

## PDF hosted at the Radboud Repository of the Radboud University Nijmegen

The following full text is a publisher's version.

For additional information about this publication click this link.

<http://hdl.handle.net/2066/92972>

Please be advised that this information was generated on 2017-12-06 and may be subject to change.



---

**NEMIS**

June 2011

*Quarterly update on*

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

*Coordinated by the*

*Centre for Migration Law (CMR)  
Radboud University Nijmegen (NL) and  
Steve Peers of  
University of Essex (UK)  
register with: mrs Tineke Strik (CMR)  
email: t.strik@jur.ru.nl*

---

**Contents**

---

Editorial	2
1. Legal Migration	4
1.1 Adopted Measures	
1.2 Proposed Measures	
1.3 Jurisprudence	
2. Borders and Visas	10
2.1 Adopted Measures	
2.2 Proposed Measures	
2.3 Forthcoming	
2.4 Jurisprudence	
3. Irregular Migration	15
3.1 Adopted Measures	
3.2 Proposed Measures	
3.3 Jurisprudence	
4. External Measures	20
4.1 Readmission	
4.2 Other	
4.3 Jurisprudence	
5. Institutional Measures	28
6. Miscellaneous	28

**Editorial**

Welcome to the third issue of NEMIS: a newsletter designed for judges who need to keep up to date on EU developments in immigration and borders law. NEMIS covers: (a) relevant legislation proposed and adopted at the EU level and (b) relevant judgments of the CJEU, the ECHR and relevant national judgments regarding the interpretation of this EU legislation. NEMIS does not cover asylum issues or free movement: it concentrates on legal migration and borders law regarding third country nationals. Our intention is to inform judges in Member States what problems and proposed solutions other judges are contending with. We therefore would like to invite you again to submit relevant national judgments. We would like to point out that every subsequent issue of NEMIS contains all the references present in the previous newsletter. Thus, no references will be lacking. Please bare in mind that all references are presented in a decreasing chronological order, i.e. any new reference will be put on top of the list under its corresponding header. The indication 'New' is put beside it in order to facilitate easy recognition.

*Some Highlights***Returns Directive**

In the El Dridi case (C-61/11), the CJEU decided on 28 April 2011 that the Returns Directive precludes national legislation which provides for a sentence of imprisonment on the sole ground that a TCN continues to stay illegally on the territory of a Member State after an order to leave the national territory was notified to him and the period granted in that order has expired. According to the Court, such a custodial sentence risks jeopardising the attainment of the objective pursued by the Directive, namely, the establishment of an effective policy of removal and repatriation of illegally staying TCNs in a manner in keeping with fundamental rights.

**Family Reunification**

On 31 March 2011, the Dutch District Court Zwolle-Lelystad made a reference for a preliminary ruling in the case of Mrs Imran, an Afghan woman whose application for family reunification was denied because she did not pass the civic integration examination abroad. Her husband and eight children (of whom seven are minors) reside legally in the Netherlands. The Dutch Court wanted to know whether the obligation imposed by the Netherlands law on the family members of TCNs, first to take a civic integration examination abroad before being able to come to the Netherlands, entails a too strict interpretation of Art. 7(2) of Dir. 2003/86. On 4 May, the Commission took the position that this article 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. According to the Commission, other factors are not relevant in this case. A week after the Dutch government was informed on the position of the Commission, it granted Mrs Imran a residence permit enabling her to reunify with her family in the Netherlands. Subsequently, the CJEU decided that it was not necessary to give a ruling on the request for a preliminary ruling.

**Union Citizenship**

After the Zambrano judgment (C-34/09) on the implications of Unionship in the case of a Belgium child, depending on a relative who is a national of a non-member State, the CJEU made clear in the McCarthy judgment (C-434/09) that these implications are not applicable in the same way to all Union citizens. It judged that Art. 21 TFEU is not applicable to Mrs McCarthy, as an adult and a dual member state national, married to a national of a non-member State. Where the CJEU in the Zambrano case took into account the risk for the minor Union citizens of having to leave the EU territory because of their depending position as a child, it did not address this risk in the McCarthy case. Nevertheless the refusal of a residence permit for her Jamaican husband in fact implied that the only way for Mrs McCarthy to exercise family life is to leave the EU. According to the Court, Mrs McCarthy was not hindered in the exercise of her freedom of movement. The distinction the Court has made between these two cases, makes clear that the vulnerable position of the minor children in the Zambrano case was the decisive factor on the court's judgment on the implications of Unionship.

**EEC-Turkey Association Agreement**

On 13 April 2011, the High Administrative Court (OVG) of Berlin-Brandenburg made a reference for a preliminary ruling to determine whether Turkish nationals are recipients of service and whether they are covered by the standstill clause of Art. 41(1) of the 1970 Additional Protocol. The OVG, referring to the Soysal-Case, has asked the CJEU whether the freedom to provide services within the meaning of the additional Protocol includes also the freedom to receive services in other EU Member States. Where EU nationals are concerned, the CJEU has consistently held, for example in 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 the answer would be yes, then the CJEU is asked also 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 in question, namely Germany, and, during their stay will request and receive services, such as dining out in a restaurant.

Nijmegen, 13 July 2011

Carolus Grütters & Tineke Strik  
Centre for Migration Law, Radboud University Nijmegen

email: t.strik@jur.ru.nl

See for the full text of judgments of the CJEU: <http://curia.europa.eu/>

## 1 Legal Migration

### 1.1 Legal Migration: Adopted Measures (Unless stated otherwise, UK, DK & IRL opted out)

**New**

#### **Directive 2011/55**

*Long-Term resident status for refugees and persons with subsidiary protection*

- \* OJ 2011 L 123/1
- \* impl. date 20 May 2013

#### **Regulation 1231/2010**

*Social Security for EU Citizens and Third-Country Nationals who move within the EU*

- \* OJ 2010 L 344/1
- \* impl. date 1 Jan. 2011
- \* Extending Reg. 883/2004 on Social Security

#### **Directive 2009/50**

*Blue Card directive: on conditions of entry and residence of third-country nationals for the purposes of highly qualified employment*

- \* OJ 2009 L 155/17
- \* impl. date 19 June 2011

#### **Decision 435/2007**

*Establishing European Integration Fund*

- \* OJ 2007 L 168/18

UK, IRL opt in

#### **Decision 688/2006**

*Asylum and Immigration Information Exchange*

- \* OJ 2006 L 283/40

UK, IRL opt in

#### **Recommendation 2005/762**

*Admission of Researchers*

- \* OJ 2005 L 289/26

#### **Directive 2005/71**

*Admission of Researchers*

- \* OJ 2005 L 289/15
- \* impl. date 12 Oct. 2007
- ☞ CJEU C-523/08 Commission v Spain [2010]

#### **Directive 2004/114**

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

- \* OJ 2004 L 375/12
- \* impl. date 12 Jan. 2007
- ☞ CJEU C-15/11 Sommer [pending]
- ☞ CJEU C-568/10 Commission vs Austria [pending]

**Directive 2003/109**

*Long-Term Residents*

- \* OJ 2004 L 16/44
- \* impl. date 23 Jan. 2006
- ☞ CJEU C-571/10 Servet [pending]
- ☞ CJEU C-508/10 Commission vs Netherlands [pending]
- ☞ CJEU C-502/10 Singh [pending]

**Directive 2003/86**

*Family Reunification*

- \* OJ 2003 L 251/12
- \* impl. date Oct. 2005
- ☞ CJEU C-155/11 Imran [2011]
- ☞ UK: ZH (Tanzania) SC [2011]UKSC4 [2011]
- ☞ Germany: BVerwG 1 C 8.09 [2010]
- ☞ CJEU C-578/08 Chakroun [2010]
- ☞ CJEU C-540/03 EP v Council [2006]

**Regulation 859/2003**

*Third-Country Nationals' Social Security*

- \* OJ 2003 L 124/1
- ☞ CJEU C-247/09 Xhymshiti [2010]

UK, IRL opt in

**Regulation 1030/2002**

*Residence Permit Format*

- \* OJ 2002 L 157/1
- \* amended by Reg. 330/2008 (OJ 2008 L 115/1)

UK opt in

1.2 *Legal Migration: Proposed Measures*

(Unless stated otherwise, UK, DK & IRL opted out)

**Directive**

*Admission of Seasonal Workers*

- \* COM (2010) 379, 13 July 2010
- \* Council working party began discussions, Sept. 2010

**New** Draft EP report, May 2011

**Directive**

*Admission of Intra-Corporate Transferees*

- \* COM (2010) 378, 13 July 2010
- \* Council working party began discussions, Sept. 2010

**New** Draft EP report, May 2011

**Directive**

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

- \* COM (2007) 638, 23 Oct. 2007
- \* discussions restarted in EP, Feb. 2011  
amendments discussed, March 2011

**New**

The Council has finally been able to agree another immigration Directive, extending the scope of the long-term residents directive to cover refugees and people with subsidiary protection. Talks have restarted between the EP and the Council on the single permit Directive, with the positions of the two sides quite close. The EP has begun to define its position on the seasonal workers' and intra-corporate transferees' Directives, but the Member States in the Council are still very divided on these proposals.

1.3 *Legal Migration: Jurisprudence***CJEU Judgments****New**

- ☞ CJEU C-155/11 **Imran** [10 June 2011] (No adjudication)
- \* interpr. of Dir. 2003/86 on **Family Reunification** Art. 7(2)
- \* ref. from 'Rechtbank 's Gravenhage (zp) Zwolle' (Netherlands) 31-03-2011
- \* *The Dutch court requested a preliminary ruling on the question whether art. 7(2) of allows a Member State to refuse entry and residence to a family member of a TCN lawfully residing in that Member State, exclusively on the ground that this family member has not passed the (national) civic integration examination abroad. In this particular case the father with his eight children already lawfully resided in The Netherlands. Just before the Court would rule on this case, the Dutch government finally granted a residence permit, which implied that the Court had to rule that it was not necessary to rule on this issue, also because no claim for compensation had been submitted. According to the Court, the mere intention to bring an action for damages does not constitute sufficient grounds for a ruling. The Commission took the position that this article 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>*

**New**

- ☞ CJEU C-434/09 **McCarthy** [5 May 2011]
  - \* interpr. of TFEU **on Citizenship** Art. 21: EU Citizenship
  - \* ref. from 'Supreme Court' (United Kingdom)
  - \* *The SC requested a preliminary ruling on the right of a British citizen who also has Irish nationality and has always lived in the United Kingdom to move and reside freely within the territory of the Member States.*  
*The CJEU ruled that art. 21 TFEU is not applicable to a Union citizen who has never exercised his right of free movement, who has always resided in a Member State of which he is a national and who is also a national of another Member State, provided that the situation of that citizen does not include the application of measures by a Member State that would have the effect of depriving him of the genuine enjoyment of the substance of the rights conferred by virtue of his status as a Union citizen or of impeding the exercise of his right of free movement and residence within the territory of the Member States.*
  
- ☞ CJEU C-34/09 **Zambrano** [8 Mar. 2011]
  - \* interpr. of TFEU **on Citizenship** Art. 20
  - \* ref. from 'Tribunal du travail de Bruxelles' (Belgium)
  - \* *Citizenship of the Union entails a right of residence to a minor child on the territory of the Member State of which that child is a national, irrespective of the previous exercise by him of his right of free movement in the territory of the Member States. This also includes a derived right of residence and a right to work, to an ascendant relative, a third country national, upon whom the minor child is dependent.*  
*See also Q&A of EP :*  
<http://cmr.jur.ru.nl/nemis/Zambrano.QA.pdf>
  
- ☞ CJEU C-247/09 **Xhymshiti** [18 Nov. 2010]
  - \* interpr. of Reg. 859/2003 on **Third-Country Nationals' Social Security**
  - \* ref. from 'Finanzgericht Baden-Württemberg' (Germany)
  
- ☞ CJEU C-578/08 **Chakroun** [4 Mar. 2010]
  - \* interpr. of Dir. 2003/86 on **Family Reunion** Art. 7(1)(c) and 2(d)
  - \* ref. from 'Raad van State' (Netherlands)
  - \* *The concept of family reunification allows no distinction based on the time of marriage.*
  
- ☞ CJEU C-523/08 **Commission v Spain** [11 Feb. 2010]
  - \* non-transp. of Dir. 2005/71 on **Admission of Researchers**
  
- ☞ CJEU C-540/03 **EP v Council** [27 June 2006]
  - \* interpr. of Dir. 2003/86 on **Family Reunion**
  - \* challenge to validity of parts of Directive
  - \* decided in favour of the Council



**CJEU pending cases**

- ☞ CJEU C-15/11 **Sommer**
  - \* interpr. of Dir. 2004/114 on **Admission of students** Art. 17(3)
  - \* ref. from 'Verwaltungsgerichtshof' (Austria)
  - \* *Is it contrary to European Union law, that a permit (for students) to work is dependent on a fixed maximum number of foreign workers?*
  
- ☞ CJEU C-571/10 **Servet**
  - \* interpr. of Dir. 2003/109 on **Long-Term Residents**
  - \* ref. from 'Tribunale di Bolzano' (Italy)
  - \* *Is it contrary to European Union law, to make 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**
  - \* incor. appl. of Dir. 2004/114 on **Admission of students** Art. 17(1)
  - \* *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-508/10 **Commission vs Netherlands**
  - \* incor. appl. of Dir. 2003/109 on **Long-Term Residents**
  - \* *Charging € 201 to 830 for the processing of an application for LTR status is disproportionate if compared with the sum of EUR 30 which EU citizens are required to pay for a residence permit. Such a procedure cannot be regarded as 'fair'. Such high charges can be 'a means of hindering the exercise of the right of residence' within the meaning of recital 10 in the preamble to the directive, and thus have a deterrent effect on TCN.*
  
- ☞ CJEU C-502/10 **Singh**
  - \* interpr. of Dir. 2003/109 on **Long-Term Residents** Art. 3(2)(e)
  - \* ref. from 'Raad van State' (NL)
  - \* *Is the concept of formally limited residence permit within the meaning of [the LTR dir.] to be interpreted as including a fixed-period residence permit which, under Netherlands law, does not offer any prospect of a residence permit of indefinite duration, even if, under Netherlands law, the period of validity of the fixed-period residence permit can in principle be extended indefinitely and also if a particular group of people, such as spiritual leaders and religious teachers, are thereby excluded from the application of the Directive?*

## National Judgments

- ☞ **UK:ZH (Tanzania) SC [2011]UKSC4 [1 Feb. 2011]**
  - \* UN Convention on the Rights of the Child
  - \* by analogy: interpr. of Dir. 2003/86 on Family Reunion
  - \* full text available at:  
<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]**
  - \* no interpr. of Dir. 2004/38 on **Free Movement**
  - \* European Convention on Social and Medical Assistance
  - \* full text available at:  
<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.*
  
- ☞ **UK:MH Morocco [2010] UKUT 439 IAC [28 Sep. 2010]**
  - \* interpr. of Dir. 2003/86 on **Family Reunification**
  - \* art. 8 ECHR
  - \* full text available at:  
<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]
- \* interpr. of Dir. 2003/86 on *Family Reunion*
- \* Art. 7(2)
- \* Art. 8 ECHR
- \* appeal from Berlin Administrative Court, 17 Feb. 2009, VG 35 V 47.08
- \* full text available at:  
<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.)*

### ECHR Judgments

- ☞ Appl. No. 34848/07 *O'Donoghue and others v UK* [14 Dec. 2010]
- \* Violation of Art. 9, 12 and 14 ECHR
- \* Judgement of Fourth Section
- \* *This decision is about whether third country nationals can be required to obtain permission to marry before marrying to control their immigration status.*

## 2 Borders and Visas

### 2.1 Borders and Visas: Adopted Measures (Unless stated otherwise, UK, DK & IRL opted out)

#### Regulation 265/2010

*Long-Stay Visas Code*

- \* OJ 2010 L 85/1 (appl. 5 April 2010)
- \* appl. 5 April 2010

#### Regulation 810/2009

*Visa Code*

- \* OJ 2009 L 243/1 (appl. 5 April 2010)
- \* appl. 5 April 2010

#### Regulation 767/2008

*Establishing Visa Information System*

- \* OJ 2008 L 218/60
- \* Third-pillar VIS Decision (OJ 2008 L 218/129)

#### Decision 586/2008

*Transit through Switzerland*

- \* OJ 2008 L 162/27

#### Decision 582/2008

*Transit through Romania and Bulgaria*

- \* OJ 2008 L 161/30

**Decision 574/2007***Establishing European Borders Fund*

- \* OJ 2007 L 144

**Regulation 1931/2006***Local border traffic within enlarged EU at external borders of EU*

- \* OJ 2006 L 405/1

**Decision 896/2006***Transit through new Member States, Switzerland*

- \* OJ 2006 L 167
- \* impl. date see: OJ 2006 C 251/20

**Regulation 562/2006***Borders Code*

- \* OJ 2006 L 105/1
- \* amended by Reg. 296/2008 (OJ 2008 L 97/60)  
amended by Reg. 81/2009 (OJ 2009 L 35/56)  
*Regarding the use of the VIS*
- ☞ CJEU C-606/10 ANAFE [pending]
- ☞ CJEU C-430/10 Gaydarov [pending]
- ☞ CJEU C-355/10 EP v Council [pending]
- ☞ CJEU C-188/10 & C-189/10 Melki/Abdeli [2010]
- ☞ CJEU C-261/08 & C-348/08 Garcia/Cabrera [2000]

**Recommendation 2005/761***Visa Issuing for Researchers*

- \* OJ 2005 L 289/23

**Regulation 2252/2004***Biometric Passports*

- \* OJ 2004 L 385/1
- \* amended by Reg. 444/2009 (OJ 2009 L 142/1)  
*Biometric Passports*

**Regulation 2007/2004***Establishing External Borders Agency*

- \* OJ 2004 L 349/1
- \* amended by Reg. 863/2007 (OJ 2007 L 199/30)  
*Border guard teams*

**Decision 512/2004***Establishing Visa Information System (VIS)*

- \* OJ 2004 L 213/5

**Regulation 694/2003***Format for FTD and FRTD*

- \* OJ 2003 L 99/15

**Regulation 693/2003**

*FTD and FRTD*

- \* OJ 2003 L 99/8

**Regulation 333/2002**

*Visa stickers for persons coming from unrecognised entities*

- \* OJ 2002 L 53/4

UK opt in

**Regulation 539/2001**

*Establishing Visa List*

- \* OJ 2001 L 81/1

- \* amended by Reg. 2414/2001 (OJ 2001 L 327/1)

*Moving Romania to 'white list'*

amended by Reg. 453/2003 (OJ 2003 L 69/10)

*Moving Ecuador to 'black list'*

amended by Reg. 851/2005 (OJ 2005 L 141/3)

*On reciprocity for visas*

amended by Reg. 1932/2006 (OJ 2006 L 405/23)

amended by Reg. 1244/2009 (OJ 2009 L 336/1)

*Lifting visa req. for some Western Balkan countries*

amended by Reg. 1091/2010 (OJ 2010 L 329/1)

*Lifting visa req. for Albania and Bosnia; in force 5 April 2010*

amended by Reg. 1211/2010 (OJ 2010 L 339/6)

*Lifting visa req. for Taiwan*

**Regulation 1683/95**

*Common Visa Format*

- \* OJ 1995 L 164/1

UK opt in

- \* amended by Reg. 334/2002 (OJ 2002 L 53/7)

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

2.2 *Borders and Visas: Proposed Measures*

*(Unless stated otherwise, UK, DK & IRL opted out)*

**New**

**Regulation**

*amending visa list*

- \* COM (2011) 290, May 2011

- \* discussions underway in Council

The EP and the Council have agreed on two legislative proposals, but the difficult negotiations over the amendments to the Frontex Reg. are still ongoing, with operational human rights issues being particularly difficult. The Commission has proposed to amend the visa list legislation, not to amend the visa list as such, but to make sundry changes to the rules, in particular to allow for a fast-track reimposition of visas in the case of a major influx of people. Despite widespread press commentary on this issue, the Comm. has not yet officially proposed to amend the Borders Code in order to make it easier for Member States to reimpose internal border controls.

**Regulation***amending Schengen Borders Code*

- \* COM (2011) 624, 10 Mar. 2011
- \* discussions underway in Council

UK, IRL opt in

**Decision***Travel documents*

- \* COM (2010) 662, 12 Nov. 2010
- \* discussions underway in Council

**New** largely agreed between Council and EP**Regulation***Schengen evaluation*

- \* COM (2010) 624, 16 Nov. 2010
- \* discussions underway in Council

UK opt in

**New** Draft report discussed by EP**Amendment***Visa List re Taiwan*

- \* COM (2010) 358, 5 July 2010
- \* not yet formally adopted
- \* agreed between Council and EP

**Amendment***Frontex Regulation*

- \* COM (2010) 61, 24 Feb. 2010
- \* discussions underway in Council and EP

**New** negotiations underway between Council and EP**Regulation***Establishing agency to manage VIS, SIS and Eurodac*

- \* COM (2009) 293, 24 June 2009
- \* discussions underway in Council and EP

UK opt in

**New** largely agreed between Council and EP**Regulation***Codifying Regulations establishing EC visa list*

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

### 2.3 *Borders and Visas: Forthcoming Topics*

**Borders Code***Entry-exit programme and registered traveller programme (2011)*

## 2.4 *Borders and Visas: Jurisprudence*

### **CJEU Judgments - annulment actions**

- ☞ 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-77/05 & C-137/05 *UK v Council* [18 Dec. 2007]
  - \* validity of Border Agency Regulation and passport Regulation
  - \* judgment against UK
- ☞ CJEU C-257/01 *Commission v Council* [18 Jan. 2005]
  - \* challenge to Regs. 789/2001 and 790/2001
  - \* upholding validity of Regs.

### **CJEU Judgments - national court references**

- ☞ CJEU C-188/10 & C-189/10 *Melki/Abdeli* [22 June 2010]
  - \* interpr. of Reg. 562/2006 on *Borders Code* Art. 20 and 21
  - \* consistency of national law and European Union law, abolition of border control and the area of 20 kilometres from the land border
  - \* ref. from 'Cour de Cassation' (France)
- ☞ CJEU C-261/08 & C-348/08 *Garcia/Cabrera* [22 Oct. 2000]
  - \* interpr. of Reg. 562/2006 on *Borders Code* Art. 5, 11 and 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
  - \* ref. from 'Tribunal Superior de Justicia de Murcia' (Spain)
- ☞ CJEU C-139/08 *Kjiku* [2 Apr. 2009]
  - \* interpr. of Dec. 896/2006 on *Transit through new Member States*, Art. 1 and 2
  - \* on transit visa legislation for third-country nationals subject to a visa requirement
  - \* ref. from 'Oberlandesgericht Karlsruhe' (Germany)
- ☞ CJEU C-241/05 *Bot* [4 Oct. 2006]
  - \* interpr. of Schengen 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
  - \* ref. from 'Conseil d'Etat' (France)

**CJEU pending cases**

- ☞ CJEU C-606/10 *ANAFE*
  - \* interpr. of Reg. 562/2006 on *Borders Code* Art. 13 and 5(4)(a)
  - \* annulment of national legislation on visa
  - \* *Is it allowed to issue temporary permits that prohibits entry into other Member States?*
- ☞ CJEU C-430/10 *Gaydarov*
  - \* interpr. of Reg. 562/2006 on *Borders Code*
  - \* *Is it allowed to restrict the movements of a convicted criminal during his rehabilitation period if this restriction is based on his criminal relevant behavior in an other State?*
- ☞ CJEU C-355/10 *EP v Council*
  - \* interpr. of Reg. 562/2006 on *Borders Code* Art. 12(5)
  - \* annulment of measure implementing Borders Code

**3 Irregular Migration**

3.1 *Irregular Migration: Adopted Measures* *(Unless stated otherwise, UK, DK & IRL opted out)*

**New**

**Directive replacing Framework Dec.**

*Trafficking persons*

- \* OJ 2011 L 101/1
- \* impl. date deadline 6 april 2012
- \* The EU's next focus in this area is the implementation of the new anti-trafficking Directive, which the UK intends to participate fully in.

UK opt in

**Regulation amending Regulation**

*Immigration liaison officers*

- \* OJ 2011 L 141/13

**New** applies from 16 June 2011

**Directive 2009/52**

*Sanctions for employers of irregular migrants*

- \* OJ 2009 L 168/24
- \* impl. date 20 July 2011



**Directive 2008/115**

*Returns Directive*

- \* OJ 2008 L 348/98
- \* impl. date 24 Dec. 2010
- ☞ CJEU C-169/11 Conteh [pending]
- ☞ CJEU C-144/11 Abdallah [pending]
- ☞ CJEU C-140/11 Ngagne [pending]
- ☞ CJEU C-120/11 Kwadwo [pending]
- ☞ CJEU C-94/11 Godwin [pending]
- ☞ CJEU C-61/11 El Dridi [2011]
- ☞ CJEU C-357/09 Kadzoev [2009]

**Decision**

*European Return Programme*

- \* OJ 2007 L 144 UK opt in

**Regulation 1988/2006**

*SIS II, amending Reg. 2424/2001*

- \* OJ 2006 L 411/1 UK opt in

**Regulation 1987/2006**

*Establishing SIS II*

- \* OJ 2006 L 381/4

**Decision**

*Early warning system*

- \* OJ 2005 L 83/48 UK opt in

**Decision**

*Joint flights for expulsion*

- \* OJ 2004 L 261/28 UK opt in

**Directive 2004/82**

*Transmission of passenger data*

- \* OJ 2004 L 261/64 UK opt in

**Regulation 871/2004**

*New functionalities for SIS*

- \* OJ 2004 L 162/29

**Directive 2004/81**

*Res. permits for trafficking victims*

- \* OJ 2004 L 261/19 UK opt in
- ☞ CJEU C-266/08 Commission v Spain [2009]

**Decision**

*Costs of expulsion*

- \* OJ 2004 L 60/55 UK opt in

**Regulation 377/2004**

*ILO network*

\* OJ 2004 L 64/1

UK opt in

**Regulation 378/2004**

*Procedure for amendments to Sirene manual*

\* OJ 2004 L 64

UK opt in

**Conclusions**

*Transit via land for expulsion*

\* adopted 22 Dec. 2003 by Council

UK opt in

**Directive 2003/110**

*Assistance with transit for expulsion by air*

\* OJ 2003 L 321/26

**Directive & Framework Decision**

*Facilitation of illegal entry and residence*

\* OJ 2002 L 328

UK opt in

**Framework Decision**

*Trafficking in persons*

\* OJ 2002 L 203/1

UK opt in

**Decision 886/JHA/2001**

*Funding SIS II*

\* OJ 2001 L 328/1

UK opt in

**Regulation 2424/2001**

*Funding SIS II*

\* OJ 2001 L 328/4

UK opt in

**Directive 2001/51**

*Carrier sanctions*

\* OJ 2001 L 187/45

\* impl. date 11 Feb. 2003

UK opt in

**Directive 2001/40**

*Mutual recognition of expulsion decisions*

\* OJ 2001 L 149/34

\* impl. date 2 Oct. 2002

UK opt in

**3.2 Irregular Migration: Proposed Measures**

*(Unless stated otherwise, UK, DK & IRL opted out)*

\* nothing to report

### 3.3 Irregular Migration: Jurisprudence

#### CJEU Judgments

**New**

- ☞ CJEU C-61/11 *El Dridi* [28 Apr. 2011]
  - \* interpr. of Dir. 2008/115 on *Returns Directive* Art. 15 and 16
  - \* PPU: Urgency Procedure
  - \* ref. from 'Corte D'Appello Di Trento' (Italy)
  - \* *The Returns Dir. 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 on *Returns Directive* Art. 15(4), (5) and (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 on *Res. permits for trafficking victims*
  - \* on the status of victims of trafficking and smuggling

#### CJEU pending cases

**New**

- ☞ CJEU C-169/11 *Conteh*
  - \* interpr. of Dir. 2008/115 on *Returns Directive* Art. 15 and 16
  - \* ref. from 'Tribunale di Frosinone' (Italy)
  - \* *whether a Member State can apply to an illegally staying TCN who does not cooperate in the administrative return procedure measures involving deprivation of liberty, on the basis of measures which are other than detention measures and as defined by national law, without the pre-conditions and safeguards laid down in Art. 15 and 16, on grounds of failure to comply with a removal order.*

**New**

- ☞ CJEU C-144/11 **Abdallah**
- \* interpr. of Dir. 2008/115 on **Returns Directive**
- \* ref. from 'Giudice di pace di Mestre' (Italy)
- \* *whether a provision of national law, which categorises as a crime the mere act of entering, or of remaining in, the national territory, in breach of the provisions laid down in relation to immigration where the person who so enters or remains is a citizen of a third country.*

**New**

- ☞ CJEU C-140/11 **Ngagne**
- \* interpr. of Dir. 2008/115 on **Returns Directive** Art. 15
- \* *whether a Member State can order a non-national who is unlawfully present on its territory to depart from that territory when it is not possible to proceed by means of deportation, whether immediate or following detention, thereby reversing the priorities and the order of procedure laid down in those provisions.*

**New**

- ☞ CJEU C-120/11 **Kwadwo**
- \* interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
- \* ref. from 'Tribunale di Santa Maria Capua Vetere' (Italy)
- \* *whether an illegally staying foreign national who has simply failed to comply with the deportation order and the removal order issued by the administrative authorities from incurring criminal liability and being sentenced to a term of imprisonment of up to four years if he fails to comply with the first removal order and up to five years if he fails to comply with subsequent orders issued by the Questore.*

**New**

- ☞ CJEU C-94/11 **Godwin**
- \* interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
- \* ref. from 'Tribunale di Bergamo' (Italy)
- \* *whether the conduct of a third-country national illegally staying in a Member State may be categorised as punishable under criminal law - simply on account of his lack of cooperation in the deportation procedure, in particular his mere failure to comply with a removal order issued by the administrative authorities - by a sentence of imprisonment of up to four years for failure to comply with the initial order issued by the Questore and a term of imprisonment of up to five years for failure to comply with subsequent orders.*

- ☞ CJEU C-60/11 **Mrad**
- \* interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
- \* ref. from 'Tribunale di Ragusa' (Italy)
- \* *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*

- ☞ CJEU C-50/11 **Emegor**
- \* interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
- \* ref. from 'Tribunale di Ivrea' (Italy)
- \* *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*

- ☞ CJEU C-43/11 **Samb**
- \* interpr. of Dir. 2008/115 on **Returns Directive** Art. 15 and 16
- \* ref. from 'Tribunale Ordinario Di Milano' (Italy)
- \* *on the relation between a removal order, (non-) cooperation with deportation, and imprisonment because of illegal stay*

## 4 External Treaties

### 4.1 External Treaties: Readmission *(Unless stated otherwise, UK, DK & IRL opted out)*

#### **Russia, Ukraine, Moldova**

- \* Council to approve mandate to renegotiate, Apr. 2011

#### **Belarus**

- \* negotiation mandate approved by Council, Feb. 2011

#### **Morocco, Algeria, Turkey and China**

- \* negotiations approved, 2010
- agreed with Turkey, Jan. 2011

#### **Georgia**

- \* Proposal to sign and conclude agreement:  
signed, (COM (2010) 199 and 200), 5 May 2010  
concluded Jan. 2011; entered into force 1 March 2011

#### **Pakistan**

- \* concluded, Sep. 2010 (OJ 2010 L 287/50)  
into force 1 Dec. 2010

#### **Ukraine, Serbia, Montenegro, Bosnia, Macedonia and Moldova**

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

#### **Russia**

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

#### **Cape Verde**

- \* agreement proposed Nov. 2008;  
negotiation mandate approved by Council June 2009

#### **Albania**

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

#### **Sri Lanka**

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

**Macao**

- \* OJ 2004 L 143/97 (into force 1 June 2004 )
- \* into force 1 June 2004

UK opt in

**Hong Kong**

- \* OJ 2004 L 17/23 (into force 1 Mar. 2004)
- \* into force 1 Mar. 2004

UK opt in

**4.2 External Treaties: Other****Belarus**

- \* Council approved mandate to negotiate visa facilitation treaty, Feb. 2011

**Brazil: Two visa waiver treaties**

- \* OJ 2011 L 66/1 & 2
- \* into force 24 Feb. 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

**Cape Verde: Visa facilitation agreement negotiations**

- \* proposed Nov. 2008  
negotiation mandate approved by Council June 2009

**Georgia: Visa facilitation agreement**

- \* proposal to sign and conclude, (COM (2010) 197 and 198), 5 May 2010  
signed June 2010  
concluded, Jan. 2011; entered into force 1 March 2011

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

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

**Russia: Visa facilitation agreement**

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

**Denmark: Dublin II treaty**

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

**China: Approved Destination Status treaty**

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

**Switzerland: Schengen, Dublin**

(applied from Dec. 2008 )

- \* applied from Dec. 2008

**Switzerland: Free Movement of Persons**

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

**Norway and Iceland: Dublin Convention**

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

**EC-Turkey Association Agreement**

- \* into force 23 Dec. 1963  
Additional Protocol into force 1 Jan. 1973
- \* Decision No 1/80 of the Association Council of 19 Sept. 1980 on the Development of the Association and  
Decision No 3/80 of the Association Council of 19 Sept. 1980 on Social Security

4.3 *External Treaties: Jurisprudence***CJEU Judgments on EEC-Turkey Association Agreement*****New***

- ☞ C-484/07 *Pehlivan* [16 June 2011]
- \* interpr. of Dec. No 1/80 & 3/80 Art. 7
- \* ref. from 'Rechtbank 's Gravenhage' (Netherlands)
- \* *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.*

**New**

- ☞ C-485/07 **Akdas** [26 May 2011]
  - \* interpr. of Dec. 3/80 Art. 6(1)
  - \* ref. from 'Centrale Raad van Beroep' (Netherlands)
  - \* *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. No 1/80 Art. 7 and 14(1)
  - \* ref. from 'Bundesverwaltungsgericht' (Germany)
  - \* *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. No 1/80 Art. 13 (standstill clause)
  - \* ref. from 'Raad van State' (Netherlands)
  - \* *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. No 1/80 Art. 10(1) and 13 (standstill clauses)
  - \* *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. No 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. No 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. No 1/80 Art. 13
  - \* ref. from 'Raad van State' (Netherlands)
  
- ☞ C-228/06 **Soysal** [19 Feb. 2009]
  - \* interpr. of standstill provision Art. 41(1)



- ☞ C-337/07 **Altun** [18 Dec. 2008]
  - \* interpr. of Dec. No 1/80 Art. 7
  - \* ref. from 'Verwaltungsgericht Stuttgart' (Germany)
  
- ☞ C-453/07 **Er** [25 Sep. 2008]
  - \* interpr. of Dec. No 1/80 Art. 7
  - \* ref. from 'Verwaltungsgericht Gießen' (Germany)
  
- ☞ C-294/06 **Payir** [24 Jan. 2008]
  - \* interpr. of Dec. No 1/80 Art. 6 (1)
  - \* ref. from 'Court of Appeal' (United Kingdom)
  
- ☞ C-349/06 **Polat** [4 Oct. 2007]
  - \* interpr. of Dec. No 1/80 Art. 7 and 14
  - \* ref. from 'Verwaltungsgericht Darmstadt' (Germany)
  
- ☞ C-16/05 **Tum & Dari** [20 Sep. 2007]
  - \* interpr. of standstill provision Art. 41(1)
  
- ☞ C-325/05 **Derin** [18 July 2007]
  - \* interpr. of Dec. No 1/80 Art. 6, 7 and 14
  - \* ref. from 'Verwaltungsgericht Darmstadt' (Germany)
  
- ☞ C-4/05 **Güzeli** [26 Oct. 2006]
  - \* interpr. of Dec. No 1/80 Art. 10(1)
  - \* ref. from 'Verwaltungsgericht Aachen' (Germany)
  
- ☞ C-502/04 **Torun** [16 Feb. 2006]
  - \* interpr. of Dec. No 1/80 Art. 7
  - \* ref. from 'Bundesverwaltungsgericht' (Germany)
  
- ☞ C-230/03 **Sedef** [10 Jan. 2006]
  - \* interpr. of Dec. No 1/80 Art. 6
  - \* ref. from 'Bundesverwaltungsgericht' (Germany)
  
- ☞ C-374/03 **Gürol** [7 July 2005]
  - \* interpr. of Dec. No 1/80 Art. 9
  - \* ref. from 'Verwaltungsgericht Sigmarinen' (Germany)
  
- ☞ C-383/03 **Dogan** [7 July 2005]
  - \* interpr. of Dec. No 1/80 Art. 6(1) and (2)
  - \* ref. from 'Verwaltungsgerichtshof' (Austria)
  
- ☞ C-373/03 **Aydinli** [7 July 2005]
  - \* interpr. of Dec. No 1/80 Art. 6 and 7
  - \* ref. from 'Verwaltungsgericht Freiburg' (Germany)

- ☞ C-136/03 **Dörr & Unal** [2 June 2005]
  - \* interpr. of Dec. No 1/80 Art. 6(1) and 14(1)
  - \* ref. from 'Verwaltungsgerichtshof' (Austria)
  
- ☞ C-467/02 **Cetinkaya** [11 Nov. 2004]
  - \* interpr. of Dec. No 1/80 Art. 7 and 14(1)
  - \* ref. from 'Verwaltungsgericht Stuttgart' (Germany)
  
- ☞ C-275/02 **Ayaz** [30 Sep. 2004]
  - \* interpr. of Dec. No 1/80 Art. 7
  - \* ref. from 'Verwaltungsgericht Stuttgart' (Germany)
  
- ☞ C-465/01 **Comm. v Austria** [16 Sep. 2004]
  - \* interpr. of Dec. No 1/80
  
- ☞ C-317/01 & C-369/01 **Abatay/Sahin** [21 Oct. 2003]
  - \* interpr. of Dec. No 1/80 Art. 13 and 41(1)
  - \* ref. from 'Bundessozialgericht' (Germany)
  
- ☞ C-171/01 **Birlikte** [8 May 2003]
  - \* interpr. of Dec. No 1/80 Art. 10(1)
  - \* ref. from 'Verfassungsgerichtshof' (Austria)
  
- ☞ C-188/00 **Kurz (Yuze)** [19 Nov. 2002]
  - \* interpr. of Dec. No 1/80 Art. 6(1) and 7
  - \* ref. from 'Verwaltungsgericht Karlsruhe' (Germany)
  
- ☞ C-89/00 **Bicakci** [19 Sep. 2000]
  - \* interpr. of Dec. No 1/80
  
- ☞ C-65/98 **Eyüp** [22 June 2000]
  - \* interpr. of Dec. No 1/80 Art. 7
  - \* ref. from 'Verwaltungsgerichtshof' (Austria)
  
- ☞ C-37/98 **Savas** [11 May 2000]
  - \* interpr. of standstill provision Art. 41(1)
  
- ☞ C-329/97 **Ergat** [16 Mar. 2000]
  - \* interpr. of Dec. No 1/80 Art. 7
  - \* ref. from 'Bundesverwaltungsgericht' (Germany)
  
- ☞ C-340/97 **Nazli** [10 Feb. 2000]
  - \* interpr. of Dec. No 1/80 Art. 6(1) and 14(1)
  - \* ref. from 'Verwaltungsgericht Ansbach' (Germany)
  
- ☞ C-1/97 **Birden** [26 Nov. 1998]
  - \* interpr. of Dec. No 1/80 Art. 6(1)
  - \* ref. from 'Verwaltungsgericht Bremen' (Germany)

- ☞ C-210/97 **Akman** [19 Nov. 1998]
  - \* interpr. of Dec. No 1/80 Art. 7
  - \* ref. from 'Verwaltungsgericht Köln' (Germany)
  
- ☞ C-98/96 **Ertanir** [30 Sep. 1997]
  - \* interpr. of Dec. No 1/80 Art. 6(1) and 6(3)
  - \* ref. from 'Verwaltungsgericht Darmstadt' (Germany)
  
- ☞ C-36/96 **Günaydin** [30 Sep. 1997]
  - \* interpr. of Dec. No 1/80 Art. 6(1)
  - \* ref. from 'Bundesverwaltungsgericht' (Germany)
  
- ☞ C-285/95 **Kol** [5 June 1997]
  - \* interpr. of Dec. No 1/80 Art. 6(1)
  - \* ref. from 'Oberverwaltungsgericht Berlin' (Germany)
  
- ☞ C-386/95 **Eker** [29 May 1997]
  - \* interpr. of Dec. No 1/80 Art. 6(1)
  - \* ref. from 'Bundesverwaltungsgericht' (Germany)
  
- ☞ C-351/95 **Kadiman** [17 Apr. 1997]
  - \* interpr. of Dec. No 1/80 Art. 7
  - \* ref. from 'Verwaltungsgericht München' (Germany)
  
- ☞ C-171/95 **Tetik** [23 Jan. 1997]
  - \* interpr. of Dec. No 1/80 Art. 6(1)
  - \* ref. from 'Bundesverwaltungsgericht' (Germany)
  
- ☞ C-434/93 **Ahmet Bozkurt** [6 June 1995]
  - \* interpr. of Dec. No 1/80 Art. 6(1)
  - \* ref. from 'Raad van State' (Netherlands)
  
- ☞ C-355/93 **Eroglu** [5 Oct. 1994]
  - \* interpr. of Dec. No 1/80 Art. 6(1)
  - \* ref. from 'Verwaltungsgericht Karlsruhe' (Germany)
  
- ☞ C-237/91 **Kus** [16 Dec. 1992]
  - \* interpr. of Dec. No 1/80 Art. 6(1) and (3)
  - \* ref. from 'Hessischer Verwaltungsgerichtshof' (Germany)
  
- ☞ C-192/89 **Sevince** [20 Sep. 1990]
  - \* interpr. of Dec. No 1/80 Art. 6(1) and 13
  - \* ref. from 'Raad van State' (Netherlands)
  
- ☞ 12/86 **Demirel** [30 Sep. 1987]
  - \* interpr. of Dec. No 1/80 Art. 7 and 12
  - \* ref. from 'Verwaltungsgericht Stuttgart' (Germany)

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

**New**

- ☞ C- (not yet known)
- \* interpr. of Dec. 1/80 Art. 10(1) and 13 (standstill clauses)
- \* ref. from 'Oberverwaltungsgericht Hamburg' (Germany) 19-05-2011
- \* *Whether new and more restrictive legislation on work and residence permits are in breach with the standstill clause; with reference to C-300/09 (Toprak) and C-301/09 (Oguz).*

**New**

- ☞ C- (not yet known)
- \* interpr. of Add. Protocol 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 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.*
- ☞ C-187/10 **Baris Unal**
- \* ref. from 'Raad van State' (Netherlands)
- \* *on retroactive withdrawal of residence permit; no fraude; legal certainty*
- ☞ C-186/10 **Tural Oguz**
- \* interpr. of Add. Protocol Art. 41(1)
- \* ref. from 'Court of Appeal (E&W)' (United Kingdom)
- \* *Residence permit granted under condition of no self-employment; can Turkish national rely on Art. 41 Protocol?*
- ☞ C-7/10 & C-9/10 **Kahveci & Inan**
- \* interpr. of Dec. No 1/80 Art. 7
- \* ref. from 'Raad van State' (Netherlands)
- \* *Is status of Art. 7 of Dec. 1/80 lost because worker acquires nationality of Member State of residence next to Turkish nationality?*

- ☞ C-436/09 **Belkiran**
  - \* interpr. of Dec. No 1/80
  - \* ref. from 'Bundesverwaltungsgericht' (Germany)
  - \* *Should Art. 14(1) of Dec. 1/80 (protection against expulsion) be interpreted as Art. 28(3) of the Free Movement Directive (2004/38/EC)?*
  
- ☞ C-420/08 **Erdil**
  - \* interpr. of Dec. No 1/80
  - \* ref. from 'Verwaltungsgericht Berlin' (Germany)
  - \* *Does the protection of Art 28(3) of Free Movement Directive (2004/38) apply to Turkish national with status Art. 7 of 1/80 born in a Member State?*
  
- ☞ C-371/08 **Ziebell or Örnek**
  - \* interpr. of Dec. No 1/80 Art. 14(1)
  - \* ref. from 'Verwaltungsgerichtshof Baden Württemberg' (Germany)
  - \* *Should Art. 14(1) of Dec. 1/80 (protection against expulsion) be interpreted as Art. 28(3) of the Free Movement Directive (2004/38/EC)?*  
*The AG concluded (14 April 2011) that a Turkish national who enjoys protection within the meaning of Art. 7(1) can only be expelled if his behaviour is an actual, real and sufficiently serious threat to a vital interest of the society. Whether that is the case is up to the national court to decide.*

## 5 Institutional Measures

### 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)
- \* in effect 1 March 2008

## 6 Miscellaneous

**New**

### Information Note on references from national courts for a preliminary ruling

- \* OJ 2011 C 160/01  
on preliminary rulings
- \* full text available at:  
<http://cmr.jur.ru.nl/nemis//onpreliminaryrulings.pdf>

**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.

COE Rule 39

- \* full text available at:  
<http://cmr.jur.ru.nl/nemis//COERule39.pdf>