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New in this Issue of NEMIS

§ 1 Regular Migration
§ 1.3.1 CJEU C-550/16, A. & S. 12 Apr. 2018 Family Reunification Art. 2(f)
§ 1.3.5 ECtHR 6311/14, Hoti v. CRO 26 Apr. 2018 ECHR Art. 8
§ 1.3.5 ECtHR 32248/12, Ibrogimov v. RUS 15 May 2018 ECHR Art. 8 + 14

§ 2 Borders and Visas
§ 2.2 Borders and Visas (Proposed Measures) Reg.: On interoperability of visas and borders legislation
§ 2.2 Borders and Visas (Proposed Measures) Reg.: Codifying Visa List Regulation
§ 2.2 Borders and Visas (Proposed Measures) Reg.: Amending Cisa Code Regulation
§ 2.2 Borders and Visas (Proposed Measures) Reg.: Amending Regulation on Visa Information System
§ 2.3.2 CJEU C-341/18, J. a.o. pending Borders Code (codified) Art. 11

§ 3 Irregular Migration
§ 3.3.1 CJEU C-181/16, Gnandi 19 June 2018 Return Directive Art. 5
§ 3.3.1 CJEU C-82/16, K.A. a.o. 8 May 2018 Return Directive Art. 5, 11 + 13

§ 4 External Treaties
§ 4.4.2 CJEU C-257/18 & C-258/18, Güler & Solak pending Dec. 3/80 EC-Turkey Assn. Agr. Art. 6

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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Subscribe email to c.grutters@jur.ru.nl
ISSN 2212 - 9154
Welcome to the Second issue of NEMIS in 2018. In this issue we would like to draw your attention to the following.

Family Life
On 12 April 2018, the CJEU ruled (C-550/16, A & S) on the issue of the particular moment of reference to which the age of a refugee must be assessed in order to be regarded as a minor and be able therefore to benefit from the right to family reunification under Article 10(3)(a) of the Family Reunification Directive 2003/86. The Court ruled that the date of application for asylum is determinative. Another conclusion would make the right to family reunification depending upon the moment at which the competent national authority formally adopts the decision recognising the refugee status of the person concerned and, therefore, on how quickly or slowly the application for international protection is processed by that authority. Such an interpretation would go against not only the aim of that directive, but also the principles of equal treatment and legal certainty as well as the best interests of the child.

The Advocate General delivered two opinions. On the question if an application for family reunification by a refugee can be rejected for the sole reason that it was not submitted within the three-month period of Article 12(1) 3rd par. (C-380/17, K & B), the AG concluded that an automatic rejection would violate articles 17 and 5(5) Directive and the Charter on Fundamental Rights. Furthermore the AG stipulated that these obligations apply to both the formal and material aspects of the procedure. On the question whether Member States are allowed to impose an integration requirement for the granting of an autonomous residence permit on the basis of Article 15 (C-257/17, C & A), the AG concluded that this is not allowed, as this implies a material requirement, which is not provided for in the Directive. The national requirements allowed for by the Directive in Article 15(4) only refer to formal requirements. If a Member State requires that the family member submits an application, the autonomous residence right, which has a declaratory nature, starts to apply from that moment onwards.

Return
On 8 May 2018, the CJEU ruled (K.A. et al. C-82/16) that Article 20 TFEU precludes that an application for a residence permit from a third country national family member of an EU citizen is not examined for the sole reason that he is subjected to an entry ban based on Article 11 Return Directive. The authorities have to examine whether there exists, between the third-country national and Union citizen concerned, a relationship of dependency in such a way that the EU-citizen would be compelled to leave the EU-territory if the third country national would be denied a right of residence. In that case, the EU-citizen would be deprived of the genuine enjoyment of the substance of the rights conferred on him by that status. In such circumstances, the Member State concerned must withdraw or, at the least, suspend the return decision and the entry ban to which that third-country national is subject.
1 Regular Migration

1.1 Regular Migration: Adopted Measures

<table>
<thead>
<tr>
<th>Directive 2009/50</th>
<th>Blue Card I</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>On conditions of entry and residence of TCNs for the purposes of highly qualified employment</strong></td>
<td></td>
</tr>
<tr>
<td>* OJ 2009 L 155/17</td>
<td>impl. date 19 June 2011</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Directive 2003/86</th>
<th>Family Reunification</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>On the right to Family Reunification</strong></td>
<td></td>
</tr>
<tr>
<td>* OJ 2003 L 251/12</td>
<td>impl. date 3 Oct. 2005</td>
</tr>
</tbody>
</table>

* CJEU judgments

**New**

- CJEU C-550/16 A. & S. 12 Apr. 2018 Art. 2(f)
- CJEU C-558/14 Khachab 21 Apr. 2016 Art. 7(1)(c)
- CJEU C-153/14 K. & A. 9 July 2015 Art. 7(2)
- CJEU C-338/13 Noorzia 17 July 2014 Art. 4(5)
- CJEU C-138/13 Dogan (Naime) 10 July 2014 Art. 7(2)
- CJEU C-87/12 Ymeraga 8 May 2013 Art. 3(3)
- CJEU C-365/11 O. & S. 6 Dec. 2012 Art. 7(1)(c)
- CJEU C-155/11 Imran 10 June 2011 Art. 7(2) - no adj.
- CJEU C-578/08 Chakroun 4 Mar. 2010 Art. 7(1)(c) + 2(d)
- CJEU C-540/03 EP v. Council 27 June 2006 Art. 8

* CJEU pending cases

- CJEU C-257/17 C. & A. pending Art. 3(3)
- CJEU C-380/17 K. & B. pending Art. 9(2)
- CJEU C-484/17 K. pending Art. 15
- CJEU C-557/17 Y.Z. a.o. pending Art. 16(2)(a)
- CJEU C-635/17 E. pending Art. 3(2)(c) + 11(2)

* EFTA judgments

- EFTA E-4/11 Claude 26 July 2011 Art. 7(1)

See further: § 1.3

<table>
<thead>
<tr>
<th>Council Decision 2007/435</th>
<th>Integration Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establishing European Fund for the Integration of TCNs for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows</td>
<td></td>
</tr>
<tr>
<td>* OJ 2007 L 168/18</td>
<td>UK, IRL opt in</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Directive 2014/66</th>
<th>Intra-Corporate Transferees</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>On conditions of entry and residence of TCNs in the framework of an intra-corporate transfer</strong></td>
<td></td>
</tr>
<tr>
<td>* OJ 2014 L 157/1</td>
<td>impl. date 29 Nov. 2016</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Directive 2003/109</th>
<th>Long-Term Residents</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Concerning the status of TCNs who are long-term residents</strong></td>
<td></td>
</tr>
<tr>
<td>* OJ 2004 L 164/44</td>
<td>impl. date 23 Jan. 2006</td>
</tr>
<tr>
<td>* amended by Dir. 2011/51</td>
<td></td>
</tr>
</tbody>
</table>

* CJEU judgments

- CJEU C-636/16 Lopez Pastuzano 7 Dec. 2017 Art. 12
- CJEU C-309/14 CGIL 2 Sep. 2015
- CJEU C-579/13 P. & S. 4 June 2015 Art. 5 + 11
- CJEU C-311/13 Tümer 5 Nov. 2014
- CJEU C-469/13 Tahir 17 July 2014 Art. 7(1) + 13
- CJEU C-40/11 Iida 8 Nov. 2012 Art. 7(1)
- CJEU C-502/10 Singh 18 Oct. 2012 Art. 3(2)(c)
- CJEU C-571/10 Servet Kamberaj 24 Apr. 2012 Art. 11(1)(d)

See further: § 1.3

<table>
<thead>
<tr>
<th>Directive 2011/51</th>
<th>Long-Term Resident status for refugees and persons with subsidiary protection</th>
</tr>
</thead>
</table>

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

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

**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 2005/71** Researchers
  On a specific procedure for admitting TCNs for the purposes of scientific research
  * Directive is replaced by Dir. 2016/801 Researchers and Students
    - CJEU judgments
    - CJEU C-523/08 Com. v. Spain 11 Feb. 2010
  See further: § 1.3

**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.
  * OJ 2016 L 132/21 (11-05-2016) impl. date 24 May 2018
  * This directive replaces both Dir 2005/71 on Researchers and Dir 2004/114 on Students

**Regulation 1030/2002** Residence Permit Format I
  Laying down a uniform format for residence permits for TCNs
  * OJ 2002 L 157/1
    amd by Reg. 330/2008 (OJ 2008 L 115/1)

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

**Directive 2011/98** Single Permit
  Single Application Procedure: for a single permit for TCNs to reside and work in the territory of a MS and on a common set of rights for third-country workers legally residing in a MS
    - CJEU judgments
      - CJEU C-449/16 Martinez Silva 21 June 2017 Art. 12(1)(e)
    See further: § 1.3

**Regulation 859/2003** Social Security TCN
  Third-Country Nationals’ Social Security extending Reg. 1408/71 and Reg. 574/72
  * OJ 2003 L 124/1
    amd by Reg. 1231/2010: Social Security TCN II
      - CJEU judgments
      - CJEU C-465/14 Wieland & Rothwangl 27 Oct. 2016 Art. 1
      - CJEU C-247/09 Xhymshtiti 18 Nov. 2010
    See further: § 1.3

**Regulation 1231/2010** Social Security TCN II
  Social Security for EU Citizens and TCNs who move within the EU
  * OJ 2010 L 344/1 impl. date 1 Jan. 2011
  * Replacing Reg. 859/2003 on Social Security TCN

**Directive 2004/114** Students
  Admission of Third-Country Nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service
  * OJ 2004 L 375/12 impl. date 12 Jan. 2007
  * Directive is replaced by Dir. 2016/801 Researchers and Students
    - CJEU judgments
      - CJEU C-491/13 Ben Alaya 10 Sep. 2014 Art. 6 + 7
      - CJEU C-544/15 Fahimian 4 Apr. 2017 Art. 6(1)(d)
      - CJEU C-15/11 Sommer 21 June 2012 Art. 17(3)
      - CJEU C-294/06 Payir 24 Nov. 2008
    See further: § 1.3
1.1: Regular Migration: Adopted Measures

**ECtHR**

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

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

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

**ECtHR Judgments**

<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Art.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ibrogimov</td>
<td>15 May 2018</td>
<td>8 + 14</td>
</tr>
<tr>
<td>Hoti</td>
<td>26 Apr. 2018</td>
<td>8</td>
</tr>
<tr>
<td>Ndidi</td>
<td>14 Sep. 2017</td>
<td>8</td>
</tr>
<tr>
<td>Alam</td>
<td>29 June 2017</td>
<td>8</td>
</tr>
<tr>
<td>Krasniqi</td>
<td>25 Apr. 2017</td>
<td>8</td>
</tr>
<tr>
<td>Abuhmaid</td>
<td>12 Jan. 2017</td>
<td>8 + 13</td>
</tr>
<tr>
<td>Salem</td>
<td>1 Dec. 2016</td>
<td>8</td>
</tr>
<tr>
<td>El Ghatet</td>
<td>8 Nov. 2016</td>
<td>8</td>
</tr>
<tr>
<td>Usinova</td>
<td>8 Nov. 2016</td>
<td>8</td>
</tr>
<tr>
<td>Khan</td>
<td>23 Sep. 2016</td>
<td>8</td>
</tr>
<tr>
<td>Ramadan</td>
<td>21 June 2016</td>
<td>8</td>
</tr>
<tr>
<td>Biao</td>
<td>24 May 2016</td>
<td>8 + 14</td>
</tr>
<tr>
<td>Jeunesse</td>
<td>3 Oct. 2014</td>
<td>8</td>
</tr>
<tr>
<td>Kaplan a.o.</td>
<td>24 July 2014</td>
<td>8</td>
</tr>
<tr>
<td>Mugenzi</td>
<td>10 July 2014</td>
<td>8</td>
</tr>
<tr>
<td>Dhahbi</td>
<td>8 Apr. 2014</td>
<td>6, 8 + 14</td>
</tr>
<tr>
<td>Hasanbasic</td>
<td>11 June 2013</td>
<td>8</td>
</tr>
<tr>
<td>Udeh</td>
<td>16 Apr. 2013</td>
<td>8</td>
</tr>
<tr>
<td>Butt</td>
<td>4 Dec. 2012</td>
<td>8</td>
</tr>
<tr>
<td>Hode and Abdi</td>
<td>6 Nov. 2012</td>
<td>8 + 14</td>
</tr>
<tr>
<td>Antwi</td>
<td>14 Feb. 2012</td>
<td>8</td>
</tr>
<tr>
<td>G.R.</td>
<td>10 Jan. 2012</td>
<td>8 + 13</td>
</tr>
<tr>
<td>Kaplan a.o.</td>
<td>20 Nov. 2011</td>
<td>8</td>
</tr>
<tr>
<td>Nunez</td>
<td>28 June 2011</td>
<td>8</td>
</tr>
<tr>
<td>Osman</td>
<td>14 June 2011</td>
<td>8</td>
</tr>
<tr>
<td>O'Donoghue</td>
<td>14 Dec. 2010</td>
<td>12 + 14</td>
</tr>
<tr>
<td>Neulinger</td>
<td>6 July 2010</td>
<td>8</td>
</tr>
<tr>
<td>Maslov</td>
<td>22 Mar. 2007</td>
<td>8</td>
</tr>
<tr>
<td>Üner</td>
<td>18 Oct. 2006</td>
<td>8</td>
</tr>
<tr>
<td>Boulif</td>
<td>2 Aug. 2001</td>
<td>8</td>
</tr>
</tbody>
</table>

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)**

*Case law sorted in alphabetical order*

1.3 Regular Migration: Jurisprudence

1.3.1 CJEU Judgments on Regular Migration

<table>
<thead>
<tr>
<th>Case</th>
<th>Date</th>
<th>Art.</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-550/16</td>
<td>12 Apr. 2018</td>
<td>A. &amp; S.</td>
</tr>
<tr>
<td>interpr. of Dir. 2003/86 Family Reunification</td>
<td></td>
<td>Art. 2(f)</td>
</tr>
<tr>
<td>C-491/13</td>
<td>10 Sep. 2014</td>
<td>Ben Alaya</td>
</tr>
</tbody>
</table>
1.3: Regular Migration: Jurisprudence: CJEU Judgments

* interpr. of Dir. 2004/114
Students
Art. 6 + 7

* The MS concerned is obliged to admit to its territory a third-country national who wishes to stay for more than three months in that territory for study purposes, where that national meets the conditions for admission exhaustively listed in Art. 6 and 7 and provided that that MS does not invoke against that person one of the grounds expressly listed by the directive as justification for refusing a residence permit.

CJEU C-309/14
CGIL
2 Sep. 2015

* interpr. of Dir. 2003/109
Long-Term Residents

* 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
Chakroun
4 Mar. 2010

* interpr. of Dir. 2003/86
Family Reunification
Art. 7(1)(c) + 2(d)

* 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
Com. v. Netherlands
26 Apr. 2012

* incor. appl. of Dir. 2003/109
Long-Term Residents

* 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
Com. v. Spain
11 Feb. 2010

* non-transp. of Dir. 2005/71
Researchers

CJEU C-138/13
Dogan (Naime)
10 July 2014

* interpr. of Dir. 2003/86
Family Reunification
Art. 7(2)

* 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
EP v. Council
27 June 2006

* interpr. of Dir. 2003/86
Family Reunification
Art. 8

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

CJEU C-544/15
Fahimian
4 Apr. 2017

* interpr. of Dir. 2004/114
Students
Art. 6(1)(d)

* 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
Iida
8 Nov. 2012

* interpr. of Dir. 2003/109
Long-Term Residents
Art. 7(1)

* 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.
### 1.3: Regular Migration: Jurisprudence: CJEU Judgments

<table>
<thead>
<tr>
<th>CJEU Case</th>
<th>Applicant</th>
<th>Decision Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU C-155/11</td>
<td>Imran</td>
<td>10 June 2011</td>
</tr>
<tr>
<td>* interpr. of Dir. 2003/86 Family Reunification Art. 7(2) - no adj.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
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</tr>
<tr>
<td>CJEU C-153/14</td>
<td>K. &amp; A.</td>
<td>9 July 2015</td>
</tr>
<tr>
<td>* interpr. of Dir. 2003/86 Family Reunification Art. 7(2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
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</tr>
<tr>
<td>CJEU C-558/14</td>
<td>Khachab</td>
<td>21 Apr. 2016</td>
</tr>
<tr>
<td>* interpr. of Dir. 2003/86 Family Reunification Art. 7(1)(c)</td>
<td></td>
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</tr>
<tr>
<td>* 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.</td>
<td></td>
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</tr>
<tr>
<td>CJEU C-636/16</td>
<td>Lopez Pastorazo</td>
<td>7 Dec. 2017</td>
</tr>
<tr>
<td>* interpr. of Dir. 2003/109 Long-Term Residents Art. 12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* 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.</td>
<td></td>
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</tr>
<tr>
<td>CJEU C-449/16</td>
<td>Martinez Silva</td>
<td>21 June 2017</td>
</tr>
<tr>
<td>* interpr. of Dir. 2011/98 Single Permit Art. 12(1)(e)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>* 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).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CJEU C-338/13</td>
<td>Noorzia</td>
<td>17 July 2014</td>
</tr>
<tr>
<td>* interpr. of Dir. 2003/86 Family Reunification Art. 4(5)</td>
<td></td>
<td></td>
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<td>* 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.</td>
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<td>* interpr. of Dir. 2003/86 Family Reunification Art. 7(1)(c)</td>
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<td>* 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.</td>
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<tr>
<td>CJEU C-579/13</td>
<td>P. &amp; S.</td>
<td>4 June 2015</td>
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<tr>
<td>* interpr. of Dir. 2003/109 Long-Term Residents Art. 5 + 11</td>
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<td>* Article 5(2) and Article 11(1) do not preclude national legislation, such as that at issue in the main proceedings, which imposes on TCNs who already possess long-term resident status the obligation to pass a civic integration examination, under pain of a fine, provided that the means of implementing that obligation are not liable to jeopardise the achievement of the objectives pursued by that directive, which is for the referring court to determine. Whether the long-term resident status was acquired before or after the obligation to pass a civic integration examination was imposed is irrelevant in that respect.</td>
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<tr>
<td>CJEU C-294/06</td>
<td>Payir</td>
<td>24 Nov. 2008</td>
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<td>* interpr. of Dir. 2004/114 Students</td>
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<td>* 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.</td>
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<tr>
<td>CJEU C-571/10</td>
<td>Servet Kamberaj</td>
<td>24 Apr. 2012</td>
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<tr>
<td>* interpr. of Dir. 2003/109 Long-Term Residents Art. 11(1)(d)</td>
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<td>* EU Law precludes a distinction on the basis of ethnicity or linguistic groups in order to be eligible for housing benefit.</td>
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<tr>
<td>CJEU C-502/10</td>
<td>Singh</td>
<td>18 Oct. 2012</td>
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</tbody>
</table>
1.3.2 CJEU pending cases on Regular Migration

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CJEU C-15/11
Sommer
21 June 2012
* interpr. of Dir. 2004/114
Students
Art. 17(3)

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

F

CJEU C-469/13
Tahir
17 July 2014
* interpr. of Dir. 2003/109
Long-Term Residents
Art. 7(1) + 13

* 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 26(c) of that directive, with LTR’ EU residence permits on terms more favourable than those laid down by that directive.

F

CJEU C-311/13
Timmer
5 Nov. 2014
* interpr. of Dir. 2003/109
Long-Term Residents

* 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”.

F

CJEU C-465/14
Wieland & Rothwangl
* interpr. of Reg. 859/2003
Social Security TCN
Art. 1

* 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.

F

CJEU C-247/09
Xhymshiti
18 Nov. 2010
* interpr. of Reg. 859/2003
Social Security TCN

* 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.

F

CJEU C-87/12
Ymeraga
8 May 2013
* interpr. of Dir. 2003/86
Family Reunification
Art. 3(3)

* 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 Dereci a.o., par. 58).

1.3.2 CJEU pending cases on Regular Migration

F

CJEU C-257/17
C. & A.
* interpr. of Dir. 2003/86
Family Reunification
Art. 3(3)

* AG: 27 Jun 2018

* 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 sponsors 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?

F

CJEU C-635/17
E.
* interpr. of Dir. 2003/86
Family Reunification
Art. 3(2)(e) + 11(2)

* On the proof of family ties and the situation in which there is a plausible explanation for the fact that no such documentary evidence is provided.

F

CJEU C-484/17
K.
* interpr. of Dir. 2003/86
Family Reunification
Art. 15

* 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 rejected because of non-compliance with integration conditions?

F

CJEU C-380/17
K. & B.
* interpr. of Dir. 2003/86  
** 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)?

** CJEU C-557/17  
** Y.Z. a.o.  
** interpr. of Dir. 2003/86  
** Family Reunification  
** 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  
** Claude v. Lie  
** interpr. of Dir. 2003/86  
** Family Reunification  
** 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  
** Yankuba Jabbi v. NO  
** interpr. of Dir. 2004/38  
** Right of Residence  
** Art. 7(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 that EEA national returns with the family member to his home State.

### 1.3.4 ECHR Judgments on Regular Migration

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

** ECHR 31183/13  
** Abuhmaid v. UKR  
** no violation of  
** ECHR  
** Art. 8 + 13  
** The applicant is a Palestinian residing in Ukraine for over twenty years. In 2010 the temporary residence permit expired. Since then, the applicant has applied for asylum unsuccessfully. The Court found that the applicant does not face any real or imminent risk of expulsion from Ukraine since his new application for asylum is still being considered and therefore declared this complaint inadmissible.

** ECHR 33809/15  
** Alam v. DK  
** no violation of  
** ECHR  
** Art. 8  
** The applicant is a Pakistani national who entered DK in 1984 when she was 2 years old. She has two children. In 2013 she is convicted of murder, aggravated robbery and arson to life imprisonment. She was also expelled from DK with a life-long entry ban. The Court states that it has no reason to call into question the conclusions reached by the domestic courts on the basis of the balancing exercise which they carried out. 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.

** ECHR 26940/10  
** Antwi v. NOR  
** no violation of  
** ECHR  
** Art. 8  
** A case similar to Nunez (ECHR 28 Jun 2011) except that the judgment is not unanimous (2 dissenting opinions). Mr Antwi from Ghana migrates in 1988 to Germany on a false Portuguese passport. In Germany he meets his future wife (also from Ghana) who lives in Norway and is naturalised to Norwegian nationality. Mr Antwi moves to Norway to live with her and their first child is born in 2001 in Norway. In 2005 the parents marry in Ghana and subsequently it is discovered that Mr Antwi travels on a false passport. In Norway Mr Antwi goes to trial and is expelled to Ghana with a five year re-entry ban. The Court does not find that the Norwegian authorities acted arbitrarily or otherwise transgressed the margin of appreciation which should be accorded to it in this area when seeking to strike a fair balance between its public interest in ensuring effective immigration control, on the one hand, and the applicants’ need that the first applicant be able to remain in Norway, on the other hand.

** ECHR 38590/10  
** Biao v. DK  
** violation of  
** ECHR  
** 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.
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

<table>
<thead>
<tr>
<th>Case</th>
<th>Judgment No.</th>
<th>Violation of</th>
<th>Date of Judgment</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECtHR 54273/00</td>
<td>Boultif v. CH</td>
<td>ECtHR</td>
<td>2 Aug. 2001</td>
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<tr>
<td>*</td>
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<td>Art. 8</td>
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<td>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:</td>
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<td>- the nature and seriousness of the offence committed by the applicant;</td>
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<td>- the length of the applicant’s stay in the country from which he is going to be expelled;</td>
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<td>- the time elapsed since the offence was committed as well as the applicant’s conduct in that period;</td>
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<td>- the nationalities of the various persons concerned;</td>
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<td>- the applicant’s family situation, such as the length of the marriage;</td>
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<td>- and other factors expressing the effectiveness of a couple’s family life;</td>
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<td>- whether the spouse knew about the offence at the time when he or she entered into a family relationship;</td>
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<td>- and whether there are children in the marriage, and if so, their age.</td>
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<td>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.</td>
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<tr>
<td>ECtHR 47017/09</td>
<td>Butt v. NO</td>
<td>ECtHR</td>
<td>4 Dec. 2012</td>
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<td>Art. 8</td>
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<td>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 and 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.</td>
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<tr>
<td>ECtHR 22689/07</td>
<td>De Souza Ribeiro v. UK</td>
<td>ECtHR</td>
<td>13 Dec. 2012</td>
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<td>Art. 8 + 13</td>
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<td>A Brazilian in French Guiana was removed to Brazil within 50 minutes after an appeal had been lodged against his removal order. In this case the Court considers that the haste with which the removal order was executed had the effect of rendering the available remedies ineffective in practice and therefore inaccessible. The brevity of that time lapse excludes any possibility that the court seriously examined the circumstances and legal arguments in favour of or against a violation of Article 8 of the Convention in the event of the removal order being enforced. Thus, while States are afforded some discretion as to the manner in which they conform to their obligations under Article 13 of the Convention, that discretion must not result, as in the present case, in an applicant being denied access in practice to the minimum procedural safeguards needed to protect him against arbitrary expulsion. Concerning the danger of overloading the courts and adversely affecting the proper administration of justice in French Guiana, the Court reiterates that, as with Article 6 of the Convention, Article 13 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet its requirements.</td>
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<tr>
<td>ECtHR 17120/09</td>
<td>Dhahibi v. IT</td>
<td>ECtHR</td>
<td>8 Apr. 2014</td>
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<td>Art. 6, 8 + 14</td>
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<td>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.</td>
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<tr>
<td>ECtHR 56971/10</td>
<td>El Ghatet v. CH</td>
<td>ECtHR</td>
<td>8 Nov. 2016</td>
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<td>Art. 8</td>
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<td>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 have merely examined the best interest of the child in a brief manner and put forward a rather summary reasoning. As such the child’s best interests have not sufficiently been placed at the centre of its balancing exercise. The Court therefore finds a violation of Art. 8.</td>
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<tr>
<td>ECtHR 22251/07</td>
<td>G.R. v. NL</td>
<td>ECtHR</td>
<td>10 Jan. 2012</td>
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<td>Art. 8 + 13</td>
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| * | * | 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.

Hasanbasic v. CH
ECtHR 52166/09
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.

Hode and Abdi v. UK
ECtHR 22341/09
violation of
ECHR
Art. 8 + 14

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

Hori v. CRO
ECtHR 63311/14
violation of
ECHR
Art. 8

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

Ibrogimov v. RUS
ECtHR 32248/12
violation of
ECHR
Art. 8 + 14

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

Jeunesse v. NL
ECtHR 12738/10
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.

Kaplan a.o. v. NO
ECtHR 32504/11
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.

Khan v. GER
ECtHR 38030/12
interpr. of
ECHR
Art. 8

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

Krasniqi v. AUS
ECtHR 41697/12
no violation of
ECHR
Art. 8

The applicant is from Kosovo and entered Austria in 1994 when he was 19 years old. Within a year he was arrested for working illegally and was issued a five-year residence ban. He lodged an asylum application, which was dismissed, and returned voluntarily to Kosovo in 1997. In 1998 he went back to Austria and filed a second asylum request with his wife and daughter. Although the asylum claim was dismissed they were granted subsidiary protection. The temporary residence permit was extended a few times but expired in December 2009 as he had not applied for its renewal. After nine convictions on drugs offences and aggravated threat, he was issued a ten-year residence ban. Although the applicant is well integrated in Austria, the Court concludes that the Austrian authorities have not overstepped the margin of appreciation accorded to them in immigration matters by expelling the applicant.

Maslov v. AU
ECtHR 1638/03
22 Mar. 2007
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

<table>
<thead>
<tr>
<th>Case</th>
<th>Summary</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>ECtHR 52701/09</td>
<td>Mugenzi v. FR</td>
<td>10 July 2014</td>
</tr>
<tr>
<td>ECtHR 41215/14</td>
<td>Nndi v. UK</td>
<td>14 Sep. 2017</td>
</tr>
<tr>
<td>ECtHR 41615/07</td>
<td>Neuling v. CH</td>
<td>6 July 2010</td>
</tr>
<tr>
<td>ECtHR 55597/09</td>
<td>Nunez v. NO</td>
<td>28 June 2011</td>
</tr>
<tr>
<td>ECtHR 34848/07</td>
<td>O'Donoghue v. UK</td>
<td>14 Dec. 2010</td>
</tr>
<tr>
<td>ECtHR 38058/09</td>
<td>Osman v. DK</td>
<td>14 June 2011</td>
</tr>
<tr>
<td>ECtHR 76136/12</td>
<td>Ramadan v. MAL</td>
<td>21 June 2016</td>
</tr>
</tbody>
</table>
1.3: Regular Migration: Jurisprudence: ECtHR Judgments

**Regular Migration:** Jurisprudence: ECtHR Judgments

**NEMIS 2018/2** (June)

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* The applicant is a stateless Palestinian from Lebanon. In 1994, having married a Danish woman he is granted a residence permit, and in 2000 he is also granted asylum. In June 2010 the applicant - by then father of 8 children - is convicted of drug trafficking and dealing, coercion by violence, blackmail, theft, and the possession of weapons. He is sentenced to five years imprisonment, which decision is upheld by the Supreme Court in 2011 adding a life-long ban on his return. Appeals against his expulsion are refused and at the end of 2014 he is deported to Lebanon. The ECtHR rules that although the applicant has 8 children in Denmark, he has an extensive and serious criminal record. Also, he is not well-integrated into Danish society (still being illiterate and not being able to speak Danish).

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**ECtHR 12020/09**

**Udeh v. CH**

16 Apr. 2013

* The applicant was 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.

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**ECtHR 46410/09**

**Üner v. NL**

18 Oct. 2006

* The expulsion of an alien raises a problem within the context of art. 8 ECHR if that alien has a family whom he has to leave behind. In Boultif (54273/00) the Court elaborated the relevant criteria which it would use in order to assess whether an expulsion measure was necessary in a democratic society and proportionate to the legitimate aim pursued. In this judgment the Court adds two additional criteria:

  - the best interests and well-being of the children, in particular the seriousness of the difficulties which any children of the applicant are likely to encounter in the country to which the applicant is to be expelled; and
  - the solidarity of social, cultural and family ties with the host country and with the country of destination.

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**ECtHR 7994/14**

**Ustinova v. RUS**

8 Nov. 2016

* 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.
# 2 Borders and Visas

## 2.1 Borders and Visas: Adopted Measures

**Regulation 2016/1624**

**Border and Coast Guard Agency**

Creating a Borders and Coast Guard Agency

* OJ 2016 L 251/1


**Regulation 562/2006**

**Borders Code**

Establishing 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-346/16 C. 20 July 2017 Art. 20 + 21 - deleted
- 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 & Abdeki 22 June 2010 Art. 20 + 21

**CJEU pending cases**

- CJEU C-412/17 & C-474/17 Touring Tours a.o. 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

**New**

  * amd by Reg. 2225/2017 (OJ 2017 L 327/1): on the use of the EES

**CJEU pending cases**

- CJEU C-341/18 J. a.o. pending Art. 11
- CJEU C-444/17 Arib pending Art. 32

See further: § 2.3

**Decision 574/2007**

**Borders Fund I**

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**

Borders and Visa Fund

* OJ 2014 L 150/143

* This Regulation repeals Decision No 574/2007 (Borders Fund I)

**Regulation 2017/2226**

**EES**

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

* OJ 2017 L 327/20
2.1: Borders and Visas: Adopted Measures

Regulation 1052/2013
Establishing the European Border Surveillance System (Eurosur)
* 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

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

Regulation 656/2014
Maritime Surveillance
Rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex
* OJ 2014 L 189/93

Directive 2004/82
On the obligation of carriers to communicate passenger data
* OJ 2004 L 261/24
  UK opt in

Regulation 2252/2004
On standards for security features and biometrics in passports and travel documents
* OJ 2004 L 385/1
  CJEU judgments
  CJEU C-446/12 Willems a.o.
  16 Apr. 2015 Art. 4(3)
  CJEU C-101/13 U.
  2 Oct. 2014 Art. 6
  CJEU C-139/13 Com. v. Belgium
  13 Feb. 2014 Art. 1(2)
  CJEU C-291/12 Schwarz
  17 Oct. 2013
See further: § 2.3

Recommendation 761/2005
On uniform short-stay visas for researchers from third countries
* OJ 2005 L 289/23

Convention
Implementing the Schengen Agreement of 14 June 1985
* OJ 2000 L 239
  CJEU judgments
  CJEU C-240/17 E.
  16 Jan. 2018 Art. 25(1) + 25(2)
See further: § 2.3

Regulation 1053/2013
Schengen Evaluation
* OJ 2013 L 295/27

Regulation 1987/2006
Establishing 2nd generation Schengen Information System
* 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
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
2.1: Borders and Visas: Adopted Measures

On the SIRENE Manual and other implementing measures for SIS II
* OJ 2016 L 203/35

Council Decision 2017/818
Temporary Internal Border Control
Setting out a Recommendation for prolonging temporary internal border control in exceptional circumstances putting the overall functioning of the Schengen area at risk
* OJ 2017 L 122/73

Decision 565/2014
Transit Bulgaria a.o. countries
Transit through Bulgaria, Croatia, Cyprus and Romania
* OJ 2014 L 157/23

Regulation 693/2001
Transit Documents
Establishing a specific Facilitated Transit Document (FTD) and a Facilitated Rail Transit Document (FRTD)
* OJ 2003 L 99/8

Regulation 694/2001
Transit Documents Format
Format for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD)
* OJ 2003 L 99/15

Decision 586/2008
Transit Switzerland
Transit through Switzerland and Liechtenstein
* OJ 2008 L 162/27

Decision 1105/2011
Travel Documents
On the list of travel documents which entitle the holder to cross the external borders
* OJ 2011 L 287/9

Regulation 767/2008
VIS
Establishing Visa Information System (VIS) and the exchange of data between MS
* OJ 2008 L 218/60
* Third-pillar VIS Decision (OJ 2008 L 218/129)

Decision 512/2004
VIS (start)
Establishing Visa Information System (VIS)
* OJ 2004 L 213/5

Council Decision 2008/633
VIS Access
Access for consultation of the Visa Information System (VIS) by designated authorities of Member States and Europol
* OJ 2008 L 218/129

Regulation 1077/2011
VIS Management Agency
Establishing an Agency to manage VIS, SIS & Eurodac
* OJ 2011 L 286/1

Regulation 810/2009
Visa Code
Establishing a Community Code on Visas
* OJ 2009 L 243/1
  amd by Reg. 154/2012 (OJ 2012 L 58/3): On the relation with the Schengen acquis

CJEU judgments
❖ CJEU C-403/16 El Hassani 13 Dec. 2017 Art. 32
❖ CJEU C-638/16 PPU X. & X. 7 Mar. 2017 Art. 25(1)(a)
❖ CJEU C-575/12 Air Baltic 4 Sep. 2014 Art. 24(1) + 34
❖ CJEU C-84/12 Koushkaki 19 Dec. 2013 Art. 23(4) + 32(1)
❖ CJEU C-39/12 Dang 18 June 2012 Art. 21 + 34 - deleted
❖ CJEU C-83/12 Vo 10 Apr. 2012 Art. 21 + 34

CJEU pending cases
❖ CJEU C-680/17 Vethanayagam pending Art. 8(4) + 32(3)

See further: § 2.3

Regulation 1683/95,
Visa Format
Uniform format for visas
* OJ 1995 L 164/1 UK opt in
  amd by Reg. 334/2002 (OJ 2002 L 53/7)
  amd by Reg. 856/2008 (OJ 2008 L 235/1)
  amd by Reg. 1370/2017 (OJ 2017 L 198/24)

Regulation 539/2001
Visa List
Listing the third countries whose nationals must be in possession of visas
* OJ 2001 L 81/1
2.1: Borders and Visas: Adopted Measures

- Adopted Measures
  - CJEU judgments
      See further: § 2.3
    - amd by Reg. 2414/2001 (OJ 2001 L 327/1): Moving Romania to ‘white list’
    - amd by Reg. 1091/2010 (OJ 2010 L 329/1): Lifting visa req. for Albania and Bosnia
    - amd by Reg. 1211/2010 (OJ 2010 L 339/6): Lifting visa req. for Taiwan
    - amd by Reg. 1289/2013 (OJ 2013 L 347/74)
    - amd by Reg. 372/2017 (OJ 2017 L 61/7): Lifting visa req. for Georgia
    - amd by Reg. 371/2017 (OJ 2017 L61/1): On Suspension mechanism
    - amd by Reg. 850/2017 (OJ 2017 L 133/1): Lifting visa req. for Ukraine
      See further: § 2.3
    - Regulation 333/2002
      - Visa Stickers
      - Uniform format for forms for affixing the visa
        * OJ 2002 L 53/4
      - UK opt in
    - ECHR
      - Anti-torture
          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. 20 Dec. 2016 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 Samaran 28 Feb. 2012 Art. 3
            - ECtHR 27765/09 Hirsi 21 Feb. 2012 Art. 3 + 13
            See further: § 2.3

2.2 Borders and Visas: Proposed Measures

- Regulation amending Regulation
  - On the European Agency for large-scale IT systems
    * Com (2017) 352, 29 June 2017
    - New Council and EP agreed, spring 2018
  - Regulation amending Regulation
    - On temporary reintroduction of checks at internal borders
      * Com (2017) 571, 27 Sep 2017
        * amending Borders Code (Reg. 2016/399)
      - New No Council or EP position yet
  - Regulation
    - On interoperability of visas and borders legislation
      * Com (2017) 193, 12 Dec 2017
        * No Council or EP position yet
    - Regulation
      - Codifying Visa List Regulation
        * Com (2018) 139, 14 Mar 2018
        * No Council or EP position yet
    - Regulation
      - Amending Cisa Code Regulation
        * Com (2018) 252, 14 Mar 2018
2.2: Borders and Visas: Proposed Measures

- **New**
  - **Regulation**
    - Amending Regulation on Visa Information System
    - **Regulation amending Regulation 539/2001**
    - **New**
      - EP and Council agreed, spring 2018

- **New**
  - **Regulation**
    - Establishing a European Travel Information and Authorisation System
    - **Regulation amending Regulation 539/2001**
    - **New**
      - Council and EP negotiating

- **New**
  - **Regulation**
    - On the use of SIS for the return of illegally staying third-country nationals
    - **Visa waiver Kosovo**
    - **Visa waiver Turkey**
    - **New**
      - Council and EP negotiating

- **New**
  - **Regulation amending Regulation 539/2001**
    - Visa List amendment
      - **New**
        - Council and EP negotiating

2.3 Borders and Visas: Jurisprudence

2.3.1 CJEU Judgments on Borders and Visas

<table>
<thead>
<tr>
<th>CJEU C-9/16</th>
<th>A. Interpr. of Reg. 562/2006</th>
<th>Borders Code</th>
<th>21 June 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>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. Additionally, Art. 20 and 21 must be interpreted as not precluding national legislation, which permits the police authorities of the MS to carry out, on board trains and on the premises of the railways of that MS, identity or border crossing document checks on any person, and briefly to stop and question any person for that purpose, if those checks are based on knowledge of the situation or border police experience, provided that the exercise of those checks is subject under national law to detailed rules and limitations determining the intensity, frequency and selectivity of the checks, which is for the referring court to verify.</td>
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<tr>
<td>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.</td>
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<tr>
<td>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.</td>
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<td>CJEU C-575/12</td>
<td>Air Baltic</td>
<td>4 Sep. 2014</td>
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<td>:*</td>
<td>interpr. of</td>
<td>Visa Code</td>
<td>Art. 24(1) + 34</td>
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<tr>
<td>CJEU C-606/10</td>
<td>ANAFE</td>
<td>14 June 2012</td>
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<td>:*</td>
<td>interpr. of</td>
<td>Borders Code</td>
<td>Art. 13 + 5(4)(a)</td>
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<tr>
<td>CJEU C-241/05</td>
<td>Bot</td>
<td>4 Oct. 2006</td>
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<td>:*</td>
<td>interpr. of</td>
<td>Schengen Agreement</td>
<td>Art. 20(1)</td>
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<tr>
<td>CJEU C-346/16</td>
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<td>20 July 2017</td>
<td></td>
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<td>:*</td>
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<td>Borders Code</td>
<td>Art. 20 + 21 - deleted</td>
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<tr>
<td>:*</td>
<td>violation of</td>
<td>Passports</td>
<td>Art. 6</td>
</tr>
<tr>
<td>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</td>
<td>Visa Applications</td>
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<td>:*</td>
<td>validity of</td>
<td>Visa List</td>
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<tr>
<td>CJEU C-39/12</td>
<td>Dang</td>
<td>18 June 2012</td>
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<td>:*</td>
<td>interpr. of</td>
<td>Visa Code</td>
<td>Art. 21 + 34 - deleted</td>
</tr>
<tr>
<td>CJEU C-240/17</td>
<td>E.</td>
<td>16 Jan. 2018</td>
<td></td>
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<tr>
<td>:*</td>
<td>interpr. of</td>
<td>Schengen Acquis</td>
<td>Art. 25(1) + 25(2)</td>
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<tr>
<td>CJEU C-17/16</td>
<td>El Dakkak</td>
<td>4 May 2017</td>
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<td>:*</td>
<td>interpr. of</td>
<td>Borders Code</td>
<td>Art. 4(1)</td>
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<td>CJEU C-403/16</td>
<td>El Hassani</td>
<td>13 Dec. 2017</td>
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<td>:*</td>
<td>interpr. of</td>
<td>Visa Code</td>
<td>Art. 32</td>
</tr>
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</table>
2.3: Borders and Visas: Jurisprudence: CJEU Judgments

- CJEU C-355/10
  - EP v. Council
  - 5 Sep. 2012
  - annulment of measure supplementing Borders Code

- CJEU C-261/11 & C-348/08
  - Garcia & Cabrera
  - 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

- CJEU C-355/10
  - Gaydarov
  - 17 Nov. 2011
  - Reg. does not preclude national legislation that permits the restriction of the right of a national of a MS to travel to another MS in particular on the ground that he has been convicted of a criminal offence of narcotic drug trafficking in another State, provided that (i) the personal conduct of that national constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, (ii) the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it and (iii) that measure is subject to effective judicial review permitting a determination of its legality as regards matters of fact and law in the light of the requirements of European Union law.

- CJEU C-88/12
  - Jaoo
  - 14 Sep. 2012
  - On statutory provision authorising, in the context of countering illegal residence after borders have been crossed, police checks in the area between the land border of the Netherlands with Belgium or Germany and a line situated within 20 kilometres of that border

- CJEU C-84/12
  - Koushikai
  - 19 Dec. 2013
  - 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 circumstances 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
  - Kajiku
  - 2 Apr. 2009
  - On transit visa legislation for third-country nationals subject to a visa requirement

- CJEU C-188/10 & C-189/10
  - Melki & Abdeli
  - 22 June 2010
  - * These cases relate to a visa requirement that was in force in Liechtenstein to TCNs subject to a visa requirement, are to be equivalent to a transit visa only.

- CJEU C-291/12
  - Schwarz
  - 17 Oct. 2013
  - 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
  - * 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
  - * 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**
* interp. of Reg. 2252/2004
* 2 Oct. 2014

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

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

**CJEU C-83/12**
* interp. 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.
* Art. 21 + 34

**CJEU C-446/12**
* interp. 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 that issue of the passport or travel document, since that is not a matter which falls within the scope of that regulation.
* Art. 4(3)

**CJEU C-638/16 PPU**
* interp. 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 that an application for a visa with limited territorial validity made on humanitarian grounds by a TCN, on the basis of Article 25 of the code, to the representation of the MS of destination that is within the territory of a third country, with a view to lodging, immediately upon his or her arrival in that MS, an application for international protection and, thereafter, to staying in that MS for more than 90 days in a 180-day period, does not fall within the scope of that code but, as EU law currently stands, solely within that of national law.
* Art. 25(1)(a)

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

**2.3.2 CJEU pending cases on Borders and Visas**

**CJEU C-444/17**
* interp. of Reg. 399/2016
* Borders Code (codified)
* hearing: 12 June 2018
* If border controls are reintroduced at an internal border of a Member State may this be equated with border controls at an external border, when that border is crossed by a third-country national who has no right of entry?
* Art. 32

**CJEU C-341/18**
* interp. of Reg. 399/2016
* Borders Code (codified)
* On the necessity of providing departure stamps at (external) border crossings particularly in harbours.
* Art. 11

**CJEU C-412/17 & C-474/17**
* interp. of Reg. 362/2006
* Borders Code
* hearing: 7 June 2018
* 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?
* Art. 22 + 23

**CJEU C-680/17**
* interp. of Reg. 810/2009
* Visa Code
* Is an interpretation of Article 8(4) and Article 32(3) of the Visa Code according to which visa applicants can lodge an appeal against the rejection of their applications only with an administrative or judicial body of the representing Member State, and not in the represented Member State for which the visa application was made, consistent with effective legal protection as referred to in Article 47 of the Charter?
* Art. 8(4) + 32(3)

**2.3.3 ECHR Judgments on Borders and Visas**

**ECHR 55352/12**
* Aden Ahmed v. MAL
* 23 July 2013
2.3: Borders and Visas: Jurisprudence: ECtHR Judgments

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>B.M. v. GR</td>
<td>ECtHR 53608/11</td>
<td>19 Dec. 2013</td>
</tr>
<tr>
<td>Hirs v. IT</td>
<td>ECtHR 27765/09</td>
<td>21 Feb. 2012</td>
</tr>
<tr>
<td>Samaras v. GR</td>
<td>ECtHR 11463/09</td>
<td>28 Feb. 2012</td>
</tr>
<tr>
<td>Skioshvili a.o. v. RUS</td>
<td>ECtHR 19356/07</td>
<td>20 Dec. 2016</td>
</tr>
</tbody>
</table>

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.

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.

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 ECtHR, 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).

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 ECtHR art. 3.

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  

**Case law sorted in chronological order**

**Directive 2001/51**
Obligation of carriers to return TCNs when entry is refused
- * OJ 2001 L 187/45

**Decision 267/2005**
Establishing a secure web-based Information and Coordination Network for MS’ Migration Management Services
- * OJ 2005 L 83/48

**Directive 2009/52**
Minimum standards on sanctions and measures against employers of illegally staying TCNs
- * OJ 2009 L 168/24

**Directive 2003/110**
Assistance with transit for expulsion by air
- * OJ 2003 L 321/26

**Decision 191/2004**
On the compensation of the financial imbalances resulting from the mutual recognition of decisions on the expulsion of TCNs
- * OJ 2004 L 60/55

**Directive 2001/40**
Mutual recognition of expulsion decisions of TCNs
- * OJ 2001 L 149/34
  - CJEU judgments
    - CJEU C-456/14 *Orrego Arias* 3 Sep. 2015 (Art. 3(1)(a) - inadmissable)
  - See further: § 3.3

**Decision 573/2004**
On the organisation of joint flights for removals from the territory of two or more MSs, of TCNs
- * OJ 2004 L 261/28

**Conclusion**
Transit via land for expulsion
- * adopted 22 Dec. 2003 by Council

**Regulation 377/2004**
On the creation of an immigration liaison officers network
- * OJ 2004 L 64/1

**Recommendation 2017/432**
Making returns more effective when implementing the Returns Directive
- * OJ 2017 L 66/15

**Directive 2008/115**
On common standards and procedures in MSs for returning illegally staying TCNs
- * OJ 2008 L 348/98
  - CJEU judgments
  - New
    - CJEU C-181/16 *Gnandi* 19 June 2018 (Art. 5)
    - CJEU C-82/16 *K.A. a.o.* 8 May 2018 (Art. 5, 11 + 13)
    - CJEU C-184/16 *Petrea* 14 Sep. 2017 (Art. 6(1))
    - CJEU C-199/16 *Nianga* 11 Aug. 2017 (Art. 5 - deleted)
    - CJEU C-225/16 *Ouhrami* 26 July 2017 (Art. 11(2))
    - CJEU C-47/15 *Affum* 7 June 2016 (Art. 2(1) + 3(2))
    - CJEU C-290/14 *Celaj* 1 Oct. 2015
    - CJEU C-554/13 *Zh. & O.* 11 June 2015 (Art. 7(4))
    - CJEU C-38/14 *-Zaizoune* 23 Apr. 2015 (Art. 4(2) + 6(1))
    - CJEU C-562/13 *Abidia* 18 Dec. 2014 (Art. 5 + 13)
    - CJEU C-249/13 *Boudjifda* 11 Dec. 2014 (Art. 6)
    - CJEU C-166/13 *Mukarubega* 5 Nov. 2014 (Art. 3 + 7)
3.1: Irregular Migration: Adopted Measures

- CJEU C-473/13 & C-514/13 Bero & Bouzalmate 17 July 2014 Art. 16(1)
- CJEU C-474/13 Pham 17 July 2014 Art. 16(1)
- CJEU C-189/13 Da Silva 3 July 2014 inadmissable
- CJEU C-146/14 (PPU) Mahdi 5 June 2014 Art. 15
- CJEU C-297/13 Filev & Osmani 19 Sep. 2013 Art. 2(2)(b) + 11
- CJEU C-383/13 (PPU) G. & R. 10 Sep. 2013 Art. 15(2) + 6
- CJEU C-534/11 Arslan 30 May 2013 Art. 2(1)
- CJEU C-522/11 Mbaye 21 Mar. 2013 Art. 2(2)(b) + 7(4)
- CJEU C-430/11 Sagor 6 Dec. 2012 Art. 2, 15 + 16
- CJEU C-383/13 (PPU) Kadzoev 30 Nov. 2009 Art. 15(4), (5) + (6)
- CJEU C-175/17 X. pending
- CJEU C-444/17 Arib pending Art. 2(2)(a)

See further: § 3.3

Decision 575/2007
Establishing the Eur. Return Fund as part of the General Programme Solidarity and Management of Migration Flows

Directives

- 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)

- 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

- Directive 2002/90 Unauthorized Entry
  Facilitation of unauthorised entry, transit and residence
  * OJ 2002 L 328
  CJEU judgments
  - CJEU C-218/15 Paoletti a.o. 25 May 2016 Art. 1
  - CJEU C-83/12 Vo 10 Apr. 2012 Art. 1
  See further: § 3.3

ECHR Detention - Collective Expulsion
European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols
Art. 5 Detention
Prot. 4 Art. 4 Collective Expulsion
* ETS 005 (4 November 1950) impl. date 31 Aug. 1954

ECHR Judgments
- ECHR 55352/12 Aden Ahmed 23 July 2013 Art. 3 + 5
- ECHR 23707/15 Mazumba Oyaw 4 Apr. 2017 Art. 5 - inadmissable
- ECHR 39061/11 Thimothawes 4 Apr. 2017 Art. 5
- ECHR 3342/11 Richmond Yaw 6 Oct. 2016 Art. 5
- ECHR 53709/11 A.F. 13 June 2013 Art. 5
- ECHR 13056/11 Abdelhakim 23 Oct. 2012 Art. 5
- ECHR 14902/10 Mahmundi 31 July 2012 Art. 5
- ECHR 27765/09 Hirsi 21 Feb. 2012 Prot. 4 Art. 4
- ECHR 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

- **Abida (CJEU C-562/13)**: 18 Dec. 2014
  - Intcrep. 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.

- **Achughbabian (CJEU C-229/11)**: 6 Dec. 2011
  - Intcrep. 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.

- **Affum (CJEU C-47/15)**: 7 June 2016
  - Intcrep. 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).

- **Arslan (CJEU C-534/11)**: 30 May 2013
  - Intcrep. 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.

- **Bero & Bouzalmate (CJEU C-473/13 & C-514/13)**: 17 July 2014
  - Intcrep. 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.

- **Boudjilida (CJEU C-249/13)**: 11 Dec. 2014
  - Intcrep. of: Dir. 2008/115
  - Return Directive
  - Art. 6
  - 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.

- **Celaj (CJEU C-290/14)**: 1 Oct. 2015
  - Intcrep. of: Dir. 2008/115
  - Return Directive
  - Art. 5(2)
  - 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.

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

- **Da Silva (CJEU C-189/13)**: 3 July 2014
  - Intcrep. of: Dir. 2008/115
  - Return Directive
  - Art. 6
  - On the permissibility of national legislation imposing a custodial sentence for the offence of illegal entry prior to the institution of deportation proceedings.

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**Case Law sorted in alphabetical order**
### 3.3: Irregular Migration: Jurisprudence: CJEU Judgments

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision</th>
<th>Reason</th>
</tr>
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<tbody>
<tr>
<td>C-61/11 (PPU)</td>
<td>El Dridi</td>
<td>The Return Directive precludes that a Member State has legislation which provides for a sentence of imprisonment to be imposed on an illegally staying TCN on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.</td>
</tr>
<tr>
<td>C-297/12</td>
<td>Fillev &amp; Osmani</td>
<td>Directive must be interpreted as precluding a MS from providing that an expulsion or removal order which predates by five years or more the period between the date on which that directive should have been implemented and the date on which it was implemented, may subsequently be used as a basis for criminal proceedings, where that order was based on a criminal law sanction (within the meaning of Article 2(2)(b)) and where that MS exercised the discretion provided for under that provision.</td>
</tr>
<tr>
<td>C-383/13 (PPU)</td>
<td>G. &amp; R.</td>
<td>If the extension of a detention measure has been decided in an administrative procedure in breach of the right to be heard, the national court responsible for assessing the lawfulness of that extension decision may order the lifting of the detention measure only if it considers, in the light of all of the factual and legal circumstances of each case, that the infringement at issue actually deprived the party relying thereon of the possibility of arguing his defence better, to the extent that the outcome of that administrative procedure could have been different.</td>
</tr>
<tr>
<td>C-181/16</td>
<td>Gnandi</td>
<td>Member States are entitled to adopt a return decision as soon as an application for international protection is rejected, provided that the return procedure is suspended pending the outcome of an appeal against that rejection. Member States are required to provide an effective remedy against the decision rejecting the application for international protection, in accordance with the principle of equality of arms, which means, in particular, that all the effects of the return decision must be suspended during the period prescribed for lodging such an appeal and, if such an appeal is lodged, until resolution of the appeal.</td>
</tr>
<tr>
<td>C-357/09 (PPU)</td>
<td>Kadzoev</td>
<td>Art. 3 and 11 must be interpreted as not precluding a practice of a MS that consists in not examining an application for residence for the purposes of family reunification, submitted on its territory by a TCN family member of a Union citizen who is a national of that MS and who has never exercised his or her right to freedom of movement, solely on the ground that TCN is the subject of a ban on entering the territory of that Member State. Art. 5 must be interpreted as precluding a national practice pursuant to which a return decision is adopted with respect to a TCN, who has previously been the subject of a return decision, accompanied by an entry ban that remains in force, without any account being taken of the details of his or her family life, and in particular the interests of a minor child of that TCN, referred to in an application for residence for the purposes of family reunification submitted after the adoption of such an entry ban, unless such details could have been provided earlier by the person concerned.</td>
</tr>
<tr>
<td>C-146/14 (PPU)</td>
<td>Mahidi</td>
<td>Any decision adopted by a competent authority, on expiry of the maximum period allowed for the initial detention of a TCN, on the further course to take concerning the detention must be in the form of a written measure that includes the reasons in fact and in law for that decision. The Dir. precludes that an initial six-month period of detention may be extended solely because the third-country national concerned has no identity documents.</td>
</tr>
<tr>
<td>C-522/11</td>
<td>Mbaye</td>
<td>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.</td>
</tr>
<tr>
<td>C-166/13</td>
<td>Mukarubega</td>
<td>A national authority is not precluded from failing to hear a TCN specifically on the subject of a return decision where, after that authority has determined that the TCN is staying illegally in the national territory on the conclusion of a procedure which fully respected that person’s right to be heard, it is contemplating the adoption of such a decision in respect of that person, whether or not that return decision is the result of refusal of a residence permit.</td>
</tr>
<tr>
<td>C-199/16</td>
<td>Nianga</td>
<td></td>
</tr>
</tbody>
</table>
3.3: Irregular Migration: Jurisprudence: CJEU Judgments

* On the best interests of the child, family life and the state of health of the TCN concerned when issuing a return decision.

F CJEU C-456/14 Orrego Arias 3 Sep. 2015
* interp. of Dir. 2001/40 Expulsion Decisions Art. 3(1)(a) - inadmissible
* This case concerns the exact meaning of the term 'offence punishable by a penalty involving deprivation of liberty of at least one year', set out in Art 3(1)(a). However, the question was incorrectly formulated. Consequently, the Court ordered that the case was inadmissible.

F CJEU C-225/16 Ouhrami 26 July 2017
* interp. of Dir. 2008/115 Return Directive Art. 11(2)
* Article 11(2) must be interpreted as meaning that the starting point of the duration of an entry ban, as referred to in that provision, which in principle may not exceed five years, must be calculated from the date on which the person concerned actually left the territory of the Member States.

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

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

F CJEU C-474/13 Pham 17 July 2014
* interp. of Dir. 2008/115 Return Directive Art. 16(1)
* The Dir. does not permit a MS to detain a TCN for the purpose of removal in prison accommodation together with ordinary prisoners even if the TCN consents thereto.

F CJEU C-430/11 Sagner 6 Dec. 2012
* interp. of Dir. 2008/115 Return Directive Art. 2, 15 + 16
* An illegal stay by a TCN in a MS:
1) can be penalised by means of a fine, which may be replaced by an expulsion order;
2) can not be penalised by means of a home detention order unless that order is terminated as soon as the physical transportation of the TCN out of that MS is possible.

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

F CJEU C-38/14 Zaizoun 23 Apr. 2015
* interp. of Dir. 2008/115 Return Directive Art. 4(2) + 6(1)
* Articles 6(1) and 8(1), read in conjunction with Article 4(2) and 4(3), must be interpreted as precluding legislation of a MS, which provides, in the event of TCNs illegally staying in the territory of that Member State, depending on the circumstances, for either a fine or removal, since the two measures are mutually exclusive.

F CJEU C-554/13 Zh. & O. 11 June 2015
* interp. of Dir. 2008/115 Return Directive Art. 7(4)
* (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.
(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.
(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.
3.3.2 CJEU pending cases on Irregular Migration

- **CJEU C-444/17**
  - Arib
  - *interp. of Dir. 2008/115*
  - Return Directive
  - *hearing: 12 June 2018*
  - 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?
  - *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?*

- **CJEU C-175/17**
  - *interp. of Dir. 2008/115*
  - Return Directive
  - *AG: 24 Jan 2018*
  - *On the suspensory effect of an appeal.*

3.3.3 ECtHR Judgments on Irregular Migration

- **ECtHR 53709/11**
  - Abdelhamim v. GR
  - *violation of*
  - ECHR
  - *30 Sep. 2012*
  - 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.

- **ECtHR 13058/11**
  - Ahmed v. HU
  - *violation of*
  - ECHR
  - *23 Oct. 2012*
  - *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.*

- **ECtHR 50520/09**
  - Ahmed v. GR
  - *violation of*
  - ECHR
  - *25 Sep. 2012*
  - *The conditions of detention of the applicant Afghan asylum seeker in two police stations in Athens were found to constitute degrading treatment in breach of ECHR art. 3. Since Greek law did not allow the courts to examine the conditions of detention in centres for irregular immigrants, the applicant did not have an effective remedy in that regard, in violation of ECHR art. 13 taken together with art. 3. The Court found an additional violation of ECHR art. 13 taken together with art. 3, resulting from the structural deficiencies of the Greek asylum system, as evidenced by the period during which the applicant had been awaiting the outcome of his appeal against the refusal of asylum, and the risk that he might be deported before his asylum appeal had been examined. ECHR art. 5 para. 4 was violated due to the lack of judicial competence to review the lawfulness of the deportation constituting the legal basis of detention.*

- **ECtHR 59727/13**
  - All Said v. UK
  - *no violation of*
  - ECHR
  - *2 Mar. 2017*
  - *A fifteen year old Somali asylum seeker gets a temporary residence permit in The Netherlands in 1992. After 6 years (1998) he travels to the UK and applies - again - for asylum but under a false name. The asylum request is rejected but he is allowed to stay (with family) in the UK in 2004. In 2007 he is sentenced to four and a half months’ imprisonment and also faced with a deportation order in 2008. After the Sufi and Elmi judgment (8319/07) the Somali is released on bail in 2011. The Court states that the periods of time taken by the Government to decide on his appeals against the deportation orders were reasonable.*

- **ECtHR 13457/11**
  - All Said v. HU
  - *violation of*
  - ECHR
  - *23 Oct. 2012*
  - *This case concerns unlawful detention, without effective judicial review, of an asylum seeker during the examination of his asylum application. The applicants were Iraqi nationals who illegally entered Hungary, applied for asylum and then travelled illegally to the Netherlands from where they were transferred back to Hungary under the Dublin Regulation.*

- **ECtHR 27765/09**
  - Hirsi v. IT
  - *violation of*
  - ECHR
  - *21 Feb. 2012*
  - *Prot. 4 Art. 4*
**3.3: Irregular Migration: Jurisprudence: ECtHR Judgments**

| Case Reference | Parties | Decision Date | Art. 5
|----------------|---------|---------------|--------
| ECHR 10816/10  | Lokpo & Touré v. HU | 20 Sep. 2011 | no violation of ECHR |
| ECHR 14902/10  | Mahmundi v. GR | 31 Jul. 2012 | violation of ECHR |
| ECHR 23707/15  | Muzamba Oyaw v. BEL | 4 Apr. 2017 | no violation of ECHR |
| ECHR 3342/11   | Richmond Yaw v. IT | 6 Oct. 2016 | violation of ECHR |
| ECHR 39061/11  | Thimothawes v. BEL | 4 Apr. 2017 | no violation of ECHR |

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

The applicants entered Hungary illegally. After their arrest and during subsequent detention they applied for asylum. They were kept however in detention.

The Court ruled that Article 5 § 1 (right to liberty and security) was violated, stating that the absence of elaborate reasoning for an applicant’s deprivation of liberty renders that measure incompatible with the requirement of lawfulness.

The conditions of detention of the applicants – Afghan nationals, subsequently seeking asylum in Norway, who had been detained in the Paganí 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.

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.

The case concerns the placement in detention of four Ghanaian nationals pending their removal from Italy. The applicants arrived in Italy in June 2008 after fleeing inter-religious clashes in Ghana. On 20 November 2008 deportation orders were issued with a view to their removal. This order for detention was upheld on 24 November 2008 by the justice of the peace and extended, on 17 December 2008, by 30 days without the applicants or their lawyer being informed. They were released on 14 January 2009 and the deportation order was withdrawn in June 2010. In June 2010 the Court of Cassation declared the detention order of 17 December 2008 null and void on the ground that it had been adopted without a hearing and in the absence of the applicants and their lawyer.

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

The 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.
4.1 External Treaties: Association Agreements

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

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

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

EEC-Turkey Association Agreement Decision 1/80

CJEU judgments
- CJEU C-652/15 Tekdemir 29 Mar. 2017 Art. 13
- CJEU C-508/15 Uçar a.o. 21 Dec. 2016 Art. 7
- CJEU C-225/12 Demir 7 Nov. 2013 Art. 13
- CJEU C-268/11 Gülhalbace 8 Nov. 2012 Art. 6(1) + 10
- CJEU C-451/11 Dülger 19 July 2012 Art. 7
- CJEU C-7/10 & C-9/10 Kahveci & Inan 29 Mar. 2012 Art. 7
- CJEU C-436/09 Belkıran 13 Jan. 2012 deleted
- CJEU C-371/08 Ziebell or Örnek 8 Dec. 2011 Art. 14(1)
- CJEU C-256/11 Dereci et al. 15 Nov. 2011 Art. 13
- CJEU C-187/10 Unal 29 Sep. 2011 Art. 6(1)
- CJEU C-484/07 Pehtlivan 16 June 2011 Art. 7
- CJEU C-303/08 Metin Bozkart 22 Dec. 2010 Art. 7 + 14(1)
- 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 Aydinli 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 Dörr & 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)
- CJEU C-171/01 Birdikte 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-65/98 Eyüp 22 June 2000 Art. 7
- CJEU C-329/97 Ergat 16 Mar. 2000 Art. 7
- CJEU C-340/97 Nazlı 10 Feb. 2000 Art. 6(1) + 14(1)
4.1: External Treaties: Association Agreements

- 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 *Günaydın* 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 *Eрогlu* 5 Oct. 1994 Art. 6(1)
- CJEU C-237/91 *Kus* 16 Dec. 1992 Art. 6(1) + 6(3)
- CJEU C-192/89 *Sevinсe* 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 *Yın* pending Art. 13
- New CJEU C-70/18 *A.B. & P.* pending Art. 13
- New CJEU C-89/18 *A.* pending Art. 13

See further: § 4.4

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

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

  **CJEU judgments**
  - CJEU C-171/13 *Demirici a.o.* 14 Jan. 2015 Art. 6(1)
  - CJEU C-485/07 *Akdas* 26 May 2011 Art. 6(1)

  **CJEU pending cases**
  - CJEU C-257/18 & C-258/18 *Güler & Solak* pending Art. 6
  - CJEU C-677/17 *Çoban* pending Art. 6(1)

See further: § 4.4

4.2 External Treaties: Readmission

**Albania**

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

**Armenia**

- OJ 2013 L 289/13 (into force 1 Jan. 2014)

**Azerbaijan**

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

**Belarus**

- Mobility partnership signed in 2014

**Bosnia and Herzegovina**


**Cape Verde**


**Georgia**

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

**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

**Macedonia**

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

**Moldova**

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

**Montenegro**

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

**Morocco, Algeria, and China**
4.2: External Treaties: Readmission

* negotiation mandate approved by Council

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

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

Serbia
  UK opt in

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

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

Ukraine
  UK opt in

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

4.3 External Treaties: Other

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

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
4.3: External Treaties: Other

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

4.4 External Treaties: Jurisprudence

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

<table>
<thead>
<tr>
<th>Case</th>
<th>Decision</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>CJEU C-317/01 &amp; C-369/01</td>
<td>Abatay &amp; Sahin</td>
<td>21 Oct. 2003</td>
</tr>
<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 13 + 41(1)</td>
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<td>CJEU C-434/93</td>
<td>Ahmet Bozkurt</td>
<td>6 June 1995</td>
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<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1)</td>
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<tr>
<td>CJEU C-485/07</td>
<td>Akdas</td>
<td>26 May 2011</td>
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<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1)</td>
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<td>CJEU C-210/97</td>
<td>Akman</td>
<td>19 Nov. 1998</td>
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<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
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<td>CJEU C-337/07</td>
<td>Altun</td>
<td>18 Dec. 2008</td>
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<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
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<td>CJEU C-275/02</td>
<td>Ayaz</td>
<td>30 Sep. 2004</td>
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<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7</td>
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<tr>
<td>CJEU C-373/03</td>
<td>Aydinli</td>
<td>7 July 2005</td>
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<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6 + 7</td>
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<td>CJEU C-462/08</td>
<td>Bekleyen</td>
<td>21 Jan. 2010</td>
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<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7(2)</td>
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<td>CJEU C-436/09</td>
<td>Belkiran</td>
<td>13 Jan. 2012</td>
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<td>interpr. of</td>
<td>Dec. 1/80</td>
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<td>CJEU C-89/00</td>
<td>Bicakci</td>
<td>19 Sep. 2000</td>
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<td>interpr. of</td>
<td>Dec. 1/80</td>
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<td>CJEU C-1/97</td>
<td>Birden</td>
<td>26 Nov. 1998</td>
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<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 6(1)</td>
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<tr>
<td>CJEU C-171/01</td>
<td>Birlikte</td>
<td>8 May 2003</td>
</tr>
<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 10(1)</td>
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<td>CJEU C-467/02</td>
<td>Cetinkaya</td>
<td>11 Nov. 2004</td>
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<tr>
<td>interpr. of</td>
<td>Dec. 1/80</td>
<td>Art. 7 + 14(1)</td>
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<td>CJEU C-465/01</td>
<td>Comm. v. Austria</td>
<td>16 Sep. 2004</td>
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</table>
4.4: External Treaties: Jurisprudence: CJEU Judgments on EEC-Turkey Association

- **CJEU C-92/07** Comm. v. Netherlands 29 Apr. 2010
  * Austria has failed to fulfil its obligations by denying workers who are nationals of other MS the right to stand for election for workers’ chambers: art. 10(1) prohibition of all discrimination based on nationality.

- **CJEU C-225/12** Demir 7 Nov. 2013
  * The obligation to pay charges in order to obtain or extend a residence permit, which are disproportionate compared to charges paid by citizens of the Union is in breach with the standstill clauses of Articles 10(1) and 13 of Decision No 1/80 of the Association.

- **CJEU C-171/13** Demirci a.o. 14 Jan. 2015
  * 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-12/06** Demirel 30 Sep. 1987
  * No right to family reunification.

- **CJEU C-221/11** Demirkan 24 Sep. 2013
  * 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
  * 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
  * 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
  * Return to labour market: no loss due to detention.

- **CJEU C-138/13** Dogan (Naime) 10 July 2014
  * The language requirement abroad is not in compliance with the standstill clauses of the 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.

- **CJEU C-136/03** Dürr & Unal 2 June 2005
  * The procedural guarantees set out in the Directives on Free Movement also apply to Turkish workers.

- **CJEU C-451/11** Dülger 19 July 2012
  * 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
  * On the meaning of “same employer”.

- **CJEU C-453/07** Er 25 Sep. 2008
  * On the consequences of having no paid employment.

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

- **CJEU C-355/93** Eroğlu 5 Oct. 1994
  * On the meaning of “same employer”.

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**N E M I S 2018/2**

**Newsletter on European Migration Issues – for Judges**

NEMIS 2018/2 (June)
<table>
<thead>
<tr>
<th>Case</th>
<th>Jurisdiction</th>
<th>Date</th>
<th>Relevant Article(s)</th>
</tr>
</thead>
</table>
| CJEU C-98/06 | • interpr. of  
  * On interpretation of Art 45 TFEU | Ertanir  
  Dec. 1/80 | Art. 6(1) + 6(3) |
| CJEU C-91/13 | • interpr. of  
  * 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. | Essent  
  Dec. 1/80 | Art. 13 |
| CJEU C-65/98 | • On the obligation to co-habit as a family. | Eyüp  
  Dec. 1/80 | Art. 7 |
| CJEU C-561/14 | • 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. | Genc (Caner)  
  Dec. 1/80 | Art. 41(1) |
| CJEU C-14/09 | • On the determining criteria of the concept worker and the applicability of these criteria on both EU and Turkish workers. | Genc (Hava)  
  Dec. 1/80 | Art. 6(1) |
| CJEU C-268/11 | • A MS cannot withdraw the residence permit of a Turkish employee with retroactive effect. | Gühlebaç  
  Dec. 1/80 | Art. 6(1) + 10 |
| CJEU C-36/96 | • Turkish national who has been lawfully employed in a Member State for an uninterrupted period of more than three years in a genuine and effective economic activity for the same employer and whose employment status is not objectively different to that of other employees employed by the same employer or in the sector concerned and exercising identical or comparable duties, is duly registered. | Günsiyan  
  Dec. 1/80 | Art. 6(1) |
| CJEU C-374/03 | • On the right to an education grant for study in Turkey. | Güröl  
  Dec. 1/80 | Art. 9 |
| CJEU C-4/05 | • The rights of the Ass. Agr. apply only after one year with same employer. | Güzeli  
  Dec. 1/80 | Art. 10(1) |
| CJEU C-351/95 | • On the calculation of the period of cohabitation as a family. | Kadiman  
  Dec. 1/80 | Art. 7 |
| CJEU C-7/10 & C-9/10 | • The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality. | Kahveci & Inan  
  Dec. 1/80 | Art. 7 |
| CJEU C-285/95 | • On the consequences of conviction for fraud | Kol  
  Dec. 1/80 | Art. 6(1) |
| CJEU C-188/00 | • On the rights following an unjustified expulsion measure | Kurz (Yuse)  
  Dec. 1/80 | Art. 6(1) + 7 |
| CJEU C-237/91 | • On stable position on the labour market | Kus  
  Dec. 1/80 | Art. 6(1) + 6(3) |
| CJEU C-303/08 | • 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 | Metin Bozkurt  
  Dec. 1/80 | Art. 7 + 14(1) |
convicted of criminal offences, provided that his personal conduct constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society. It is for the competent national court to assess whether that is the case in the main proceedings.

CJEU C-340/97
* interpr. of
  * On the effects of detention on residence rights.
Nazli
10 Feb. 2000
Art. 6(1) + 14(1)

CJEU C-294/06
* interpr. of
  * Residence rights do not depend on the reason for admission.
Payir
24 Jan. 2008
Art. 6(1)

CJEU C-484/07
* interpr. of
  * 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.
Pehlivan
16 June 2011
Art. 7

CJEU C-349/06
* interpr. of
  * Multiple convictions for small crimes do not lead to expulsion.
Pulat
4 Oct. 2007
Art. 7 + 14

CJEU C-242/06
* interpr. of
  * On the fees for a residence permit.
Sahin
17 Sep. 2009
Art. 13

CJEU C-37/98
* interpr. of
  * On the scope of the standstill obligation.
Savas
11 May 2000
Art. 41(1)

CJEU C-230/03
* interpr. of
  * On the meaning of “same employer”.
Sedef
10 Jan. 2006
Art. 6

CJEU C-192/89
* interpr. of
  * On the meaning of stable position and the labour market.
Sevinc
20 Sep. 1990
Art. 6(1) + 13

CJEU C-228/06
* interpr. of
  * On the standstill obligation and secondary law.
Soysal
19 Feb. 2009
Art. 41(1)

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

CJEU C-171/95
* interpr. of
  * On the meaning of voluntary unemployment after 4 years.
Tetik
23 Jan. 1997
Art. 6(1)

CJEU C-300/09 & C-301/09
* interpr. of
  * On the reference date regarding the prohibition to introduce new restrictions for Turkish workers and their family members.
Toprak/Oguz
9 Dec. 2010
Art. 13

CJEU C-502/04
* interpr. of
  * On possible reasons for loss of residence right.
Torun
16 Feb. 2006
Art. 7

CJEU C-16/05
* interpr. of
  * On the scope of the standstill obligation.
Tum & Dari
20 Sep. 2007
Art. 41(1)

CJEU C-186/10
* interpr. of
  * Article 41(1) must be interpreted as meaning that it may be relied on by a Turkish national who, having leave to remain in a Member State on condition that he does not engage in any business or profession, nevertheless enters
Tural Oguz
21 July 2011
Art. 41(1)
into self-employment in breach of that condition and later applies to the national authorities for further leave to remain on the basis of the business which he has meanwhile established.

**CJEU C-508/15**

* Ucar a.o.  
* Dec. 1/80  
* Art. 7

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

**CJEU C-187/10**

* Unal  
* Dec. 1/80  
* Art. 6(1)

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

**CJEU C-371/08**

* Ziebell or Örnek  
* Dec. 1/80  
* Art. 14(1)

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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.

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

**New**

**CJEU C-89/18**

* A.  
* Dec. 1/80  
* Art. 13

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Marriage of convenience. Would a national rule under which it is a general condition for family reunification that the couple’s attachment to Denmark be greater than (in this case) to Turkey — be deemed to be justified by an overriding reason in the public interest, ... suitable to achieve the legitimate objective pursued and ... not [going] beyond what is necessary in order to attain it? 

**CJEU C-70/18**

* A.B. & P.  
* Dec. 1/80  
* Art. 13

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On the use (processing and storage) of biometric data in databases and access to these databases for criminal law purposes, and the meaning of that in the context of the standstill Articles.

**CJEU C-677/17**

* Çoban  
* Dec. 3/80  
* Art. 6(1)

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On the issue of place of residence, LTR status in the context of social security.

**New**

**CJEU C-257/18 & C-258/18**

* Gûler & Solak  
* Dec. 3/80  
* Art. 6

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On the effect of the loss of (Union) citizenship.

**CJEU C-123/17**

* Yûn  
* Dec. 1/80  
* Art. 13

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AG: 19 April 2018  
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.

### 4.4.3 CJEU Judgments on Readmission Treaties

**CJEU T-192/16**

* N.F.  
* 27 Feb. 2017  
* inadm.

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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.