

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.).

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1 See A von Bogdandy and I 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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Table of Contents Eecturkey Abociation Agreement And Protocols And Other Basic Texts

1. Understanding the eBook Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - The Rise of Digital Reading Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Advantages of eBooks Over Traditional Books
2. Identifying Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Exploring Different Genres
 - Considering Fiction vs. Non-Fiction
 - Determining Your Reading Goals
3. Choosing the Right eBook Platform
 - Popular eBook Platforms
 - Features to Look for in an Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - User-Friendly Interface
4. Exploring eBook Recommendations from Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Personalized Recommendations
 - Eecturkey Abociation Agreement And Protocols And Other Basic Texts User Reviews and Ratings
 - Eecturkey Abociation Agreement And Protocols And Other Basic Texts and Bestseller Lists
5. Accessing Eecturkey Abociation Agreement And Protocols And Other Basic Texts Free and Paid eBooks
 - Eecturkey Abociation Agreement And Protocols And Other Basic Texts Public Domain eBooks
 - Eecturkey Abociation Agreement And Protocols And Other Basic Texts eBook Subscription Services
 - Eecturkey Abociation Agreement And Protocols And Other Basic Texts Budget-Friendly Options

6. Navigating Eecturkey Abociation Agreement And Protocols And Other Basic Texts eBook Formats
 - ePub, PDF, MOBI, and More
 - Eecturkey Abociation Agreement And Protocols And Other Basic Texts Compatibility with Devices
 - Eecturkey Abociation Agreement And Protocols And Other Basic Texts Enhanced eBook Features
7. Enhancing Your Reading Experience
 - Adjustable Fonts and Text Sizes of Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Highlighting and Note-Taking Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Interactive Elements Eecturkey Abociation Agreement And Protocols And Other Basic Texts
8. Staying Engaged with Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Joining Online Reading Communities
 - Participating in Virtual Book Clubs
 - Following Authors and Publishers Eecturkey Abociation Agreement And Protocols And Other Basic Texts
9. Balancing eBooks and Physical Books Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Benefits of a Digital Library
 - Creating a Diverse Reading Collection Eecturkey Abociation Agreement And Protocols And Other Basic Texts
10. Overcoming Reading Challenges
 - Dealing with Digital Eye Strain
 - Minimizing Distractions
 - Managing Screen Time
11. Cultivating a Reading Routine Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Setting Reading Goals Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Carving Out Dedicated Reading Time
12. Sourcing Reliable Information of Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Fact-Checking eBook Content of Eecturkey Abociation Agreement And Protocols And Other Basic Texts
 - Distinguishing Credible Sources
13. Promoting Lifelong Learning
 - Utilizing eBooks for Skill Development
 - Exploring Educational eBooks
14. Embracing eBook Trends
 - Integration of Multimedia Elements

- Interactive and Gamified eBooks

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