

# EMN INFORM

## Case Law of the Court of Justice of the European Union relating to legal migration and national developments

### 1. INTRODUCTION

This EMN Inform provides information on EU and national case law<sup>1</sup> on the interpretation and application of legal instruments within the legal migration EU *acquis*. For the purpose of this EMN Inform these are:

- ★ [Directive 2003/109/EC](#) concerning the status of third-country nationals who are long-term residents;<sup>2</sup>
- ★ [Directive 2003/86/EC](#) on the right to family reunification;<sup>3</sup>

In addition, one example of case law relevant to third-country nationals – even if not falling under the legal migration legal basis (Article 79 TFEU) – is also included in relation to the following instrument, for comparison purposes:

- ★ [Directive 2004/38/EC](#) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States;

Other instruments governing legal migration, for example, Directives 2004/114/EC<sup>4</sup> (conditions of admission for third-country nationals (TCNs) for the purpose of studies, pupil exchange, unremunerated training or voluntary service), 2005/71/EC (admission and residence of TCN researchers), 2009/50/EC

(admission and residence of TCNs for the purpose of highly qualified employment); and 2011/98/EU (the 'single permit' Directive) have generated fewer examples of case law at EU and national levels.

The information on EU case law is complemented by national developments and case law reported by 18 Member States<sup>5</sup> (**BE, BG, EE, FI, FR, HU, IE, LT, LU, LV, NL, PL, PT, RO, SE, SK, UK**) and **Norway**<sup>6</sup>.

### 2. KEY POINTS TO NOTE

- ★ The way the Court of Justice of the European Union (CJEU) has interpreted provisions of the EU *acquis* on legal migration and citizenship reflects the importance the Court has attached to ensuring that **equal treatment** between nationals and legal migrants is preserved and that the **rights** associated with the relevant legal instruments are protected in full by Member States;
- ★ The CJEU has undergone a clarification process concerning the definitions of individuals that can fall under the scope of the Instruments to ensure that Member States do not implement an unduly restrictive interpretation of the legal provisions.
- ★ Case Law relating to the interpretation of the provisions of Directive 2004/38/EC has demonstrated the CJEU's approach in ensuring that third-country nationals can be admitted to the territory of the Member States in situations

<sup>1</sup> Case Law from the entry into force of the Treaty of Lisbon, in December 2009, onwards was examined though previous judgments were also highlighted, where relevant, due to their impact on future judgments.

<sup>2</sup> Denmark, Ireland and United Kingdom do not take part in this Directive and are not bound by or subject to its application.

<sup>3</sup> Denmark, Ireland and United Kingdom do not take part in this Directive and are not bound by or subject to its application.

<sup>4</sup> The only judgement given by the CoJ concerning the 'Students' Directive' (*Sommer*, C-15/2011) is in relation to the equal treatment of EU citizens compared to TCNs and was therefore not included.

<sup>5</sup> The national developments are based on the replies received to the EMN Ad-Hoc Query n. 547 launched by COM on 27<sup>th</sup> March 2014.

<sup>6</sup> Norway is not a Member States of the EU and is not bound by the EU *acquis*, but participates in the EMN and is thus included in this Inform.

where the rights of Union citizens would be significantly impeded if their admission were denied.

### 3. THE GUARANTEE OF EQUAL TREATMENT – CASE LAW RELATING TO LONG-TERM RESIDENCE

#### a. EU case-law

Directive 2003/109/EC applies to third-country nationals residing legally in the territory of a Member State. The Directive determines 'the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto'.<sup>7</sup>

The CJEU has examined a number of cases relating to the interpretation of specific provisions of this Directive, giving particular relevance to the provision of **equal treatment**<sup>8</sup> to long-term residents as opposed to nationals of the Member States. In the *Kamberaj* judgment,<sup>9</sup> the CJEU was asked to determine the extent to which third-country national long-term residents have access to social benefits in the Member State in which they reside. Article 11(4) of the Directive provides that Member States may limit equal treatment in respect of social assistance and protection to core benefits. The Court held, however, that the clause of equal treatment of the Directive "prevents different treatment for long-term residents compared to the allocation to nationals residing in the same province or regions where the funds for the benefit are allocated".

Following the *Kamberaj* judgment, the Court in *European Commission v. Netherlands* Case C-508/10<sup>10</sup> ruled on the *application of administrative fees for the issuance and renewal of a long-term residence permit*, once again examining the difference in treatment between third-country nationals and nationals of the Member State. The Commission claimed that, by requiring third-country nationals and their family members to pay high and unfair fees, the Netherlands had failed in its obligations under Directive 2003/109/EC. The Court attempted to establish some criteria to define whether the administrative charge could be considered as excessive and disproportionate,

thus creating an obstacle to the exercise of the rights provided for in the Directive.

The Court held that the levels at which charges are set 'must have neither the object nor the effect of creating an obstacle to the obtaining of long-term residence status'.<sup>11</sup> Charges that have a significant financial impact on third-country nationals falling under the provisions of the Directive could impact and prevent them from claiming the rights provided for under the Directive.

The *Singh* judgment<sup>12</sup> concerned the interpretation of Article 3(2)(e) of Directive 2003/109/EC. The Court was asked whether this Article must be interpreted as meaning that the concept of 'residence permit which has been formally limited' includes a fixed-period residence permit, the validity of which may be indefinite without actually offering any prospect of a residence permit of indefinite duration.

The Court held that this concept does not include a fixed period residence permit but that a fixed period residence permit can be relevant for accumulating five years required by the Directive. The court highlighted the importance of the concrete possibility of integration for the third-country national who may have the right to long-term residence after five years of legal and continuous stay based on a limited permit that is indefinitely renewed.

The case law relating to long-term residence has demonstrated the CJEU's approach in ensuring that Member States guarantee that *no disproportionate administrative obstacles exist for third-country nationals wishing to benefit from the long-term residence and the equal treatment that is subsequently associated with it*.

#### b. National developments and case-law

Following the *Singh* judgment, a number of impacts have been reported in the Member States:

- ★ In **Belgium** the Law on long-term residence rights was amended in order to change the condition of holding the right of indefinite residence to request EU long-term residence status into a condition of legal and uninterrupted stay of 5 years;
- ★ The **French Conseil d'Etat** clarified in a ruling that the solidarity allowance for the elderly and the allowance for disabled adults shall not be taken into account in the calculation of the

<sup>7</sup> Article 1(a)

<sup>8</sup> Article 11 of the Directive.

<sup>9</sup> Case C-571/10 Judgment of the Court (Grand Chamber) of 24 April 2012 *Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES) and Others*

<sup>10</sup> Case C-508/10 Judgment of the Court (Second Chamber) of 26 April 2012 *European Commission v Kingdom of the Netherlands* Available at <http://curia.europa.eu/juris/celex.jsf?celex=62010CJ0508&lang1=en&type=NOT&ancre=>.

<sup>11</sup> Paragraph 69 of judgment.

<sup>12</sup> C-502/10 *Staatssecretaris van Justitie v Mangat Singh*

resources of the applicant for an EC long-term residence permit.<sup>13</sup> On the other hand, it stated that the requirement of having a minimum amount of resources other than the ones coming from social aid is not against the principle of equality of treatment.<sup>14</sup>

As a consequence of the Court of Justice judgment on case C-508/10:<sup>15</sup>

- ★ Both **France** and the **Netherlands** lowered the administrative fees for third-country nationals who are long-term residents and their family members;
- ★ The Irish High Court noted that although **Ireland** opted out of Directive 2003/109, regard should be given to its terms, and that national law should be interpreted in a manner consistent with it. In particular the Court made reference to the concept of 'threat to public policy' as a ground to refuse long-term residence status;<sup>16</sup>
- ★ In **Luxembourg**, several Administrative Court decisions<sup>17</sup> took into account the Directive to define the requirement of regular and stable financial resources during the 5 years period before the application without having depended on the social assistance system. Finally, in **Poland** the national courts issued several rulings<sup>18</sup> which defined the requirement to have a stable and regular income as the condition for acquiring long-term resident status in the EU.<sup>19</sup> This process led to an amendment to national law which clarified that when evaluating applicant's resources the authorities should take into account a certain period of stay in the territory of the Member State.

## 4. THE RESPECT OF FAMILY LIFE - CASE LAW RELATING TO FAMILY REUNIFICATION

### a. EU case-law

Directive 2003/86/EC on the right to family reunification aims to '*determine the conditions for the*

*exercise of the right to family reunification by third-country nationals residing lawfully in the territory of the Member States*'. The relevant case law of the CJEU concerns the rights that can be enjoyed by the third-country nationals as well as the conditions associated to their permission to stay.

In its judgment in case C-540/03 *European Parliament v. Council*,<sup>20</sup> the Court rejected the Parliament's claim that the Directive breached the fundamental right to family life, arguing that its provisions preserve only a **limited margin of appreciation** for the Member States.<sup>21</sup> The Court indicated useful pointers on these margins of appreciation and concluded that the Directive does not confer on Member States a greater discretion than other international instruments to weigh, in each situation, the different interests at stake, particularly the effective integration of the immigrants, the right to family life, and the best interest of the child.<sup>22</sup>

**Access to social assistance** (Article 7), was tackled by the CJEU in the *Chakroun* (C-578/08) judgment.<sup>23</sup> The Court held that, together with the income requirement set out in Article 7(1)(c) other criteria such as the nature and solidity of the person's family relationships and the duration of his residence in the Member State and of the existence of family, cultural and social ties with his/her country of origin (Article 17) were to be considered when deciding on an application for family reunification. According to the Court, Member States must be prevented from adopting rules relating to family reunification which result in the refusal of a sponsor who has proved that s/he has stable and regular resources which are sufficient to maintain him/herself and his/her family, but require special assistance in exceptional circumstances<sup>24</sup>.

Furthermore, the judges stressed that restrictions to the right to family reunification must be strictly interpreted in the light of the fundamental right to family life as enshrined under existing international norms. For this reason, the Member States should implement the Directive in a way that does not undermine its objective or its effectiveness.<sup>25</sup>

Finally, the Court emphasised that the Directive must be interpreted as preventing national legislation from drawing a distinction as to whether the family

<sup>13</sup> Conseil d'Etat, 26 December 2013, *M. Nouri-Shakeri*, request n° 366722.

<sup>14</sup> Conseil d'Etat, 5 March 2014, *Mme B.*, request n° 374145.

<sup>15</sup> Ruling of 26 April 2012 case C-508/10 *EC vs Kingdom of the Netherlands*.

<sup>16</sup> *Hussein v. Minister for Justice* [2014] IEHC 34.

<sup>17</sup> See table 1 in annex.

<sup>18</sup> See table 1 in Annex for reference.

<sup>19</sup> Pursuant to Article 5(1)(a) of Directive 2003/109.

<sup>20</sup> Judgment of the Court (Grand Chamber) of 27 June 2006 *European Parliament v Council of the European Union*.

<sup>21</sup> Paragraph 98 of judgment.

<sup>22</sup> Paragraphs 103-104 of judgment

<sup>23</sup> Case C-578/08 *Rhimou Chakroun v Minister van Buitenlandse Zaken* Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0578:EN:HTML>.

<sup>24</sup> Paragraph 52 of judgement.

<sup>25</sup> Paragraphs 43-47 of judgement

relationship arose before or after the sponsor entered the territory of the host Member State when applying the income requirement<sup>26</sup>.

The **right to family life** was also examined by the CJEU in the joined cases *O, S and L*<sup>27</sup> where the connection between the right of Union citizens to family life under the Charter of Fundamental Rights and the right of third-country nationals to family reunification under the Directive were explored. The reference for a preliminary ruling concerned the interpretation of Article 20 TFEU.<sup>28</sup> The questions in these cases were whether Article 20 TFEU prevents a third-country national from being refused a residence permit because of lack of means of subsistence in a family situation in which the spouse has custody of a child who is a Union citizen and the third-country national is not the child's parent, does not have custody of the child and does not live with the spouse or child.<sup>29</sup>

The Court held that EU Law does not prevent, in principle, a Member State from refusing to grant a residence permit for family reunification, provided that the refusal does not entail, for the Union citizen concerned, the denial of the enjoyment of the right of family life. The National Courts are responsible for ascertaining whether such a refusal would deny the Union citizens their rights in light of Articles 7 and 24(2) and (3) of the Charter of Fundamental Rights. Member States must examine family reunification applications in the best interests of the child and also with a view to promoting family life while avoiding undermining the objective and the effectiveness of the family reunification Directive.

#### b. National case-law and developments

A number of impacts at National level have been reported:

- ★ In **Belgium** the Constitutional Court<sup>30</sup> interpreted some provision of the law on access to the territory, residence, establishment and removal of foreigners<sup>31</sup> in light of Directive 2003/86. A Circular<sup>32</sup> explained how to apply certain provisions of the law, taking into account the way the Constitutional Court interpreted the Directive concerned.

- ★ In **Estonia** a ruling of the Supreme Court<sup>33</sup> defined the right to family reunification looking, among others, to Directive 2003/86 and the Court of Justice's jurisprudence. As a result, a provision of the Aliens Act which did not allow discretionary power to decide on family reunification in cases where the concerned person benefited from international aid or reintegration programs in a third country was declared unconstitutional. Following this ruling, the Aliens Act now allows third-country nationals who received support to leave Estonia to receive a temporary residence permit as an exception if he or she is applying for a residence permit to settle with a close relative.

- ★ The Supreme Court of **Ireland** held that 'proxy marriage' is accepted as valid proof of marital relationship, if the relationship had subsisted for many years in accordance with the UNHCR principle of the "essential right" of refugees to family unity and respecting the rationale of family reunification as defined in Recital (4) to Directive 2003/83.<sup>34</sup> Though Ireland opted out Directive 2003/86, the Irish Court has looked to it as a reference point for its reasoning, or as an inspiration in several other rulings concerning, for example, the concept of marriage;<sup>35</sup> the requirement for the sponsor;<sup>36</sup> and the concept of dependency.<sup>37</sup> One of the most significant examples was the ruling of the High Court in *Kuhn v. Minister for Justice*<sup>38</sup> sought to apply the test for dependency laid down by the CJEU in the *Jia* judgement.<sup>39</sup>

- ★ In **Luxembourg** several rulings of the First instance Administrative Court<sup>40</sup> interpreted the notions of "effective family life", "dependency" and "being under the responsibility of the applicant and not having financial aid in the country of origin" in conformity with Directive 2003/86.

- ★ The **Netherlands** introduced some changes to the national rules on family reunification as a consequence of rulings of the Court of Justice and of the European Court of Human Rights (ECHR). Firstly, it lowered application fees for

<sup>26</sup> Paragraph 66 of judgement

<sup>27</sup> Joined Cases C-356/11 and C-357/11 *O, S v Maahanmuuttovirasto (C-356/11), and Maahanmuuttovirasto v L (C-357/11)*.

<sup>28</sup> Article 20 TFEU relates to citizenship of the Union and the rights and duties a citizen has.

<sup>29</sup> Only in Case C-357/11 did the spouse not live with the child.

<sup>30</sup> Ruling 121/2013 of 26 September 2013.

<sup>31</sup> Law of 15 December 1980.

<sup>32</sup> Circular of 13 December 2013.

<sup>33</sup> Supreme Court decision 3-3-1-44-11 of 03.07.2012.

<sup>34</sup> *Hamza v. Minister for Justice [2013] IESC 9*.

<sup>35</sup> *Aslam v. Minister for Justice [2011] IEHC 512*

<sup>36</sup> *AAM v. Minister for Justice [2013] IEHC 68*

<sup>37</sup> *Ducale v. Minister for Justice [2013] IEHC 25*

<sup>38</sup> *Kuhn v. Minister for Justice [2013] IEHC 424*

<sup>39</sup> C-1/05 *Yunying Jia v Migrationsverket* Judgment of the Court of 9 January 2007

<sup>40</sup> Listed in table 1 in Annex.

family reunification;<sup>41</sup> secondly, it abolished the distinction on whether family relationships arose before or after the sponsor entered the territory;<sup>42</sup> thirdly it revised the age and income requirements for family reunification.<sup>43</sup>

- ★ In **Poland**, following the *Singh* judgement, a holder of a temporary residence permit for the purpose of family reunification may also apply for long-term EU residence permit.
- ★ The Supreme Court in **Norway**<sup>44</sup> clarified the concept of **best interest of the minor** with regard to family reunification and expulsion in a ruling<sup>45</sup> which was also accompanied by a ruling of the ECHR<sup>46</sup> on the same issue. On this basis, a Circular stressed some criteria already used in practice to protect minor child's interest and ensure proportionality of expulsion measures.

## 5. THE RESPECT OF UNION RIGHTS - CASE LAW RELATING TO THIRD COUNTRY NATIONALS IN RELATION TO THE FREE MOVEMENT OF EU CITIZENS AND THEIR FAMILY MEMBERS

### a. EU case-law

Interesting case law exists also concerning third country nationals in relation to the interpretation of the provisions of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States. While this does not fall under the legal migration legal basis (Article 79 TFEU), but relates rather to the interpretation of rules on free movement of EU nationals and members of their family, it might be interesting to compare the case law of the ECJ in this area to the case law related to migration of third-country nationals.

The CJEU adopted a leading judgment on this matter in the *Metock*<sup>47</sup> case which demonstrated the Court's interpretation of the Directive's provisions and the importance attached to ensuring citizenship rights were not affected. In *Metock*, the Court removed the

requirement of 'prior lawful residence' of third-country national family members of Member State nationals who exercise their free movement rights.<sup>48</sup>

The rights associated with citizenship were further examined in the *Zambrano*<sup>49</sup> judgment, where the EU citizens in question had not in fact exercised their free movement rights, in comparison to *Metock*. In this case, the CJEU held that an illegally staying third-country national in Belgium whose children are Belgian citizens must be allowed to reside and work in Belgium in order not to deprive the children from the genuine enjoyment of their Union citizenship. The Court indicated that a refusal of a right of residence would lead to a situation where the children would need to leave the EU territory in order to accompany their parents. The judgment therefore moved beyond the *Metock* case by emphasising the importance associated with citizenship rights and the impact that could occur on EU citizens if their rights were impeded, regardless of whether they had exercised free movement of not.

Following the *Zambrano* judgment, the CJEU further confirmed the importance of ensuring that a refusal to allow a third-country national from residing on Member State territory would not impede the enjoyment of EU rights. In *Murat Dereci*,<sup>50</sup> the Court held that Member States can refuse to allow a third-country national to reside on its territory with a family member who is a Union citizen but has never exercised free movement, provided that such refusal does not impede the genuine enjoyment of EU rights conferred to the Union citizen.<sup>51</sup>

In the recent judgment of *Alokpa and others*,<sup>52</sup> the Court emphasised that Articles 20 and 21 TFEU do not prevent Member States from refusing a third-country national the right to reside in its territory where that individual has full responsibility for minor children who are EU citizens and who have not exercised their right to free movement. The CJEU indicated, however, that the national courts must carefully examine whether the refusal would not in fact deprive the Union citizens of the effective enjoyment of their citizenship rights. In this judgment, the Court once again examined the importance of the rights of the child, as provided under the Charter of Fundamental Rights.

<sup>41</sup> Following the already mentioned case C-508/10 *EC vs Kingdom of the Netherlands* of 26 April 2012.

<sup>42</sup> As a consequence of the *Chakroun* judgment.

<sup>43</sup> *Ibidem*.

<sup>44</sup> Norway does not take part in Directive 2003/86/EC and is not bound by or subject to its application

<sup>45</sup> Ruling of the Supreme Court of 28 June 2011 case *Zarife Kashtanjeva* (HR-2011-01280-A).

<sup>46</sup> Judgement of the ECHR of 28 June 2011 *Nunez v. Norway*.

<sup>47</sup> Case C-127/08 *Blaise Baheten Metock and Others v Minister for Justice, Equality and Law Reform*.

<sup>48</sup> *Metock* was reaffirmed in Case C-155/07, *Sahin v. Bundesminister für Inneres*, Reasoned Order of the 7th Chamber, 19 Dec. 2008.

<sup>49</sup> Case C-34/09 Judgment of the Court (Grand Chamber) of 8 March 2011 *Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm)*.

<sup>50</sup> Case C-256/11 Judgment of the Court (Grand Chamber) of 15 November 2011 *Murat Dereci and Others v Bundesministerium für Inneres*.

<sup>51</sup> This interpretation was confirmed in the *Ymerga* judgment (Case C-87/12).

<sup>52</sup> C-86/12 Judgment of the Court (Second Chamber) of 10 October 2013 *Adzo Domyo Alokpa and Others v Ministre du Travail, de l'Emploi et de l'Immigration*.

In addition to case law relating to free movement rights, the CJEU also examined the interpretation of what constitutes a dependent 'family member'.

In *Rahman and Others*,<sup>53</sup> the court held that national law has to contain objective criteria to ensure that persons applying for residence had their application decision founded on an extensive examination of their personal circumstances. The judgment also clarified the aspect of 'dependency', as provided under Article 3(2), by indicating that in order to fall within this category, the situation of dependence must have existed in the country of origin, at the very least at the time when they applied to join the Union citizen on whom they are dependent.<sup>54</sup>

The issue of 'dependency' was also examined in the recent 2013 judgment *Flora May Reyes v Migrationsverket*.<sup>55</sup> The Court held that Article 2(2) must be interpreted as meaning that a Member State cannot require a direct descendant over the age of 21 to have tried unsuccessfully to obtain employment or to obtain subsistence support from the authorities of his country of origin and/or otherwise to support himself in order to be regarded as a dependant. The Court emphasised that the fact that a relative is deemed to be well placed to obtain a job and intends to start work in the Member State does not affect the interpretation of the meaning of 'dependant'.

The judgments of the CJEU have demonstrated the high importance the Court places on ensuring that rights associated with citizenship are not impeded. The Court has also aimed to clarify other aspects of contention relating to the definitions of dependency in the Directive while also ensuring that Member States undertake an objective approach to each case<sup>56</sup>.

#### b. National developments and case-law

Following the *Metock* judgment:

- ★ **Austria, Bulgaria and Finland** made further amendments to their legislation which had initially transposed the Directive following the court's judgment. In **Austria**, it was

<sup>53</sup> C-83/11 Judgment of the Court (Grand Chamber) of 5 September 2012 *Secretary of State for the Home Department v Muhammad Sazzadur Rahman and Others*.

<sup>54</sup> Dependence was also examined in the judgment C-83/11 *Secretary of State for the Home Department v Muhammad Sazzadur Rahman, Fazly Rabby Islam, Mohibullah Rahman*.

<sup>55</sup> C-423/12 *Flora May Reyes v Migrationsverket*.

<sup>56</sup> In addition to the cited judgments where residence associated with free movement was clarified, the *Iida* judgment (Case C-40/2011) the Court also clarified that outside the situations governed by Directive 2004/38/EC and where there is no other connection with the provisions on citizenship of European Union law, a third-country national cannot claim a right of residence derived from a Union citizen.

considered necessary to apply further control and restriction mechanisms on this Directive in order to balance the impact of new provisions. In Finland, actions were undertaken to make the section of their *Aliens Act* correspond to the CJEU's new interpretation of the content of the Directive. A bill concerning these amendments was presented to Parliament in 2009.<sup>57</sup>

At the time of delivery of the *Zambrano* judgment:

- ★ **Belgium** introduced a supplementary provision allowing for family reunification of Belgian minors with their two parents;
- ★ Moreover, in **Ireland** several return decisions made against third-country national parents of Irish citizen children were challenged before the courts following the *Zambrano* decision. The Minister for Justice decided to review all cases involving third country national parents of Irish citizen children (around 120). The approach followed was to revoke deportation orders and grant permission to reside in the State to such parents;<sup>58</sup>
- ★ Following the *Rahman and Others* judgement, developments took place in **Poland** with regard to the criteria of dependency and family link pursuant to which third country nationals who are family members of an EU citizen may apply for a residence permit.
- ★ Finally, **Slovak Republic** added to its legislation the category of "family member of an EU citizen" as a consequence of a preliminary ruling of the Court of Justice.<sup>59</sup>

#### c. National developments and case-law on other Directives

A change in national practice was reported by **France** in relation to Directive 2004/114/EC. Following a ruling of the *Conseil d'Etat*, the principle that a temporary residence permit for the purpose of study may only be renewed if the applicant justifies that his/her proposed studies are genuine and serious<sup>60</sup> was introduced.

With regard to the same Directive, the Administrative Court in **Luxembourg** addressed issues concerning the use of false documents to prove financial resources

<sup>57</sup> EMN Annual Policy Report.

<sup>58</sup> This approach is clearly explained in case *Amobi (An infant) v. Minister for Justice* [2013] IEHC 47.

<sup>59</sup> C-370/90 preliminary ruling Judgment of the Court of 7 July 1992. - the Queen v Immigration Appeal Tribunal et Surinder Singh.

<sup>60</sup> Conseil d'Etat, 15 April 1996, *Mme Rakotomavo*, request n° 136079.

and the verification of the financial resources of applicants<sup>61</sup>.

## 6. FURTHER INFORMATION

You may obtain further details on this EMN Inform and/or on any other aspect of the EMN, from: [HOME-EMN@ec.europa.eu](mailto:HOME-EMN@ec.europa.eu)

*Produced October 2014*

---

<sup>61</sup> See table 1 in Annex.

## ANNEX I

Table 1: Examples of national case law reported in the area of legal migration

DIRECTIVES			
	<b>2003/86/EC</b>	<b>2003/109/EC</b>	<b>2004/114/EC</b>
<b>BE</b>	Belgian Constitutional Court, Ruling 121/2013 from 26 September 2013		
<b>BG</b>	n/a	n/a	n/a
<b>EE</b>	Estonian Supreme Court decision 3-3-1-44-11 from 03.07.2012	Estonian Supreme Court decision 3-3-1-1-14 from 27.02.2014	n/a
	Estonian Supreme Court decision 3-3-1-61-09 from 09.11.2009	Estonian Supreme Court decision 3-3-1-42-09 from 18.06.2009	
<b>FI</b>	Supreme Administrative Court ruling of 6th of Feb. 2014	n/a	n/a
<b>FR</b>	Conseil d'Etat, 19 May 2010, CIMADE/GISTI, request n°323758	Conseil d'Etat, 26 December 2013, M. Nouri-Shakeri, request n°366722	Conseil d'Etat, 13 February 2013, GISTI, request n°353864
		Conseil d'Etat, 5 March 2014, Mme B., request n°374145	Conseil d'Etat, 15 April 1996, Mme Rakotomavo, request n° 136079
<b>IE</b>	Hamza v. Minister for Justice [2013] IESC 9	Hussein v. Minister for Justice [2014] IEHC 34	
	Hassan v. Minister for Justice [2013] IESC 8		
	Aslam v. Minister for Justice [2011] IEHC 512		
	AAM v. Minister for Justice [2013] IEHC 68		
	Ducale v. Minister for Justice [2013] IEHC 25		
	T. v. Minister for Justice [2008] IEHC 361		
	AMS v. Minister for Justice [2014] IEHC 57		
<b>LU</b>	Administrative Court, n° 33597 of 11 February 2014; See also First instance Administrative Court, 3 <sup>rd</sup> Chamber n° 28972 of 22 October 2013	Administrative Court, n° 32158C of 21 May 2013; see also First instance administrative court, 1 <sup>st</sup> Chamber, n° 30342 of 20 February 2013	Administrative Court Administrative Court n° 33047C of 19



<p>Administrative Court, n° 33494C of 18 October 2013; See also First instance Administrative Court, 3<sup>rd</sup> Chamber, n° 31593 of 24 September 2013.</p> <p>Administrative Court, n° 33067C of 16 January 2014; See also First instance Administrative Court, 2<sup>nd</sup> Chamber, n° 30866 of 27 June 2013 and First instance Administrative Court n° 30867 of 23 July 2012</p> <p>Administrative Court, n° 32328C of 22 April 2013; See also First instance Administrative Court, 2<sup>nd</sup> Chamber, n° 30462 of 11 March 2013</p> <p>Administrative Court, n° 31949C of 2 May 2013; See also, First instance Administrative Court, 3<sup>rd</sup> Chamber, n° 29881 of 5 December 2012.</p> <p>Administrative Court, n° 31852C of 28 February 2013; See also First instance Administrative Court, 3<sup>rd</sup> Chamber, n° 29821 of 21 November 2012.</p> <p>Administrative Court, n° 30555 of 12 July 2012; see also First instance Administrative Court, 2<sup>nd</sup> chamber, n° 28035 of 29 March 2012.</p> <p>Administrative Court, n° 28952CA of 11 July 2013</p> <p>Administrative Court n° 26685C of 17 June 2010</p> <p>Administrative Court n° 29435C of 16 February 2012; See also First instance Administrative Court, 3<sup>rd</sup> Chamber, of 21 September 2011</p> <p>Administrative Court n° 27397C of 4 January 2011; See also First instance Administrative Court, 3<sup>rd</sup> Chamber, n°26594 of 15 September 2010.</p> <p>Administrative Court n° 26548C of 4 May 2010; See also First instance Administrative Court, 1<sup>st</sup> Chamber, n° 24131 of 18 January 2010</p> <p>Administrative Court n°26685C of 17 June 2010; See also First instance Administrative Court, 1<sup>st</sup> Chamber, n° 25826 of 10 February 2010</p>	<p>Administrative Court, n° 30445C of 12 July 2012; see also First instance administrative court, 3<sup>rd</sup> Chamber, n° 29065 of 14 March 2012.</p> <p>Administrative Court, n° 27941C of 5 April 2011; see also First instance administrative court, 1<sup>st</sup> Chamber, n° 27012 of 19 January 2011 (stateless)</p>	<p>December 2013; see also First instance Administrative Court, 1<sup>st</sup> Chamber, n° 31869 of 12 June 2013</p> <p>First instance Administrative Court. Most of these decisions addressed the issue s of the use of false documents to prove financial resources and in general the verification of the financial resources.</p> <p>Positive decisions</p> <p>First instance Administrative Court, 3<sup>rd</sup> Chamber n° 32078 of 8 July 2013; see also n° 32079 of 28 February 2013.</p> <p>First instance Administrative Court, 3<sup>rd</sup> Chamber n° 32076 of 5 June 2013; see also n° 32077 of 28 February 2013.</p> <p>Negative decisions</p> <p>First instance Administrative Court 2<sup>nd</sup> Chamber n° 32187 of 11 July 2013</p> <p>First instance Administrative Court 1<sup>st</sup> Chamber, n° 31869 of 12 June 2013</p> <p>First instance Administrative Court 1<sup>st</sup> Chamber, n° 31817 of 24 February 2014</p> <p>First instance Administrative Court 1<sup>st</sup> Chamber, n° 28941 of 2 July 2012</p>
--	--	---

<p>Administrative Court, n° 26520C of 25 January 2010; See also First instance Administrative Court, 3rd Chamber, n° 25416 of 16 December 2009</p> <p>Administrative Court, n° 25503C of 10 March 2009; See also First instance Administrative Court, Chamber, n°24612 of 19 February 2009</p> <p>Administrative Court, n° 25369C of 6 February 2009; See also First instance Administrative Court, 2nd Chamber, n° 24203 of 8 January 2009</p> <p>Administrative Court, n° 25146C of 9 June 2009; See also First instance Administrative Court, 2nd Chamber, n° 24202 of 23 October 2008</p> <p>Administrative Court, n° 24137C of 27 May 2008; See also First instance Administrative Court, 2nd Chamber, n° 23344 of 21 January 2008</p> <p>First instance Administrative Court (Positive decisions). These cases are mainly related to recognized refugees and the issues addressed by the courts are related to the evaluation of financial resources and documents proving the family links.</p> <p>First instance Administrative Court, 1st Chamber, n° 31989 of 3 March 2014.</p> <p>First instance Administrative Court, 1<sup>st</sup> Chamber, n° 29414 of 25 October 2011 and 3<sup>rd</sup> Chamber, n° 29176 of 2 May 2012.</p> <p>First instance Administrative Court, 2<sup>nd</sup> Chamber, n° 28685 of 15 October 2012.</p> <p>First instance Administrative Court, 3rd Chamber, n°28972 of 22 October 2013</p> <p>First instance Administrative Court, 2nd Chamber, n° 26466 of 24 January 2013</p> <p>First instance Administrative Court, 2nd Chamber, n° 25286 of 19 October 2009</p>		
--	--	--

<p>First instance Administrative Court, 3rd Chamber, n° 29730 of 6 November 2012</p> <p>First instance Administrative Court, 2nd Chamber, n° 29059 of 25 October 2012</p> <p>First instance Administrative Court, 3<sup>rd</sup> Chamber, n° 29046 of 24 April 2012</p> <p>First instance Administrative Court, 2nd Chamber, n° 28549 of 21 June 2012</p> <p>First instance Administrative Court, 2nd Chamber, n° 28177 of 8 March 2012</p> <p>First instance Administrative Court, 2nd Chamber, n° 26916 of 10 March 2011</p> <p>First instance Administrative Court, 3rd Chamber, n° 26803 of 15 of December 2010</p> <p>First instance Administrative Court, 3rd Chamber, n° 26538 21 July 2010</p> <p>First instance Administrative Court, 3rd Chamber, n° 26364 of 14 July 2010</p> <p>First instance Administrative Court, 3rd Chamber, n° 25834 of 9 March 2010</p> <p>First instance Administrative Court, 2nd Chamber, n° 25696 of 16 November 2009</p> <p>First instance Administrative Court, 2nd Chamber, n° 25291 of 25 February 2009</p> <p>First instance Administrative Court, 1<sup>st</sup> Chamber, n° 25139 of 13 July 2009</p> <p>First instance Administrative Court, 3rd Chamber, n° 24854 of 11 February 2009</p> <p>First instance Administrative Court, 2nd Chamber, n° 24203 of 8 January 2009</p>		
---	--	--

	First instance Administrative Court, 1st Chamber, n° 24006 of 8 October 2008		
NL	<p><u>Fees:</u> AbRS 9 October 2012, 201008782/1; AbRS 16 October 2012, 201200075/1. On fees for Provisional Residence Permit (mvv – a national visa) for family reunification. Reference is made to EcJ 26 April 2012 C-508/10.</p> <p><u>Art. 3, par. 1 and 2:</u> AbRS 12 March 2008, 200705142/1. On the scope of Directive 2003/86/EC. Does the directive apply to family members of refugees?</p> <p><u>Art. 3, second paragraph, introduction and c:</u> AbRS 10 October 2012, 201200907/1; AbRS 10 October 2012, 201108774/1; AbRS 18 March 2013, 201202732/1; AbRS 1 August 2013, 201202165/1; AbRS 23 January 2013, 2012001101/1; AbRS 23 January 2013, 201112350/1; AbRS 28 November 2013, 201210021/1; AbRS 23 December 2013, 201211336/1. Directive does not apply to subsidiary protection.</p> <p><u>Art. 3, par. 3:</u> a.o. AbRS 29 March 2006, 200510214/1; AbRS 24 October 2011, 201009597/1; AbRS 23 November 2006, 200604478/1. Directive does not apply to EU citizens.</p> <p><u>Art. 3, par. 5:</u> AbRS 12 March 2008, 200705142/1; AbRS 13 January 2011, 201002653/1; AbRS 28 May 2013, 201209349/1; AbRS 4 December 2013, 201300183/1; AbRS 23 December 2013, 201211336/1; AbRS 26 April 2013, 201108649/1. the possibility for the Member States to adopt or maintain more favourable provisions.</p> <p><u>Applicability of the Directive and the application of the Charter of Fundamental Rights:</u> AbRS 1 December 2010, 201003052/1; AbRS 8 August 2013, 201203552/1.</p> <p><u>Art. 4, par. 2:</u> AbRS 6 December 2007, 200703563/1. Extended family reunification.</p> <p><u>Art. 5:</u> AbRS 8 April 2013, 201111404/1; AbRS 3 April 2012, 201107209/1. Submission and examination of the application.</p> <p><u>Art. 7:</u> AbRS 18 November 2011, 201011551/1; AbRS 20 November 2009, 200808437/1; AbRS 27 mei 2013, 201202042/1. Requirements for the exercise of the right to</p>	<p><u>Fees:</u> AbRS 28 November 2008, 200802173/1; AbRS 29 June 2010, 200906408/1; AbRS 9 October 2012, 201008782/1; AbRS 16 October 2012, 201200075/1; AbRS 23 June 2010, 200806637/1. Reference is made to EcJ 26 April 2012 C-508/10.</p> <p><u>Art. 3:</u> AbRS 23 June 2010, 200806637/1; AbRS 22 January 2010, 200808772/1. On the scope of Directive 2003/109/EC.</p> <p><u>Art. 4:</u> AbRS 3 April 2012, 201101225/1. Duration of residence.</p> <p><u>Art. 5:</u> AbRS 5 December 2008, 200802115/1; AbRS 1 November 2013, 201211142/1. Conditions for acquiring long-term resident status.</p> <p><u>Art. 7:</u> AbRS 5 December 2008, 200802115/1. Acquisition of long-term resident status.</p> <p><u>Art. 8:</u> AbRS 21 May 2012, 201100853/1. Long-term resident's EC residence permit.</p> <p><u>Art. 14 and 15:</u> AbRS 12 February 2014, 201302284/1; AbRS 18 January 2012, 201005222/1; AbRS 18 January 2012, 201104254/1; AbRS 21 May 2012, 201100853/1. Residence in a second Member State.</p>	<p><u>Art. 17, par. 1:</u> AbRS 4 April 2012, 201100107/1. Economic activities by students.</p>

	<p>family reunification. Reference is made to EcJ 4 March 2010 C-578/08 (Chakroun).</p> <p><u>Art. 7, par. 2</u>: AbRS 201211916/1 and 201300404/1. Requirements to comply with integration measures. Prejudicial questions on integration requirements before entering the Netherlands (Civic Integration Abroad Act) were asked on 1 April 2014. Reference is made to EcJ 10 June 2011, C-155/11 PPU.</p> <p><u>Art. 9</u>: AbRS 12 March 2008, 200705142/1. Family reunification of refugees.</p> <p><u>Art. 13</u>: AbRS 21 July 2009, 200802953/1; AbRS 4 September 2009, 200901966/1; AbRS 17 September 2009, 200808794/1. Entry and residence of family members.</p> <p><u>Art. 16</u>: AbRS 6 March 2014, 201305993/1; AbRS 21 July 2009, 200802953/1; AbRS 17 September 2009, 200808794/1; AbRS 6 May 2010, 200904656/1; AbRS 12 July 2006, 200601302/1. Penalties and redress.</p>		
<p><b>PL</b></p>		<p>Voivodeship Administrative Court in Warsaw of 29 November 2006 (file No V SA/Wa 1374/06, LEX No 326227)</p> <p>Judgment of 19 February 2007 (file No V SA/Wa 1506/06, LEX No 318081)</p> <p>Voivodeship Administrative Court in Warsaw of 30 November 2011 (file No V SA/Wa 1285/2011 Lex Polonica No 3941479)</p> <p>Voivodeship Administrative Court in Warsaw in its judgment of 24 January 2012 (file No V SA/Wa 1284/11)</p>	
<p><b>SE</b></p>	<p>Migration Court of Appeal on 19 April 2007, UM 1004-06</p> <p>Migration Court of Appeal on 15 September 2009, UM 8477-08</p> <p>Migration Court of Appeal on 3 September 2013, UM 8192-12</p> <p>Migration Court of Appeal from 27 November 2008 UM 691-07</p>	<p>Migration Court of Appeal on 29 May 2008, UM 895-08</p>	<p>Migration Court of Appeal 6 February 2009 UM 2446-08 and UM 4691-08</p>

	Migration Court of Appeal from 26 November 2008 (UM 2072-08)		
--	--	--	--