



NEMIS

Quarterly update on

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

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Editorial

Welcome to the 2nd edition of NEMIS in 2013.

NEMIS is a newsletter designed for judges who need to keep up to date with EU developments in migration and borders law. This newsletter contains all European legislation and jurisprudence on access and residence rights of third country nationals, as well as relevant national judgments on the interpretation of this legislation. NEMIS does not include jurisprudence on free movement of EU citizens and their third country national family members.

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

Presentation

In the previous editions of NEMIS adopted measures were presented in a chronological order: the most recent ones were presented at the top of the list. However, in order to increase the usefulness we have decided to present the adopted measures in alphabetical order based on their shortened name as of this issue. We will maintain the practice of putting the indication of 'new' besides each new reference.

Language requirements

We would like to draw your attention to some recent developments concerning the language requirement for family reunification. Although two cases have been presented to the CJEU, the court did not have a chance to judge on the compatibility of this requirement with the Family Reunification Directive. In the (Dutch) Imran case (C-155/11) a residence permit was issued at the very last moment right before the court could rule. A similar situation occurred in the (German) Ayalti case (C-513/12) which was deleted by the court last month. A third opportunity for the court to rule on this issue is the (German) Dogan case (C-138/13) in which a family member of a Turkish national has to prove - before entry - that he fulfills the (German) language requirement. Like in the Ayalti case, the Dogan case is about two questions: (a) is the language requirement in compliance with the standstill clauses of the Association Agreement, and (b) is the language requirement in compliance with the Family Reunification Directive?

Another issue concerning the Family Reunification Directive was raised in the O. and S. case (C-356/11). The court ruled that when examining an application for family reunification a MS has to do so in the interests of the children. Moreover, the court stated explicitly that such an examination should be done with a view to promoting family life avoiding any undermining of the objective and effectiveness of the directive.

Article 8 and 13 ECHR

The ECtHR ruled in a French case (De Souza Ribeira, 22689/07) that although a State is afforded some discretion, this must not result in the denial of access to the minimum procedural safeguards needed to protect a foreigner against arbitrary expulsion. In this case the court ruled that the haste with which the removal order was executed excluded 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.

Art. 13 imposes on a Contracting State the duty to organise its judicial systems in such a way that - even in a non-European part of a Contracting State such as French Guiana - its courts can meet its requirements.

Detention

After the judgments of the CJEU in El Dridi (C-61/11) and Achughbabian (C-329/11) in which the court ruled that penal sanctions may only be imposed after full application of the return procedure established by the Return Directive, the court stated in Sagor (C-430/11) that the illegal stay of a TCN cannot be penalised by means of home detention unless this home detention is terminated as soon as the physical transportation of the TCN out of the MS is possible. In the case of Mbaye (C-522/11) the court ruled that the directive does not preclude the replacement of a fine (because of illegal stay) by an expulsion order provided that there is a risk of absconding.

Nijmegen 30 April 2013, Carolus Grütters & Tineke Strik

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1 Regular Migration

1.1 Regular Migration: Adopted Measures

Directive 2009/50

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

* OJ 2009 L 155/17

Blue Card

impl. date 19 June 2011

Directive 2003/86

On the right to Family Reunification

* OJ 2003 L 251/12

☞ CJEU C-513/12, *Ayalti*,

☞ CJEU C-356/11, *O. and S.*,

☞ CJEU C-155/11, *Imran*,

☞ CJEU C-578/08, *Chakroun*,

☞ CJEU C-540/03, *EP v Council*,

☞ CJEU C-138/13, *Dogan*,

☞ EFTA E-4/11, *Clauder*,

☞ Ger: BVerwG 10 C 4.12

☞ NL: Rb Den Haag zp Den Bosch AWB 12/9408

☞ Ger: VerwG Berlin VG 29 K 138.12V

☞ NL: Raad van State 201008782/1/V1

☞ Ger: BVerwG 10 C 12.12

☞ Ger: BVerwG 1 C 9.10

☞ Ger: BVerwG 1 C 8.09

Family Reunification

impl. date Oct. 2005

[25 Mar. 2013] [Art. 7(2) - deleted]

[6 Dec. 2012] [Art. 7(1)(c)]

[10 June 2011] [Art. 7(2) - no adj.]

[4 Mar. 2010] [Art. 7(1)(c) + 2(d)]

[27 June 2006] [Art. 8]

[pending] [Art. 7]

[26 July 2011] [Art. 7(1)]

[29 Dec. 2012] [Art. 17]

[23 Nov. 2012] [Art. 7(2)]

[25 Oct. 2012] [Art. 7(2)]

[9 Oct. 2012]

[4 Sep. 2012] [Art. 8]

[28 Oct. 2011]

[30 Mar. 2010] [Art. 7(2)]

Decision 435/2007

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

* OJ 2007 L 168/18

UK, IRL opt in

Integration Fund

Directive 2011/51

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

* OJ 2011 L 132/1 (April 2011)

* extending Dir. 2003/109 on LTR

Long-Term Resident ext.

impl. date 20 May 2013

Directive 2003/109

Concerning the status of TCNs who are long-term residents

* OJ 2004 L 16/44

* amended by Dir. 2011/51

☞ CJEU C-40/11, *Iida*,

☞ CJEU C-502/10, *Singh*,

☞ CJEU C-508/10, *Commission vs Netherlands*,

☞ CJEU C-571/10, *Servet Kamberaj*,

Long-Term Resident

impl. date 23 Jan. 2006

[8 Nov. 2012] [Art. 7(1)]

[18 Oct. 2012] [Art. 3(2)(e)]

[26 Apr. 2012]

[24 Apr. 2012] [Art. 11(1)(d)]

Decision 688/2006

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

* OJ 2006 L 283/40

UK, IRL opt in

Mutual Information

Directive 2005/71

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

* OJ 2005 L 289/15

☞ CJEU C-523/08, *Commission v Spain*,

Researchers

impl. date 12 Oct. 2007

[11 Feb. 2010]

Recommendation 2005/762

To facilitate the admission of TCNs to carry out scientific research

* OJ 2005 L 289/26

Researchers

Regulation 1030/2002

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)

Residence Permit Format

UK opt in

Directive 2011/98

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

* OJ 2011 L 343/1 (Dec. 2011)

Single Permit

impl. date 25 Dec. 2013

Regulation 1231/2010

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

* OJ 2010 L 344/1

Social Security

impl. date 1 Jan. 2011

IRL opt in

* extending Reg. 883/2004 on Social Security

Regulation 859/2003

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

* OJ 2003 L 124/1

Social Security TCNs

UK, IRL opt in

☞ CJEU C-247/09, *Xhymshiti*,

[18 Nov. 2010]

Directive 2004/114

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

* OJ 2004 L 375/12

Students

impl. date 12 Jan. 2007

☞ CJEU C-15/11, *Sommer*,

[21 June 2012] [Art. 17(3)]

☞ CJEU C-568/10, *Commission vs Austria*,

[22 Nov. 2011] [Art. 17(1) - deleted]

☞ CJEU C-294/06, *Payir*,

[24 Nov. 2008]

ECHR

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

Art. 8 Family Life

Art. 12 Right to Marry

Art. 14 Prohibition of Discrimination

* ETS 005 (4-11-50)

impl. date 1950

☞ ECtHR Ap.no. 22689/07, *De Souza Ribeiro v. F*,

[13 Dec. 2012] [Art. 8 + 13]

☞ ECtHR Ap.no. 22341/09, *Hode and Abdi v. UK*,

[6 Nov. 2012] [Art. 8 + 14]

☞ ECtHR Ap.no. 22251/07, *G.R.*,

[10 Jan. 2012] [Art. 8 + 13]

☞ ECtHR Ap.no. 8000/08, *A.A. v. UK*,

[20 Sep. 2011] [Art. 8]

☞ ECtHR Ap.no. 55597/09, *Nunez*,

[28 June 2011] [Art. 8]

☞ ECtHR Ap.no. 38058/09, *Osman*,

[14 June 2011] [Art. 8]

☞ ECtHR Ap.no. 34848/07, *O'Donoghue v. UK*,

[14 Dec. 2010] [Art. 12 + 14]

☞ UK: Quila SC [2011]UKSC45

[12 Oct. 2011] [Art. 8]

☞ UK: MH Morocco [2010] UKUT 439 IAC

[28 Sep. 2010] [Art. 8]

1.2 Regular Migration: Proposed Measures

Directive

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

* COM (2010) 379, 13 July 2010

* Council working party began discussions, Sept. 2010; Draft EP report, May 2011

EP negotiating position adopted, 24 April 2012; Council position agreed, Dec. 2012;

New EP/Council negotiations underway

Directive

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

* COM (2010) 378, 13 July 2010

* Council working party began discussions, Sept. 2010; Draft EP report, May 2011;

EP negotiating position adopted Feb. 2012; Council position adopted, May 2012;

New EP/Council negotiations underway

1.3 Regular Migration: Jurisprudence

1.3.1 CJEU Judgments on Regular Migration

New ☞ CJEU C-513/12, *Ayalti*, [25 Mar. 2013] (deleted)

- * interpr. of Dir. 2003/86, **Family Reunification** [Art. 7(2) - deleted]
- * *Is the introduction of the language requirement (that a family member of TCN before entry proves to have basic knowledge of the German language) compatible with: (a) the standstill clauses of the Association Agreement, and (b) the Family Reunification Directive?*
- New** ☞ CJEU C-356/11, **O. and S.**, [6 Dec. 2012]
- * interpr. of Dir. 2003/86, **Family Reunification** [Art. 7(1)(c)]
- * *When examining an application for family reunification, a MS has to do so in the interests of the children concerned and also with a view to promoting family life, and avoiding any undermining of the objective and the effectiveness of the directive.*
- New** ☞ CJEU C-40/11, **Iida**, [8 Nov. 2012]
- * interpr. of Dir. 2003/109, **Long-Term Resident** [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.*
- ☞ CJEU C-502/10, **Singh**, [18 Oct. 2012]
- * interpr. of Dir. 2003/109, **Long-Term Resident** [Art. 3(2)(e)]
- * *The concept of 'residence permit which has been formally limited' as referred to in Art. 3(2)(e), does not include a fixed-period residence permit, granted to a specific group of persons, if the validity of their permit can be extended indefinitely without offering the prospect of permanent residence rights. The referring national court has to ascertain if a formal limitation does not prevent the long-term residence of the third-country national in the Member State concerned. If that is the case, this national cannot be excluded from the personal scope of Directive 2003/109.*
- ☞ 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*
- ☞ CJEU C-508/10, **Commission vs Netherlands**, [26 Apr. 2012]
- * incor. appl. of Dir. 2003/109, **Long-Term Resident**
- * *The Court rules that the Netherlands has failed to fulfil its obligations by applying excessive and disproportionate administrative fees which are liable to create an obstacle to the exercise of the rights conferred by the Long-Term Residents Directive: (1) to TCNs seeking long-term resident status in the Netherlands, (2) to those who, having acquired that status in a MS other than the Kingdom of the Netherlands, are seeking to exercise the right to reside in that MS, and (3) to members of their families seeking authorisation to accompany or join them.*
- ☞ CJEU C-571/10, **Servet Kamberaj**, [24 Apr. 2012]
- * interpr. of Dir. 2003/109, **Long-Term Resident** [Art. 11(1)(d)]
- * *EU Law precludes a distinction on the basis of ethnicity or linguistic groups in order to be eligible for housing benefit.*
- ☞ CJEU C-568/10, **Commission vs Austria**, [22 Nov. 2011] (deleted)
- * incor. appl. of Dir. 2004/114, **Students** [Art. 17(1) - deleted]
- * *Austrian law systematically denies TCN students access to the labour market. They are issued a work permit for a vacant position only if a check has been previously carried out as to whether the position cannot be filled by a person registered as unemployed.*
- ☞ CJEU C-155/11, **Imran**, [10 June 2011] (no adj.)
- * interpr. of Dir. 2003/86, **Family Reunification** [Art. 7(2) - no adj.]
- * *The Commission took the position that Art. 7(2) does not allow Member States to deny a family member as meant in Art. 4(1)(a) of a lawfully residing TCN entry and admission on the sole ground of not having passed a civic integration examination abroad.
See: <http://cmr.jur.ru.nl/nemis/Imran.EU.pdf>
However, as a residence permit was granted just before the hearing would take place, the Court decided it was not necessary to give a ruling.*
- ☞ CJEU C-247/09, **Xhymshiti**, [18 Nov. 2010]
- * interpr. of Reg. 859/2003, **Social Security TCNs**
- ☞ 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-523/08, **Commission v Spain**, [11 Feb. 2010]
- * non-transp. of Dir. 2005/71, **Researchers**
- ☞ CJEU C-294/06, **Payir**, [24 Nov. 2008]
- * interpr. of Dir. 2004/114, **Students**
- * *On a working Turkish student.*
- ☞ CJEU C-540/03, **EP v Council**, [27 June 2006]
- * interpr. of Dir. 2003/86, **Family Reunification** [Art. 8]
- * *The derogation clauses (3 years waiting period and the age-limits for children) are not annulled, as they do not constitute a violation of article 8 ECHR. However, while applying these clauses and the directive as a whole, Member States are bound by the fundamental rights (including the rights of the child), the purpose of the directive and obligation to take all individual interests into account.*

1.3.2 CJEU pending cases on Regular Migration

New

- ☞ CJEU C-138/13, **Dogan**,
- * interpr. of Dir. 2003/86, **Family Reunification** [Art. 7]
- * ref. from 'Verwaltungsgericht Berlin' (Germany)
- * *Is the language requirement in compliance with (a) the standstill clauses of the Association Agreement, and (b) the Family Reunification Directive?*

1.3.3 EFTA judgments on Regular Migration

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

1.3.4 ECtHR Judgments on Regular Migration

New

- ☞ ECtHR Ap.no. 22689/07, **De Souza Ribeiro v. F.**, [13 Dec. 2012]
- * violation of, **ECHR** [Art. 8 + 13]
- * *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.*
- ☞ ECtHR Ap.no. 22341/09, **Hode and Abdi v. UK**, [6 Nov. 2012]
- * violation of, **ECHR** [Art. 8 + 14]
- * *Discrimination on the basis of date of marriage has no objective and reasonable justification.*

- ☞ ECtHR Ap.no. 22251/07, **G.R.**, [10 Jan. 2012]
- * interpr. of, **ECHR** [Art. 8 + 13]
- * *The applicant did not have effective access to the administrative procedure by which he might, subject to fulfilling the conditions prescribed by domestic law, obtain a residence permit which would allow him to reside lawfully with his family in the Netherlands, due to the disproportion between the administrative charge in issue and the actual income of the applicant's family. The Court finds that the extremely formalistic attitude of the Minister – which, endorsed by the Regional Court, also deprived the applicant of access to the competent administrative tribunal – unjustifiably hindered the applicant's use of an otherwise effective domestic remedy. There has therefore been a violation of Article 8 and 13 of the Convention.*
- ☞ ECtHR Ap.no. 8000/08, **A.A. v. UK**, [20 Sep. 2011]
- * violation of, **ECHR** [Art. 8]
- * *The applicant alleged, in particular, that his deportation to Nigeria would violate his right to respect for his family and private life and would deprive him of the right to education by terminating his university studies in the United Kingdom.*
- ☞ ECtHR Ap.no. 55597/09, **Nunez**, [28 June 2011]
- * violation of, **ECHR** [Art. 8]
- * *Although Ms Nunez was deported from Norway in 1996 with a two-year ban on her re-entry into Norway, she returned to Norway, got married and had two daughters born in 2002 and 2003. It takes until 2005 for the Norwegian authorities to revoke her permits and to decide that Mrs Nunez should be expelled. The Court rules that the authorities had not struck a fair balance between the public interest in ensuring effective immigration control and Ms Nunez's need to remain in Norway in order to continue to have contact with her children.*
- ☞ ECtHR Ap.no. 38058/09, **Osman**, [14 June 2011]
- * violation of, **ECHR** [Art. 8]
- * *The Court concluded that the denial of admission of a 17 years old Somali girl to Denmark, where she had lived from the age of seven until the age of fifteen, violated Article 8. For a settled migrant who has lawfully spent all of the major part of his or her childhood and youth in a host country, very serious reasons are required to justify expulsion'. The Danish Government had argued that the refusal was justified because the applicant had been taken out of the country by her father, with her mother's permission, in exercise of their rights of parental responsibility. The Court agreed 'that the exercise of parental rights constitutes a fundamental element of family life', but concluded that 'in respecting parental rights, the authorities cannot ignore the child's interest including its own right to respect for private and family life'.*
- ☞ ECtHR Ap.no. 34848/07, **O'Donoghue v. UK**, [14 Dec. 2010]
- * violation of, **ECHR** [Art. 12 + 14]
- * Judgment of Fourth Section
- * *The UK Certificate of Approval required foreigners, except those wishing to marry in the Church of England, to pay large fees to obtain the permission from the Home Office to marry. The Court found that the conditions violated the right to marry (Article 12 of the Convention), that it was discriminatory in its application (Article 14 of the Convention) and that it was discriminatory on the ground of religion (Articles 9 and 14 of the Convention).*

1.3.5 National Judgments on Regular Migration

New

- ☞ **Germany:** BVerwG 10 C 4.12 [29 Dec. 2012]
- * interpretation of Dir. 2003/86: **Family Reunification** Art. 17
- * *In a family reunification case, the Federal Administrative Court decided that, following the Chakroun judgment of the CJEU, the level of income that can be required from the sponsor, also depends on the actual needs of the family as a whole. If the necessary income level is not fully ensured, Article 17 of the Family Reunification Directive requires a further individual assessment if there are reasons to derogate from the formal income requirement. This assessment is in any case subject of a full judicial scrutiny.*

- ☞ **Netherlands:** Rb Den Haag zp Den Bosch AWB 12/9408 [23 Nov. 2012]
- * interpretation of Dir. 2003/86: **Family Reunification** Art. 7(2)
- * <http://cmr.jur.ru.nl/nemis/Netherlands/RbDenHaagzpDenBoschAWB129408.pdf>
- * *Dutch District Court fully endorses the position of the European Commission taken in the **Imran** case (C-155/11) that the denial of family reunification for the sole reason that the applicant has failed the integration test abroad, is not in compliance with Article 7(2) of the Directive. According to this court, a request for a preliminary ruling was not necessary as the interpretation of the Commission was crystal clear.*

- ☞ **Germany:** VerwG Berlin VG 29 K 138.12V [25 Oct. 2012]
- * interpretation of Dir. 2003/86: **Family Reunification** Art. 7(2)
- * *The Verwaltungsgericht (Administrative Court) of Berlin asked, first, whether passing the language test as a condition for family reunification was in compliance with the standstill clauses in the EEC-Turkey Association law and, second, whether it was in compliance with Article 7(2) of the Family Reunification Directive.*

- ☞ **Netherlands:** Raad van State 201008782/1/V1 [9 Oct. 2012]
- * violation of Dir. 2003/86: **Family Reunification**
- * <http://cmr.jur.ru.nl/nemis/Netherlands/RaadvanState2010087821V1.pdf>
- * *The Dutch Council of State (highest administrative court) decided that the CJEU judgment on the Dutch fees for long term residents (26 April 2012, case C-508/10, Commission against the Netherlands), which the Court considered as ‘extraordinary high’, and therefore not in compliance with (the objective of) Directive 2003/109, also has repercussions for the level of fees for family reunification. According to the Council of State, the high level can also constitute an obstacle for the exercise of the right to family reunification and therefore violate Directive 2003/86, undermining its objective.*

- ☞ **Germany:** BVerwG 10 C 12.12 [4 Sep. 2012]
- * interpretation of Dir. 2003/86: **Family Reunification** Art. 8
- * appeal from VG Berlin, 1 Aug. 2011, VG 22 K 340.09 V
- * <http://cmr.jur.ru.nl/nemis/Germany/BVerwG10C1212.pdf>
- * *The German pre-entry language requirement is in compliance with art. 6 German Constitution and art. 8 ECHR, as long as the measure is proportional in the individual case. In case of a third country national with a German partner, this principle of proportionality is violated earlier than in case of both partners being third country nationals, because the German Constitution guarantees the right to residence to German citizens. Even if the German has also the Afghan nationality he can’t be expected to live with his family life outside Germany. Therefore the spouse may enter Germany even without passing the language test if he or she has shown efforts to learn the language, but has not succeeded within a year’s time. This period of one year does not need to be fulfilled if there are no courses (or alternatives) available or if participation in a course implies a high security risk. A German citizen who did not use the EU right to free movement, cannot rely on art. 9 Charter of Fundamental Rights, as Union law is not applicable. In this regard the court refers to art. 3(3) Dir. 2003/86, which excludes Union citizens. According to the court, this explicit exclusion in the directive justifies a different interpretation of the personal scope than the scope of Decision 1/80, as interpreted by the CJEU in the case Kahveci and Inan (C-7/10 and C-9/10).*

- ☞ **Germany:** BVerwG 1 C 9.10 [28 Oct. 2011]
- * interpretation of Dir. 2003/86: **Family Reunification**
- * appeal from Berlin-Brandenburg Higher Administrative Court, 25 Mar. 2010
- * <http://cmr.jur.ru.nl/nemis/Germany/BVerwG1C910.pdf>
- * *Regarding the position of the European Commission taken in the case Imran (see CJEU 155/11 in the previous section) that a certain language level as a condition for admission is not in compliance with the directive, a preliminary ruling of the Court of Justice would have been necessary in this case. However it was finished by granting the claimed residence permits and the decision was only on the costs. But the importance of the decision lies in the fact that German Court - in difference from its previous judgment of 30 March 2010 (BVerwG 1 C 8.09) - now regards it necessary to make a reference to the CJEU on the question whether the language requirement is in compliance with the Family Reunification Directive.*

- ☞ **United Kingdom:** Quila SC [2011]UKSC45 [12 Oct. 2011]
- * interpretation of **ECHR** Art. 8

- * <http://cmr.jur.ru.nl/nemis/UK/QuilaSC.2011.UKSC45.pdf>
- * *These two cases concern the application of Rule 277 of the Immigration Rules (HC 395) under which the spouse or civil partner of a British national or someone settled in the UK is prevented from entering and settling in the UK if either party is under the age of 21. A parallel rule applies to fiancés and unmarried or same-sex partners. Although it was clear that the marriage was not a forced marriage, the applicants had to leave the UK in order to have a family life. The Supreme Court held that the rule was “rationally connected to the objective of deterring forced marriages (...) but the number of forced marriages which it deters is highly debatable. What seems clear is that the number of unforced marriages which it obstructs from their intended development for up to three years vastly exceeds the number of forced marriages which it deters”. The Court concluded that the Secretary of State had failed to establish that the interference with the rights of the respondents under Article 8, which protects the right to private life, that had been caused by the rule was justified.*
- ☞ **United Kingdom:** ZH (Tanzania) SC [2011]UKSC4 [1 Feb. 2011]
- * interpretation of **UN Convention on the Rights of the Child**
- * <http://cmr.jur.ru.nl/nemis/UK/ZH.Tanzania.SC.2011.UKSC4.pdf>
- * *The Supreme Court had to decide what the UK’s obligation to respect the best interests of the child means in the context of British national children of a foreign mother who is subject to a deportation decision. The SC finds that the children’s interest to live in their country of nationality, at least in this case, outweighs the public interest in the deportation of the mother. The SC does not refer to EU law but finds that expulsion can be contrary to the UN Convention on the Rights of the Child.*
- ☞ **Germany:** Bundessozialgericht B 14 AS 23/10 R [19 Oct. 2010]
- * interpretation of **European Convention on Social and Medical Assistance**
- * <http://cmr.jur.ru.nl/nemis/Germany/BundessozialgerichtB14AS2310R.pdf>
- * *A Frenchman lawfully residing as a ‘jobseeker’ in Germany was entitled to social assistance benefit (Arbeitslosengeld: similar to CJEU C-22/08 Vatsouras) during the period he retained his right as a worker on the basis of art. 7(3)(c) of the Dir. on Free Movement. The question in this case was whether he was still entitled to this benefit after these 6 months as German citizens are. Such a limitation for non-nationals is an implementation of art. 24(2) of the Dir. on Free Movement. However, the German Court decided that the European Convention on Social and Medical Assistance [1953] does not allow such a limitation.*
- ☞ **United Kingdom:** MH Morocco [2010] UKUT 439 IAC [28 Sep. 2010]
- * interpretation of **ECHR** Art. 8
- * <http://cmr.jur.ru.nl/nemis/UK/MHMorocco.2010.UKUT439IAC.pdf>
- * *A refusal to adjourn proceedings before the Tribunal may have similar consequence as a decision to remove an applicant in the process of seeking a contact order: a violation of art. 8 ECHR.*
- ☞ **Germany:** BVerwG 1 C 8.09 [30 Mar. 2010]
- * interpretation of Dir. 2003/86: **Family Reunification** Art. 7(2)
- interpretation of **ECHR** Art. 8
- * appeal from Berlin Administrative Court, 17 Feb. 2009, VG 35 V 47.08
- * <http://cmr.jur.ru.nl/nemis/Germany/BVerwG1C809.pdf>
- * *This decision is about the validity of integration measures of family members before arrival in the host Member State. (This case involved an illiterate applicant.) See also BVerwG 1 C 9.10.*

2 Borders and Visas

2.1 Borders and Visas: Adopted Measures

Regulation 562/2006	Borders Code	
<i>Establishing a Community Code on the rules governing the movement of persons across borders</i>		
* OJ 2006 L 105/1		
amd by Reg. 296/2008 (OJ 2008 L 97/60)		
amd by Reg. 81/2009 (OJ 2009 L 35/56): <i>Regarding the use of the VIS</i>		
☞ CJEU C-88/12, <i>Jaoo</i> ,	[14 Sep. 2012]	[Art. 20 + 21 - deleted]
☞ CJEU C-23/12, <i>Zakaria</i> ,	[17 Jan. 2013]	[Art. 13(3)]
☞ CJEU C-278/12 PPU, <i>Adil</i> ,	[19 July 2012]	[Art. 20 + 21]
☞ CJEU C-606/10, <i>ANAFE</i> ,	[14 June 2012]	[Art. 13 + 5(4)(a)]
☞ CJEU C-430/10, <i>Gaydarov</i> ,	[17 Nov. 2011]	
☞ CJEU C-188/10 & C-189/10, <i>Melki & Abdeli</i> ,	[22 June 2010]	[Art. 20 + 21]
☞ CJEU C-261/08 & C-348/08, <i>Garcia & Cabrera</i> ,	[22 Oct. 2009]	[Art. 5, 11 + 13]
☞ CJEU C-575/12, <i>Air Baltic</i> ,	[pending]	[Art. 5]
Decision 574/2007	Borders Fund	
<i>Establishing European External Borders Fund</i>		
* OJ 2007 L 144		
Regulation 2007/2004	Frontex	
<i>Establishing External Borders Agency</i>		
* OJ 2004 L 349/1		
amd by Reg. 863/2007 (OJ 2007 L 199/30): <i>Border guard teams</i>		
amd by Reg. 1168/2011 (OJ 2011 L 304/1)		
Regulation 1931/2006	Local Border traffic	
<i>Local border traffic within enlarged EU at external borders of EU</i>		
* OJ 2006 L 405/1		
amd by Reg. 1342/2011 (OJ 2011 L 347/41)		
☞ CJEU C-254/11, <i>Shomodi</i> ,	[21 Mar. 2013]	[Art. 2(a) + 3(3)]
Regulation 265/2010	Long Stay Visa Code	
<i>On movement of persons with a long-stay Visa</i>		
* OJ 2010 L 85/1		
Regulation 1077/2011	Management Agency	
<i>Establishing an Agency to manage VIS, SIS & Eurodac</i>		
* OJ 2011 L 286/1		
Directive 2004/82	Passenger Data	
<i>On the obligation of carriers to communicate passenger data</i>		
* OJ 2004 L 261/64		UK opt in
Regulation 2252/2004	Passports	
<i>On standards for security features and biometrics in passports and travel documents</i>		
* OJ 2004 L 385/1		
amd by Reg. 444/2009 (OJ 2009 L 142/1)		
☞ CJEU C-101/13, <i>U.</i> ,	[pending]	
☞ CJEU C-446/12, <i>Willems a.o.</i> ,	[pending]	[Art. 4(3)]
☞ CJEU C-291/12, <i>Schwarz</i> ,	[pending]	[Art. 1(2)]
Recommendation 2005/761	Researchers	
<i>On uniform short-stay visas for researchers from third countries</i>		
* OJ 2005 L 289/23		
Regulation 378/2004	SIS	
<i>Procedure for amendments to Sirene manual</i>		
* OJ 2004 L 64		UK opt in
Regulation 871/2004	SIS	
<i>New functionalities for the Schengen Information System (SIS)</i>		

<p>* OJ 2004 L 162/29</p> <p>Regulation 2424/2001</p> <p><i>On the development of the second generation Schengen Information System</i></p> <p>* OJ 2001 L 328/4</p> <p>Regulation 1987/2006</p> <p><i>Establishing second generation Schengen Information System</i></p> <p>* OJ 2006 L 381/4</p> <p>Regulation 1988/2006</p> <p><i>Amending Reg. 2424/2001 second generation Schengen Information System</i></p> <p>* OJ 2006 L 411/1</p> <p>Decision 886/JHA/2001</p> <p><i>On the development of the second generation Schengen Information System</i></p> <p>* OJ 2001 L 328/1</p> <p>Decision 582/2008</p> <p><i>Transit through Romania, Bulgaria and Cyprus</i></p> <p>* OJ 2008 L 161/30</p> <p>Decision 896/2006</p> <p><i>Transit through Switzerland and Liechtenstein</i></p> <p>* OJ 2006 L 167</p> <p>☞ CJEU C-139/08, <i>Kqiku</i>,</p> <p>Decision 586/2008</p> <p><i>Transit through Switzerland and Liechtenstein</i></p> <p>* OJ 2008 L 162/27</p> <p>Decision 1105/2011</p> <p><i>On the list of travel documents which entitle the holder to cross the external borders</i></p> <p>* OJ 2011 L 287/9</p> <p>Regulation 767/2008</p> <p><i>Establishing Visa Information System (VIS)</i></p> <p>* OJ 2008 L 218/60</p> <p>* Third-pillar VIS Decision (OJ 2008 L 218/129)</p> <p>Decision 512/2004</p> <p><i>Establishing Visa Information System (VIS)</i></p> <p>* OJ 2004 L 213/5</p> <p>Regulation 810/2009</p> <p><i>Establishing a Community Code on Visas</i></p> <p>* OJ 2009 L 243/1</p> <p>amd by Reg. 154/2012 (OJ 2012 L 58/3)</p> <p>☞ CJEU C-39/12, <i>Dang</i>,</p> <p>☞ CJEU C-83/12, <i>Vo</i>,</p> <p>☞ CJEU C-84/12, <i>Koushkaki</i>,</p> <p>Regulation 693/2003</p> <p><i>Establishing a specific Facilitated Transit Document (FTD) and a Facilitated Rail Transit Document (FRTD)</i></p> <p>* OJ 2003 L 99/8</p> <p>Regulation 694/2003</p> <p><i>Format for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD)</i></p> <p>* OJ 2003 L 99/15</p> <p>Regulation 1683/95</p> <p><i>Uniform format for visas</i></p> <p>* OJ 1995 L 164/1</p> <p>amd by Reg. 334/2002 (OJ 2002 L 53/7)</p> <p>amd by Reg. 856/2008 (OJ 2008 L 235/1)</p>	<p>SIS II</p> <p>SIS II</p> <p>SIS II</p> <p>SIS II</p> <p>SIS II</p> <p>Transit Romania, Bulgaria, Cyprus</p> <p>Transit Switzerland</p> <p>impl. date see: OJ 2006 C [2 Apr. 2009] [Art. 1 + 2]</p> <p>Transit Switzerland</p> <p>Travel Documents</p> <p>VIS</p> <p>VIS</p> <p>Visa Code</p> <p>[18 June 2012] [Art. 21 + 34 - deleted] [10 Apr. 2012] [Art. 21 + 34] [pending] [Art. 21(1) + 32(1)]</p> <p>Transit Documents</p> <p>Transit Documents</p> <p>Visa Format</p>	<p>UK opt in</p> <p>UK opt in</p> <p>UK opt in</p> <p>UK opt in</p>
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Regulation 539/2001

Visa List

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

- * OJ 2001 L 81/1
 amd by Reg. 2414/2001 (OJ 2001 L 327/1): *Moving Romania to 'white list'*
 amd by Reg. 453/2003 (OJ 2003 L 69/10): *Moving Ecuador to 'black list'*
 amd by Reg. 851/2005 (OJ 2005 L 141/3): *On reciprocity for visas*
 amd by Reg. 1932/2006 (OJ 2006 L 405/23)
 amd by Reg. 1244/2009 (OJ 2009 L 336/1): *Lifting visa req. for some Western Balkan countries*
 amd by Reg. 1091/2010 (OJ 2010 L 329/1): *Lifting visa req. for Albania and Bosnia*
 amd by Reg. 1211/2010 (OJ 2010 L 339/6): *Lifting visa req. for Taiwan*

Regulation 333/2002

Visa Stickers

Uniform format for forms for affixing the visa

- * OJ 2002 L 53/4 UK opt in

ECHR

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

Art. 3 Prohibition of Torture

- * ETS 005 (4-11-50) impl. date 1950
- ☞ ECtHR Ap.no. 11463/09, **Samaras**, [28 Feb. 2012] [Art. 3]
- ☞ ECtHR Ap.no. 27765/09, **Hirsi**, [21 Feb. 2012] [Art. 3 + 13]

2.2 Borders and Visas: Proposed Measures

Regulation amending Regulation

Amending the Visa list

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

Regulation

Establishing the European Border Surveillance System (Eurosur)

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

Regulation amending Regulation 562/2006

Amended Borders Code

Amending Borders Code

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

Regulation amending Regulation 539/2001

Visa

Visa List

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

Regulation

amending Borders Code

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

Regulation

Schengen Evaluation

- * COM (2010) 624, 16 Nov. 2010
- * discussions underway in Council
 revised proposal: COM (2011) 559, 16 Sep. 2011

EP adopted negotiation mandate, Nov 2011
 Council agreed text, June 2012; EP/Council talks resumed

Regulation

Codifying Regulations establishing EU visa list

- * COM (2008) 761, 28 Nov. 2008
- * discussion terminated in Council working group

2.3 Borders and Visas: Jurisprudence

2.3.1 CJEU Judgments on Borders and Visas

- New** ☞ CJEU C-254/11, **Shomodi**, [21 Mar. 2013]
- * interpr. of Reg. 1931/2006, **Local Border traffic** [Art. 2(a) + 3(3)]
 - * *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.*
- New** ☞ CJEU C-39/12, **Dang**, [18 June 2012] (deleted)
- * interpr. of Reg. 810/2009, **Visa Code** [Art. 21 + 34 - deleted]
 - * *Whether penalties can be applied in the case of foreign nationals in possession of a visa which was obtained by deception from a competent authority of another Member State but has not yet been annulled pursuant to the regulation.*
- New** ☞ CJEU C-88/12, **Jaoo**, [14 Sep. 2012] (deleted)
- * interpr. of Reg. 562/2006, **Borders Code** [Art. 20 + 21 - deleted]
 - * *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-23/12, **Zakaria**, [17 Jan. 2013]
- * interpr. of Reg. 562/2006, **Borders Code** [Art. 13(3)]
 - * *MSs are obliged to establish a means of obtaining redress only against decisions to refuse entry*
- ☞ CJEU C-355/10, **EP v Council**, [5 Sep. 2012]
- * annulment of measure implementing Borders Code
 - * *The CJEU decided to annul Council Decision 2010/252 of 26 April 2010 supplementing the Borders Code as regards the surveillance of the sea external borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. According to the Court, this decision contains essential elements of the surveillance of the sea external borders of the Member States which go beyond the scope of the additional measures within the meaning of Art. 12(5) of the Borders Code. As only the European Union legislature was entitled to adopt such a decision, this could not have been decided by comitology. Furthermore the Court ruled that the effects of decision 2010/252 maintain until the entry into force of new rules within a reasonable time.*
- ☞ CJEU C-278/12 PPU, **Adil**, [19 July 2012]
- * interpr. of Reg. 562/2006, **Borders Code** [Art. 20 + 21]
 - * *The Schengen Borders Code must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which enables officials responsible for border surveillance and the monitoring of foreign nationals to carry out checks, in a geographic area 20 kilometres from the land border between a MS and the State parties to the CISA, with a view to establishing whether the persons stopped satisfy the requirements for lawful residence applicable in the MS concerned, when those checks are based on general information and experience regarding the illegal residence of persons at the places where the checks are to be made, when they may also be carried out to a limited extent in order to obtain such general information and experience-based data in that regard, and when the carrying out of those checks is subject to certain limitations concerning, inter alia, their intensity and frequency.*
- ☞ CJEU C-606/10, **ANAFE**, [14 June 2012]
- * interpr. of Reg. 562/2006, **Borders Code** [Art. 13 + 5(4)(a)]
 - * annulment of national legislation on visa

- * *Article 5(4)(a) must be interpreted as meaning that a MS which issues to a TCN a re-entry visa within the meaning of that provision cannot limit entry into the Schengen area solely to points of entry to its national territory.*
The principles of legal certainty and protection of legitimate expectations did not require the provision of transitional measures for the benefit of TCNs who had left the territory of a MS when they were holders of temporary residence permits issued pending examination of a first application for a residence permit or an application for asylum and wanted to return to that territory (after the entry into force of this Regulation)
- ☞ CJEU C-83/12, **Vo**, [10 Apr. 2012]
- * interpr. of Reg. 810/2009, **Visa Code** [Art. 21 + 34]
- * *First substantive decision on Visa Code. The Court rules that the Visa Code does not preclude that national legislation of one MS penalises migration-related identity fraud with genuine visa issued by another MS.*
- ☞ CJEU C-430/10, **Gaydarov**, [17 Nov. 2011]
- * interpr. of Reg. 562/2006, **Borders Code**
- * *Reg. does not preclude national legislation that permits the restriction of the right of a national of a MS to travel to another MS in particular on the ground that he has been convicted of a criminal offence of narcotic drug trafficking in another State, provided that (i) the personal conduct of that national constitutes a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, (ii) the restrictive measure envisaged is appropriate to ensure the achievement of the objective it pursues and does not go beyond what is necessary to attain it and (iii) that measure is subject to effective judicial review permitting a determination of its legality as regards matters of fact and law in the light of the requirements of European Union law.*
- ☞ CJEU C-482/08, **UK v Council**, [26 Oct. 2010]
- * annulment of decision on police access to VIS, due to UK non-participation
- * judgment against UK
- ☞ CJEU C-188/10 & C-189/10, **Melki & Abdeli**, [22 June 2010]
- * interpr. of Reg. 562/2006, **Borders Code** [Art. 20 + 21]
- * consistency of national law and European Union law, abolition of border control and the area of 20 kilometres from the land border
- * *The French ‘stop and search’ law, which allowed for controls behind the internal border, is in violation of article 20 and 21 of the Borders code, due to the lack of requirement of “behaviour and of specific circumstances giving rise to a risk of breach of public order”. According to the Court, controls may not have an effect equivalent to border checks.*
- ☞ CJEU C-261/08 & C-348/08, **Garcia & Cabrera**, [22 Oct. 2009]
- * interpr. of Reg. 562/2006, **Borders Code** [Art. 5, 11 + 13]
- * Member States are not obliged to expel a third-country national who is unlawfully present on the territory of a Member State because the conditions of duration of stay are not or no longer fulfilled
- ☞ CJEU C-139/08, **Kqiku**, [2 Apr. 2009]
- * interpr. of Dec. 896/2006, **Transit Switzerland** [Art. 1 + 2]
- * on transit visa legislation for third-country nationals subject to a visa requirement
- ☞ CJEU C-77/05 & C-137/05, **UK v Council**, [18 Dec. 2007]
- * validity of Border Agency Regulation and Passport Regulation
- * judgment against UK
- ☞ CJEU C-241/05, **Bot**, [4 Oct. 2006]
- * interpr. of, **Schengen Agreement** [Art. 20(1)]
- * on the conditions of movement of third-country nationals not subject to a visa requirement; on the meaning of ‘first entry’ and successive stays
- ☞ CJEU C-257/01, **Commission v Council**, [18 Jan. 2005]
- * challenge to Regs. 789/2001 and 790/2001
- * upholding validity of Regs.

2.3.2 CJEU pending cases on Borders and Visas

- New**
- ☞ CJEU C-101/13, *U.*,
 - * interpr. of Reg. 2252/2004, **Passports**
 - * ref. from 'Verwaltungsgerichtshof Baden-Württemberg' (Germany)
 - * *About the recording and spelling of names, surnames and family names in passports.*

 - New**
 - ☞ CJEU C-575/12, *Air Baltic*,
 - * interpr. of Reg. 562/2006, **Borders Code** [Art. 5]
 - * ref. from 'Administratīvā apgabaltiesa' (Latvia)
 - * *About the relation between a valid visa contained in a travel document that has been withdrawn.*
 - ☞ CJEU C-446/12, *Willems a.o.*,
 - * interpr. of Reg. 2252/2004, **Passports** [Art. 4(3)]
 - * ref. from 'Raad van State' (Netherlands)
 - * *Reference for a preliminary ruling about the question whether a person has a right to be issued with a passport without having his or her fingerprints stored*
 - ☞ CJEU C-291/12, *Schwarz*,
 - * interpr. of Reg. 2252/2004, **Passports** [Art. 1(2)]
 - * ref. from 'Verwaltungsgericht Gelsenkirchen' (Germany)
 - ☞ CJEU C-84/12, *Koushkaki*,
 - * interpr. of Reg. 810/2009, **Visa Code** [Art. 21(1) + 32(1)]
 - * ref. from 'Verwaltungsgericht Berlin' (Germany)
 - * *On procedures and conditions for granting visas and the discretion of MS.*

2.3.3 ECtHR Judgments on Borders and Visas

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

2.3.4 National Judgments on Borders and Visas

- ☞ **Germany**: BVerwG 1 C 1.10 [11 Jan. 2011]
 - * interpretation of **Reg. 810/2009 on Visa Code**
 - interpretation of **ECHR** Art. 8
 - * appeal from Berlin-Brandenburg Higher Administrative Court, 18 Dec. 2009
 - * <http://cmr.jur.ru.nl/nemis/Germany/BVerwG1C110.pdf>
 - * *A Moroccan national seeks a Schengen visa to visit her two minor children living with her father in Germany. The visa is denied, primarily based on the assumption that there is no specific credible prospect of return. Although the court states that the child's personal contact and continuity of emotional bonds with both parents serve as a general rule toward developing the child's personality, the court does not find the denial of the visa disproportionate because the maintenance of family ties can be realised through other means and visits outside Germany.*

3 Irregular Migration

3.1 Irregular Migration: Adopted Measures

Directive 2001/51 <i>Obligation of carriers to return TCNs when entry is refused</i> * OJ 2001 L 187/45	Carrier sanctions impl. date 11 Feb. 2003	UK opt in
Decision 267/2005 <i>Establishing a secure web-based Information and Coordination Network for MS' Migration Management Services</i> * OJ 2005 L 83/48	Early Warning System	UK opt in
Directive 2003/110 <i>Assistance with transit for expulsion by air</i> * OJ 2003 L 321/26	Expulsion by Air	
Decision 191/2004 <i>On the compensation of the financial imbalances resulting from the mutual recognition of decisions on the expulsion of TCNs</i> * OJ 2004 L 60/55	Expulsion Costs	UK opt in
Directive 2001/40 <i>Mutual recognition of expulsion decisions of TCNs</i> * OJ 2001 L 149/34	Expulsion Decisions impl. date 2 Oct. 2002	UK opt in
Decision 573/2004 <i>On the organisation of joint flights for removals from the territory of two or more MSs, of TCNs</i> * OJ 2004 L 261/28	Expulsion Joint Flights	UK opt in
Directive 2009/52 <i>Minimum standards on sanctions and measures against employers of illegally staying TCNs</i> * OJ 2009 L 168/24	Employers Sanctions impl. date 20 July 2011	
Conclusion <i>Transit via land for expulsion</i> * adopted 22 Dec. 2003 by Council	Expulsion via Land	UK opt in
Directive & Framework Decision 2002/90 <i>Facilitation of unauthorised entry, transit and residence</i> * OJ 2002 L 328	Illegal Entry	UK opt in
Regulation 377/2004 <i>On the creation of an immigration liaison officers network</i> * OJ 2004 L 64/1	Immigration Liaison Officers	UK opt in
Regulation amending Regulation 493/2011 <i>On the creation of an immigration liaison officers network</i> * OJ 2011 L 141/13 (Mar. 2011) applies from 16 June 2011	Liaison Officers	UK opt in
Directive 2008/115 <i>On common standards and procedures in MSs for returning illegally staying TCNs</i> * OJ 2008 L 348/98 ☞ CJEU C-522/11, <i>Mbaye</i> , ☞ CJEU C-51/12, <i>Zhu</i> , ☞ CJEU C-430/11, <i>Sagor</i> , ☞ CJEU C-73/12, <i>Ettaghi</i> , ☞ CJEU C-329/11, <i>Achughbabian</i> , ☞ CJEU C-61/11, <i>El Dridi</i> , ☞ CJEU C-357/09, <i>Kadzoev</i> , ☞ CJEU C-297/12, <i>Filev & Osmani</i> , ☞ CJEU C-534/11, <i>Arslan</i> , ☞ Ger: BVerwG 1 C 19.11	Return Directive impl. date 24 Dec. 2010 [21 Mar. 2013] [Art. 2(2)(b) + 7(4)] [16 Feb. 2013] [Art. 2-8, 15 + 16 - deleted] [6 Dec. 2012] [Art. 2, 15 + 16] [4 July 2012] [Art. 2-8, 15 + 16 - deleted] [6 Dec. 2011] [28 Apr. 2011] [Art. 15 + 16] [30 Nov. 2009] [Art. 15(4), (5) + (6)] [pending] [Art. 2(2)(b) + 11] [pending] [Art. 2(1)] [10 July 2012]	

<p>Decision 575/2007 <i>Establishing the European Return Fund as part of the General Programme Solidarity and Management of Migration Flows</i> * OJ 2007 L 144</p>	<p>Return Programme</p> <p style="text-align: right;">UK opt in</p>
<p>Framework Decision 629/2002 <i>On combating trafficking in human beings</i> * OJ 2002 L 203/1 * Replaced by Directive 2011/36</p>	<p>Trafficking</p> <p style="text-align: right;">UK opt in</p>
<p>Directive 2011/36 <i>On preventing and combating trafficking in human beings and protecting its victims</i> * OJ 2011 L 101/1 (Mar. 2011) * Replacing Framework Decision of 2002</p>	<p>Trafficking Persons</p> <p>impl. date deadline 6 april</p> <p style="text-align: right;">UK opt in</p>
<p>Directive 2004/81 <i>Residence permits for TCNs who are victims of trafficking</i> * OJ 2004 L 261/19 ☞ CJEU C-266/08, <i>Commission v Spain</i>,</p>	<p>Trafficking Victims</p> <p>[14 May 2009]</p>
<p>ECHR <i>European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols</i> Art. 5 Detention Prot. 4 Art. 4 Collective Expulsion * ETS 005 (4-11-50)</p>	
<p>☞ ECtHR Ap.no. 13058/11, <i>Abdelhakim v. Hungary</i>, [23 Oct. 2012] [Art. 5] ☞ ECtHR Ap.no. 13457/11, <i>Ali Said v. Hungary</i>, [23 Oct. 2012] [Art. 5] ☞ ECtHR Ap.no. 50520/09, <i>Ahmade</i>, [25 Sep. 2012] [Art. 5] ☞ ECtHR Ap.no. 14902/10, <i>Mahmundi</i>, [31 July 2012] [Art. 5] ☞ ECtHR Ap.no. 27765/09, <i>Hirsi</i>, [21 Feb. 2012] [Prot. 4 Art. 4] ☞ ECtHR Ap.no. 10816/10, <i>Lokpo & Touré</i>, [20 Sep. 2011] [Art. 5]</p>	

3.2 Irregular Migration: Proposed Measures

- * nothing to report

3.3 Irregular Migration: Jurisprudence

3.3.1 CJEU Judgments on Irregular Migration

- New** ☞ CJEU C-522/11, *Mbaye*, [21 Mar. 2013]
 * interpr. of Dir. 2008/115, *Return Directive* [Art. 2(2)(b) + 7(4)]
 * *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.*
- New** ☞ CJEU C-51/12, *Zhu*, [16 Feb. 2013] (deleted)
 * interpr. of Dir. 2008/115, *Return Directive* [Art. 2-8, 15 + 16 - deleted]
 * *Whether it is possible to substitute for the fine (for entering national territory illegally or staying there illegally) an order for immediate expulsion for a period of at least five years or a measure restricting freedom ('permanenza domiciliare').*
- ☞ CJEU C-430/11, *Sagor*, [6 Dec. 2012]
 * interpr. 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.*
- ☞ CJEU C-73/12, *Ettaghi*, [4 July 2012] (deleted)
 * interpr. of Dir. 2008/115, *Return Directive* [Art. 2-8, 15 + 16 - deleted]
- ☞ CJEU C-329/11, *Achughbajian*, [6 Dec. 2011]
 * interpr. of Dir. 2008/115, *Return Directive*

- * *The directive precludes national legislation permitting the imprisonment of an illegally staying third-country national who has not (yet) been subject to the coercive measures provided for in the directive and has not, if detained with a view to be returned, reached the expiry of the maximum duration of that detention. The directive does not preclude penal sanctions being imposed after full application of the return procedure established by that directive.*
- ☞ CJEU C-61/11, **El Dridi**, [28 Apr. 2011]
- * interpr. of Dir. 2008/115, **Return Directive** [Art. 15 + 16]
- * PPU: Urgency Procedure
- * *The Return Directive precludes that a Member State has legislation which provides for a sentence of imprisonment to be imposed on an illegally staying TCN on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave that territory within a given period.*
- ☞ CJEU C-357/09, **Kadzoev**, [30 Nov. 2009]
- * interpr. of Dir. 2008/115, **Return Directive** [Art. 15(4), (5) + (6)]
- * *The maximum duration of detention must include a period of detention completed in connection with a removal procedure commenced before the rules in the directive become applicable. Only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods*
- ☞ CJEU C-266/08, **Commission v Spain**, [14 May 2009]
- * non-transp. of Dir. 2004/81, **Trafficking Victims**
- * on the status of victims of trafficking and smuggling

3.3.2 CJEU pending cases on Irregular Migration

- ☞ CJEU C-297/12, **Filev & Osmani**,
- * interpr. of Dir. 2008/115, **Return Directive** [Art. 2(2)(b) + 11]
- * ref. from 'Amtsgericht Laufen' (Germany)
- ☞ CJEU C-534/11, **Arslan**,
- * interpr. of Dir. 2008/115, **Return Directive** [Art. 2(1)]
- * ref. from 'Nejvyšší správní soud' (Czech) 22-10-2011
- * *On detention of migrants; opinion (31 Jan. 2013): pending an asylum procedure, detention of a TCN is not allowed*

3.3.3 ECtHR Judgments on Irregular Migration

- ☞ ECtHR Ap.no. 13058/11, **Abdelhakim v. Hungary**, [23 Oct. 2012]
- * violation of, **ECHR** [Art. 5]
- * *This case concerns unlawful detention, without effective judicial review, of an asylum seeker during the examination of his asylum application. The applicant was a Palestinian who had been stopped at the Hungarian border control for using a forged passport.*
- ☞ ECtHR Ap.no. 13457/11, **Ali Said v. Hungary**, [23 Oct. 2012]
- * violation of, **ECHR** [Art. 5]
- * *This case concerns unlawful detention, without effective judicial review, of an asylum seeker during the examination of his asylum application. The applicants were Iraqi nationals who illegally entered Hungary, applied for asylum and then travelled illegally to the Netherlands from where they were transferred back to Hungary under the Dublin Regulation.*
- ☞ ECtHR Ap.no. 50520/09, **Ahmade**, [25 Sep. 2012]
- * violation of, **ECHR** [Art. 5]
- * *The conditions of detention of the applicant Afghan asylum seeker in two police stations in Athens were found to constitute degrading treatment in breach of ECHR art. 3. Since Greek law did not allow the courts to examine the conditions of detention in centres for irregular immigrants, the applicant did not have an effective remedy in that regard, in violation of ECHR art. 13 taken together with art. 3.*
- The Court found an additional violation of ECHR art. 13 taken together with art. 3, resulting from the structural deficiencies of the Greek asylum system, as evidenced by the period during which the*

applicant had been awaiting the outcome of his appeal against the refusal of asylum, and the risk that he might be deported before his asylum appeal had been examined.

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

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

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

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

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

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

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

* violation of, **ECHR** [Prot. 4 Art. 4]

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

☞ ECtHR Ap.no. 10816/10, **Lokpo & Touré**, [20 Sep. 2011]

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

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

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

3.3.4 National Judgments on Irregular Migration

☞ **Germany**: BVerwG 1 C 19.11 [10 July 2012]

* interpretation of Dir. 2008/115: **Return Directive**

* appeal from North Rhine-Westphalia Higher Administrative Court, 5 Sep. 2008

* <http://cmr.jur.ru.nl/nemis/Germany/BVerwG1C1911.pdf>

* *Foreigners are entitled to have the immigration authority, simultaneously with the issuance of an expulsion, set a time limit for the effects of the expulsion as mentioned in Section 11(1) first and second sentence of the German Residence Act.*

4 External Treaties

4.1 External Treaties: Association Agreements

EC-Turkey Association Agreement

* into force 23 Dec. 1963

☞ NL: Centrale Raad van Beroep, LJN: BR4959 [16 Aug. 2011]

EC-Turkey Association Agreement Additional Protocol

* into force 1 Jan. 1973

☞ C-186/10, *Tural Oguz*, [21 July 2011] [Art. 41(1)]

☞ C-228/06, *Soysal*, [19 Feb. 2009] [Art. 41(1)]

☞ C-16/05, *Tum & Dari*, [20 Sep. 2007] [Art. 41(1)]

☞ C-37/98, *Savas*, [11 May 2000] [Art. 41(1)]

☞ C-221/11, *Demirkan*, [pending] [Art. 41(1)]

☞ NL: Raad van State, 201102803/1/V3 [14 Mar. 2012] [Art. 41]

EC-Turkey Association Agreement Decision 1/80

* Dec. 1/80 of 19 Sept. 1980 on the Development of the Association

☞ C-268/11, *Gühlbahce*, [8 Nov. 2012] [Art. 6(1) + 10]

☞ C-451/11, *Dülger*, [19 July 2012] [Art. 7]

☞ C-7/10 & C-9/10, *Kahveci & Inan*, [29 Mar. 2012] [Art. 7]

☞ C-420/08, *Erdil*, [27 Jan. 2012] [deleted]

☞ C-436/09, *Belkiran*, [13 Jan. 2012] [deleted]

☞ C-256/11, *Dereci et al.*, [15 Nov. 2011] [Art. 13]

☞ C-371/08, *Ziebell or Örnek*, [8 Dec. 2011] [Art. 14(1)]

☞ C-187/10, *Unal*, [29 Sep. 2011] [Art. 6(1)]

☞ C-484/07, *Pehlivan*, [16 June 2011] [Art. 7]

☞ C-303/08, *Metin Bozkurt*, [22 Dec. 2010] [Art. 7 + 14(1)]

☞ C-300/09 & C-301/09, *Toprak/Oguz*, [9 Dec. 2010] [Art. 13]

☞ C-92/07, *Comm. v The Netherlands*, [29 Apr. 2010] [Art. 10(1) + 13]

☞ C-14/09, *Genc*, [4 Feb. 2010] [Art. 6(1)]

☞ C-462/08, *Bekleyen*, [21 Jan. 2010] [Art. 7(2)]

☞ C-242/06, *Sahin*, [17 Sep. 2009] [Art. 13]

☞ C-337/07, *Altun*, [18 Dec. 2008] [Art. 7]

☞ C-453/07, *Er*, [25 Sep. 2008] [Art. 7]

☞ C-294/06, *Payir*, [24 Jan. 2008] [Art. 6(1)]

☞ C-349/06, *Polat*, [4 Oct. 2007] [Art. 7 + 14]

☞ C-325/05, *Derin*, [18 July 2007] [Art. 6, 7 and 14]

☞ C-4/05, *Güzeli*, [26 Oct. 2006] [Art. 10(1)]

☞ C-502/04, *Torun*, [16 Feb. 2006] [Art. 7]

☞ C-230/03, *Sedef*, [10 Jan. 2006] [Art. 6]

☞ C-374/03, *Gürol*, [7 July 2005] [Art. 9]

☞ C-383/03, *Dogan*, [7 July 2005] [Art. 6(1) + (2)]

☞ C-373/03, *Aydinli*, [7 July 2005] [Art. 6 + 7]

☞ C-136/03, *Dörr & Unal*, [2 June 2005] [Art. 6(1) + 14(1)]

☞ C-467/02, *Cetinkaya*, [11 Nov. 2004] [Art. 7 + 14(1)]

☞ C-275/02, *Ayaz*, [30 Sep. 2004] [Art. 7]

☞ C-465/01, *Comm. v Austria*, [16 Sep. 2004]

☞ C-317/01 & C-369/01, *Abatay/Sahin*, [21 Oct. 2003] [Art. 13 + 41(1)]

☞ C-171/01, *Birlikte*, [8 May 2003] [Art. 10(1)]

☞ C-188/00, *Kurz (Yuze)*, [19 Nov. 2002] [Art. 6(1) + 7]

☞ C-89/00, *Bicakci*, [19 Sep. 2000]

☞ C-65/98, *Eyüp*, [22 June 2000] [Art. 7]

☞ C-329/97, *Ergat*, [16 Mar. 2000] [Art. 7]

☞ C-340/97, *Nazli*, [10 Feb. 2000] [Art. 6(1) + 14(1)]

☞ C-1/97, *Birden*, [26 Nov. 1998] [Art. 6(1)]

☞ C-210/97, *Akman*, [19 Nov. 1998] [Art. 7]

☞ C-98/96, *Ertanir*, [30 Sep. 1997] [Art. 6(1) + 6(3)]

☞ C-36/96, <i>Günaydin</i> ,	[30 Sep. 1997]	[Art. 6(1)]
☞ C-285/95, <i>Kol</i> ,	[5 June 1997]	[Art. 6(1)]
☞ C-386/95, <i>Eker</i> ,	[29 May 1997]	[Art. 6(1)]
☞ C-351/95, <i>Kadiman</i> ,	[17 Apr. 1997]	[Art. 7]
☞ C-171/95, <i>Tetik</i> ,	[23 Jan. 1997]	[Art. 6(1)]
☞ C-434/93, <i>Ahmet Bozkurt</i> ,	[6 June 1995]	[Art. 6(1)]
☞ C-355/93, <i>Eroglu</i> ,	[5 Oct. 1994]	[Art. 6(1)]
☞ C-237/91, <i>Kus</i> ,	[16 Dec. 1992]	[Art. 6(1) + 6(3)]
☞ C-192/89, <i>Sevince</i> ,	[20 Sep. 1990]	[Art. 6(1) + 13]
☞ C-12/86, <i>Demirel</i> ,	[30 Sep. 1987]	[Art. 7 + 12]
☞ C-138/13, <i>Dogan</i> ,	[pending]	[Art. 13]
☞ C-91/13, <i>Essent</i> ,	[pending]	[Art. 13]
☞ C-225/12, <i>Demir</i> ,	[pending]	[Art. 13]

EC-Turkey Association Agreement Decision 3/80

- * Dec. 3/80 of 19 Sept. 1980 on Social Security
- ☞ C-485/07, *Akdas*, [26 May 2011] [Art. 6(1)]

4.2 External Treaties: Readmission

Albania

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

Armenia, Azerbaijan

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

Belarus

- * negotiation mandate approved by Council, Feb. 2011

Cape Verde

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

New signed Feb. 2013

Georgia

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

Hong Kong

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

Macao

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

Morocco, Algeria, Turkey and China

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

Pakistan

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

Russia

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

Sri Lanka

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

Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova

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

4.3 External Treaties: Other

Armenia, Azerbaijan

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

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

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

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

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

Cape Verde: Visa facilitation agreement negotiations

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

China: Approved Destination Status treaty

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

Denmark: Dublin II treaty

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

Georgia: Visa facilitation agreement

- * OJ 2010 L 308/1 (into force 1 March 2011)

Mauritius, Antigua/Barbuda, Barbados, Seychelles, St. Kitts and Nevis and Bahamas: Visa abolition treaties agreed

- * proposals to sign and conclude treaties, (COM (2009) 48, 49, 50, 52, 53 and 55), 12 Feb. 2009; treaties signed and provisionally into force, May 2009; concluded Nov. 2009

Norway and Iceland: Dublin Convention

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

Russia, Ukraine, Moldova

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

Russia: Visa facilitation agreement

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

Switzerland: Implementation of Schengen, Dublin

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

Switzerland: Free Movement of Persons

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

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

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

4.4 External Treaties: Jurisprudence

4.4.1 CJEU Judgments on EEC-Turkey Association Agreement

- ☞ C-268/11, *Gühlbahce*, [8 Nov. 2012]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 10]
- * *A MS cannot withdraw the residence permit of a Turkish employee with retroactive effect.*
- ☞ C-451/11, *Dülger*, [19 July 2012]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * *Art. 7 is also applicable to family members of Turkish nationals who can rely on the Regulation, who don't have the Turkish nationality themselves, but instead a nationality from a third country.*
- ☞ C-7/10 & C-9/10, *Kahveci & Inan*, [29 Mar. 2012]
- * interpr. of, *Dec. 1/80* [Art. 7]
- * *The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State can still invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.*
- ☞ C-420/08, *Erdil*, [27 Jan. 2012] (deleted)
- * interpr. of, *Dec. 1/80* [deleted]
- * *Case withdrawn because of judgment C-371/08 (Ziebell). Art. 14(1) of Dec. 1/80 does not have the same scope as art. 28(3)(a) of the Directive on Free Movement.*
- ☞ C-436/09, *Belkiran*, [13 Jan. 2012] (deleted)
- * interpr. of, *Dec. 1/80* [deleted]
- * *Case withdrawn because of judgment C-371/08 (Ziebell). Art. 14(1) of Dec. 1/80 does not have the same scope as art. 28(3)(a) of the Directive on Free Movement.*

- ☞ C-256/11, **Dereci et al.**, [15 Nov. 2011]
- * interpr. of, **Dec. 1/80** [Art. 13]
- * *Right of residence of nationals of third countries who are family members of Union citizens - Refusal based on the citizen's failure to exercise the right to freedom of movement - Possible difference in treatment compared with EU citizens who have exercised their right to freedom of movement - EEC-Turkey Association Agreement - Article 13 of Decision No 1/80 of the Association Council - Article 41 of the Additional Protocol - 'Standstill' clauses.*
- ☞ C-371/08, **Ziebell or Örnek**, [8 Dec. 2011]
- * interpr. of, **Dec. 1/80** [Art. 14(1)]
- * *Decision No 1/80 does not preclude an expulsion measure based on grounds of public policy from being taken against a Turkish national whose legal status derives from the second indent of the first paragraph of Article 7 of that decision, in so far as the personal conduct of the individual concerned constitutes at present a genuine and sufficiently serious threat affecting a fundamental interest of the society of the host Member State and that measure is indispensable in order to safeguard that interest. It is for the national court to determine, in the light of all the relevant factors relating to the situation of the Turkish national concerned, whether such a measure is lawfully justified in the main proceedings.*
- ☞ C-187/10, **Unal**, [29 Sep. 2011]
- * interpr. of, **Dec. 1/80** [Art. 6(1)]
- * *Art. 6(1) must be interpreted as precluding the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the point in time at which there was no longer compliance with the ground on the basis of which his residence permit had been issued under national law if there is no question of fraudulent conduct on the part of that worker and that withdrawal occurs after the expiry of the one-year period of legal employment.*
- ☞ C-186/10, **Tural Oguz**, [21 July 2011]
- * interpr. of, **Prot.** [Art. 41(1)]
- * *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 into self-employment in breach of that condition and later applies to the national authorities for further leave to remain on the basis of the business which he has meanwhile established.*
- ☞ C-484/07, **Pehlivan**, [16 June 2011]
- * interpr. of, **Dec. 1/80** [Art. 7]
- * *Family member marries in first 3 years but continues to live with Turkish worker. Art. 7 precludes legislation under which a family member properly authorised to join a Turkish migrant worker who is already duly registered as belonging to the labour force of that State loses the enjoyment of the rights based on family reunification under that provision for the reason only that, having attained majority, he or she gets married, even where he or she continues to live with that worker during the first three years of his or her residence in the host Member State.*
- ☞ C-485/07, **Akdas**, [26 May 2011]
- * interpr. of, **Dec. 3/80** [Art. 6(1)]
- * *Supplements to social security can not be withdrawn solely on the ground that the beneficiary has moved out of the Member State.*
- ☞ C-303/08, **Metin Bozkurt**, [22 Dec. 2010]
- * interpr. of, **Dec. 1/80** [Art. 7 + 14(1)]
- * *Art. 7 means that a Turkish national who enjoys certain rights, does not lose those rights on account of his divorce, which took place after those rights were acquired. By contrast, Art. 14(1) does not preclude a measure ordering the expulsion of a Turkish national who has been convicted of criminal offences, provided that his personal conduct constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society. It is for the competent national court to assess whether that is the case in the main proceedings.*
- ☞ C-300/09 & C-301/09, **Toprak/Oguz**, [9 Dec. 2010]
- * interpr. of, **Dec. 1/80** [Art. 13]
- * *On the reference date regarding the prohibition to introduce new restrictions for Turkish workers and their family members.*

- ☞ C-92/07, *Comm. v The Netherlands*, [29 Apr. 2010]
- * interpr. of, *Dec. 1/80* [Art. 10(1) + 13]
- * *The obligation to pay charges in order to obtain or extend a residence permit, which are disproportionate compared to charges paid by citizens of the Union is in breach with the standstill clauses of Articles 10(1) and 13 of Decision No 1/80 of the Association.*
- ☞ C-14/09, *Genc*, [4 Feb. 2010]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- * *On the determining criteria of the concept worker and the applicability of these criteria on both EU and Turkish workers.*
- ☞ C-462/08, *Bekleyen*, [21 Jan. 2010]
- * interpr. of, *Dec. 1/80* [Art. 7(2)]
- * *The child of a Turkish worker has free access to labour and an independent right to stay in Germany, if this child is graduated in Germany and its parents have worked at least three years in Germany.*
- ☞ C-242/06, *Sahin*, [17 Sep. 2009]
- * interpr. of, *Dec. 1/80* [Art. 13]
- ☞ C-228/06, *Soysal*, [19 Feb. 2009]
- * interpr. of, *Prot.* [Art. 41(1)]
- ☞ C-337/07, *Altun*, [18 Dec. 2008]
- * interpr. of, *Dec. 1/80* [Art. 7]
- ☞ C-453/07, *Er*, [25 Sep. 2008]
- * interpr. of, *Dec. 1/80* [Art. 7]
- ☞ C-294/06, *Payir*, [24 Jan. 2008]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- ☞ C-349/06, *Polat*, [4 Oct. 2007]
- * interpr. of, *Dec. 1/80* [Art. 7 + 14]
- ☞ C-16/05, *Tum & Dari*, [20 Sep. 2007]
- * interpr. of, *Prot.* [Art. 41(1)]
- ☞ C-325/05, *Derin*, [18 July 2007]
- * interpr. of, *Dec. 1/80* [Art. 6, 7 and 14]
- ☞ C-4/05, *Güzeli*, [26 Oct. 2006]
- * interpr. of, *Dec. 1/80* [Art. 10(1)]
- ☞ C-502/04, *Torun*, [16 Feb. 2006]
- * interpr. of, *Dec. 1/80* [Art. 7]
- ☞ C-230/03, *Sedef*, [10 Jan. 2006]
- * interpr. of, *Dec. 1/80* [Art. 6]
- ☞ C-374/03, *Gürol*, [7 July 2005]
- * interpr. of, *Dec. 1/80* [Art. 9]
- ☞ C-383/03, *Dogan*, [7 July 2005]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + (2)]
- ☞ C-373/03, *Aydinli*, [7 July 2005]
- * interpr. of, *Dec. 1/80* [Art. 6 + 7]
- ☞ C-136/03, *Dörr & Unal*, [2 June 2005]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 14(1)]
- ☞ C-467/02, *Cetinkaya*, [11 Nov. 2004]
- * interpr. of, *Dec. 1/80* [Art. 7 + 14(1)]
- ☞ C-275/02, *Ayaz*, [30 Sep. 2004]
- * interpr. of, *Dec. 1/80* [Art. 7]
- ☞ C-465/01, *Comm. v Austria*, [16 Sep. 2004]
- * interpr. of, *Dec. 1/80*

- ☞ C-317/01 & C-369/01, *Abatay/Sahin*, [21 Oct. 2003]
- * interpr. of, *Dec. 1/80* [Art. 13 + 41(1)]
- ☞ C-171/01, *Birlikte*, [8 May 2003]
- * interpr. of, *Dec. 1/80* [Art. 10(1)]
- ☞ C-188/00, *Kurz (Yuze)*, [19 Nov. 2002]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 7]
- ☞ C-89/00, *Bicakci*, [19 Sep. 2000]
- * interpr. of, *Dec. 1/80*
- ☞ C-65/98, *Eyüp*, [22 June 2000]
- * interpr. of, *Dec. 1/80* [Art. 7]
- ☞ C-37/98, *Savas*, [11 May 2000]
- * interpr. of, *Prot.* [Art. 41(1)]
- ☞ C-329/97, *Ergat*, [16 Mar. 2000]
- * interpr. of, *Dec. 1/80* [Art. 7]
- ☞ C-340/97, *Nazli*, [10 Feb. 2000]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 14(1)]
- ☞ C-1/97, *Birden*, [26 Nov. 1998]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- ☞ C-210/97, *Akman*, [19 Nov. 1998]
- * interpr. of, *Dec. 1/80* [Art. 7]
- ☞ C-98/96, *Ertanir*, [30 Sep. 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 6(3)]
- ☞ C-36/96, *Günaydin*, [30 Sep. 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- ☞ C-285/95, *Kol*, [5 June 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- ☞ C-386/95, *Eker*, [29 May 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- ☞ C-351/95, *Kadiman*, [17 Apr. 1997]
- * interpr. of, *Dec. 1/80* [Art. 7]
- ☞ C-171/95, *Tetik*, [23 Jan. 1997]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- ☞ C-434/93, *Ahmet Bozkurt*, [6 June 1995]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- ☞ C-355/93, *Eroglu*, [5 Oct. 1994]
- * interpr. of, *Dec. 1/80* [Art. 6(1)]
- ☞ C-237/91, *Kus*, [16 Dec. 1992]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 6(3)]
- ☞ C-192/89, *Sevince*, [20 Sep. 1990]
- * interpr. of, *Dec. 1/80* [Art. 6(1) + 13]
- ☞ C-12/86, *Demirel*, [30 Sep. 1987]
- * interpr. of, *Dec. 1/80* [Art. 7 + 12]

4.4.2 CJEU pending cases on EEC-Turkey Association Agreement

New

- ☞ C-138/13, *Dogan*,
- * interpr. of, *Dec. 1/80* [Art. 13]
- * ref. from 'Verwaltungsgericht Berlin' (Germany)
- * *Is the language requirement in compliance with (a) the standstill clauses of the Association Agreement, and (b) the Family Reunification Directive?*

New

- ☞ C-91/13, **Essent**,
 - * interpr. of, **Dec. 1/80** [Art. 13]
 - * *On the posting by a German company of Turkish workers in the Netherlands to work in the Netherlands.*
- ☞ C-225/12, **Demir**,
 - * interpr. of, **Dec. 1/80** [Art. 13]
 - * ref. from 'Raad van State' (Netherlands)
 - * *Is Art 13 to be interpreted as meaning that it is applicable to a substantive or formal condition governing first admission, even if such a condition - in the present case, the possession of a temporary residence permit - has as one of its objectives the prevention of illegal entry and illegal residence prior to the submission of an application for a residence permit and, to that extent, can be regarded as a measure, within the terms of par. 85 of the judgment in Joined Cases C-317/01 and C-369/01 (Abatay and Others) which may be made more stringent?*
- ☞ C-221/11, **Demirkan**,
 - * interpr. of, **Prot.** [Art. 41(1)]
 - * ref. from 'Oberverwaltungsgericht Berlin' (Germany) 13-4-2011
 - * *The OVG asked whether Turkish nationals are recipients of service and whether they are covered by the standstill clause (Art. 41(1) Add. Protocol). The OVG, referring to the Soysal-Case, asked whether the freedom to 'provide services' also covers the freedom to 'receive' services in other EU Member States. Where EU nationals are concerned, the CJEU has consistently held (Cowan (C-186/87) and Bickel and Franz (C-274/96)), that the freedom to provide services "includes the freedom for the recipients of services to go to another Member State in order to receive a service there". If so, the question is whether Turkish nationals can invoke such a right if they do not wish to receive a specific service, but rather to visit relatives residing in the Member State (i.e. Germany) and during their stay will request and receive services, such as dining out in a restaurant.*

4.4.3 National Judgments on External Treaties

- ☞ **Netherlands:** Centrale Raad van Beroep, LJN: BR4959 [16 Aug. 2011]
 - * interpretation of **EC-Turkey Assn. Agr.**
 - * <http://www.ljn.nl/BR4959>
 - * *The Dutch Court decided that the recently introduced 'civic integration examinations' is in breach with the standstill clauses and therefor do not apply to Turkish nationals.*
- ☞ **Netherlands:** Raad van State, 201102803/1/V3 [14 Mar. 2012]
 - * interpretation of **EC-Turkey Assn. Agr. Add. Protocol** Art. 41
 - * <http://cmr.jur.ru.nl/nemis/Netherlands/RaadvanState,2011028031V3.pdf>
 - * *The Standstill clauses preclude a visa requirement for Turkish nationals for a short (less than 3 months) stay. It also precludes visa requirements for self-employed Turkish national or Turkish service providers. The Dutch court refers to several CJEU judgments: C-92/07, Cie. v. Netherlands; C-228/06, Soysal; C-101/05, Skatteverket.*

5 Miscellaneous

Lives Lost Report of Parliamentary Assembly of COE

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

The starting point for the resolution and of the report is that at least 1500 people are known to have lost their lives attempting to cross the Mediterranean in 2011. This report however focuses on one particularly harrowing case in which a small boat left Tripoli with 72 people on board and after two weeks at sea drifted back to Libya with only nine survivors. No one went to the aid of this boat, despite a distress call logged by the Italian Maritime Rescue Coordination Centre, which pinpointed the boat’s position.

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

- * Letter, 6 March 2012

Information Note on references from national courts for a preliminary ruling

- * OJ 2011 C 160/01

COE Report on Rule 39

- * On 9 Nov. 2010, the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe, published a report on Rule 39. Preventing Harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights.

Amendments to Court of Justice Statute and rules of procedure

Fast-track system for urgent JHA cases

- * OJ 2008 L 24
- * in effect 1 March 2008