

Constitutional Foundations of the Judgments on the EEC-Turkey Association Agreement

*Daniel Thym**

It is widely accepted that the ECJ judgments on the Ankara Agreement, the Additional Protocol and the Decisions of the Association Council (hereinafter: EU-Turkey association *acquis*) are crucial points of reference for migration law and wider bilateral relations. While many contributions rightly focus on the formidable doctrinal questions, which individual judgments or lines of cases bring out, this chapter sets off to scrutinise the role of the Court of Justice (ECJ) from a broader perspective. In doing so, this chapter embeds the case law into a wider analytical framework, thereby illuminating the legal and constitutional infrastructure, which guides and explains individual judgments and which marks aspects for critical reflection.

Methodologically, this chapter opts for a meta-level of analysis. It is no theoretical paper considering the role of international judges in abstract¹ or concentrating on the legitimacy of judicial review.² It rather highlights those doctrinal and constitutional arrangements,³ which underlie the case law on the EU-Turkey association *acquis* and which are, in their function of guiding the resolution of individual cases on background principles, not always given adequate attention by migration law experts without a specialisation in EU law. It will be demonstrated that the Court's interpretation of the Ankara Agreement follows the example of public international law and is, in comparison to other treaties, rather lenient (below 1.). Moreover, constitutional frames of reference for Union citizens and third-country nationals in the EU Treaties differ markedly and extend more leeway to the political institutions regarding the position of the latter (11.).

* Professor of Public, European and International Law and Co-Director of the Research Centre Immigration & Asylum Law at the University of Konstanz.

1 See A von Bogdandy and J Venzke, 'In Whose Name? An Investigation of International Courts' Public Authority and Its Democratic Justification' (2012) 23 *EJIL* 7.

2 Cf the classic position of J Waldron, 'The Core of the Case Against Judicial Review' (2006) 115 *Yale LJ* 1346–1406.

3 See, in general, T Horsley, 'Reflections on the Role of the Court of Justice as the "Motor" of European Integration' (2013) 50 *CML Rev* 931, 941.

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