

JUDGMENT OF THE COURT (Second Chamber)

10 July 2014 (*)

(Reference for a preliminary ruling — EEC-Turkey Association Agreement — Additional Protocol — Article 41(1) — Right of residence of family members of Turkish nationals — National legislation requiring evidence of basic linguistic knowledge with regard to the family member wishing to enter the national territory — Lawfulness — Directive 2003/86/EC — Family reunification — Article 7(2) — Compatibility)

In Case C-138/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Germany), made by decision of 13 February 2013, received at the Court on 19 March 2013, in the proceedings

Naime Dogan

v

Bundesrepublik Deutschland,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J. L. da Cruz Vilaça, G. Arestis, J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 5 February 2014,

after considering the observations submitted on behalf of:

- Mrs Dogan, by C. Käss, Rechtsanwalt,
- the German Government, by T. Henze and J. Möller, acting as Agents,
- the Danish Government, by M. Wolff, C. Thorning and V. Pasternak Jørgensen, acting as Agents,
- the Netherlands Government, by J. Langer and M. Bulterman, acting as Agents,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the European Commission, by M. Condou-Durande, M. Kellerbauer and W. Bogensberger, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 April 2014,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 41(1) of the Additional Protocol, signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 concluding the additional protocol and the financial protocol signed on 23 November 1970 and annexed to the Agreement establishing an Association between the European Economic Community and Turkey and relating to the measures to be taken for their implementation (OJ 1977 L 361, p. 60) ('the Additional Protocol'). That agreement was signed in Ankara on 12 September 1963 by the Republic of Turkey, of the one part, and by the Member States of the EEC and the Community, of the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1) ('the Association Agreement'). The request for a preliminary ruling also concerns the interpretation of the first subparagraph of Article 7(2) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).
- 2 The request has been made in proceedings between Mrs Dogan and the Bundesrepublik Deutschland concerning the rejection by the latter of her application for a visa for the purposes of family reunification.

Legal context

EU law

The Association Agreement

- 3 It is apparent from Article 2(1) of the Association Agreement that it is intended to promote the continuous and balanced strengthening of trade and economic relations between the parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people.
- 4 Under Article 12 of the Association Agreement, 'the Contracting Parties agree to be guided by Articles [39 EC], [40 EC] and [41 EC] for the purpose of progressively securing freedom of movement for workers between them' and, under Article 13 of that agreement, those parties 'agree to be guided by Articles [43 EC] to [46 EC] and [48 EC] for the purpose of abolishing restrictions on freedom of establishment between them'.

The Additional Protocol

- 5 According to Article 62 of the Additional Protocol, the latter and its Annexes form an integral part of the Association Agreement.
- 6 Article 41(1) of the Additional Protocol provides:

'The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services.'

Directive 2003/86

- 7 Article 1 of Directive 2003/86 states:

'The purpose of this Directive is 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.'
- 8 Article 4(1) of that directive provides:

'1. The Member States shall authorise the entry and residence, pursuant to this Directive and subject to compliance with the conditions laid down in Chapter IV, as well as in Article 16, of the following family members:

(a) the sponsor's spouse;

...'

9 Under Article 6(1) of that directive:

'The Member States may reject an application for entry and residence of family members on grounds of public policy, public security or public health.'

10 Article 7 of Directive 2003/86 is worded as follows:

'1. When the application for family reunification is submitted, the Member State concerned may require the person who has submitted the application to provide evidence that the sponsor has:

(a) accommodation regarded as normal for a comparable family in the same region and which meets the general health and safety standards in force in the Member State concerned;

(b) sickness insurance in respect of all risks normally covered for its own nationals in the Member State concerned for himself/herself and the members of his/her family;

(c) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum national wages and pensions as well as the number of family members.

2. Member States may require third country nationals to comply with integration measures, in accordance with national law.

With regard to the refugees and/or family members of refugees referred to in Article 12, the integration measures referred to in the first subparagraph may only be applied once the persons concerned have been granted family reunification.'

11 Article 17 of that directive provides:

'Member States shall take due account of 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 where they reject an application, withdraw or refuse to renew a residence permit or decide to order the removal of the sponsor or members of his family.'

German law

12 As is apparent from the order for reference, the grant of the visa sought is governed by the following provisions of the Law on the residence, gainful employment and integration of foreign nationals in the federal territory (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet), in the version resulting from the notice of 25 February 2008 (BGBl. 2008 I, p. 162), as amended by Article 2 of the Law of 21 January 2013 (BGBl. 2013 I, p. 86) ('the Law on the residence of foreign nationals').

13 Paragraph 2(8) of that law provides:

'A basic knowledge of the German language shall be the level of language skills corresponding to Level A1 of the Common European Framework of Reference for Language (Recommendation No R (98) 6 of the Council of Europe Committee of Ministers to the Member States of 17 March 1998 concerning the common framework for reference for languages).'

14 Paragraph 27(1) of the Law on the residence of foreign nationals provides:

'For the purposes of protecting marriage and the family, as enshrined in Article 6 of the German Constitution (Grundgesetz), fixed-term residence permits may be issued and extended in order to establish or maintain, for the benefit of foreign family members, consortium vitae in a family within federal territory (family reunification).'

15 Under the heading 'Spouse reunification', Paragraph 30 of the Law on the residence of foreign nationals is worded as follows:

'1. The spouse of a foreign national shall be granted a fixed-term residence permit if:

- (1) both spouses have reached the age of 18,
- (2) the spouse is able to communicate in the German language at least at a basic level and
- (3) the foreign national
 - (a) holds a residence permit of unlimited duration ...

A fixed-term residence permit may be granted notwithstanding points 1 and 2 of the first sentence if:

- (1) the foreign national holds a residence permit pursuant to Paragraphs 19 to 21 of this Law [residence permit for particular professional activities] and the marriage had already taken place when he/she transferred his/her centre of main interests to federal territory ...;

A fixed-term residence permit may be granted notwithstanding point 2 of the first sentence if:

- (1) ...
- (2) the spouse is not in a position to demonstrate basic knowledge of the German language due to a physical, mental or psychological illness or disability,
...'

16 It is apparent from the order for reference that Point 2 of the first sentence of Paragraph 30(1) of the Law on the residence of foreign nationals was inserted by the Law implementing European Union directives on the right of residence and asylum (Gesetz zur Umsetzung aufenthalts- und asylrechtlicher Richtlinien der Europäischen Union) of 19 August 2007 (BGBl. 2007 I, p. 1970).

The dispute in the main proceedings and the questions referred for a preliminary ruling

17 The applicant in the main proceedings is a Turkish national, born in Turkey in 1970, and residing in that country. She has applied for a visa for the purposes of family reunification with her spouse, who was born in 1964, also a Turkish national, and who has lived in Germany since 1998.

18 Since 2002, Mr Dogan has possessed a fixed-term residence permit, which subsequently became a residence permit of unlimited duration. He is the managing director of a limited liability company of which he is the majority shareholder. At present, he is still carrying on that activity.

19 On 18 January 2011, the applicant applied to the German embassy in Ankara (Turkey) for a visa for the purpose of family reunification of spouses and children, for herself and, initially, for two of her children. For those purposes, she submitted, inter alia, a certificate issued by the Goethe Institut relating to a language test at level A1 which she took on 28 September 2010 and which she passed with the mark 'satisfactory' (62 points out of 100). Her results in the written part of the test were 14.11 points out of 25.

- 20 According to the German embassy, the applicant in the main proceedings is however illiterate. She took the test by answering the multiple-choice questionnaire at random and she learned the three standard sentences by heart.
- 21 In the absence of evidence of knowledge of the German language, the German embassy dismissed Mrs Dogan's application by decision of 23 March 2011. The applicant in the main proceedings did not challenge that decision, but made a new application to the same embassy on 26 July 2011 for a visa for the purposes of family reunification only in relation to herself. That application was again dismissed by that embassy by decision of 31 October 2011.
- 22 In response to an application for reconsideration ('Remonstrations') brought by Mrs Dogan through her lawyer on 15 November 2011, the German embassy in Ankara set aside the original decision and replaced it with a decision of 24 January 2012 on 'Remonstrations', dismissing also that application on the ground that the applicant in the main proceedings did not have the necessary knowledge of the language as she was illiterate.
- 23 Since Mrs Dogan considers that she possesses the necessary linguistic knowledge and, furthermore, that the evidence of knowledge of the German language infringes the prohibition on *reformatio in pejus* arising from the Association Agreement, she brought an action against the decision of 24 January 2012 before the Verwaltungsgericht Berlin.
- 24 In those circumstances the Verwaltungsgericht Berlin decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:
- '(1) Does Article 41(1) of the Additional Protocol ... relating to the measures to be taken during the transitional stage of the association established by the [Association] Agreement preclude a provision of national law which was introduced for the first time after the abovementioned provisions had come into force and which makes the first entry [into the Federal Republic of Germany] of a member of the family of a Turkish national who enjoys the legal status under Article 41(1) of the Additional Protocol conditional on the requirement that, prior to entry, the family member can demonstrate the ability to communicate, in a basic way, in the German language?
- (2) Does the first subparagraph of Article 7(2) of ... Directive 2003/86 ... preclude the provision of national law mentioned in Question 1?'

Consideration of the questions referred

The first question

- 25 By its first question, the referring court asks, in essence, whether Article 41(1) of the Additional Protocol must be interpreted as meaning that the 'standstill' clause set out in that provision precludes a measure of national law, introduced after the entry into force of that additional protocol in the Member State concerned, which imposes on spouses of Turkish nationals residing in that Member State, who wish to enter the territory of that State for the purposes of family reunification, the condition that they demonstrate beforehand that they have acquired basic knowledge of the official language of that Member State.
- 26 First of all, it should be noted that it is settled case-law that the 'standstill' clause set out in Article 41(1) of the Additional Protocol prohibits generally the introduction of any new measures having the object or effect of making the exercise by a Turkish national of the freedom of establishment or the freedom to provide services on the territory of that Member State subject to stricter conditions than those which applied to him at the time when the Additional Protocol entered into force with regard to the Member State concerned (judgment in *Dereci and Others*, C-256/11, EU:C:2011:734, paragraph 88 and case-law cited).
- 27 It has also been acknowledged that that provision prohibits the introduction, as from the date of entry into force of the legal act of which that provision forms part in the host Member State, of any new restrictions on the exercise of freedom of establishment or freedom to provide services, including those relating to the substantive and/or procedural conditions governing

the first admission to the territory of that Member State of Turkish nationals intending to make use of those economic freedoms (judgment in *Oguz*, C-186/10, EU:C:2011:509, paragraph 22 and case-law cited).

- 28 Finally, according to the Court's case-law, irrespective of whether freedom of establishment or freedom to provide services is invoked, it is only where the activity in question is the corollary of the exercise of an economic activity that the 'standstill' clause may relate to the conditions of entry and residence of Turkish nationals within the territory of the Member States (judgment in *Demirkan*, C-221/11, EU:C:2013:583, paragraph 55).
- 29 In the present case, it is not disputed that the national provision at issue in the main proceedings was introduced after 1 January 1973, the date on which the Additional Protocol entered into force in the Member State concerned, and that that national provision has brought about a tightening of the conditions of admission concerning family reunification which existed previously, for spouses of foreigners residing in that Member State, so that it makes such reunification more difficult.
- 30 Furthermore, it is apparent from the order for reference that Mrs Dogan wishes to enter the territory of the Member State concerned not for the purpose of exercising there the freedom to provide services or the freedom of establishment, but to join her spouse who is residing there, so as to lead a family life with him.
- 31 Finally, it is also apparent from the order for reference that Mr Dogan is a Turkish national, who has resided in the Member State at issue since 1998 and who, as managing director of a limited liability company of which he is the majority shareholder, receives income from a self-employed activity (see, to that effect, judgment in *Asscher*, C-107/94, EU:C:1996:251, paragraph 26). Consequently, Mr Dogan's situation is within the scope of the principle of the freedom of establishment.
- 32 Accordingly, in the main proceedings, the question whether the national provision at issue complies with the 'standstill' clause set out in Article 41(1) of the Additional Protocol must be analysed in the light of the exercise of the freedom of establishment by Mr Dogan.
- 33 It is therefore necessary to determine whether, in the context of family reunification, the introduction of new legislation tightening the conditions of the first admission of spouses of Turkish nationals residing in a Member State in relation to those conditions applicable when the Additional Protocol entered into force in the Member State concerned, can constitute a 'new restriction' on the freedom of establishment of those Turkish nationals, within the meaning of Article 41(1) of the Additional Protocol.
- 34 In that regard, it must be noted that the Court has held that family reunification constitutes an essential way of making possible the family life of Turkish workers who belong to the labour force of the Member States, and contributes both to improving the quality of their stay and to their integration in those Member States (see judgment in *Dülger*, C-451/11, EU:C:2012:504, paragraph 42).
- 35 The decision of a Turkish national to establish himself in a Member State in order to exercise there a stable economic activity could be negatively affected where the legislation of that Member State makes family reunification difficult or impossible, so that that national could, as the case may be, find himself obliged to choose between his activity in the Member State concerned and his family life in Turkey.
- 36 It must therefore be held that legislation such as that at issue in the main proceedings, which makes family reunification more difficult by tightening the conditions of first admission to the territory of the Member State concerned by spouses of Turkish nationals in relation to those conditions applicable when the Additional Protocol entered into force, constitutes a 'new restriction', within the meaning of Article 41(1) of the Additional Protocol, on the exercise of the freedom of establishment by those Turkish nationals.
- 37 Finally, it must be noted that a restriction, whose purpose or effect is to make the exercise by a Turkish national of the freedom of establishment in national territory subject to conditions

more restrictive than those applicable at the date of entry into force of the Additional Protocol, is prohibited, unless it is justified by an overriding reason in the public interest, is suitable to achieve the legitimate objective pursued and does not go beyond what is necessary in order to attain it (see, by analogy, judgment in *Demir*, C-225/12, EU:C:2013:725, paragraph 40).

38 In that regard, on the assumption that the grounds set out by the German Government, namely the prevention of forced marriages and the promotion of integration, can constitute overriding reasons in the public interest, it remains the case that a national provision such as that at issue in the main proceedings goes beyond what is necessary in order to attain the objective pursued, in so far as the absence of evidence of sufficient linguistic knowledge automatically leads to the dismissal of the application for family reunification, without account being taken of the specific circumstances of each case.

39 In view of the foregoing considerations, the answer to the first question is that Article 41(1) of the Additional Protocol must be interpreted as meaning that the 'standstill' clause set out in that provision precludes a measure of national law, introduced after the entry into force of that additional protocol in the Member State concerned, which imposes on spouses of Turkish nationals residing in that Member State, who wish to enter the territory of that State for the purposes of family reunification, the condition that they demonstrate beforehand that they have acquired basic knowledge of the official language of that Member State.

The second question

40 In the light of the answer given to the first question, there is no need to answer the second question.

Costs

41 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 41(1) of the Additional Protocol, signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 concluding the additional protocol and the financial protocol signed on 23 November 1970 and annexed to the Agreement establishing an Association between the European Economic Community and Turkey and relating to the measures to be taken for their implementation must be interpreted as meaning that the 'standstill' clause set out in that provision precludes a measure of national law, introduced after the entry into force of that additional protocol in the Member State concerned, which imposes on spouses of Turkish nationals residing in that Member State, who wish to enter the territory of that State for the purposes of family reunification, the condition that they demonstrate beforehand that they have acquired basic knowledge of the official language of that Member State.