
<td>* Replaces by Reg 377/2004 (Liaison Officers)</td>
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</tr>
</tbody>
</table>
3.1: Irregular Migration: Adopted Measures

**Directive 2008/115**

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

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

**Return**

CJEU judgments

- CJEU 3 June 2021 C-546/19 B.Z. / Westerwaldkreis (GER) Art. 2(2)(b)+3(6)
- CJEU 11 Mar. 2021 C-112/20 M.A. Art. 5+13
- CJEU 24 Feb. 2021 C-673/19 M. a.o. Art. 3+6+15
- CJEU 14 Jan. 2021 C-441/19 T.Q. Art. 6+8+10
- CJEU 17 Dec. 2020 C-808/18 Com. / Hungary Art. 5+6+12+13
- CJEU 4 Dec. 2020 C-746/19 U.D. all Art.
- CJEU 8 Oct. 2020 C-568/19 M.O. / Toledo (ESP) Art. 6(1)+8(1)
- CJEU 30 Sep. 2020 C-233/19 B. / CPAS (BEL) Art. 16(1)
- CJEU 30 Sep. 2020 C-402/19 L.M. / CPAS (BEL) 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

CJEU pending cases

- CJEU (pending) C-924/19 F.M.S. & F.N.Z. Art. 13
- CJEU (pending) C-241/21 I.L. Art. 15(1)
- CJEU (pending) C-39/21 (PPU) X. / Stscr (NL) Art. 3(9)+15(2)(b)
- CJEU (pending) C-69/21 X. / Stscr (NL) Art. 5+6+9

See further: § 3.3

**Recommendation 2017/432**

*Making returns more effective when implementing the Returns Directive*

* OJ 2017 L 66/15

**Decision 575/2007**

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

* OJ 2007 L 144 UK opt in

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

**Directive 2011/36**

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

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

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

**Directive 2004/81**

*Residence permits for TCNs who are victims of trafficking*

* OJ 2004 L 261/19 impl. date 6 Aug. 2004
### Directive 2002/90

**Unauthorized Entry**

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<th>OJ 2002 L 328</th>
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**CJEU judgments**

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<td>Vo</td>
<td>Art. 1</td>
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See further: § 3.3

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

Art. 20 Guardian

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

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

**CtRC views**

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<td>*</td>
<td>CtRC 28 Sep. 2020 26/2017</td>
<td>M.B.S.</td>
<td>Art. 8+20</td>
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<tr>
<td>*</td>
<td>CtRC 28 Sep. 2020 40/2018</td>
<td>S.M.A.</td>
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<td>CtRC 7 Feb. 2020 24/2017</td>
<td>M.A.B.</td>
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<td>*</td>
<td>CtRC 31 May 2019 16/2017</td>
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<td>*</td>
<td>CtRC 31 May 2019 22/2017</td>
<td>J.A.B.</td>
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See further: § 3.3

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

Art. 5 Detention

| * | ETS 005 | impl. date 31 Aug. 1954 |

**ECtHR Judgments**

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<td>*</td>
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<td>Muzamba Oyaw v BEL</td>
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<td>*</td>
<td>ECtHR 13 June 2013 53709/11</td>
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<td>Mahmundi v GRE</td>
<td>Art. 5</td>
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</tbody>
</table>

See further: § 3.3

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### 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

**Return II**

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3.3.1 CJEU judgments on Irregular Migration

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<tr>
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<th>Case Reference: Court, Case Number</th>
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<td>EU:C:2020:759</td>
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<tr>
<td>30 May 2013, C-534/11</td>
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<td>ref. from Cour du Travail de Liège, Belgium, 17 May 2019</td>
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<tr>
<td>30 May 2013, C-534/11</td>
<td></td>
<td>Art. 5, 13 and 14, read in the light of Art. 7, 19(2), 21 and 47 of the Charter, must be interpreted as precluding national legislation which does not provide, as far as possible, for the basic needs of a TCN to be met where:</td>
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<td></td>
<td>– that national has appealed against a return decision made in respect of him or her;</td>
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<td>– the adult child of that TCN is suffering from a serious illness;</td>
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<td>– the presence of that TCN with that adult child is essential;</td>
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<td></td>
<td>– an appeal was brought on behalf of that adult child against a return decision taken against him or her, the enforcement of which may expose that adult child to a serious risk of grave and irreversible deterioration in his or her state of health, and</td>
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<td>– that TCN does not have the means to meet his or her needs himself or herself.</td>
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<tr>
<td>18 Dec. 2014, C-562/13</td>
<td></td>
<td>Ref. from Court d'Appel de Paris, France, 29 June 2011</td>
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<tr>
<td>18 Dec. 2014, C-562/13</td>
<td></td>
<td>Although the Belgian court had asked a preliminary ruling on the interpretation of the Qualification Dir., the CJEU re-interpreted the question of an issue of Art. 5 and 13 of the Returns Directive. These articles are to be interpreted as precluding national legislation which:</td>
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<tr>
<td></td>
<td></td>
<td>(1) does not endow with suspensive effect an appeal against a decision ordering a third country national suffering from a serious illness to leave the territory of a Member State, where the enforcement of that decision may expose that third country national to a serious risk of grave and irreversible deterioration in his or her state of health, and</td>
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<td>(2) does not make provision, in so far as possible, for the basic needs of such a third country national to be met, in order to ensure that that person may in fact avail himself of emergency health care and essential treatment of illness during the period in which that Member State is required to postpone removal of the third country national following the lodging of the appeal.</td>
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<tr>
<td>6 Dec. 2011, C-329/11</td>
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<td>Ref. from Court d'Appel de Paris, France, 29 June 2011</td>
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<tr>
<td>6 Dec. 2011, C-329/11</td>
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<tr>
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<td>(2) does not make provision, in so far as possible, for the basic needs of such a third country national to be met, in order to ensure that that person may in fact avail himself of emergency health care and essential treatment of illness during the period in which that Member State is required to postpone removal of the third country national following the lodging of the appeal.</td>
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<tr>
<td>2 Feb. 2016, C-47/15</td>
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<td>Ref. from Cour de Cassation, France, 6 Feb. 2015</td>
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<tr>
<td>2 Feb. 2016, C-47/15</td>
<td></td>
<td>Art. 2(1) and 3(2) must be interpreted as meaning that a TCN is staying illegally on the territory of a MS and therefore falls within the scope of that directive when, without fulfilling the conditions for entry, stay or residence, he passes in transit through that MS as a passenger on a bus from another MS forming part of the Schengen area and border for a third MS outside that area. Also, the Directive must be interpreted as precluding legislation of a MS which permits a TCN in respect of whom the return procedure established by the directive has not yet been completed to be imprisoned merely on account of illegal entry across an internal border, resulting in an illegal stay. That interpretation also applies where the national concerned may be taken back by another MS pursuant to an agreement or arrangement within the meaning of Art. 6(3).</td>
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<tr>
<td>19 Mar. 2019, C-444/17</td>
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<td>Ref. from Cour de Cassation, France, 21 July 2017</td>
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<tr>
<td>17 Oct. 2018</td>
<td></td>
<td>Article 2(2)(a) of Dir. 2008/115 read in conjunction with Art. 32 of Regulation 2016/399 (Borders Code), must be interpreted as not applying to the situation of an illegally staying third-country national who was apprehended in the immediate vicinity of an internal border of a Member State, even where that Member State has reintroduced border control at that border, pursuant to Article 25 of the regulation, on account of a serious threat to public policy or internal security in that Member State.</td>
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<tr>
<td>30 May 2013, C-534/11</td>
<td></td>
<td>Ref. from Nejvyšší správní soud, Czech, 20 Oct. 2011</td>
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<tr>
<td>31 Jan. 2013</td>
<td></td>
<td>The Return Directive does not apply during the period from the making of the (asylum) application to the adoption of the decision at first instance on that application or, as the case may be, until the outcome of any action brought against that decision is known.</td>
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</tbody>
</table>
* 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.

* 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.

* 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.

* 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.
<table>
<thead>
<tr>
<th>Date</th>
<th>Case Ref.</th>
<th>Judgment</th>
<th>EU:C:</th>
<th>Para.</th>
<th>Case Details</th>
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<tbody>
<tr>
<td>19 Sep. 2013</td>
<td>C-297/12</td>
<td>Fielev &amp; Osmani</td>
<td>2013:569</td>
<td>Art. 15(2)+6</td>
<td>ref. from Amtsgericht Lauen, Germany, 18 June 2012</td>
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<td>23 Aug. 2013</td>
<td>C-383/13</td>
<td>G. &amp; R.</td>
<td>2013:553</td>
<td>Art. 15(2)+6</td>
<td>ref. from Raad van State, NL, 5 July 2013</td>
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<tr>
<td>17 Sep. 2020</td>
<td>C-806/18</td>
<td>J.Z.</td>
<td>2020:724</td>
<td>Art. 15(2)+6</td>
<td>ref. from Hoge Raad, NL, 23 Nov. 2018</td>
</tr>
</tbody>
</table>

* 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.

* Directive must be interpreted as precluding a MS from providing that an expulsion or removal order which predate by five years or more the period between the date on which that directive should have been implemented and the date on which it was implemented, may subsequently be used as a basis for criminal proceedings, where that order was based on a criminal law sanction (within the meaning of Article 2(2)(b)) and where that MS exercised the discretion provided for under that provision.

* If the extension of a detention measure has been decided in an administrative procedure in breach of the right to be heard, the national court responsible for assessing the lawfulness of that extension decision may order the lifting of the detention measure only if it considers, in the light of all of the factual and legal circumstances of each case, that the infringement at issue actually deprived the party relying thereon of the possibility of arguing his defence better, to the extent that the outcome of that administrative procedure could have been different.

* Member States are entitled to adopt a return decision as soon as an application for international protection is rejected, provided that the return procedure is suspended pending the outcome of an appeal against that rejection. Member States are required to provide an effective remedy against the decision rejecting the application for international protection, in accordance with the principle of equality of arms, which means, in particular, that all the effects of the return decision must be suspended during the period prescribed for lodging such an appeal and, if such an appeal is lodged, until resolution of the appeal.

* The Return Directive, and in particular Art. 11 thereof, must be interpreted as not precluding legislation of a MS which provides that a custodial sentence may be imposed on an illegally staying TCN for whom the return procedure set out in that directive has been exhausted but who has not actually left the territory of the MS, where the criminal act consists in an unlawful stay with notice of an entry ban, issued in particular on account of that TCN’s criminal record or the threat he represents to public policy or national security, provided that the criminal act is not defined as a breach of such an entry ban and that legislation is sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness, which is for the referring court to ascertain.

Follow up on the Ouhrami case (C-225/16) of 26 July 2017 on the consequences of an entry ban if the alien has not (yet) left the territory of the MS.
**3.3: Irregular Migration: Jurisprudence: CJEU Judgments**

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

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

- **CJEU 8 Oct. 2020, C-568/19**
  - M.O. / Toledo (ESP)
  - AG 14 May 2020
  - **interp. of** Dir. 2008/115
  - Return Art. 3(1)(a)
  - ref. from Tribunal Superior de Justicia of Castilla La Mancha, Spain, 11 July 2019
  - * First, it should be observed that, when applying domestic law, and within the limits established by general principles of law, national courts are required to interpret that law, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by that directive. In this case, the referring court seems to preclude that possibility. Secondly, it must be observed that, in accordance with the Court’s settled case-law, a directive cannot, of itself, impose obligations on an individual.
  - The Return Directive must be interpreted as meaning that, where national legislation makes provision, in the event of a TCN staying illegally in the territory of a MS, for either a fine or removal, and the latter measure may be adopted only if there are aggravating circumstances concerning that national, additional to his or her illegal stay, the competent national authority may not rely directly on the provisions of that directive in order to adopt a return decision and to enforce that decision, even in the absence of such aggravating circumstances.

- **CJEU 5 June 2014, C-146/14 (PPU)**
  - Mahdi
  - AG 14 May 2014
  - **interp. of** Dir. 2008/115
  - Return Art. 15
  - ref. from Administrativen sad Sofia-grad, Bulgaria, 28 Mar. 2014
  - * Any decision adopted by a competent authority, on expiry of the maximum period of detention of a TCN, on the further course to take concerning the detention must be in the form of a written measure that includes the reasons in fact and in law for that decision. The Dir. precludes that an initial six-month period of detention may be extended solely because the third-country national concerned has no identity documents.

- **CJEU 21 Mar. 2013, C-522/11**
  - Mbaye
  - AG 25 June 2014
  - **interp. of** Dir. 2008/115
  - Return Art. 2(2)(b)+7(4)
  - ref. from Ufficio del Giudice di Pace Lecce, Italy, 22 Sep. 2011
  - * Third-country nationals prosecuted for or convicted of the offence of illegal residence provided for in the legislation of a Member State cannot, on account solely of that offence of illegal residence, be excluded from the scope of Directive 2008/115.
  - Directive 2008/115 does not preclude legislation of a Member State penalising the illegal residence of third-country nationals by a fine which may be replaced by expulsion. However, it is only possible to have recourse to that option to replace the fine where the situation of the person concerned corresponds to one of those referred to in Article 7(4) of that directive.

- **CJEU 5 Nov. 2014, C-166/13**
  - Mukarubega
  - AG 25 June 2014
  - **interp. of** Dir. 2008/115
  - Return Art. 3+7
  - ref. from Tribunal Administrative de Melun, France, 3 Apr. 2013
  - * A national authority is not precluded from failing to hear a TCN specifically on the subject of a return decision where, after that authority has determined that the TCN is staying illegally in the national territory on the conclusion of a procedure which fully respecting that person’s right to be heard, it is contemplating the adoption of such a decision in respect of that person, whether or not that return decision is the result of refusal of a residence permit.

- **CJEU 3 Sep. 2015, C-456/14**
  - Orrego Arias
  - AG 25 June 2014
  - **interp. of** Dir. 2001/40
  - Expulsion Decisions Art. 3(1)(a)
  - ref. from Tribunal Superior de Justicia of Castilla La Mancha, Spain, 2 Oct. 2014
  - * 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.

- **CJEU 26 July 2017, C-225/16**
  - Ouhrami
  - AG 18 May 2017
  - **interp. of** Dir. 2008/115
  - Return Art. 11(2)
  - ref. from Hoge Raad, NL, 22 Apr. 2016
  - * Article 11(2) must be interpreted as meaning that the starting point of a period 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.
3.3: Irregular Migration: Jurisprudence: CJEU Judgments

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

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

**CJEU 17 July 2014, C-474/13**  
Pham  
AG 30 Apr. 2014  
* interpr. of Dir. 2008/115  
Return Art. 16(1)  
ref. from Bundesgerichtshof, Germany, 3 Sep. 2013  
* The Dir. does not permit a MS to detain a TCN for the purpose of removal in prison accommodation together with ordinary prisoners even if the TCN consents thereto.

**CJEU 6 Dec. 2012, C-430/11**  
Sagor  
AG 27 Apr. 2017  
* interpr. of Dir. 2008/115  
Return Art. 2+15+16  
ref. from Tribunale di Adria, Italy, 18 Aug. 2011  
* An illegal stay by a TCN in a MS:  
(1) can be penalised by means of a fine, which may be replaced by an expulsion order;  
(2) can not be penalised by means of a home detention order unless that order is terminated as soon as the physical transportation of the TCN out of that MS is possible.

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

**CJEU 4 Dec. 2020, C-746/19**  
U.D.  
AG 2 July 2020  
* interpr. of Dir. 2008/115  
Return all Art.  
ref. from Juzgado de lo Contencioso-Administrativo de Barcelona, Spain, 14 Oct. 2019  
* case is deleted  
* Did the Spanish State correctly transpose Dir. 2008/115 into national law.  
Question was withdrawn with reference to the judgment CJEU 8 Oct. 2020, C-568/19.

**CJEU 10 Apr. 2012, C-83/12**  
Vo  
AG 26 Mar. 2012  
* interpr. of Dir. 2002/90  
Unauthorized Entry Art. 1  
ref. from Bundesgerichtshof, Germany, 17 Feb. 2012  
* The Visa Code is to be interpreted as meaning that is does not preclude national provisions under which assisting illegal immigration constitutes an offence subject to criminal penalties in cases where the persons smuggled, third-country nationals, hold visas which they obtained fraudulently by deceiving the competent authorities of the Member State of issue as to the true purpose of their journey, without prior annulment of those visas.

**CJEU 2 July 2020, C-18/19**  
W.M.  
AG 27 Feb. 2020  
* interpr. of Dir. 2008/115  
Return Art. 16(1)  
ref. from Bundesgerichtshof, Germany, 11 Jan. 2019  
* Art. 16(1) Return Directive must be interpreted as not precluding national legislation which allows an illegally staying TCN to be detained in prison accommodation for the purpose of removal, separated from ordinary prisoners, on the ground that he poses a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society or the internal or external security of the MS concerned.
3.3.2 CJEU pending cases on Irregular Migration

**CJEU C-241/21**  
* I.L.  
* interpr. of Dir. 2008/115  
ref. from Rigikohus, Estonia, 30 Mar. 2021

Is the first sentence of Art. 15(1) Return Directive to be interpreted as meaning that MSs may keep in detention a TCN in respect of whom there is a real risk that, while at liberty and prior to removal, he or she will commit a criminal offence, the investigation and punishment of which may substantially impede the execution of the removal process?

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### 3.3: Irregular Migration: Jurisprudence: CJEU pending cases

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*interp. of Dir. 2008/115
*ref. from Szegedi Közigazgatási és Munkaügyi Bíróság, Hungary, 18 Dec. 2019
*1. Art. 13 Return Directive must be interpreted as precluding legislation of a Member State not only if the amendment by an administrative authority of the country of destination stated in an earlier return decision can be contested by the TCN concerned only by means of an action brought before an administrative authority, without a subsequent review by the competent judicial authority. In such a situation, the principle of supremacy 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.

This 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. The 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 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.

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

<table>
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<td>ECtHR 13 June 2013, 53709/11</td>
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<td>CE:ECHR:2013:0613JUD005370911</td>
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<td>ECtHR 23 July 2013, 55352/12</td>
<td>Aden Ahmed v MAL</td>
<td>CE:ECHR:2013:0723JUD005535212</td>
<td>Art. 5</td>
<td>23 July 2013</td>
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*violation of
*This case concerns unlawful detention, without effective judicial review, of an asylum seeker during the examination of his asylum application. The applicant was a Palestinian who had been stopped at the Hungarian border control for using a forged passport.
*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 14 months were, taken as a whole, amounted to degrading treatment.
The conditions of detention of the applicant Afghan asylum seeker in two police stations in Athens were found to constitute degrading treatment in breach of ECHR art. 3 Since Greek law did not allow the courts to examine the conditions of detention in centres for irregular immigrants, the applicant did not have an effective remedy in that regard, in violation of ECHR art. 13 taken together with art. 3. The Court found an additional violation of ECHR art. 13 taken together with art. 3, resulting from the structural deficiencies of the Greek asylum system, as evidenced by the period during which the applicant had been awaiting the outcome of his appeal against the refusal of asylum, and the risk that he might be deported before his asylum appeal had been examined. ECHR art. 5 para. 4 was violated due to the lack of judicial competence to review the lawfulness of the deportation constituting the legal basis of detention.

A fifteen year old Somali asylum seeker gets a temporary residence permit in The Netherlands in 1992. After 6 years (1998) he travels to the UK and applies - again - for asylum but under a false name. The asylum request is rejected but he is allowed to stay (with family) in the UK in 2004. In 2007 he is sentenced to four and a half months’ imprisonment and also faced with a deportation order in 2008. After the Sufi and Elmi judgment (8319/07) the Somali is released on bail in 2011. The Court states that the periods of time taken by the Government to decide on his appeals against the deportation orders were reasonable.

The applicant was born in Syria in 1963. He fought as part of a foreign mujahedin unit on the Bosnian side during the 1992-95 war. At some point he obtained citizenship of Bosnia and Herzegovina, but this was revoked in 2007. He was placed in an immigration detention centre in October 2008 as a threat to national security. He claimed asylum, but this was dismissed and a deportation order was issued in February 2011. The applicant lodged a first application to the ECtHR, which found that he faced a violation of his rights if he were to be deported to Syria. The authorities issued a new deportation order in March 2012 and proceeded over the following years to extend his detention on national security grounds. In the meantime, the authorities tried to find a safe third country to deport him to, but many countries in Europe and the Middle East refused to accept him. In February 2016 he was released subject to restrictions, such as a ban on leaving his area of residence and having to report to the police. The Court concluded that the grounds for the applicant’s detention had not remained valid for the whole period of his detention owing to the lack of a realistic prospect of his expulsion. There had therefore been a violation of his rights under Article 5(1)(f).

The Court concluded that the decision of the Italian authorities to send TCNs - who were intercepted outside the territorial waters of Italy - back to Libya, had exposed them to the risk of ill-treatment there, as well as to the risk of ill-treatment if they were sent back to their countries of origin (Somalia and Eritrea). They also had been subjected to collective expulsion prohibited by Art. 4 of Protocol No. 4. The Court also concluded that they had had no effective remedy in Italy against the alleged violations.

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

**ECtHR 31 July 2012, 14902/10 Mahmundi v GRE**

* violation of * ECHR: Art. 5

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

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

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

**ECtHR 25 June 2020, 9347/14 Moustahi v FRA**

* 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.

**ECtHR 4 Apr. 2017, 23707/15 Mucamba Oyav v BEL**

* 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.

**ECtHR 3 Oct. 2017, N.D. & N.T. v ESP**

* 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 established that the facts of the case fell within the jurisdiction of Spain since the applicants had been under the continuous and exclusive control of the Spanish authorities from the moment they climbed down the border barriers. It was therefore unnecessary to decide whether the barrier was located on Spanish territory. As the applicants had been removed and sent back to Morocco against their wishes, the Spanish authorities’ action had clearly constituted an ‘expulsion’ for the purposes of art. 4 Protocol no. 4. The removals had taken place without any prior administrative or judicial decision and without any procedure, in the absence of any examination of the applicants’ individual situation and with no identification procedure carried out. Therefore, the expulsions had undoubtedly been collective, in violation of art. 4 Protocol 4. Due to the well documented circumstances and the immediate nature of the expulsions, the Court considered that the applicants had been deprived of any remedy that would have enabled them to submit their complaint under art. 4 Protocol 4 and to obtain a thorough and rigorous assessment of their request. Art. 13 had therefore also been violated.

**ECtHR 13 Feb. 2020, (GC) N.D. & N.T. v ESP**

* 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 5 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.
3.3: Irregular Migration: Jurisprudence: CtRC views

**CtRC 29 Jan. 2021, CRC/C/86/D/63/2018**  
*C.O.C. v ESP*  
violation of  
CRC: Art. 8+12+20  
*  
The author is a national of Gambia born in 2001. In 2018, the Maritime Safety and Rescue Agency detained the author as he attempted to enter Spain on board a small boat. Although he claimed to be a minor he was declared an adult on the basis of a wrist X-ray. However, nor this X-ray or any other test result was presented. The Committee notes that the determination of the age of a young person who claims to be a minor is of fundamental importance, as the outcome determines whether that person will be entitled to or excluded from national protection as a child. Similarly, and this point is of vital importance to the Committee, the enjoyment of the rights set out in the Convention flows from that determination. Subsequently, it is imperative that there be due process to determine a person’s age, as well as the opportunity to challenge the outcome through an appeals process.

**CtRC 31 May 2019, CRC/C/81/D/22/2017**  
*J.A.B. v ESP*  
violation of  
CRC: Art. 8+20  
*  
The age-determination procedure undergone by the author, who claimed to be a child, was not accompanied by the safeguards needed to protect his rights under the Convention. In particular the failure to consider the author’s originals of official identity documents issued by a sovereign country, the declaration of adulthood in response to the author’s refusal to undergo age-determination tests, and the State’s refusal to allow his representative to assist him during this process, the Committee is of the view that the best interests of the child were not a prime consideration in the age-determination procedure to which the author was subjected, in breach of articles 3 and 12 of the Convention. The Committee further notes that the State party violated his rights under article 8 of the Convention insofar as it altered elements of his identity by attributing to him a date of birth that did not correspond to the information in the official documents issued by his country of origin, including his original passport. The Committee further notes that the State’s failure to provide protection in response to his situation as an unprotected, highly vulnerable unaccompanied child migrant who was ill, as well as the contradiction inherent in declaring the author to be an adult while at the same time requiring him to have a guardian in order to receive medical treatment and vaccinations. This constitutes a violation of Art. 20(1) and 24.

**CtRC 7 Feb. 2020, CRC/C/83/D/24/2017**  
*M.A.B. v ESP*  
violation of  
CRC: Art. 8+20  
*  
The Committee considers that the age determination procedure undergone by the author, who claimed to be a child and provided evidence to support this claim, was not accompanied by the safeguards needed to protect his rights under the Convention. Given the circumstances of the present case, in particular the examination used to determine the author’s age, the fact that he was not assisted by a representative during the age determination procedure and the fact that the State party almost automatically rejected as evidence the birth certificate that he provided, without even formally assessing the information that it contained and clearing up any doubts with the Guinean consular authorities, the Committee is of the view that the best interests of the child were not a primary consideration in the age determination procedure undergone by the author, contrary to artt. 3 and 12. The Committee also considers that a child’s date of birth forms part of his or her identity and that States parties have an obligation to respect the right of the child to preserve his or her identity without depriving him or her of any elements thereof. Although the author provided the Spanish authorities with a copy of his birth certificate, the State party failed to respect the identity of the author by rejecting the certificate as evidence, without first asking a competent authority to formally assess the information that it contained or asking the authorities of the author’s country of origin to verify that information.

**CtRC 28 Sep. 2020, CRC/C/85/D/28/2017**  
*M.B. v ESP*  
violation of  
CRC: Art. 8+20  
*  
The Committee considers that the lack of a process to assess the age of the author, who claimed to be a minor, the failure to take proper account of the official documents submitted by the author and issued by his country of origin, and the failure to appoint a guardian, constitute a violation of the author’s Convention rights. Consequently, the Committee is of the view that the best interests of the child were not a primary consideration in the procedures in which the author took part, contrary to artt. 3 and 12 of the Convention. The Committee also notes the author’s claims that the State party violated his rights under art. 8 of the Convention insofar as it altered elements of his identity by attributing to him an age that did not match the information contained in the official document issued by his country of origin.

**CtRC 28 Sep. 2020, CRC/C/85/D/26/2017**  
*M.R.S. v ESP*  
violation of  
CRC: Art. 8+20  
*  
The Committee considers that the age determination procedure undergone by the author, who claimed to be a minor, was not accompanied by the safeguards needed to protect his rights under the Convention. In the present case, this is due to the failure to take proper account of the original copy of the official birth certificate issued by his country of origin and the failure to appoint a guardian to assist him during the age determination procedure. Consequently, the Committee is of the view that the best interests of the child were not a primary consideration in the age determination procedure, contrary to artt. 3 and 12 of the Convention.
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.

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.
4.1 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

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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


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**CJEU** pending cases

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

- CJEU (pending) C-402/21 E.C. / Stscr (NL)
  - Art. 6+7+13

- CJEU (pending) C-279/21 X. / Udlændingen (DEN)
  - Art. 13

See further: § 4.4

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

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

**CJEU judgments**

- CJEU 13 Feb. 2020 C-258/18 Solak
  - Art. 6

- CJEU 15 May 2019 C-677/17 Çoban
  - Art. 6(1)

  - Art. 6(1)

- CJEU 26 May 2011 C-485/07 Akdas
  - Art. 6(1)

See further: § 4.4

### 4.2 External Treaties: Readmission

**Albania**

- OJ 2005 L 124/21 into force 1 May 2006 UK opt in
- into force for TCN: May 2008

**Armenia**


**Azerbaijan**


**Belarus**

- OJ 2020 L 181/3 into force 1 July 2020

**Bosnia and Herzegovina**

- OJ 2007 L 334/66 into force 1 Jan. 2008 UK opt in
- into force for TCN: Jan. 2010

**Cape Verde**


**Georgia**

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

**Hong Kong**

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

**Macao**

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

**Macedonia**

- OJ 2007 L 334/7 into force 1 Jan. 2008 UK opt in
- into force for TCN: Jan. 2010

**Moldova**

- OJ 2007 L 334/149 into force 1 Jan. 2008 UK opt in
- into force for TCN: Jan. 2010

**Montenegro**

- OJ 2007 L 334/26 into force 1 Jan. 2008 UK opt in
- into force for TCN: Jan. 2010

**Morocco, Algeria, and China**

- negotiation mandate approved by Council

**Pakistan**

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

**Russia**

- OJ 2007 L 129 into force 1 June 2007 UK opt in
- into force for TCN: Jun. 2010

**Serbia**

- OJ 2007 L 334/46 into force 1 Jan. 2008 UK opt in
- into force for TCN: Jan. 2010
4.2: External Treaties: Readmission

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

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

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

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

* CJEU judgments
  * CJEU 27 Feb. 2017 T-192/16  N.F. / European Council
  See further: § 4.4

**4.3 External Treaties: Other**

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

**Armenia: visa**

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

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

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

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

**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**
* OJ 2008 L 83/37  into force 1 Dec. 2008

**Ukraine: visa**
* OJ 2013 L 168/11  into force 1 July 2013
4.4 External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association Agreement

4.4.1 CJEU Judgments on EEC-Turkey Association Agreement

F CJEU 10 July 2019, C-89/18  
AG 14 Mar. 2019  
* interpr. of  
EEC-Turkey Dec. 1/80: Art. 13  
---  
ref. from Ostre Landsret, Denmark, 8 Feb. 2018  
* Art. 13 Dec. 1/80, must be interpreted as meaning that a national measure which makes family reunification between a Turkish worker legally resident in the MS concerned and his spouse conditional upon their overall attachment to that MS being greater than their overall attachment to a third country, constitutes a 'new restriction', within the meaning of that provision. Such a restriction is unjustified.

---

F CJEU 21 Oct. 2003, C-317/01  
AG 13 May 2003  
* interpr. of  
EEC-Turkey Dec. 1/80: Art. 13+41(1)  
---  
ref. from Bundessozialgericht, Germany, 13 Aug. 2001  
* joined case with C-369/01  
* Art. 41(1) Add. Protocol and Art. 13 Dec. 1/80 have direct effect and prohibit generally the introduction of new national restrictions on the right of establishment and the freedom to provide services and freedom of movement for workers from the date of the entry into force in the host Member State of the legal measure of which those articles are part (scope standstill obligation).

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F CJEU 6 June 1995, C-434/93  
AG 28 Mar. 1995  
* interpr. of  
EEC-Turkey Dec. 1/80: Art. 6(1)  
---  
ref. from Raad van State, NL, 4 Nov. 1993  
* In order to ascertain whether a Turkish worker belongs to the legitimate labour force of a Member State, for the purposes of Art. 6(1) of Dec. 1/80 it is for the national court to determine whether the applicant's employment relationship retained a sufficiently close link with the territory of the Member State, and, in so doing, to take account, in particular, of the place where he was hired, the territory on which the paid employment is based and the applicable national legislation in the field of employment and social security law.  
The existence of legal employment in a Member State within the meaning of Art. 6(1) of Dec. 1/80 can be established in the case of a Turkish worker who was not required by the national legislation concerned to hold a work permit or a residence permit issued by the authorities in the host State in order to carry out his work. The fact that such employment exists necessarily implies the recognition of a right of residence for the person concerned.

---

F CJEU 26 May 2011, C-485/07  
AG 9 July 2011  
* interpr. of  
EEC-Turkey Dec. 3/80: Art. 6(1)  
---  
ref. from Centrale Raad van Beroep, NL, 5 Nov. 2007  
* Supplements to social security can not be withdrawn solely on the ground that the beneficiary has moved out of the Member State.  

---

F CJEU 19 Nov. 1998, C-210/97  
AG 9 July 1998  
* interpr. of  
EEC-Turkey Dec. 1/80: Art. 7  
---  
ref. from Verwaltungsgericht Köln, Germany, 2 June 1997  
* A Turkish national is entitled to respond to any offer of employment in the host Member State after having completed a course of vocational training there, and consequently to be issued with a residence permit, when one of his parents has in the past been legally employed in that State for at least three years.

However, it is not required that the parent in question should still work or be resident in the Member State in question at the time when his child wishes to gain access to the employment market there.

---

F CJEU 18 Dec. 2008, C-337/07  
AG 11 Sep. 2008  
* interpr. of  
EEC-Turkey Dec. 1/80: Art. 7  
---  
ref. from Verwaltungsgericht Stuttgart, Germany, 20 July 2007  
* Art. 7(1) of Dec. 1/80 is to be interpreted as meaning that the child of a Turkish worker may enjoy rights arising by virtue of that provision where, during the three-year period when the child was co-habiting with that worker, the latter was working for two and a half years before being unemployed for the following six months.

The fact that a Turkish worker has obtained the right of residence in a Member State and, accordingly, the right of access to the labour market of that State as a political refugee does not prevent a member of his family from enjoying the rights arising under the first paragraph of Art. 7 of Dec. 1/80.

Art. 7(1) of Dec. 1/80 is to be interpreted as meaning that when a Turkish worker has obtained the status of political refugee on the basis of false statements, the rights that a member of his family derives from that provision cannot be called into question if the latter, on the date on which the residence permit issued to that worker is withdrawn, fulfils the conditions laid down therein.
**New**

**CJEU 2 Sep. 2021, C-379/20**

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

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**CJEU 30 Sep. 2004, C-275/02**

Ayaz  
* EEC-Turkey Dec. 1/80: Art. 7  
ref. from Verwaltungsgericht Stuttgart, Germany, 26 July 2002  
* A stepson who is under the age of 21 years or is a dependant of a Turkish worker duly registered as belonging to the labour force of a Member State is a member of the family of that worker.

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**CJEU 7 July 2005, C-373/03**

Aydinli  
* EEC-Turkey Dec. 1/80: Art. 6+7  
ref. from Verwaltungsgericht Freiburg, Germany, 12 Mar. 2003  
* A long detention is no justification for loss of residence permit.

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**CJEU 2 Sep. 2021, C-379/20**

B. / Utländingen (DEN)  
* interp. of  
EEC-Turkey Dec. 1/80: Art. 10(1)  
ref. from Verfassungsgerichtshof, Austria, 19 Apr. 2001  
* Art. 10(1) Dec. 3/80 must be interpreted as meaning that a national measure excluding a Turkish worker from the labour force of the host MS from eligibility for election to organisations such as trade unions.

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**CJEU 21 Jan. 2010, C-462/08**

Bekleyen  
* interp. of  
EEC-Turkey Dec. 1/80: Art. 6, 7 and 9  
ref. from Oberverwaltungsgericht Berlin-Brandenburg, Germany, 27 Oct. 2008  
* The first sentence of Art. 9 Dec. 1/80 must be interpreted as meaning that it cannot be relied on by Turkish children whose parents do not satisfy the conditions laid down in Arts. 6 and 7 of Dec. 1/80.

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**CJEU 19 Sep. 2000, C-89/00**

Bicakci  
* interp. of  
EEC-Turkey Dec. 1/80: Art. 13  
ref. from Verwaltungsgericht Berlin, Germany, 8 Mar. 2000  
* Art 14 does not refer to a preventive expulsion measure.

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**CJEU 26 Nov. 1998, C-1/97**

Birden  
* interp. of  
EEC-Turkey Dec. 1/80: Art. 6(1)  
ref. from Verwaltungsgericht Bremen, Germany, 6 Jan. 1997  
* In so far as he has available a job with the same employer, a Turkish national in that situation is entitled to demand the renewal of his residence permit in the host MS, even if, pursuant to the legislation of that MS, the activity pursued by him was restricted to a limited group of persons, was intended to facilitate their integration into working life and was financed by public funds.

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**CJEU 8 May 2003, C-171/01**

Bırılke  
* interp. of  
EEC-Turkey Dec. 1/80: Art. 10(1)  
ref. from Verfassungsgerichtshof, Austria, 19 Apr. 2001  
* Art 10 precludes the application of national legislation which excludes Turkish workers duly registered as belonging to the labour force of the host MS from eligibility for election to organisations such as trade unions.

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**CJEU 11 Nov. 2004, C-467/02**

Cetinkaya  
* interp. of  
EEC-Turkey Dec. 1/80: Art. 7+14(1)  
ref. from Verwaltungsgericht Stuttgart, Germany, 19 Dec. 2002  
* The meaning of a “family member” is analogous to its meaning in the Free Movement Regulation.

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**CJEU 15 May 2019, C-677/17**

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

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**CJEU 29 Apr. 2010, C-92/07**

Com. / NL  
* interp. of  
EEC-Turkey Dec. 1/80: Art. 10(1)+13  
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.
The procedural guarantees set out in the Dir. on Free Movement also apply to Turkish workers.

ref. from Verwaltungsgerichtshof, Austria, 18 Mar. 2003

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

The language requirement abroad is not in compliance with the standstill clauses of the Association Agreement. Although the question was also raised whether this requirement is in compliance with the Family Reunification Dir., the Court did not answer that question.

CJEU 10 July 2014, C-138/13
AG 30 Apr. 2014
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
* ref. from Verwaltungsgericht Berlin, Germany, 19 Mar. 2013
* The language requirement abroad is not in compliance with the standstill clauses of the Association Agreement. Although the question was also raised whether this requirement is in compliance with the Family Reunification Dir., the Court did not answer that question.

CJEU 7 July 2005, C-383/03
AG 10 July 2014
* interpr. of EEC-Turkey Dec. 3/80: Art. 6(1)
* ref. from Centrale Raad van Beroep, NL, 8 Apr. 2013
* Art. 6(1) must be interpreted as meaning that nationals of a MS who have been duly registered as belonging to the labour force of that MS as Turkish workers cannot, on the ground that they have retained Turkish nationality, rely on Article 6 of Dec. 3/80 to object to a residence requirement provided for by the legislation of that MS in order to receive a special non-contributory benefit within the meaning of Article 4(2) of Reg. 1408/71 on social security.

CJEU 7 Nov. 2013, C-225/12
AG 11 July 2013
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
* Holding a temporary residence permit, which is valid only pending a final decision on the right of residence, does not fall within the meaning of 'legally resident'.

CJEU 15 Nov. 2011, C-256/11
AG 11 Apr. 2013
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
* ref. from Oberverwaltungsgericht Berlin, Germany, 11 May 2011
* No right to family reunification. Art. 12 EEC-Turkey and Art. 36 of the Additional Protocol, do not constitute rules of Community law which are directly applicable in the internal legal order of the Member States.

CJEU 30 Sep. 2013, C-221/11
AG 11 Apr. 2013
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
* ref. from Oberverwaltungsgericht Stuttgart, Germany, 17 Jan. 1986
* The freedom to ‘provide services’ does not encompass the freedom to ‘receive’ services in other EU Member States.

CJEU 24 Sep. 2013, C-221/11
AG 19 May 1987
* interpr. of EEC-Turkey Dec. 1/80: Art. 7+12
* No right to family reunification. Art. 12 EEC-Turkey and Art. 36 of the Additional Protocol, do not constitute rules of Community law which are directly applicable in the internal legal order of the Member States.

CJEU 14 Jan. 2015, C-171/13
AG 10 July 2014
* interpr. of EEC-Turkey Dec. 3/80: Art. 6(1)
* Art. 6(1) must be interpreted as meaning that nationals of a MS who have been duly registered as belonging to the labour force of that MS as Turkish workers cannot, on the ground that they have retained Turkish nationality, rely on Article 6 of Dec. 3/80 to object to a residence requirement provided for by the legislation of that MS in order to receive a special non-contributory benefit within the meaning of Article 4(2) of Reg. 1408/71 on social security.

CJEU 7 Nov. 2013, C-225/12
AG 11 July 2013
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
* Holding a temporary residence permit, which is valid only pending a final decision on the right of residence, does not fall within the meaning of 'legally resident'.

CJEU 15 Nov. 2011, C-256/11
AG 11 Apr. 2013
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
* ref. from Oberverwaltungsgericht Berlin, Germany, 11 May 2011
* No right to family reunification. Art. 12 EEC-Turkey and Art. 36 of the Additional Protocol, do not constitute rules of Community law which are directly applicable in the internal legal order of the Member States.

CJEU 30 Sep. 2013, C-12/86
AG 19 May 1987
* interpr. of EEC-Turkey Dec. 1/80: Art. 7+12
* No right to family reunification. Art. 12 EEC-Turkey and Art. 36 of the Additional Protocol, do not constitute rules of Community law which are directly applicable in the internal legal order of the Member States.

CJEU 16 Sep. 2004, C-465/01
Com. / Austria
EU:C:2004:530
* interpr. of EEC-Turkey Dec. 1/80: Art. 10(1)
* ref. from Commission, 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
EU:C:2013:725
EU:C:2013:475
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
* Holding a temporary residence permit, which is valid only pending a final decision on the right of residence, does not fall within the meaning of 'legally resident'.

CJEU 14 Jan. 2015, C-171/13
Demirici a.o.
EU:C:2015:8
EU:C:2014:2073
* interpr. of EEC-Turkey Dec. 3/80: Art. 6(1)
* Art. 6(1) must be interpreted as meaning that nationals of a MS who have been duly registered as belonging to the labour force of that MS as Turkish workers cannot, on the ground that they have retained Turkish nationality, rely on Article 6 of Dec. 3/80 to object to a residence requirement provided for by the legislation of that MS in order to receive a special non-contributory benefit within the meaning of Article 4(2) of Reg. 1408/71 on social security.

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

CJEU 24 Sep. 2013, C-221/11
Demirkan
EU:C:2013:583
EU:C:2013:237
* interpr. of EEC-Turkey Add.Prot.: Art. 41(1)
* ref. from Oberverwaltungsgericht Stuttgart, Germany, 17 Jan. 1986
* The freedom to ‘provide services’ does not encompass the freedom to ‘receive’ services in other EU Member States.

CJEU 15 Nov. 2011, C-256/11
Dereci et al.
EU:C:2011:734
EU:C:2011:626
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
* ref. from Verwaltungsgerichtshof, Austria, 25 May 2011
* EU law does not preclude a Member State from refusing to allow a third country national to reside on its territory, where that third country national wishes to reside with a member of his family who is a citizen of the Union residing in the Member State of which he has nationality, who has never exercised his right to freedom of movement, provided that such refusal does not lead, for the Union citizen concerned, to the denial of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a citizen of the Union, which is a matter for the referring court to verify. Art. 41(1) of the Additional Protocol must be interpreted as meaning that the enactment of new legislation more restrictive that the previous legislation, which, for its part, relaxed earlier legislation concerning the conditions for the exercise of the freedom of establishment of Turkish nationals at the time of the entry into force of that protocol in the Member State concerned must be considered to be a 'new restriction' within the meaning of that provision.
The AG 8 May 2014

CJEU 11 Sep. 2014, C-91/13

AG 8 May 2014

* interpr. of

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.
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

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

EU:C:2020:847
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Ostre Landsret, Denmark, 5 Dec. 2014
* A national measure, making family reunification between a Turkish worker residing lawfully in the MS concerned and his minor child subject to the condition that the latter have, or have the possibility of establishing, sufficient ties with Denmark to enable him successfully to integrate, when the child concerned and his other parent reside in the State of origin or in another State, and the application for family reunification is made more than two years from the date on which the parent residing in the MS concerned obtained a permanent residence permit or a residence permit with a possibility of permanent residence constitutes a 'new restriction', within the meaning of Art. 13 of Decision 1/80. Such a restriction is not justified.

EU:C:2010:57
AG 21 June 2012
* 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.

EU:C:2012:695
AG 30 Sep. 1997
* 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.

EU:C:2012:381
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 employees employed by the same employer or in the sector concerned and exercising identical or comparable duties, is duly registered.

EU:C:2005:435
AG 2 Dec. 2004
* interpr. of EEC-Turkey Dec. 1/80: Art. 9
ref. from Verwaltungsgericht Signminen, Germany, 31 July 2005
* 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.
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.

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.

Where a Turkish national has worked for an employer for an uninterrupted period of at least four years, he enjoys in the host Member State, in accordance with the third indent of Art. 6(1) of Dec. 1/80, the right of free access to any paid employment of his choice and a corresponding right of residence.

Where a Turkish national who fulfils the conditions laid down in a provision of Dec. 1/80 and therefore enjoys the rights which it confers has been expelled, Community law precludes application of national legislation under which issue of a residence authorisation must be refused until a time-limit has been placed on the effects of the expulsion order.
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

F  CJEU 22 Dec. 2010, C-303/08  Metin Bozkurt  EU:C:2010:800  EU:C:2010:413
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.

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.

AG 18 July 2007
* interpr. of EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Court of Appeal, United Kingdom, 30 June 2006
* The fact that a Turkish national was granted leave to enter the territory of a Member State as an au pair or as a student cannot deprive him of the status of ‘worker’ and prevent him from being regarded as ‘duly registered as belonging to the labour force’ of that Member State within the meaning of Art. 6(1) of Dec. 1/80. Accordingly, that fact cannot prevent that national from being able to rely on that provision for the purposes of obtaining renewed permission to work and a corollary right of residence.

AG 8 July 2010
* interpr. of EEC-Turkey Dec. 1/80: Art. 7
ref. from Rechtbank Den Haag (zp) Roermond, NL, 31 Oct. 2007
* 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.

F  AG 4 Oct. 2007, C-349/06  Polat  EU:C:2007:581
AG 17 Sep. 2009, C-242/06  Sahin  EU:C:2009:554
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Verwaltungsgericht Darmstadt, Germany, 21 Aug. 2006
* Art. 13 of Dec. 1/80 must be interpreted as excluding the introduction of a measure ordering the expulsion of a Turkish national on the basis of his having been convicted of a criminal offence, provided that his personal conduct constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society.
* 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.
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

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

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

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

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

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

CJEU 29 Mar. 2017, C-652/15
Tekdemir
* interpr. of EEC-Turkey Dec. 1/80: Art. 13
ref. from Verwaltungsgericht Darmstadt, Germany, 7 Dec. 2015
* Art. 13 must be interpreted as meaning that the objective of efficient management of migration flows may constitute an overriding reason in the public interest capable of justifying a national measure, introduced after the entry into force of that decision in the Member State in question, requiring nationals of third countries under the age of 16 years old to hold a residence permit in order to enter and reside in that Member State. Such a measure is not, however, proportionate to the objective pursued where the procedure for its implementation as regards child nationals of third countries born in the MS in question and one of whose parents is a Turkish worker lawfully residing in that MS, such as the applicant in the main proceedings, goes beyond what is necessary for attaining that objective.
CJEU 23 Jan. 1997, C-171/95
AG 14 Nov. 1996
* interpr. of
EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Bundesverwaltungsgericht, Germany, 7 June 1995
* Art. 6(1) of Dec. 1/80 must be interpreted as meaning that a Turkish worker who has been legally employed for more than four years in a Member State, who decides voluntarily to leave his employment in order to seek new work in the same Member State and is unable immediately to enter into a new employment relationship, enjoys in that State, for a reasonable period, a right of residence for the purpose of seeking new paid employment there, provided that he continues to be duly registered as belonging to the labour force of the Member State concerned, complying where appropriate with the requirements of the legislation in force in that State, for instance by registering as a person seeking employment and making himself available to the employment authorities. It is for the Member State concerned and, in the absence of legislation to that end, for the national court before which the matter has been brought to fix such a reasonable period, which must, however, be sufficient not to jeopardize in fact the prospects of his finding new employment.

CJEU 9 Dec. 2010, C-300/09
Toprak & Oğuz
AG 14 Nov. 2011
* interpr. of
EEC-Turkey Dec. 1/80: Art. 13
ref. from Raad van State, NL, 30 July 2009
* joined case with C-301/09
* Art. 13 of Dec. 1/80 must be interpreted as meaning that a tightening of a provision introduced after 1 December 1980, which provided for a relaxation of the provision applicable on 1 December 1980, constitutes a ‘new restriction’ within the meaning of that article, even where that tightening does not make the conditions governing the acquisition of that permit more stringent than those which resulted from the provision in force on 1 December 1980.

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

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

CJEU 21 July 2011, C-186/10
Tural Oğuz
AG 14 Apr. 2011
* interpr. of
EEC-Turkey Add.Prot.: Art. 41(1)
ref. from Court of Appeal (E&W), UK, 15 Apr. 2010
* Art. 41(1) must be interpreted as meaning that it may be relied on by a Turkish national who, having leave to remain in a Member State on condition that he does not engage in any business or profession, nevertheless enters into self-employment in breach of that condition and later applies to the national authorities for further leave to remain on the basis of the business which he has meanwhile established.

CJEU 21 Dec. 2016, C-508/15
Ucar a.o.
AG 15 Sep. 2016
* interpr. of
EEC-Turkey Dec. 1/80: Art. 7
ref. from Verwaltungsgericht Berlin, Germany, 24 Sep. 2015
* Art 7 must be interpreted as meaning that that provision confers a right of residence in the host MS on a family member of a Turkish worker, who has been authorised to enter that MS, for the purposes of family reuniﬁcation, and who, from his entry into the territory of that MS, has lived with that Turkish worker, even if the period of at least three years during which the latter is duly registered as belonging to the labour force does not immediately follow the arrival of the family member concerned in the host MS, but is subsequent to it.

CJEU 29 Sep. 2011, C-187/10
Unal
AG 21 July 2011
* interpr. of
EEC-Turkey Dec. 1/80: Art. 6(1)
ref. from Raad van State, NL, 16 Apr. 2010
* Art. 6(1) must be interpreted as precluding the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the point in time at which there was no longer compliance with the ground on the basis of which his residence permit had been issued under national law if there is no question of fraudulent conduct on the part of that worker and that withdrawal occurs after the expiry of the one-year period of legal employment.
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

**New**

<ref> CJEU 7 Aug. 2018, C-123/17 Yön</ref>
AG 19 Apr. 2018  
* interpr. of  
EEC-Turkey Dec. 1/80: Art. 13  
ref. from Bundesverwaltungsgericht Leipzig, Germany, 10 Mar. 2017  
* Meaning of the standstill clause of Art 13 Dec 1/80 and Art 7 Dec 2/76 in relation to the language requirement of visa for retiring spouses. A national measure, taken during the period from 20 December 1976 to 30 November 1980, which makes the grant, for the purposes of family reunification, of a residence permit to third-country nationals who are family members of a Turkish worker residing lawfully in the Member State concerned, subject to such nationals obtaining, before entering national territory, a visa for the purpose of that reunification, constitutes a ‘new restriction’ within the meaning of that provision.

Such a measure may nevertheless be justified on the grounds of the effective control of immigration and the management of migratory flows, but may be accepted only provided that the detailed rules relating to its implementation do not go beyond what is necessary to achieve the objective pursued, which it is for the national court to verify.

<ref> CJEU 8 Dec. 2011, C-371/08 Ziebell or Örnek</ref>  
AG 14 Apr. 2011  
* interpr. of  
EEC-Turkey Dec. 1/80: Art. 14(1)  
ref. from Verwaltungsgerichtshof Baden Württemberg, Germany, 14 Aug. 2008  
* Decision No 1/80 does not preclude an expulsion measure based on grounds of public policy from being taken against a Turkish national whose legal status derives from the second indent of the first paragraph of Article 7 of that decision, in so far as the personal conduct of the individual concerned constitutes at present a genuine and sufficiently serious threat affecting a fundamental interest of the society of the host Member State and that measure is indispensable in order to safeguard that interest. It is for the national court to determine, in the light of all the relevant factors relating to the situation of the Turkish national concerned, whether such a measure is lawfully justified in the main proceedings.

**New**

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

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

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

**4.4.3 CJEU Judgments on Readmission Treaties**

* validity of  
EU-Turkey Statement:  
* inadmissible  
* 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.