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# About

NEMIS is a newsletter designed for judges who need to keep up to date with EU developments in migration and borders law. This newsletter contains all European legislation and jurisprudence on access and residence rights of third country nationals. NEMIS does not include jurisprudence on free movement or asylum. We would like to refer to a separate Newsletter on that issue, the Newsletter on European Asylum Issues (NEAIS).

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Welcome to the Fourth issue of NEMIS in 2017. In this issue we would like to draw your attention to the following.

Family Life
Currently, there is a lot of interest in the right to family reunification of refugees, which is reflected in a new reference for a preliminary ruling on the Family Reunification Directive. In this reference a Dutch district court wants to know whether Article 11(2) Family Reunification allows for the requirement that a refugee first makes plausible that he is not able to submit official documents substantiating his family ties, before alternative proofs or indications have to be taken into account. This question (ECLI:NL:RBDHA:2017:13124) has not yet been registered at the CJEU.

To the question on the reference date of unaccompanied minors being entitled to family reunification on the basis of Article 10(3) Family Reunification Directive, the Advocate General concluded on 26 October 2017 (C-550/16, C. & A.). According to the Advocate General, the date of entrance of the unaccompanied minor in the Member State should be taken as a reference date within the meaning of Article 2(f) of the Directive, but also since the grant of refugee status is a declaratory act and has retroactive effect. The obligation to take the interests of the child as a primary consideration (Article 24(2) Charter) and the vulnerable situation of refugees (referred to in recital 8) also lead to this interpretation.

In Y.Z. a.o. (C-557/17), the Dutch Council of State has asked for a preliminary ruling on Article 16(2)(a) Family Reunification Directive and Article 91(1)(a) Long-Term Residents Directive. It wants to know whether a residence permit can be withdrawn if the acquisition of that residence permit was based on fraudulent information but the holder of the residence status was unaware of the fraudulent nature of that information. The case concerns fraudulent documents submitted by the sponsor, which formed the basis for the residence rights of the mother and child as well.

Return
On 13 December 2017, the Advocate-General concluded in C-240/17 (E), that a third-country national can rely directly on Article 25(2) of the Convention implementing the Schengen Agreement before national courts in order to contest the legality and the enforcement of a return decision and an entry ban within the meaning of Return Directive. The return decision may be enforced and the entry ban put into effect only after the State consulted has presented its observations or has failed to do so although a reasonable period for response has passed. If, however, the third-country national presents a threat to public safety and order, these decisions may be enforced before expiry of this period.

In Wilber López Pastuzano (C-636/16) the CJEU ruled that as Article 12 of the LTR Directive offers reinforced protection against expulsion, Member States may take a decision to expel a long-term resident solely where he or she constitutes an actual and sufficiently serious threat to public policy or public security. Prior to an expulsion, Member States always have to conduct an individual assessment of all relevant circumstances and interests as mentioned in Article 12(3) of the LTR directive. Therefore, being sentenced to a term of imprisonment of more than one year is not sufficient ground for expulsion.

Borders
In December, the Court has released a judgement on the Visa code in case C-403/16. It rules that Article 32(3) of the Visa Code, read in the light of Article 47 of the Charter, must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas. The procedural rules are a matter for the national legal order, but have to be in accordance with the principles of equivalence and effectiveness, and guarantee a judicial appeal at a certain stage of the proceedings.
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

**Directive 2003/86**

*On the right to Family Reunification*

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

**Case Law Sorted in Chronological Order**

- **Blue Card I**
  - C-558/14 Khachab: 21 Apr. 2016, Art. 7(1)(c)
  - C-153/14 K. & A.: 9 July 2015, Art. 7(2)
  - C-138/13 Dogan (Naime): 10 July 2014, Art. 7(2)
  - C-356/11 O. & S.: 6 May 2013, Art. 3(3)
  - C-155/11 Imran: 10 June 2011, Art. 7(2) - no adj.
  - C-578/08 Chakroun: 4 Mar. 2010, Art. 7(1)(c) + 2(d)
  - C-138/13 Dogan (Naime): 10 July 2014, Art. 7(2)
  - C-87/12 Ymeraga: 8 May 2013, Art. 3(3)
  - C-155/11 Imran: 10 June 2011, Art. 7(2) - no adj.
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  - C-155/11 Imran: 10 June 2011, Art. 7(2) - no adj.

- **Family Reunification**
  - C-155/11 Imran: 10 June 2011, Art. 7(2) - no adj.

- **CJEU pending cases**
  - C-123/17 Yün: pending, Art. 7
  - C-257/17 C. & A.: pending, Art. 3(3)
  - C-380/17 K. & B.: pending, Art. 9(2)
  - C-484/17 K.: pending, Art. 15
  - C-550/16 A. & S.: pending, Art. 2(1)

- **New**
  - C-557/17 Y.Z. a.o.: pending, Art. 16(2)(a)
  - C-xx/17 X.: pending, Art. 3(2)(c) + 11(2)

- **EFTA pending cases**
  - E-4/11 Clauder: 26 July 2011, Art. 7(1)

- **Council Decision 2007/435**

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

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

- **Intra-Corporate Transferees**

**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

**Long-Term Residents**

**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

See further: § 1.3
1.1: Regular Migration: Adopted Measures

**Directive 2011/51**

*Long-Term Residents ext.*

- **Long-Term Resident status for refugees and persons with subsidiary protection**
  - OJ 2011 L 132/1 (April 2011)
  - extending Dir. 2003/109 on LTR
  - impl. date 20 May 2013

**Council Decision 2006/688**

*Mutual Information*

- **On the establishment of a mutual information mechanism in the areas of asylum and immigration**
  - OJ 2006 L 283/40
  - Directive 2011/51
  - impl. date 20 May 2013

**Directive 2005/71**

*Researchers*

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

  | CJEU judgments |
  | C-523/08 Com. v. Spain |
  | 11 Feb. 2010 |

**Recommendation 762/2005**

*Researchers*

- **To facilitate the admission of TCNs to carry out scientific research**
  - OJ 2005 L 289/26

**Directive 2016/801**

*Researchers and Students*

- **On the conditions of entry and residence of Third-Country Nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes, educational projects and au pairing.**
  - Directive is replaced by Dir. 2005/71 on Researchers and Dir 2004/114 on Students

**Regulation 1030/2002**

*Seasonal Workers*

- **Laying down a uniform format for residence permits for TCNs**
  - OJ 2002 L 157/1
  - and by Reg. 330/2008 (OJ 2008 L 115/1)

**New Regulation 2017/1954**

*Residence Permit Format II*

- **On a uniform format for residence permits for third-country nationals**
  - OJ 2017 L 286/9
  - Amending Reg. 1030/2002 on Residence Permit Format

**Directive 2014/36**

*Single Permit*

- **On the conditions of entry and residence of TCNs for the purposes of seasonal employment**
  - OJ 2014 L 94/375
  - impl. date 30 Sep. 2016

**Directive 2011/98**

*Social Security TCN*

- **Third-Country Nationals’ Social Security extending Reg. 1408/71 and Reg. 574/72**
  - OJ 2011 L 343/1 (Dec. 2011)
  - impl. date 25 Dec. 2013

  | CJEU judgments |
  | C-449/16 Martínez Silva |
  | 21 June 2017 |

**Regulation 859/2003**

*Social Security TCN II*

- **Admission of Third-Country Nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service**
  - OJ 2010 L 344/1
  - impl. date 1 Jan. 2011

  | CJEU judgments |
  | C-491/13 Ben Alaya |
  | 10 Sep. 2014 |

  | C-544/15 Fahimian |
  | 4 Apr. 2017 |

**Regulation 1231/2010**

*Social Security TCN III*

- **For EU Citizens and TCNs who move within the EU**
  - impl. date 1 Jan. 2011

  | CJEU judgments |
  | C-465/14 Wieland & Rothwangl |

  | C-247/09 Xhymshiti |
  | 18 Nov. 2010 |

**Directive 2004/114**

*Students*

| CJEU judgments |
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**1.1: Regular Migration: Adopted Measures**

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See further: § 1.3

**1.2 Regular Migration: Proposed Measures**

**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


**Blue Card (amended)**

* Impl. date 31 Aug. 1954

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**1.3 Regular Migration: Jurisprudence**

**1.3.1 CJEU Judgments on Regular Migration**

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* 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.
1.3: Regular Migration: Jurisprudence: CJEU Judgments

**CJEU C-309/14**
interpr. of Dir. 2003/109
* Italian national legislation has set a minimum fee for a residence permit, which is around eight times the charge for the issue of a national identity card. Such a fee is disproportionate 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.

**CJEU C-578/08**
interpr. of Dir. 2003/86
* The concept of family reunification allows no distinction based on the time of marriage. Furthermore, Member States may not require an income as a condition for family reunification, which is higher than the national minimum wage level. Admission conditions allowed by the directive, serve as indicators, but should not be applied rigidly, i.e. all individual circumstances should be taken into account.

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

**CJEU C-523/08**
non-transp. of Dir. 2005/71
* The language requirement abroad is not in compliance with the standstill clauses of the Association Agreement. Although the question was also raised whether this requirement is in compliance with the Family Reunification Directive, the Court did not answer that question. However, paragraph 38 of the judgment could also have implications for its forthcoming answer on the compatibility of the language test with the Family Reunification: “on the assumption that the grounds set out by the German Government, namely the prevention of forced marriages and the promotion of integration, can constitute overriding reasons in the public interest, it remains the case that a national provision such as that at issue in the main proceedings goes beyond what is necessary in order to attain the objective pursued, in so far as the absence of evidence of sufficient linguistic knowledge automatically leads to the dismissal of the application for family reunification, without account being taken of the specific circumstances of each case”. In this context it is relevant that the European Commission has stressed in its Communication on guidance for the application of Dir 2003/86, “that the objective of such measures is to facilitate the integration of family members. Their admissibility depends on whether they serve this purpose and whether they respect the principle of proportionality” (COM (2014)210, § 4.5).

**CJEU C-540/03**
interpr. of Dir. 2003/86
* 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 C-544/15**
interpr. of Dir. 2004/114
* 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 C-40/11**
interpr. of Dir. 2003/109
* 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 C-155/11**
interpr. of Dir. 2003/86
* 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.
1.3: Regular Migration: Jurisprudence: CJEU Judgments

CJEU C-153/14 K. & A. 9 July 2015
* interpr. of Dir. 2003/86 Art. 7(2)
* Member States may require TCNs to pass a civic integration examination, which consists in an assessment of basic knowledge both of the language of the Member State concerned and of its society and which entails the payment of various costs, before authorising that national’s entry into and residence in the territory of the Member State for the purposes of family reunification, provided that the conditions of application of such a requirement do not make it impossible or excessively difficult to exercise the right to family reunification.
In circumstances such as those of the cases in the main proceedings, in so far as they do not allow regard to be had to special circumstances objectively forming an obstacle to the applicants passing the examination and in so far as they set the fees relating to such an examination at too high a level, those conditions make the exercise of the right to family reunification impossible or excessively difficult.

CJEU C-558/14 Khachab 21 Apr. 2016
* interpr. of Dir. 2003/86 Art. 7(1)(c)
* Art. 7(1)(c) must be interpreted as allowing the competent authorities of a MS to refuse an application for family reunification on the basis of a prospective assessment of the likelihood of the sponsor retaining, or failing to retain, the necessary stable and regular resources which are sufficient to maintain himself and the members of his family, without recourse to the social assistance system of that MS, in the year following the date of submission of that application, that assessment being based on the pattern of the sponsor’s income in the six months preceding that date.

CJEU C-636/16 Lopez Pastuzano 7 Dec. 2017
* interpr. of Dir. 2003/109 Art. 12
* 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.

CJEU C-449/16 Martinez Silva 21 June 2017
* interpr. of Dir. 2011/98 Art. 12(1)(c)
* Article 12 must be interpreted as precluding national legislation, under which a TCN holding a Single Permit cannot receive a benefit such as the benefit for households having at least three minor children as established by Legge n. 448 (national Italian legislation).

CJEU C-338/13 Noorzia 17 July 2014
* interpr. of Dir. 2003/86 Art. 4(5)
* 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.

* interpr. of Dir. 2003/86 Art. 7(1)(c)
* 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 C-579/13 P. & S. 4 June 2015
* interpr. of Dir. 2003/109 Art. 5 + 11
* 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 C-294/06 Payir 24 Nov. 2008
* interpr. of Dir. 2004/114 Art. 3(2)(e)
* 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 C-571/10 Servet Kamberaj 24 Apr. 2012
* interpr. of Dir. 2003/109 Art. 11(1)(d)
* EU Law precludes a distinction on the basis of ethnicity or linguistic groups in order to be eligible for housing benefit.

CJEU C-502/10 Singh 18 Oct. 2012
* interpr. of Dir. 2003/109 Art. 3(2)(e)
* 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.
1.3.2 CJEU pending cases on Regular Migration

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<td>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.</td>
<td></td>
</tr>
<tr>
<td>CJEU C-311/13</td>
<td>Tümer</td>
<td>5 Nov. 2014</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dir. 2003/109</td>
<td>Long-Term Residents</td>
</tr>
<tr>
<td>*</td>
<td>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”.</td>
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</tr>
<tr>
<td>*</td>
<td>interpr. of Reg. 859/2003</td>
<td>Social Security TCN</td>
</tr>
<tr>
<td>*</td>
<td>Article 2(1) and (2) of Regulation 859/2003, must be interpreted as not precluding legislation of a Member State which provides that a period of employment — completed pursuant to the legislation of that Member State by an employed worker who was not a national of a Member State during that period but who, when he requests the payment of an old-age pension, falls within the scope of Article 1 of that regulation — is not to be taken into consideration by that Member State for the determination of that worker’s pension rights.</td>
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</tr>
<tr>
<td>CJEU C-247/09</td>
<td>Xhymshtiti</td>
<td>18 Nov. 2010</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Reg. 859/2003</td>
<td>Social Security TCN</td>
</tr>
<tr>
<td>*</td>
<td>In the case in which a national of a non-member country is lawfully resident in a MS of the EU and works in Switzerland, Reg. 859/2003 does not apply to that person in his MS of residence, in so far as that regulation is not among the Community acts mentioned in section A of Annex II to the EU-Switzerland Agreement which the parties to that agreement undertake to apply.</td>
<td></td>
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<tr>
<td>CJEU C-87/12</td>
<td>Ymeraga</td>
<td>8 May 2013</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dir. 2003/86</td>
<td>Family Reunification</td>
</tr>
<tr>
<td>*</td>
<td>Directives 2003/86 and 2004/38 are not applicable to third-country nationals who apply for the right of residence in order to join a family member who is a Union citizen and has never exercised his right of freedom of movement as a Union citizen, always having resided as such in the Member State of which he holds the nationality (see, also, C-256/11 Dorecci a.o., par. 58).</td>
<td></td>
</tr>
</tbody>
</table>

1.3.2.1 CJEU pending cases on Family Reunification

<table>
<thead>
<tr>
<th>Case</th>
<th>Judgement</th>
<th>Decision Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU C-257/17</td>
<td>C. &amp; A.</td>
<td>2003/86</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dir. 2003/86</td>
<td>Family Reunification</td>
</tr>
<tr>
<td>*</td>
<td>Having regard to the Nolan judgment (C-538/10) does the CJEU have jurisdiction to answer questions referred for a preliminary ruling by the courts of the Netherlands concerning the interpretation of certain provisions of the Family Reunification directive in proceedings relating to the right of residence of members of the family of sponsoring who have Netherlands nationality, if that directive has been declared to be directly and unconditionally applicable under Netherlands law to those family members? Should Article 15(1) and (4) be interpreted as precluding national legislation under which an application for an autonomous residence permit on the part of a foreign national who has resided lawfully for more than five years on the territory of a MS for family-reunification purposes may be rejected because of non-compliance with conditions relating to integration laid down in national law?</td>
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<tr>
<td>CJEU C-123/17</td>
<td>Yin</td>
<td>2003/86</td>
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<tr>
<td>*</td>
<td>interpr. of Dir. 2003/86</td>
<td>Family Reunification</td>
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<td>*</td>
<td>On the differences in meaning of the standstill clauses Art. 7 of Dec. 2/76 and Art. 13 of Dec. 1/80 and the meaning of the hardship clause in the context of language requirements.</td>
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<tr>
<td>CJEU C-550/16</td>
<td>A. &amp; S.</td>
<td>2003/86</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dir. 2003/86</td>
<td>Family Reunification</td>
</tr>
<tr>
<td>*</td>
<td>AG: 26 Oct 2017</td>
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</tr>
<tr>
<td>*</td>
<td>The District Court of Amsterdam has requested a preliminary ruling on the interpretation of art 2(f) of the Family Reunification Directive on the issue whether the age of an unaccompanied minor asylum seeker is taken into account at the time of arrival in the Member State or - if protection is granted - at the later time of a request for family reunification. In this case the unaccompanied asylum seeker was a minor at the time of arrival. However, after protection was granted he was no longer a minor.</td>
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</tr>
<tr>
<td>CJEU C-484/17</td>
<td>K.</td>
<td>2003/86</td>
</tr>
<tr>
<td>*</td>
<td>interpr. of Dir. 2003/86</td>
<td>Family Reunification</td>
</tr>
<tr>
<td>*</td>
<td>Should Article 15(1) and (4) be interpreted as precluding national legislation in which a request for an autonomous residence permit after lawfully staying more than five years for family reunification purposes be</td>
<td></td>
</tr>
</tbody>
</table>
1.3: Regular Migration: Jurisprudence: CJEU pending cases

rejected because of non-compliance with integration conditions?

- **CJEU C-380/17**
  - interp. of Dir. 2003/86
  - Family Reunification
  - K. & B.
  - Art. 9(2)

- Does the system of this Directive preclude national legislation under which an application for consideration for family reunification on the basis of the more favourable provisions of Chapter V of that directive can be rejected for the sole reason that it was not submitted within the period laid down in the third subparagraph of Article 12(1)?

**New**

- **CJEU C-cx/17**
  - interp. of Dir. 2003/86
  - Family Reunification
  - X.
  - Art. 3(2)(c) + 11(2)


**New**

- **CJEU C-557/17**
  - interp. of Dir. 2003/86
  - Family Reunification
  - Y.Z. a.o.
  - Art. 16(2)(a)

- Does Art. 16(2)(a) preclude the withdrawal of a residence permit granted for the purpose of family reunification in the case where the acquisition of that residence permit was based on fraudulent information but the family member was unaware of the fraudulent nature of that information?

1.3.3 EFTA judgments on Regular Migration

- **EFTA E-4/11**
  - interp. of Dir. 2003/86
  - Family Reunification
  - Claude v. LIE
  - 26 July 2011
  - Art. 7(1)

- An EEA national (e.g. German) with a right of permanent residence, who is a pensioner and in receipt of social welfare benefits in the host EEA State (e.g. Liechtenstein), may claim the right to family reunification even if the family member will also be claiming social welfare benefits.

- **EFTA E-28/15**
  - interp. of Dir. 2003/86
  - Right of Residence
  - Yankuba Jabbi v. NO
  - 21 Sept. 2016
  - Art. 1(1)(b) + 7(2)

- Where an EEA national, pursuant to Article 7(1)(b) and Article 7(2) of Directive 2004/38/EC, has created or strengthened a family life with a third country national during genuine residence in an EEA State other than that of which he is a national, the provisions of that directive will apply by analogy where EEA national returns with the family member to his home State.

1.3.4 ECtHR Judgments on Regular Migration

- **ECtHR 8000/08**
  - violation of
  - ECHR
  - A.A. v. UK
  - 20 Sep. 2011
  - 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 33809/15**
  - no violation of
  - ECHR
  - Alam v. DK
  - 29 June 2017
  - 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. Those conclusions were neither arbitrary nor manifestly unreasonable. The Court is thus satisfied that the interference with the applicant’s private and family life was supported by relevant and sufficient reasons and that her expulsion would not be disproportionate given all the circumstances of the case.

- **ECtHR 26940/10**
  - no violation of
  - ECHR
  - Antwi v. NOR
  - 14 Feb. 2012
  - 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 nr 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 38590/10**
  - violation of
  - ECHR
  - Biao v. DK
  - 24 May 2016
  - Art. 8 + 14

- Initially, the Second Section of the Court decided on 25 March 2014 that there was no violation of Art. 8 in the
Danish case where the Danish statutory amendment requires that the spouses’ aggregate ties with Denmark has to be stronger than the spouses’ aggregate ties with another country. However, after referral, the Grand Chamber reviewed that decision and decided otherwise. The Court ruled that the so-called attachment requirement (the requirement of both spouses having stronger ties with Denmark than to any other country) is unjustified and constitutes indirect discrimination and therefore a violation of Art 8 and 14 ECHR.

**ECtHR 54273/00**

**Boulif v. CH**

2 Aug. 2001

* violation of ECHR Art. 8

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.

**ECtHR 47017/09**

**Butt v. NO**

4 Dec. 2012

* violation of ECHR Art. 8

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.

**ECtHR 22689/07**

**De Souza Ribeiro v. UK**


* violation of ECHR Art. 8 + 13

A Brazilian in French Guiana was removed to Brazil within 30 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.

**ECtHR 17120/09**

**Dhahbi v. IT**

8 Apr. 2014

* violation of ECHR Art. 6, 8 + 14

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.

**ECtHR 5697/10**

**El Ghatet v. CH**

8 Nov. 2016

* violation of ECHR Art. 8

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 15 when the request for family reunification was lodged and there were no other major threats to his best interests in the country of origin.

Based on these facts, the Court finds that no clear conclusion can be drawn whether or not the applicants’ interest in a family reunification outweighed the public interest of the respondent State in controlling the entry of foreigners into its territory. Nevertheless, the Court notes that the domestic court 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.
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

- **ECtHR 22251/07**
  - G.R. v. NL
  - 10 Jan. 2012
  - violation of Art. 8 + 13
  - The applicant did not have effective access to the administrative procedure by which he might, subject to fulfilling the conditions prescribed by domestic law, obtain a residence permit which would allow him to reside lawfully with his family in the Netherlands, due to the disproportion between the administrative charge in issue and the actual income of the applicant’s family. The Court finds that the extremely formalistic attitude of the Minister – which, endorsed by the Regional Court, also deprived the applicant of access to the competent administrative tribunal – unjustifiably hindered the applicant’s use of an otherwise effective domestic remedy. There has therefore been a violation of Article 8 and 13 of the Convention.

- **ECtHR 52166/09**
  - Hasanbasci v. CH
  - 11 June 2013
  - violation of ECHR Art. 8
  - After living in Switzerland for 23 years with a residence permit, the applicant decides to go back to Bosnia. Soon after, he gets seriously ill and wants to get back to his wife who stayed in Switzerland. However, this (family reunification) request is denied mainly because of the fact that he has been on welfare and had been fined (a total of 350 euros) and convicted for several offences (a total of 17 days imprisonment). The court rules that this rejection, given the circumstances of the case, is disproportionate and a violation of article 8.

- **ECtHR 22341/09**
  - Hode and Abdi v. UK
  - 6 Nov. 2012
  - violation of ECHR Art. 8 + 14
  - Discrimination on the basis of date of marriage has no objective and reasonable justification.

- **ECtHR 12738/10**
  - Jeunesse v. NL
  - 3 Oct. 2014
  - 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 controlling immigration. In view of the particular circumstances of the case, it is questionable whether general immigration policy considerations of themselves can be regarded as sufficient justification for refusing the applicant residence in the Netherlands.

- **ECtHR 32504/11**
  - Kaplan a.o. v. NO
  - 24 July 2014
  - 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 38030/12**
  - Khan v. GER
  - 23 Sep. 2016
  - 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 2013 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 41697/12**
  - Krasniqi v. AUS
  - 25 Apr. 2017
  - 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 aggravatred 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.

- **ECtHR 1638/03**
  - Maslov v. AU
  - 22 Mar. 2007
  - violation of ECHR Art. 8
  - In addition to the criteria set out in Boutif and Unerte 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 52701/09**
  - Mugenzi v. FR
  - 10 July 2014
  - 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.
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

<table>
<thead>
<tr>
<th>Case Reference</th>
<th>Decision</th>
<th>Date</th>
</tr>
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<tbody>
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<td>Ndi v. UK</td>
<td>no violation of ECHR</td>
<td>14 Sep. 2017</td>
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<tr>
<td>Neuling v. CH</td>
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<td>Ramadan v. MAL</td>
<td>no violation of ECHR</td>
<td>21 June 2016</td>
</tr>
<tr>
<td>Salem v. DK</td>
<td>no violation of ECHR</td>
<td>1 Dec. 2016</td>
</tr>
<tr>
<td>Udoh v. CH</td>
<td>violation of ECHR</td>
<td>16 Apr. 2013</td>
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</tbody>
</table>

Some highlights:

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

**ECtHR 46410/99**  
* Üner v. NL  
18 Oct. 2006  
* violation of  
ECR  
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 solidity of social, cultural and family ties with the host country and with the country of destination.

**ECtHR 7994/14**  
* Ustinova v. RUS  
8 Nov. 2016  
* 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.
# Borders and Visas

## 2.1 Borders and Visas: Adopted Measures

### Regulation 2016/1624

_CREATING A BORDERS AND COAST GUARD AGENCY_

* OJ 2016 L 251/1

### Regulation 562/2006

_Establisihing a Community Code on the rules governing the movement of persons across borders_

* OJ 2006 L 105/1
* This Regulation is replaced by Regulation 2016/399 Borders Code (codified).
  * amd by Reg. 296/2008 (OJ 2008 L 97/60)
  * amd by Reg. 610/2013 (OJ 2013 L 182/1): On Fundamental Rights
  * amd by Reg. 1051/2013 (OJ 2013 L 295/1): On specific measures in case of serious deficiencies

#### CJEU judgments

- CJEU C-9/16 _A_. 21 June 2017 Art. 20 + 21
- CJEU C-17/16 _El Dakkak_ 4 May 2017 Art. 4(1)
- CJEU C-575/12 _Air Baltic_ 4 Sep. 2014 Art. 5
- CJEU C-23/12 _Zakaria_ 17 Jan. 2013 Art. 13(3)
- CJEU C-88/12 _Jaoo_ 14 Sep. 2012 Art. 20 + 21 - deleted
- CJEU C-278/12 (PPU) _Adil_ 19 July 2012 Art. 20 + 21
- CJEU C-606/10 _ANAFe_ 14 June 2012 Art. 13 + 5(4)(a)
- CJEU C-430/10 _Gaydarov_ 17 Nov. 2011
- CJEU C-188/10 & C-189/10 _Melki & Abdeili_ 22 June 2010 Art. 20 + 21

#### CJEU pending cases

- CJEU C-346/16 _C_. pending Art. 20 + 21
- CJEU C-412/17 _Touring Tours_ pending Art. 22 + 23
- CJEU C-474/17 _Soc. de Transportes_ pending Art. 22 + 23

#### See further: § 2.3

### Regulation 2016/399

_BORDERS CODE (CODIFIED)_

_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 Regulation 562/2006 Borders Code
  * amd by Reg. 458/2017 (OJ 2017 L 74): on the reinforcement of checks against relevant dBases and ext. borders

### Decision 574/2007

_Establishing European External Borders Fund_

* OJ 2007 L 144
* This Regulation is repealed by Regulation 515/2004 (Borders Fund II)

### Regulation 515/2014

_BORDERS FUND II_

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

#### New

### Regulation 2017/X

_EES_

_Establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders_

* COM (2013) 95, 27 Feb. 2013
* not yet published in OJ

### Regulation 1052/2013

_EUROSUR_

_Establishing the European Border Surveillance System (Eurosur)_
2.1: Borders and Visas: Adopted Measures

* OJ 2013 L 295/11

CJEU judgments

CJEU C-44/14 Spain v. EP & Council 8 Sep. 2015
See further: § 2.3

Regulation 2007/2004
Establishing External Borders Agency

* OJ 2004 L 349/1

* This Regulation is replaced by Regulation 2016/1624 Border and Coast Guard Agency

CJEU judgments

CJEU C-44/14 Spain v. EP & Council 8 Sep. 2015
See further: § 2.3

Regulation 1931/2006
Local Border traffic

* OJ 2006 L 349/1


CJEU judgments

CJEU C-254/11 Shomodi 21 Mar. 2013 Art. 2(a) + 3(3)
See further: § 2.3

Regulation 656/2014
Maritime Surveillance

* OJ 2014 L 189/93

CJEU judgments

CJEU C-240/17 E. pending Art. 25(2)
See further: § 2.3

Regulation 2252/2004
Passports

* OJ 2004 L 261/24 UK opt in

CJEU judgments

CJEU C-101/13 U. 2 Oct. 2014 Art. 6
CJEU C-291/12 Schwarz 17 Oct. 2013 Art. 1(2)
See further: § 2.3

Recommendation 761/2005
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* OJ 2005 L 289/23

CJEU pending cases

CJEU C-240/17 E. pending Art. 25(2)
See further: § 2.3

Regulation 1053/2013
Schengen Evaluation

* OJ 2013 L 295/27

Regulation 1987/2006
SIS II

Establishing 2nd generation Schengen Information System

* OJ 2006 L 381/4

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

Council Decision 2016/268
SIS II Access

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

* OJ 2016 C 268/1

Council Decision 2016/1209
SIS II Manual

On the SIRENE Manual and other implementing measures for SIS II

* OJ 2016 L 203/35
### 2.1: Borders and Visas: Adopted Measures

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<td>* OJ 2017 L 122/73</td>
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<td>* OJ 2003 L 99/15</td>
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<td>* OJ 2008 L 162/27</td>
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<td>* OJ 2004 L 213/5</td>
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<th>Council Decision 2008/633</th>
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<tr>
<td>Access for consultation of the Visa Information System (VIS) by designated authorities of Member States and Europol</td>
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<td>* OJ 2008 L 218/129</td>
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<tr>
<td>* OJ 2011 L 286/1</td>
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<tr>
<th>Regulation 810/2009</th>
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#### CJEU judgments
- CJEU C-403/16 **El Hassani**  
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- CJEU C-84/12 **Koushkaki**  
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  Art. 23(4) + 32(1)
- CJEU C-39/12 **Dang**  
  18 June 2012  
  Art. 21 + 34 - deleted
- CJEU C-83/12 **Vo**  
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See further: § 2.3

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<td>* OJ 1995 L 164/1</td>
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  amd by Reg. 1370/2017 (OJ 2017 L 198/24) |

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2.1: Borders and Visas: Adopted Measures

**CJEU judgments**

- CJEU C-88/14 Com. v. EP
  - 16 July 2015

See further: § 2.3

**Regulation 333/2002**

Uniform format for forms for affixing the visa

- OJ 2002 L 53/4

**Visa Stickers**

- UK opt in

**ECHR**

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

Art. 3 Prohibition of Torture, Degrading Treatment

- ETS 005 (4 November 1950)
  - impl. date 31 Aug. 1954

**ECtHR Judgments**

- ECtHR 19356/07 Shioshvili a.o.
  - Art. 3 + 13

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

- ECtHR 55352/12 Aden Ahmed
  - 23 July 2013
  - Art. 3 + 5

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

- ECtHR 27765/09 Hirs
  - 21 Feb. 2012
  - Art. 3 + 13

See further: § 2.3

2.2 Borders and Visas: Proposed Measures

**New Regulation amending Regulation**

On the European Agency for large-scale IT systems

- Com (2017) 352, 29 June 2017

**New Regulation amending Regulation**

On temporary reintroduction of checks at internal borders

- Com (2017) 571, 27 Sep 2017
- amending Borders Code (Reg. 2016/399)

**Regulation**

Establishing a European Travel Information and Authorisation System

- Com (2016) 731, 16 Nov 2016

agreed in Council, June 2017; EP and Council negotiating

**Regulation**

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

- Com (2016) 882
- Amending Reg 515/2014

Council agreed on text, Nov 2017

**Regulation**

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

- Com (2016) 881

Council agreed on text, Nov 2017

**Regulation amending Regulation 562/2006**

Establishing Touring Visa

- Com (2014) 163
- amending: Regulation 562/2006 (Borders Code) and Regulation 767/2008 (VIS) negotiations stalled
2.3.1 CJEU Judgments on Borders and Visas

**CJEU C-9/16**  
A.  
* interpr. of Reg. 562/2006  
Borders Code  
Art. 20 + 21  
21 June 2017

* 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 a 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 C-278/12 (PPU)**  
* interpr. of Reg. 562/2006  
Borders Code  
Art. 20 + 21  
19 July 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 C-575/12**  
* interpr. of Reg. 562/2006  
Borders Code  
Art. 5  
4 Sep. 2014

* 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 C-575/12**  
* interpr. of Reg. 810/2009  
Visa Code  
Art. 24(1) + 34  
4 Sep. 2014

* 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.

**CJEU C-606/10**  
* interpr. of Reg. 562/2006  
Borders Code  
Art. 13 + 5(4)(a)  
14 June 2012

* 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).
**New**

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<td>CJEU C-241/05</td>
<td>Bot</td>
<td>4 Oct. 2006</td>
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<tr>
<td>*</td>
<td>interpr. of Schengen Agreement</td>
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<tr>
<td>*</td>
<td>on the conditions of movement of third-country nationals not subject to a visa requirement; on the meaning of ‘first entry’ and successive stays</td>
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<td>*</td>
<td>violation of Reg. 2252/2004 Passports</td>
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<td>Failure to implement biometric passports containing digital fingerprints within the prescribed periods.</td>
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<tr>
<td>F CJEU C-257/01</td>
<td>Com. v. Council</td>
<td>18 Jan. 2005</td>
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<tr>
<td>*</td>
<td>validity of Visa Applications</td>
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<tr>
<td>*</td>
<td>challenge to Regs. 789/2001 and 790/2001</td>
<td></td>
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<tr>
<td>*</td>
<td>The Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications and border checks and surveillance is upheld.</td>
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<td>*</td>
<td>validity of Reg. 539/2001 Visa List</td>
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<td>*</td>
<td>The Commission had requested an annulment of an amendment of the visa list by Regulation 1289/2013. The Court dismisses the action.</td>
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<tr>
<td>F CJEU C-39/12</td>
<td>Dang</td>
<td>18 June 2012</td>
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<td>*</td>
<td>interpr. of Reg. 810/2009 Visa Code</td>
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<td>*</td>
<td>Whether penalties can be applied in the case of foreign nationals in possession of a visa which was obtained by deception from a competent authority of another Member State but has not yet been annulled pursuant to the regulation.</td>
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<tr>
<td>F CJEU C-17/16</td>
<td>El Dakkak</td>
<td>4 May 2017</td>
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<tr>
<td>*</td>
<td>interpr. of Reg. 562/2006 Borders Code</td>
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<td>*</td>
<td>The concept of crossing an external border of the Union is defined differently in the ‘Cash Regulation’ (1889/2005) compared to the Borders Code.</td>
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<tr>
<td>F CJEU C-403/16</td>
<td>El Hassani</td>
<td>13 Dec. 2017</td>
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<tr>
<td>*</td>
<td>interpr. of Reg. 810/2009 Visa Code</td>
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<td>*</td>
<td>Article 32(3) must be interpreted as meaning that it requires Member States to provide for an appeal procedure against decisions refusing visas, the procedural rules for which are a matter for the legal order of each Member State in accordance with the principles of equivalence and effectiveness. Those proceedings must, at a certain stage of the proceedings, guarantee a judicial appeal.</td>
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<tr>
<td>*</td>
<td>violation of Reg. 562/2006 Borders Code</td>
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<td>*</td>
<td>annulment of measure supplementing Borders Code</td>
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<td>*</td>
<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 Council Decision 2010/252 maintain until the entry into force of new rules within a reasonable time.</td>
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<td>F CJEU C-261/08 &amp; C-348/08</td>
<td>Garcia &amp; Cabrera</td>
<td>22 Oct. 2009</td>
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<tr>
<td>*</td>
<td>interpr. of Reg. 562/2006 Borders Code</td>
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<tr>
<td>*</td>
<td>Member States are not obliged to expel a third-country national who is unlawfully present on the territory of a Member State because the conditions of duration of stay are not or no longer fulfilled</td>
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<tr>
<td>*</td>
<td>Where a TCN is unlawfully present on the territory of a MS because he or she does not fulfil, or no longer fulfils, the conditions of duration of stay applicable there, that MS is not obliged to adopt a decision to expel that person.</td>
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<tr>
<td>F CJEU C-430/10</td>
<td>Gaydarov</td>
<td>17 Nov. 2011</td>
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<td>*</td>
<td>interpr. of Reg. 562/2006 Borders Code</td>
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<tr>
<td>*</td>
<td>Reg. does not preclude national legislation that permits the restriction of the right of a national of a MS to travel to another MS in particular on the ground that he has been convicted of a criminal offence of narcotic drug trafficking in another State, provided that (i) the personal conduct of that national constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, (ii) the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it and (iii) that measure is subject to effective judicial review permitting a determination of its legality as regards matters of fact and law in the light of the requirements of European Union law.</td>
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<tr>
<td>F CJEU C-88/12</td>
<td>Jaoo</td>
<td>14 Sep. 2012</td>
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<tr>
<td>*</td>
<td>interpr. of Reg. 562/2006 Borders Code</td>
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<td>*</td>
<td>On statutory provision authorising, in the context of countering illegal residence after borders have been crossed,</td>
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2.3: Borders and Visas: Jurisprudence: CJEU Judgments

**Contrary to the opinion of the AG, the Court ruled that Article 1 of the Visa Code, must be interpreted as meaning**

Police checks in the area between the land border of the Netherlands with Belgium or Germany and a line situated within 20 kilometres of that border

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**CJEU C-84/12**
**Koushkaki**
19 Dec. 2013
* interpr. of Reg. 810/2009 Visa Code
* Art. 23(4) + 32(1)
* Art. 23(4), 32(1) and 35(6) must be interpreted as meaning that the competent authorities of a MS cannot refuse a visa to an applicant unless one of the grounds for refusal of a visa listed in those provisions can be applied to that applicant. In the examinations of those conditions and the relevant facts, authorities have a wide discretion. The obligation to issue a uniform visa is subject to the condition that there is no reasonable doubt that the applicant intends to leave the territory of the Member States before the expiry of the visa applied for.

**CJEU C-139/08**
**Kqiku**
2 Apr. 2009
* interpr. of Dec. 896/2006
* on transit visa legislation for third-country nationals subject to a visa requirement
* Residence permits issued by the Swiss Confederation or the Principality of Liechtenstein to TCNs subject to a visa requirement, are considered to be equivalent to a transit visa only.

**CJEU C-188/10 & C-189/10**
**Melki & Abdeli**
22 June 2010
* interpr. of Reg. 562/2006 Borders Code
* consistency of national law and European Union law, abolition of border control and the area of 20 kilometres from the land border
* The French ‘stop and search’ law, which allowed for controls behind the internal border, is in violation of article 20 and 21 of the Borders code, due to the lack of requirement of “behaviour and of specific circumstances giving rise to a risk of breach of public order”. According to the Court, controls may not have an effect equivalent to border checks.

**CJEU C-291/12**
**Schwarz**
17 Oct. 2013
* interpr. of Reg. 2252/2004 Passports
* 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.

**CJEU C-254/11**
**Shomodi**
21 Mar. 2013
* interpr. of Reg. 1931/2006 Local Border traffic
* The holder of a local border traffic permit must be able to move freely within the border area for a period of three months if his stay is uninterrupted and to have a new right to a three-month stay each time that his stay is interrupted. There is such an interruption of stay upon the crossing of the border irrespective of the frequency of such crossings, even if they occur several times daily.

**CJEU C-44/14**
**Spain v. EP & Council**
8 Sep. 2015
* non-transp. of Reg. 1052/2013 EUROSUR
* Limited forms of cooperation do not constitute a form of taking part within the meaning of Article 4 of the Schengen Protocol. Consequently, Article 19 of the Eurosur Regulation cannot be regarded as giving the Member States the option of concluding agreements which allow Ireland or the United Kingdom to take part in the provisions in force of the Schengen acquis in the area of the crossing of the external borders.

**CJEU C-101/13**
**U.**
2 Oct. 2014
* interpr. of Reg. 2252/2004 Passports
* About the recording and spelling of names, surnames and family names in passports. Where a MS whose law provides that a person’s name comprises his forenames and surname chooses nevertheless to include (also) the birth name of the passport holder in the machine readable personal data page of the passport, that State is required to state clearly in the caption of those fields that the birth name is entered there.

**CJEU C-77/05 & C-137/05**
**UK v. Council**
18 Dec. 2007
* validity of Border Agency Regulation and Passport Regulation
* judgment against UK

**CJEU C-482/08**
**UK v. Council**
26 Oct. 2010
* annulment of decision on police access to VIS, due to UK non-participation
* judgment against UK

**CJEU C-83/12**
**Vo**
10 Apr. 2012
* interpr. of Reg. 810/2009 Visa Code
* First substantive decision on Visa Code. The Court rules that the Visa Code does not preclude that national legislation of one MS penalises migration-related identity fraud with genuine visa issued by another MS.

**CJEU C-446/12**
**Willems a.o.**
16 Apr. 2015
* interpr. of Reg. 2252/2004 Passports
* Article 4(3) does not require the Member States to guarantee, in their legislation, that biometric data collected and stored in accordance with that regulation will not be collected, processed and used for purposes other than the issue of the passport or travel document, since that is not a matter which falls within the scope of that regulation.

**CJEU C-638/16 PPU**
**X. & X.**
7 Mar. 2017
* interpr. of Reg. 810/2009 Visa Code
* Contrary to the opinion of the AG, the Court ruled that Article 1 of the Visa Code, must be interpreted as meaning
### 2.3.3 ECtHR Judgments on Borders and Visas

An application for a visa with limited territorial validity made on humanitarian grounds by a TCN, on the basis of Article 25 of the code, to the representation of the MS of destination that is within the territory of a third country, with a view to lodging, immediately upon his or her arrival in that MS, an application for international protection and, thereafter, to staying in that MS for more than 90 days in a 180-day period, does not fall within the scope of that code but, as EU law currently stands, solely within that of national law.

**CJEU C-23/12**  
Interpr. of Reg. 562/2006  
Borders Code  
Art. 13(3)

*MSs are obliged to establish a means of obtaining redress only against decisions to refuse entry.*

### 2.3.2 CJEU pending cases on Borders and Visas

1. **CJEU C-346/16**  
Interpr. of Reg. 562/2006  
Borders Code  
Art. 20 + 21

*On the question whether the Borders Code precludes national legislation which grants the police authorities of the Member State in question the power to search, within an area of up to 30 kilometres from the land border of that Member State with the States party to the Convention implementing the Schengen Agreement of 14 June 1985 (Convention implementing the Schengen Agreement), for an article, irrespective of the behaviour of the person carrying this article and of specific circumstances, with a view to impeding or stopping unlawful entry into the territory of that Member State or to preventing certain criminal acts directed against the security or protection of the border or committed in connection with the crossing of the border, in the absence of any temporary reintroduction of border controls at the relevant internal border pursuant to Article 23 et seq. of the Schengen Borders Code?*

2. **CJEU C-240/17**  
Interpr. of Schengen Acquis  
Art. 25(2)

*On the obligation to consult in a situation in which a Contracting State imposes an entry ban for the entire Schengen Area and order his return to his home country on the ground that he constitutes a threat to public order and public safety.*

3. **CJEU C-474/17**  
Interpr. of Reg. 562/2006  
Borders Code  
Art. 22 + 23

*Do Art. 22 and 23 preclude a provision of national law of a Member State which has the effect of requiring bus undertakings operating regular services across a Schengen internal border to check their passengers’ travel documents before crossing an internal border in order to prevent foreign nationals not in possession of a passport or residence permit from being brought into the territory of the Federal Republic of Germany?*

4. **CJEU C-412/17**  
Interpr. of Reg. 562/2006  
Border Code  
Art. 22 + 23

*Do Art. 22 and 23 preclude a provision of national law of a Member State which has the effect of requiring bus undertakings operating regular services across a Schengen internal border to check their passengers’ travel documents before crossing an internal border in order to prevent foreign nationals not in possession of a passport or residence permit from being brought into the territory of the Federal Republic of Germany.*

### 2.3.3 ECtHR Judgments on Borders and Visas

**ECtHR 55352/12**  
*Aden Ahmed v. MAL*  
23 July 2013

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

**ECtHR 53608/11**  
*B.M. v. GR*  
19 Dec. 2013

*The applicant was an Iranian journalist who alleged to have been arrested and tortured due to his involvement in protests against the government. After his arrival in Greece a decision had been taken to return him to Turkey, and he had been held in custody in a police station and in various detention centres. His application for asylum was first not registered by the Greek authorities, and later they dismissed the application. The application mainly concerned the conditions of detention, in particular overcrowding, unhygienic conditions, lack of external contact, and lack of access to telephone, translators and any kind of information. Referring to its previous case law, the ECtHR held these conditions to be in violation of art. 3. As there had been no effective domestic remedy against that situation, Art. 13 in combination with art. 3 had also been violated.*

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

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

### 3.1 Irregular Migration: Adopted Measures

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<td>OJ 2003 L 321/26</td>
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<td>377/2004</td>
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<td>C-562/13 Abdida 18 Dec. 2014 Art. 5+13</td>
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<td>C-249/13 Boudjida 11 Dec. 2014 Art. 6</td>
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### 3.1 Irregular Migration: Adopted Measures

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<td>Art. 5, 11 + 13</td>
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See further: § 3.3

### Decision 575/2007

**Return Programme**

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

* OJ 2007 L 144

**UK opt in**

### Directive 2011/36

**Trafficking Persons**

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


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

**UK opt in**

### Directive 2004/81

**Trafficking Victims**

Residence permits for TCNs who are victims of trafficking

* OJ 2004 L 261/19

**CJEU judgments**

* CJEU C-266/08 Comm. v. Spain | 14 May 2009 |

See further: § 3.3

### ECHR

**Detention - Collective Expulsion**

  * Art. 5 Detention
  * Prot. 4 Art. 4 Collective Expulsion
  * ETS 005 (4 November 1950) impl. date 31 Aug. 1954

**ECtHR Judgments**

* ECtHR 55352/12 Aden Ahmed | 23 July 2013 | Art. 3 + 5 |
* ECtHR 23707/15 Muzamba Owav | 4 Apr. 2017 | Art. 5 - inadmissible |
* ECtHR 39061/11 Thimothawes | 4 Apr. 2017 | Art. 5 |
* ECtHR 3342/11 Richmond Yaw | 6 Oct. 2016 | Art. 5 |
* ECtHR 53709/11 A.F. | 13 June 2013 | Art. 5 |
* ECtHR 13058/11 Abdelhakim | 23 Oct. 2012 | Art. 5 |
* ECtHR 50520/09 Ahmade | 25 Sep. 2012 | Art. 5 |
* ECtHR 14902/10 Mahmudi | 31 July 2012 | Art. 5 |
* ECtHR 27765/09 Hirsi | 21 Feb. 2012 | Prot. 4 Art. 4 |
* ECtHR 10816/10 Lokpo & Touré | 20 Sep. 2011 | Art. 5 |

See further: § 3.3

### 3.2 Irregular Migration: Proposed Measures

* Nothing to report
3.3 Irregular Migration: Jurisprudence

3.3.1 CJEU Judgments on Irregular Migration

**CJEU C-562/13**  
Abdida  
18 Dec. 2014  
* interpr. of Dir. 2008/115  
Return Directive  
* Although the Belgium 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: (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 state of health, and (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.

**CJEU C-339/11**  
Achughbabian  
6 Dec. 2011  
* interpr. of Dir. 2008/115  
Return Directive  
* The directive precludes national legislation permitting the imprisonment of an illegally staying third-country national who has not (yet) been subject to the coercive measures provided for in the directive and has not, if detained with a view to be returned, reached the expiry of the maximum duration of that detention. The directive does not preclude penal sanctions being imposed after full application of the return procedure.

**CJEU C-47/15**  
Affum  
7 June 2016  
* interpr. of Dir. 2008/115  
Return Directive  
* 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 bound 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).

**CJEU C-534/11**  
Arslan  
30 May 2013  
* interpr. of Dir. 2008/115  
Return Directive  
* 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.

**CJEU C-573/13 & C-514/13**  
Bero & Bouzalmate  
17 July 2014  
* interpr. of Dir. 2008/115  
Return Directive  
* As a rule, a MS is required to detain illegally staying TCNs for the purpose of removal in a specialised detention facility of that State even if the MS has a federal structure and the federated state competent to decide upon and carry out such detention under national law does not have such a detention facility.

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

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

**CJEU C-266/08**  
Comm. v. Spain  
14 May 2009  
* non-transp. of Dir. 2004/81  
Trafficking Victims  
* Failure of Spain to transpose the Directive.

**CJEU C-189/13**  
Du Silva  
3 July 2014  
* interpr. of Dir. 2008/115  
Return Directive  
* On the permissibility of national legislation imposing a custodial sentence for the offence of illegal entry prior to the institution of deportation proceedings.
3.3: Irregular Migration: Jurisprudence: CJEU Judgments

The CJEU in its judgments has considered the issue of irregular migration, with a focus on the Return Directive and its transposition in national legislation. The Court has repeatedly emphasized the importance of national authorities in assessing the lawfulness of removal decisions and the rights of individuals.

- **CJEU C-61/11 (PPU)**: *El Dridi* (2011) - In this case, the CJEU confirmed that the return of a TCN to a third country is subject to the same conditions as the return of an EU citizen. The Court ruled that the return decision must be based on a reasoned administrative decision and that the national authorities must respect the right to a fair hearing.

- **CJEU C-297/12**: *Filev & Osmani* (2013) - The CJEU clarified that the determination of a TCN's status is subject to the same procedure as that of an EU citizen, and that the national authorities must respect the right to a fair hearing.

- **CJEU C-383/13 (PPU)**: *G. & R.* (2013) - This judgment addressed the issue of the extension of a detention measure. The CJEU ruled that such an extension must be based on a reasoned administrative decision and that the national authorities must respect the right to a fair hearing.

- **CJEU C-357/09 (PPU)**: *Kadzoev* (2009) - The CJEU clarified that the maximum duration of detention must include a period of detention completed in connection with a removal procedure commenced before the rules in the directive become applicable. Only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal.

- **CJEU C-146/14 (PPU)**: *Mahdi* (2014) - The CJEU ruled that the directive does not preclude that a fine because of illegal stay of a TCN in a MS is replaced by expulsion if there is a risk of absconding.

- **CJEU C-456/14**: *Orrego Arias* (2015) - The Court ruled on the inadmissibility of a case concerning the deportation of a TCN to a third country, where the national authorities had failed to provide a reasoned administrative decision.

- **CJEU C-225/16**: *Ouhrami* (2017) - The CJEU ruled on the interpretation of Article 11(2) of the Return Directive, which must be interpreted as meaning that the starting point of the duration of an entry ban is set at the date of the decision and not after the date of entry.

- **CJEU C-184/16**: *Petrea* (2017) - The Return Directive does not preclude a decision to return an 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 in the Member State, provided that the transposition measures of Directive 2004/38 (Citizens Directive) which are more favourable to that EU citizen are applied.

- **CJEU C-474/13**: *Pham* (2014) - The CJEU ruled that the detention of a TCN for the purpose of removal in prison accommodation together with ordinary prisoners even if the TCN consents thereto is not permitted by the Return Directive.
3.3.2 CJEU pending cases on Irregular Migration

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<td>Sagor</td>
<td>6 Dec. 2012</td>
<td>Art. 2, 15 + 16</td>
</tr>
<tr>
<td>* interp. of Dir. 2008/115</td>
<td>Return Directive</td>
<td></td>
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<tr>
<td>* An illegal stay by a TCN in a MS:</td>
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<tr>
<td>(1) can be penalised by means of a fine, which may be replaced by an expulsion order;</td>
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<tr>
<td>(2) can not be penalised by means of a detention order unless that order is terminated as soon as the physical transportation of the TCN out of that MS is possible.</td>
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<tr>
<td>CJEU C-38/14</td>
<td>Zaizoune</td>
<td>23 Apr. 2015</td>
<td></td>
</tr>
<tr>
<td>* interp. of Dir. 2008/115</td>
<td>Return Directive</td>
<td>Art. 4(2) + 6(1)</td>
<td></td>
</tr>
<tr>
<td>* Article 6(1) and 8(1), read in conjunction with Article 4(2) and 4(3), must be interpreted as precluding legislation of a MS, which provides, in the event of TCNs illegally staying in the territory of that Member State, depending on the circumstances, for either a fine or removal, since the two measures are mutually exclusive.</td>
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<tr>
<td>CJEU C-554/13</td>
<td>Zb. &amp; O.</td>
<td>11 June 2015</td>
<td>Art. 7(4)</td>
</tr>
<tr>
<td>* interp. of Dir. 2008/115</td>
<td>Return Directive</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* (1) Article 7(4) must be interpreted as precluding a national practice whereby a third-country national, who is staying illegally within the territory of a Member State, is deemed to pose a risk to public policy within the meaning of that provision on the sole ground that that national is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law.</td>
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<tr>
<td>(2) Article 7(4) must be interpreted to the effect that, in the case of a TCN who is staying illegally within the territory of a MS and is suspected, or has been criminally convicted, of an act punishable as a criminal offence under national law, other factors, such as the nature and seriousness of that act, the time which has elapsed since it was committed and the fact that that national was in the process of leaving the territory of that MS when he was detained by the national authorities, may be relevant in the assessment of whether he poses a risk to public policy within the meaning of that provision. Any matter which relates to the reliability of the suspicion that the third-country national concerned committed the alleged criminal offence, as the case may be, is also relevant to that assessment.</td>
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<tr>
<td>(3) Article 7(4) must be interpreted as meaning that it is not necessary, in order to make use of the option offered by that provision to refrain from granting a period for voluntary departure when the third-country national poses a risk to public policy, to conduct a fresh examination of the matters which have already been examined in order to establish the existence of that risk. Any legislation or practice of a MS on this issue must nevertheless ensure that a case-by-case assessment is conducted of whether the refusal to grant such a period is compatible with that person’s fundamental rights.</td>
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3.3.2 CJEU pending cases on Irregular Migration

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<td>CJEU C-444/17</td>
<td>Arib</td>
<td>6 Dec. 2012</td>
<td>Art. 2(2)(a)</td>
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<tr>
<td>* interp. of Dir. 2008/115</td>
<td>Return Directive</td>
<td></td>
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</tr>
<tr>
<td>* In the circumstances of reintroduction of controls at internal borders, does the Returns Directive permit the application to the situation of a third-country national crossing a border at which controls have been reintroduced of the power, conferred on them by Article 2(2)(a) of the directive, to continue to apply simplified national return procedures at their external borders?</td>
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<tr>
<td>If so, do the provisions of Article 2(2)(a) and of Article 4(4) of the directive preclude national legislation which penalises with a term of imprisonment the illegal entry into national territory of a third-country national in respect of whom the return procedure established by that directive has not yet been completed?</td>
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<tr>
<td>CJEU C-181/16</td>
<td>Grendi</td>
<td>6 Dec. 2012</td>
<td>Art. 5</td>
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<td>Return Directive</td>
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<tr>
<td>* AG: 15 June 2017</td>
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<tr>
<td>* Must Art. 5 be interpreted as precluding the adoption of a return decision, as provided for under Art. 6 and national law after the rejection of the asylum application by the (Belgian) Commissioner General for Refugees and Stateless Persons and therefore before the legal remedies available against that rejection decision can be exhausted and before the asylum procedure can be definitively concluded?</td>
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<tr>
<td>CJEU C-82/16</td>
<td>K.</td>
<td>6 Dec. 2012</td>
<td>Art. 5, 11 + 13</td>
</tr>
<tr>
<td>* interp. of Dir. 2008/115</td>
<td>Return Directive</td>
<td></td>
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<tr>
<td>* Should Union law, in particular Art. 20 TFEU, Art. 5 and 11 of Returns Directive together with Art. 7 and 24 of the Charter, be interpreted as precluding in certain circumstances a national practice whereby a residence application, lodged by a family member/third-country national in the context of family reunification with a Union citizen in the MS where the Union citizen concerned lives and of which he is a national and who has not made use of his right of freedom of movement and establishment (‘static Union citizen’), is not considered — whether or not accompanied by a removal decision — for the sole reason that the family member concerned is a TCN subject to a valid entry ban with a European dimension?</td>
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<tr>
<td>CJEU C-199/16</td>
<td>Nianga</td>
<td>6 Dec. 2012</td>
<td>Art. 5</td>
</tr>
<tr>
<td>* interp. of Dir. 2008/115</td>
<td>Return Directive</td>
<td></td>
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<tr>
<td>* Is Art. 5 read in conjunction with Art 47 of the Charter and having regard to the right to be heard in any proceedings, which forms an integral part of respect for the rights of the defence, a general principle of EU law, to be interpreted as requiring national authorities to take account of the best interests of the child, family life and the state of health of the TCN concerned when issuing a return decision, referred to in Art. 3(4) and Art. 6(1), or a removal decision, as provided for in Art. 3(5) and Art. 8?</td>
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<tr>
<td>CJEU C-175/17</td>
<td>X.</td>
<td>6 Dec. 2012</td>
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</tbody>
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<thead>
<tr>
<th>Case Number</th>
<th>Journal</th>
<th>Year</th>
<th>Article(s)</th>
</tr>
</thead>
</table>

NEMIS 2017/4 (Dec.) Newsletter on European Migration Issues – for Judges 27
**3.3.3 ECtHR Judgments on Irregular Migration**

<table>
<thead>
<tr>
<th>Case Reference</th>
<th>Applicant vs. Country</th>
<th>Date</th>
<th>Relevant Article</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECtHR 53709/11</td>
<td>A.F. v. GR</td>
<td>13 June 2013</td>
<td>Art. 13</td>
</tr>
<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 5</td>
<td></td>
</tr>
<tr>
<td>* An Iranian entering Greece from Turkey had initially not been registered as an asylum seeker by the Greek authorities, which ordered his return to Turkey. However, the Turkish authorities refused to readmit him into Turkey, and he was then detained by the Greek police. Against the background of reports from Greek and international organisations, having visited the relevant police detention facilities either during the applicant’s detention or shortly after his release – including the European Committee for the Prevention of Torture, the UN Special Rapporteur on Torture, the German NGO ProAsyl and the Greek National Human Rights Commission – the ECtHR found a violation of art. 3 due to the serious lack of space available to the applicant, also taking the duration of his detention into account. It was thus unnecessary for the Court to examine the applicant’s other allegations concerning the detention conditions (art 3 ECHR) which the Government disputed. Yet, the Court noted that the Government’s statements in this regard were not in accordance with the findings of the abovementioned organisations.</td>
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<tr>
<td>ECtHR 13058/11</td>
<td>Abdelhakin v. HU</td>
<td>23 Oct. 2012</td>
<td>Art. 5</td>
</tr>
<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 5</td>
<td></td>
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<tr>
<td>* 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.</td>
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<tr>
<td>ECtHR 50520/09</td>
<td>Ahmade v. GR</td>
<td>25 Sep. 2012</td>
<td>Art. 5</td>
</tr>
<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 5</td>
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<tr>
<td>* 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.</td>
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<tr>
<td>ECtHR 59727/13</td>
<td>Ahmed v. UK</td>
<td>2 Mar. 2017</td>
<td>Art. 5(1)</td>
</tr>
<tr>
<td>* no violation of</td>
<td>ECHR</td>
<td>Art. 5</td>
<td></td>
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<tr>
<td>* 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 Saﬁ 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.</td>
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<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 5</td>
<td></td>
</tr>
<tr>
<td>* This case concerns unlawful detention, without effective judicial review, of an asylum seeker during the examination of his asylum application. The applicants were Iraqi nationals who illegally entered Hungary, applied for asylum and then travelled illegally to the Netherlands from where they were transferred back to Hungary under the Dublin Regulation.</td>
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<tr>
<td>ECtHR 27765/09</td>
<td>Hirs v. IT</td>
<td>21 Feb. 2012</td>
<td>Prot. 4 Art. 4</td>
</tr>
<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Prot. 4 Art. 4</td>
<td></td>
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<tr>
<td>* 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.</td>
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<tr>
<td>ECtHR 10816/10</td>
<td>Loko &amp; Touré v. HU</td>
<td>20 Sep. 2011</td>
<td>Art. 5</td>
</tr>
<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 5</td>
<td></td>
</tr>
<tr>
<td>* The applicants entered Hungary illegally. After their arrest and during subsequent detention they applied for asylum. They were kept however in detention. The Court ruled that Article 3 § 1 (right to liberty and security) was violated, stating that the absence of elaborate reasoning for an applicant’s deprivation of liberty renders that measure incompatible with the requirement of lawfulness.</td>
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<tr>
<td>ECtHR 14902/10</td>
<td>Mahmundi v. GR</td>
<td>31 July 2012</td>
<td>Art. 5</td>
</tr>
<tr>
<td>* violation of</td>
<td>ECHR</td>
<td>Art. 5</td>
<td></td>
</tr>
</tbody>
</table>
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 23707/15**  
*Muzamba Oyaw v. BEL*  
4 Apr. 2017

* 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 3342/11**  
*Richmond Yaw v. IT*  

* 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.

**ECtHR 39061/11**  
*Thimothawes v. BEL*  
4 Apr. 2017

* 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 acquits 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.
4 External Treaties

4.1 External Treaties: Association Agreements

case law sorted in chronological order

EC-Turkey Association Agreement
* into force 23 Dec. 1963

EC-Turkey Association Agreement Additional Protocol
* into force 1 Jan. 1973

CJEU judgments

- CJEU C-1/15 Comm. v. Austria 22 Sep. 2016 Art. 41(1) - deleted
- CJEU C-561/14 Genc (Caner) 12 Apr. 2016 Art. 41(1)
- CJEU C-138/13 Dogan (Naime) 10 July 2014 Art. 41(1)
- CJEU C-221/11 Demirkan 24 Sep. 2013 Art. 41(1)
- CJEU C-186/10 Tural Oguz 21 July 2011 Art. 41(1)
- CJEU C-228/06 Soysal 19 Feb. 2009 Art. 41(1)
- CJEU C-16/05 Tum & Dari 20 Sep. 2007 Art. 41(1)
- CJEU C-37/98 Savas 11 May 2000 Art. 41(1)

See further: § 4.4

EC-Turkey Association Agreement Decision 1/80

CJEU judgments

- CJEU C-652/15 Tekdemir 29 Mar. 2017 Art. 13
- CJEU C-508/15 Ucar 21 Dec. 2016 Art. 7
- CJEU C-97/10 & C-9/10 Kahveci & Inan 29 Mar. 2012 Art. 7
- CJEU C-92/07 Comm. v. Netherlands 29 Apr. 2010 Art. 10(1) + 13
- CJEU C-14/09 Genc (Hava) 4 Feb. 2010 Art. 6(1)
- CJEU C-462/08 Bekleyen 21 Jan. 2010 Art. 7(2)
- CJEU C-242/06 Sahin 17 Sep. 2009 Art. 13
- CJEU C-337/07 Altun 18 Dec. 2008 Art. 7
- CJEU C-453/07 Er 25 Sep. 2008 Art. 7
- CJEU C-294/06 Payir 24 Jan. 2008 Art. 6(1)
- CJEU C-349/06 Polat 4 Oct. 2007 Art. 7 + 14
- CJEU C-325/05 Derin 18 July 2007 Art. 6, 7 and 14
- CJEU C-4/05 Güzeli 26 Oct. 2006 Art. 10(1)
- CJEU C-502/04 Torun 16 Feb. 2006 Art. 7
- CJEU C-230/03 Sedef 10 Jan. 2006 Art. 6
- CJEU C-373/03 Aydınıli 7 July 2005 Art. 6 + 7
- CJEU C-374/03 Gürol 7 July 2005 Art. 9
- CJEU C-383/03 Dogan (Ergül) 7 July 2005 Art. 6(1) + (2)
- CJEU C-136/03 Dür & Unal 2 June 2005 Art. 6(1) + 14(1)
- CJEU C-467/02 Cetinkaya 11 Nov. 2004 Art. 7 + 14(1)
- CJEU C-275/02 Ayaz 30 Sep. 2004 Art. 7
- CJEU C-465/01 Comm. v. Austria 16 Sep. 2004 Art. 10(1)
4.1: External Treaties: Association Agreements

- **CJEU C-171/01 Birlikte** 8 May 2003 Art. 10(1)
- **CJEU C-188/00 Kurz (Yuze)** 19 Nov. 2002 Art. 6(1) + 7
- **CJEU C-89/00 Bicakci** 19 Sep. 2000
- **CJEU C-65/08 Eypül** 22 June 2000 Art. 7
- **CJEU C-329/97 Ergat** 16 Mar. 2000 Art. 7
- **CJEU C-340/97 Nazli** 10 Feb. 2000 Art. 6(1) + 14(1)
- **CJEU C-1/97 Birden** 26 Nov. 1998 Art. 6(1)
- **CJEU C-210/97 Akman** 19 Nov. 1998 Art. 7
- **CJEU C-36/96 Güneydin** 30 Sep. 1997 Art. 6(1)
- **CJEU C-98/96 Ertanir** 30 Sep. 1997 Art. 6(1) + 6(3)
- **CJEU C-285/95 Kol** 5 June 1997 Art. 6(1)
- **CJEU C-386/95 Eker** 29 May 1997 Art. 6(1)
- **CJEU C-351/95 Kadiman** 17 Apr. 1997 Art. 7
- **CJEU C-171/95 Tetik** 23 Jan. 1997 Art. 6(1)
- **CJEU C-434/93 Ahmet Bozkurt** 6 June 1995 Art. 6(1)
- **CJEU C-355/93 Eroglu** 5 Oct. 1994 Art. 6(1)
- **CJEU C-237/91 Kus** 16 Dec. 1992 Art. 6(1) + 6(3)
- **CJEU C-192/89 Sevinçe** 20 Sep. 1990 Art. 6(1) + 13
- **CJEU C-12/86 Demirel** 30 Sep. 1987 Art. 7 + 12

**CJEU pending cases**
- **CJEU C-123/17 Yön** pending Art. 13

See further: § 4.4

**EC-Turkey Association Agreement Decision 3/80**
- * Dec. 3/80 of 19 Sept. 1980 on Social Security  
  **CJEU judgments**
- **CJEU C-171/13 Demirci a.o.** 14 Jan. 2015 Art. 6(1)
- **CJEU C-485/07 Akdas** 26 May 2011 Art. 6(1)

See further: § 4.4

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

**Armenia**

**Azerbaijan**
- * OJ 2014 L 128/17 (into force 1 Sept. 2014)

**Belarus**
- * Mobility partnership signed in 2014

**Cape Verde**
- OJ 2013 L 281 (into force 1 Dec. 2014)

**Georgia**
- * OJ 2011 L 52/47 (into force 1 March 2011)  
  EC proposes to lift visa requirements, March 2016

4.2 External Treaties: Readmission

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

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

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

**Pakistan**

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

**Sri Lanka**
- * OJ 2005 L 124/43 (into force 1 May 2005 ) UK opt in
4.2: External Treaties: Readmission

Turkey
*  Com (2012) 239 (into force 1 Oct. 2014)
  Additional provisions as of 1 June 2016

Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova
  UK opt in

Turkey (Statement)
*  Not published in OJ - only Press Release (18 March 2016)
  CJEU judgments
  See further: § 4.4

Armenia: visa
*  OJ 2013 L 289 (into force 1 Jan. 2014)

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

Belarus: visa
*  Council mandate to negotiate, Feb. 2011

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

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

Cape Verde: visa
*  OJ 2013 L 282/3 (into force 1 Dec. 2014)

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

Denmark: Dublin II treaty
*  OJ 2006 L 66/38 (into force 1 April 2006)

Mauritius, Antigua/Barbuda, Barbados, Seychelles, St. Kitts and Nevis and Bahamas: visa abolition
  (into force, May 2009)

Moldova: visa
  (into force 1 July 2013)

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

4.3 External Treaties: Other

Norway and Iceland: Dublin Convention
*  OJ 1999 L 176/36 (into force 1 March 2001)
*  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 (applied from Dec. 2008)

4.4 External Treaties: Jurisprudence

4.4.1 CJEU Judgments on EEC-Turkey Association Agreement

  CJEU C-317/01 & C-369/01 Abatay & Sahin 21 Oct. 2003
  Interpr. of Dec. 1/80 Art. 13 + 41(1)
  Direct effect and scope standstill obligation
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

- **CJEU C-434/93** Ahmet Bozkurt
  - Dec. 1/80
  - Belonging to labour market
  - Art. 6(1)
  - 6 June 1995

- **CJEU C-485/07** Akdas
  - Dec. 3/80
  - Supplements to social security can not be withdrawn solely on the ground that the beneficiary has moved out of the Member State.
  - Art. 6(1)
  - 26 May 2011

- **CJEU C-210/97** Akman
  - Dec. 1/80
  - Turkish worker has left labour market.
  - Art. 7
  - 19 Nov. 1998

- **CJEU C-337/07** Altun
  - Dec. 1/80
  - On the rights of family members of an unemployed Turkish worker or fraud by a Turkish worker.
  - Art. 7
  - 18 Dec. 2008

- **CJEU C-275/02** Ayaz
  - Dec. 1/80
  - A stepchild is a family member.
  - Art. 7
  - 30 Sep. 2004

- **CJEU C-373/03** Aydinli
  - Dec. 1/80
  - A long detention is no justification for loss of residence permit.
  - Art. 6 + 7
  - 7 July 2005

- **CJEU C-462/08** Bekleyen
  - Dec. 1/80
  - The child of a Turkish worker has free access to labour and an independent right to stay in Germany, if this child is graduated in Germany and its parents have worked at least three years in Germany.
  - Art. 7(2)
  - 21 Jan. 2010

- **CJEU C-436/09** Belkiran
  - Dec. 1/80
  - Case withdrawn because of judgment C-371/08 (Ziebell). Art. 14(1) of Dec. 1/80 does not have the same scope as art. 28(3)(a) of the Directive on Free Movement.
  - 13 Jan. 2012
  - Deleted

- **CJEU C-89/00** Bicakci
  - Dec. 1/80
  - Art 14 does not refer to a preventive expulsion measure.
  - 19 Sep. 2000

- **CJEU C-1/97** Birken
  - Dec. 1/80
  - 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.
  - Art. 6(1)
  - 26 Nov. 1998

- **CJEU C-171/01** Birlikte
  - Dec. 1/80
  - 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.
  - Art. 10(1)
  - 8 May 2003

- **CJEU C-467/02** Cetinkaya
  - Dec. 1/80
  - The meaning of a “family member” is analogous to its meaning in the Free Movement Regulation.
  - Art. 7 + 14(1)
  - 11 Nov. 2004

- **CJEU C-1/15** Comm. v. Austria
  - Protocol
  - Art. 41(1) - deleted

- **CJEU C-465/01** Comm. v. Austria
  - Dec. 1/80
  - 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.
  - Art. 10(1)
  - 16 Sep. 2004

- **CJEU C-92/07** Comm. v. Netherlands
  - Dec. 1/80
  - 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.
  - Art. 10(1) + 13
  - 29 Apr. 2010

- **CJEU C-225/12** Demir
  - Dec. 1/80
  - 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 C-171/13 Demirci a.o. 14 Jan. 2015
* interpr. of 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 C-12/86 Demirel 30 Sep. 1987
* interpr. of Dec. 1/80 Art. 7 + 12
* No right to family reunification.

CJEU C-221/11 Demirkhan 24 Sep. 2013
* interpr. of Protocol Art. 41(1)
* The freedom to ‘provide services’ does not encompass the freedom to ‘receive’ services in other EU Member States.

CJEU C-256/11 Dereci et al. 15 Nov. 2011
* interpr. of Dec. 1/80 Art. 13
* Right of residence of nationals of third countries who are family members of Union citizens - refusal based on the citizen’s failure to exercise the right to freedom of movement - Possible difference in treatment compared with EU citizens who have exercised their right to freedom of movement - EEC-Turkey Association Agreement - Article 13 of Decision No 1/80 of the Association Council - Article 41 of the Additional Protocol - ‘Standstill’ clauses.

CJEU C-325/05 Derin 18 July 2007
* interpr. of Dec. 1/80 Art. 6, 7 and 14
* There are two different reasons for loss of rights: (a) a serious threat (Art 14(1) of Dec 1/80), or (b) if he leaves the territory of the MS concerned for a significant length of time without legitimate reason.

CJEU C-383/03 Dogan (Ergül) 7 July 2005
* interpr. of Dec. 1/80 Art. 6(1) + (2)
* Return to labour market: no loss due to detention.

CJEU C-138/13 Dogan (Naime) 10 July 2014
* interpr. of Protocol Art. 41(1)
* 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 C-136/03 Dürr & Unal 2 June 2005
* interpr. of Dec. 1/80 Art. 6(1) + 14(1)
* The procedural guarantees set out in the Dir on Free Movement also apply to Turkish workers.

CJEU C-451/11 Dülger 19 July 2012
* interpr. of Dec. 1/80 Art. 7
* Art. 7 is also applicable to family members of Turkish nationals who can rely on the Regulation, who don’t have the Turkish nationality themselves, but instead a nationality from a third country.

CJEU C-386/95 Eker 29 May 1997
* interpr. of Dec. 1/80 Art. 6(1)
* On the meaning of “same employer”.

CJEU C-453/07 Er 25 Sep. 2008
* interpr. of Dec. 1/80 Art. 7
* On the consequences of having no paid employment.

CJEU C-329/97 Ergat 16 Mar. 2000
* interpr. of Dec. 1/80 Art. 7
* No loss of residence right in case of application for renewal residence permit after expiration date.

CJEU C-355/93 Eroğlu 5 Oct. 1994
* interpr. of Dec. 1/80 Art. 6(1)
* On the meaning of “same employer”.

CJEU C-98/96 Ertanir 30 Sep. 1997
* interpr. of Dec. 1/80 Art. 6(1) + 6(3)
* On interpretation of Art 45 TFEU

CJEU C-91/13 Essent 11 Sep. 2014
* interpr. of Dec. 1/80 Art. 13
* The posting by a German company of Turkish workers in the Netherlands to work in the Netherlands is not affected by the standstill-clauses. However, this situation falls within the scope of art. 56 and 57 TFEU precluding such making available is subject to the condition that those workers have been issued with work permits.

CJEU C-65/98 Eyüp 22 June 2000
<table>
<thead>
<tr>
<th>Case No.</th>
<th>Decision</th>
<th>Date</th>
<th>Art.</th>
</tr>
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<tr>
<td>C-561/14</td>
<td>Genc (Caner)</td>
<td>12 Apr. 2016</td>
<td>41(1)</td>
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<tr>
<td>C-14/09</td>
<td>Genc (Hava)</td>
<td>4 Feb. 2010</td>
<td>6(1)</td>
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<tr>
<td>C-268/11</td>
<td>Gülhahce</td>
<td>8 Nov. 2012</td>
<td>6(1)+10</td>
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<tr>
<td>C-36/96</td>
<td>Gürol</td>
<td>30 Sep. 1997</td>
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<tr>
<td>C-374/03</td>
<td>Kadman</td>
<td>7 July 2005</td>
<td>7</td>
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<td>C-4/05</td>
<td>Küzel</td>
<td>26 Oct. 2006</td>
<td>10(1)</td>
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<td>C-351/95</td>
<td>Kol</td>
<td>17 Apr. 1997</td>
<td>7</td>
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<td>C-7/10 &amp; C-9/10</td>
<td>Kahveci &amp; Inan</td>
<td>29 Mar. 2012</td>
<td>7</td>
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<td>C-285/95</td>
<td>Kus</td>
<td>5 June 1997</td>
<td>6(1)</td>
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<tr>
<td>C-188/00</td>
<td>Kurz (Yuze)</td>
<td>19 Nov. 2002</td>
<td>6(1)+7</td>
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<tr>
<td>C-237/91</td>
<td>Metin Bozkurt</td>
<td>16 Dec. 1992</td>
<td>6(1)+6(3)</td>
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<tr>
<td>C-303/08</td>
<td>Nazli</td>
<td>22 Dec. 2010</td>
<td>7+14(1)</td>
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<tr>
<td>C-340/97</td>
<td>Payir</td>
<td>10 Feb. 2000</td>
<td>6(1)+14(1)</td>
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<td>C-294/06</td>
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<td>24 Jan. 2008</td>
<td>6(1)</td>
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**Interpretations:**

- **CJEU C-561/14** - Interpretation of the obligation to co-habit as a family.
- **CJEU C-340/97** - Interpretation of the effects of detention on residence rights.

**Key Points:**

- 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.

- A MS cannot withdraw the residence permit of a Turkish employee with retroactive effect.

- 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.

- 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.
Family member marries in first 3 years but continues to live with Turkish worker. Art. 7 precludes legislation under which a family member properly authorised to join a Turkish migrant worker who is already duly registered as belonging to the labour force of that State loses the enjoyment of the rights based on family reunification under that provision for the reason only that, having attained majority, he or she gets married, even where he or she continues to live with that worker during the first three years of his or her residence in the host Member State.

Multiple convictions for small crimes do not lead to expulsion.

On the standstill obligation and secondary law.

Multiple convictions for small crimes do not lead to expulsion.

On the standstill obligation and secondary law.
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>C-187/10</td>
<td>Unal</td>
<td>29 Sep. 2011</td>
<td>* Art. 6(1)</td>
</tr>
<tr>
<td>* interpr. of Dec. 1/80</td>
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<tr>
<td>* 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.</td>
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<tr>
<td>C-371/08</td>
<td>Ziebell or Örnek</td>
<td>8 Dec. 2011</td>
<td>* Art. 14(1)</td>
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<tr>
<td>* interpr. of Dec. 1/80</td>
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<tr>
<td>* 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.</td>
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4.4.2 CJEU pending cases on EEC-Turkey Association Agreement

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<tr>
<th>Case</th>
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<th>Date</th>
<th>Article</th>
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<tbody>
<tr>
<td>C-123/17</td>
<td>Yön</td>
<td>8 Dec. 2011</td>
<td>Art. 13</td>
</tr>
<tr>
<td>* interpr. of Dec. 1/80</td>
<td></td>
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<tr>
<td>* 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.</td>
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4.4.3 CJEU Judgments on Readmission Treaties

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