JUDGMENT OF THE COURT (Second Chamber)

29 April 2010 *

In Case C-92/07,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 16 February 2007,

European Commission, represented by P.J. Kuijper and S. Boelaert, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of the Netherlands, represented by H.G. Sevenster, C. Wissels and M. de Grave, acting as Agents,

defendant,

* Language of the case: Dutch.

supported by:

Federal Republic of Germany, represented by M. Lumma and J. Möller, acting as Agents,

intervener,

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, P. Lindh (Rapporteur), A. Rosas, A. Ó Caoimh and A. Arabadjiev, Judges,

Advocate General: N. Jääskinen,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 November 2009,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its application, the Commission of the European Communities requests that the Court declare that, by introducing and maintaining a system providing for charges for the issue of residence permits which are higher than those required from nationals of Member States and nationals of the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation for the issue of similar documents, and by applying that system to Turkish nationals who have a right of residence in the Netherlands on the basis of:

— the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other hand, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (JO 1964 217, p. 3685; English version published in OJ 1973 C 113, p. 1) ('the Association Agreement');

— the Additional Protocol, signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (JO 1972 L 293, p. 1; English version published in OJ 1977 L 361, p. 60) ('the Additional Protocol'); and

— Decision No 1/80, adopted on 19 September 1980 by the Association Council, which was set up by the Association Agreement and consists, on the one hand, of members of the Governments of the Member States, of the Council of the European Union and of the Commission and, on the other hand, of members of the Turkish Government,

the Kingdom of the Netherlands has failed to fulfil its obligations under the Association Agreement, in particular Article 9 thereof, the Additional Protocol, in particular Article 41 thereof, and Decision No 1/80, in particular Articles 10(1) and 13 thereof.

Legal context

European Union legislation

The EEC-Turkey Association

– The Association Agreement

2 According to Article 2(1) of the Association Agreement, the aim of that agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties, which includes, in relation to the workforce, the progressive securing of freedom of movement for workers, and the abolition of restrictions on freedom of establishment and on freedom to provide services, with a view to improving the standard of living of the Turkish people and facilitating the accession of the Republic of Turkey to the Community at a later date.

3 Article 9 of the Association Agreement is worded as follows:

'The Contracting Parties recognise that within the scope of this Agreement, and without prejudice to any special provisions which may be laid down pursuant to Article 8,

any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the Treaty establishing the Community.'

– The Additional Protocol

4 In accordance with Article 62 thereof, the Additional Protocol forms an integral part of the Association Agreement.

5 Article 41(1) of the Additional Protocol states:

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

6 Article 59 of the Additional Protocol states:

'In the fields covered by this Protocol, Turkey shall not receive more favourable treatment than that which Member States grant to one another pursuant to the Treaty establishing the Community.'

– Decision No 1/80

7 Article 6(1) of Decision No 1/80 is worded as follows:

'Subject to Article 7 on free access to employment for members of his family, a Turkish worker duly registered as belonging to the labour force of a Member State:

— shall be entitled in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available;

— shall be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation;

— shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.'

8 Article 10(1) of that decision provides:

'The Member States of the Community shall, as regards remuneration and other conditions of work, grant Turkish workers duly registered as belonging to their labour forces treatment involving no discrimination on the basis of nationality between them and Community workers.'

9 Article 13 of Decision No 1/80 provides:

'The Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories.'

Directive 2004/38/EC

10 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda in OJ 2004 L 229, p. 35, OJ 2005 L 197, p. 34, and OJ

2007 L 204, p. 28) contains in its Article 25, headed 'General provisions concerning residence documents', the following provisions:

'1. Possession of a registration certificate as referred to in Article 8, of a document certifying permanent residence, of a certificate attesting submission of an application for a family member residence card, of a residence card or of a permanent residence card, may under no circumstances be made a precondition for the exercise of a right or the completion of an administrative formality, as entitlement to rights may be attested by any other means of proof.

2. All documents mentioned in paragraph 1 shall be issued free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents.'

National legislation

11 Until 1993, the Kingdom of the Netherlands did not require the payment of charges by foreign nationals, including Turkish nationals, when an application for a residence permit or an application to extend the period of validity of such a permit was being submitted. During 1993, that Member State amended its Law on Foreign Nationals, in its 1965 version, and, since 1 February 1994, foreign nationals have been required to pay such charges for the processing of an application for entry into the Netherlands.

12 That law was recast in its entirety by the Law of 23 November 2000 providing for a comprehensive review of the Law on Foreign Nationals (Wet tot algehele herziening van de Vreemdelingenwet; Stb. 2000, No 495), and subsequently amended on a number of occasions, particularly during 2002, 2003 and 2005.

13 It is apparent from the figures set out in the application, and which are not disputed by the Kingdom of the Netherlands, that the amount of the charges applied to Turkish nationals and that of the charges paid by citizens of the Union varied between 1994 and 2005 as follows:

	Citizens of the Union	Turkish nationals
Before 1 February 1994	0	0
As of 15 February 1994	NLG 35 (approx. EUR 16)	from NLG 125 to NLG 1 000 (from approx. EUR 57 to approx. EUR 454)
As of 1 May 2002	EUR 26	from EUR 50 to EUR 539
As of 1 January 2003	EUR 28	from EUR 285 to EUR 890
As of 1 July 2005	EUR 30	from EUR 52 to EUR 830

Pre-litigation procedure

14 The Commission brought infringement proceedings following a complaint made during 2003 by a Netherlands national living with a Turkish national.

15 On 24 January 2005, the Commission sent a letter of formal notice to the Kingdom of the Netherlands, which replied to it by letter of 31 May 2005. As it was not in agreement with the legal analysis of that Member State, the Commission sent to it, on 10 April 2006, a reasoned opinion calling on it to take the measures necessary to ensure compliance within a period of two months of receipt. The Kingdom of the Netherlands replied to that reasoned opinion on 9 June 2006.

16 Since it was still not convinced by the arguments put forward by the Kingdom of the Netherlands, the Commission brought the present action.

Procedure before the Court

17 By order of the President of the Court of 29 June 2007, the Federal Republic of Germany was granted leave to intervene in this case in support of the form of order sought by the Kingdom of the Netherlands.

18 By decision of the President of the Third Chamber of 14 October 2008, the proceedings in the present case were suspended pending delivery, on 17 September 2009, of the judgment in Case C-242/06 *Sahin* [2009] ECR I-8465.

The action

Arguments of the parties

19 The Commission claims that the charges imposed on Turkish nationals from 1 February 1994 until the end of the period in the reasoned opinion for obtaining and extending a residence permit ('the contested charges') are contrary to the standstill and non-discrimination rules contained in the European Union legislation concerning the EEC-Turkey Association.

20 The contested charges, the Commission argues, infringe the standstill rules because they constitute new measures which have worsened the situation of Turkish nationals with regard to the charges to be paid for a residence permit. Those persons were not subject, previously, to the obligation to pay such charges and the amounts of those charges have, moreover, been increased on a number of occasions since 1994.

21 The Commission is of the view that the contested charges are contrary to Article 13 of Decision No 1/80, with regard to the free movement of workers, to Article 41(1) of the Additional Protocol, concerning freedom of establishment and freedom to provide services, and to Article 9 of the Association Agreement and Article 10(1) of Decision No 1/80 with regard to the prohibition of discrimination.

22 According to the Commission, Article 13 of Decision No 1/80 applies even if workers and members of their family are still not integrated in the host Member State and, consequently, cannot rely on the provisions of Article 6(1) of that decision. Article 41(1) of the Additional Protocol precludes any worsening of the possibilities for establishment and offering services to enable the persons concerned to exercise the freedom of establishment and the freedom to provide services.

23 The Commission contends that, according to the case-law of the Court, standstill clauses have direct effect and relate also to the right of residence. In its observations on the Federal Republic of Germany's statement in intervention, the Commission contends that the judgment in Case C-16/05 *Tum and Dari* [2007] ECR I-7415, delivered after the reply and rejoinder had been lodged, confirms its analysis. It states that, in that judgment, the Court held that the standstill rules apply to every new restriction, whether the restriction in question arises from a substantive or a formal rule, and that those rules are not subject to a *de minimis* threshold.

24 The Commission contends that, with regard to freedom of establishment and freedom to provide services, it is necessary to compare the situation as of 1 February 1994 with that obtaining when the Additional Protocol entered into force, that is to say, on 1 January 1973, and, with regard to the free movement of workers, with the situation as of 1 December 1980 or 20 December 1976, depending on whether Decision No 1/80 or the previous decision, Decision No 2/76, concerning the implementation of Article 12 of the Association Agreement, adopted by the Association Council on 20 December 1976, is taken as the basis.

25 The Commission acknowledges that the standstill rules do not affect the right of Member States to regulate the first admission of Turkish nationals to their territory and the conditions for the pursuit of their first professional activity. It also states that there are limits to those standstill rules, namely that which results from Article 59 of the Additional Protocol, under which Turkish nationals may not benefit from rights more favourable than those granted to citizens of the Union, and that which results from application of the rules against discrimination. Even if account is taken of those rules, however, the Netherlands legislation is still contrary to the standstill rules.

26 With regard to the rules against discrimination, the Commission contends that Article 10(1) of Decision No 1/80, which prohibits discrimination as to conditions of work, is applicable because the charges required of Turkish nationals when submitting an application for a residence permit constitute a condition of work. According to the judgment in Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 57, the rule of equal treatment laid down in Article 10 imposes an obligation as to results. In addition, even if that article were not applicable, the contested charges would have to be held to be discriminatory under Article 9 of the Association Agreement, which prohibits discrimination in general.

27 At the hearing before the Court, the Commission indicated that it took formal notice of the judgment in *Sahin*, cited above, in which the Court examined whether charges

such as those applied to Turkish nationals during 2002 complied with the standstill rule in Article 13 of Decision No 1/80, basing itself on the concept of proportionality and assessing whether or not those charges were disproportionate in comparison with those applied to nationals of Member States for the issue of similar documents. The Commission takes the view that the concept of 'higher charges', to which it refers in the form of order sought in its application, includes 'disproportionate charges' and can be understood in that sense.

28 In its defence, the Kingdom of the Netherlands, having noted an uncertainty as to the scope of the failure to fulfil obligations, conceded at the hearing that the application related not only to the charges in respect of the extension of the residence permits but also to the charges associated with the first issue of those permits.

29 The Kingdom of the Netherlands also indicated that it took formal notice of the judgments delivered after it had lodged its rejoinder, that is, the judgments in *Tum and Dari*, in Case C-228/06 *Soysal and Savatli* [2009] ECR I-1031, and in *Sahin*. It recognises, consequently, that the standstill rules concern not only the substantive rules but also the formal rules and that they apply to the rights of Turkish nationals from the time of their first admission to the territory of the Member States in the areas of freedom of establishment and freedom to provide services. By contrast, it takes the view that the standstill rules referred to in Article 13 of Decision No 1/80 do not apply to the first admission of Turkish workers to a Member State.

30 So far as Turkish workers are concerned, the Kingdom of the Netherlands contends that the question whether there is a right of residence depends on whether there is a right of access to the labour market of the Member State of destination pursuant to Articles 6 and 7 of Decision No 1/80. Only Turkish nationals who have entered the territory of a Member State legally and who belong to the regular labour market of

that State, together with members of their family, have a right of residence in that Member State. Other Turkish workers do not benefit from a right of residence under Decision No 1/80, but remain subject to the national immigration rules of the Member State in which they wish to reside.

31 Concerning, next, the amount of the charges applied to Turkish nationals for the grant of a residence permit, the Kingdom of the Netherlands indicated at the hearing before the Court that it had reduced the amount of those charges with effect from 17 September 2009. Those charges, it submits, are no different from those applicable to citizens of the Union for the issue of similar documents, save in the case of a first admission for the purposes of establishment or of the provision of services and in the case of a first admission as a worker, the difference being more substantial in the second of those cases.

32 As to the amount of the contested charges, the Kingdom of the Netherlands contends that it is justified. It relies, by way of analogy, on the judgment in Case C-327/02 *Panayotova and Others* [2004] ECR I-11055, concerning the Europe Agreements establishing associations between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, the Republic of Poland and the Slovak Republic, of the other part. It refers to paragraph 20 of that judgment, in which the Court held that the restrictions imposed on the right of establishment by the host Member State's immigration legislation must be appropriate for achieving the objective in view and must not constitute, with regard to that objective, measures which would strike at the very substance of the rights granted. The Kingdom of the Netherlands states that it is necessary to verify, in the same way, that the contested charges do not make the exercise by Turkish nationals of the rights conferred on them by the Association Agreement impossible or excessively difficult. It adds that those charges must be non-discriminatory and proportionate, compliant with fundamental rights and reasonable in their amount.

33 The Kingdom of the Netherlands contends that the contested charges share those characteristics.

34 Those charges, it argues, in no way undermine the substance of the right, recognised by Decision No 1/80, of access to the labour market, given that they do not constitute a new substantive condition necessary for obtaining the right of residence which that decision grants to Turkish nationals, but a simple formal requirement for the establishment by the Netherlands authorities that that right of residence exists.

35 The contested charges, it submits, are not discriminatory since there are fundamental differences between the situation of Turkish nationals and that of citizens of the Union. The Association Agreement does not create an internal market with the Republic of Turkey and does not confer citizenship of the Union on Turkish nationals. The Commission is thus attempting, wrongly, to extend to Turkish nationals the provisions of Directive 2004/38.

36 The contested charges are not disproportionate, given that Turkish nationals wishing to immigrate to a Member State normally have sufficient means to pay those charges. Persons interested may, if necessary, borrow the amounts required.

37 Nor do the contested charges undermine fundamental rights. In addition, the Netherlands Parliament provided for an exemption in favour of foreign nationals able to rely on Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, concerning the right to respect for private and family life, in cases where they are unable to pay the contested charges.

38 The amount of those charges, it is submitted, is reasonable. The charges are based on an analysis of the cost price of producing the documents issued and amendments have been made to the amounts charged in order to take account of the latest cost

studies. Turkish nationals pay no more than 70% of the costs generated by processing applications for residence permits, 30% of those costs being met by the State.

39 The Kingdom of the Netherlands adds that the Commission accepts that Member States may move from a system of nominal charges to a system under which the charges reflect more closely the costs involved. That is exactly what the Kingdom of the Netherlands did by establishing a correlation between the amount of the contested charges and the cost price of producing the documents the issue of which is sought.

40 Lastly, that Member State maintained, at the hearing before the Court, that the head of complaint formulated by the Commission in its application, alleging that the amount of the contested charges is 'higher' than that applied to nationals of the Member States, does not correspond to the criterion of proportionality taken into account by the Court in *Sahin*. Accordingly, it contends that the present action is unfounded.

41 The Federal Republic of Germany has intervened in support of the Kingdom of the Netherlands. It contends that the contested charges are connected with an administrative formality and do not amount to a restriction for the purposes of the standstill rules. In any event, those charges may be justified by an overriding general-interest ground, namely, the need to monitor the inflow of foreign nationals and the reasons why they wish to reside in the host Member State.

42 The Federal Republic of Germany further contends that the anti-discrimination rule laid down in Article 9 of the Association Agreement is not sufficiently clear and precise for it to be directly applicable. It argues that that rule must be given more specific form by other measures, such as Article 10 of Decision No 1/80. Article 10, however, is not applicable to the present case because the contested charges do not form part of the conditions of work within the meaning of that article.

Findings of the Court

43 It is necessary to note at the outset that, in the form of order sought in its application, the Commission requests that the Court declare that, by introducing and maintaining, for the issue of residence permits to Turkish nationals with the right of residence in the Netherlands, a system providing for higher charges than those imposed not only on nationals of Member States but also on nationals of the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation for the issue of similar documents, the Kingdom of the Netherlands has failed to fulfil its obligations under European Union law. However, the European Union legal texts on which the Commission bases its action do not refer to those latter four States. Consequently, the comparison with those States must be disregarded.

The application of the standstill rules to the first admission of a Turkish national to the territory of the Kingdom of the Netherlands

44 According to the Commission, the standstill rules apply to the contested charges, whether they concern an application for a residence permit relating to a first admission to the Netherlands of a Turkish national or an application to extend such a permit. The Kingdom of the Netherlands acknowledges that the standstill rules apply to the rights of Turkish nationals, as from their first admission to the territory of the Member States in the areas of freedom of establishment and freedom to provide services, but it contends that they do not apply to the first admission of Turkish workers to that territory.

45 In that regard, the Court examined in *Sahin* the scope of the standstill rule laid down in Article 13 of Decision No 1/80, applicable to free movement of workers. It held that that provision is not intended to protect Turkish nationals already integrated into a Member State's labour force, but is intended to apply precisely to Turkish nationals

who do not yet qualify for the rights in relation to employment and, accordingly, residence under Article 6(1) of that decision (*Sahin*, paragraph 51).

46 The Court also examined Article 13 in the light of the standstill rule in Article 41(1) of the Additional Protocol, concerning freedom of establishment and freedom to provide services.

47 With regard to Article 41(1), the Court held, in accordance with the judgments in *Tum and Dari* and *Soysal and Savatli*, 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 (*Sahin*, paragraph 64).

48 The Court ruled that, as the standstill clause in Article 13 of Decision No 1/80 is of the same kind as that contained in Article 41(1) of the Additional Protocol, and as the objective pursued by those two clauses is identical, the interpretation of Article 41(1) must be equally valid as regards the standstill obligation which is the basis of Article 13 in relation to freedom of movement for workers (*Sahin*, paragraph 65).

49 It follows that Article 13 of Decision No 1/80 precludes the introduction into Netherlands legislation, as from the date on which Decision No 1/80 entered into force in the Netherlands, of any new restrictions on the exercise of the free movement of workers, 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 exercise that freedom.

50 Consequently, the standstill rules laid down in Article 41(1) of the Additional Protocol and in Article 13 of Decision No 1/80 are applicable, from the entry into force of those provisions, to all of the charges imposed on Turkish nationals for the issue of residence permits concerning a first admission to the territory of the Kingdom of the Netherlands or for the extension of such a permit.

The existence of a failure to fulfil obligations resulting from the standstill rules

51 While the Commission and the Kingdom of the Netherlands both contend that the existence of the failure to fulfil obligations alleged must be assessed in the light of the judgment in *Sahin*, their views differ on the consequences to be drawn from that judgment. According to the Commission, that failure is based on the fact that that Member State has imposed on Turkish nationals charges which are disproportionate when compared with those applied to citizens of the Union for the issue of similar documents. The concept of disproportionate charges, it argues, must be understood as being included within the concept of higher charges referred to in the form of order sought in the application.

52 According to the Kingdom of the Netherlands, it follows from *Sahin* that the application to Turkish nationals of charges which are not exactly equal to those applied to citizens of the Union is not contrary to the standstill rules and that disproportionate charges alone are prohibited by those rules. The charges imposed on Turkish nationals, however, represent only a part of the costs relating to the examination of their files and are thus not contrary to those rules. Moreover, that Member State takes the view that the action concerns the application to Turkish nationals, not of disproportionate charges, but of higher charges than those applied to citizens of the Union and that, therefore, the action is unfounded.

53 In that regard, for the purposes of examining the present action, it is necessary to refer to the judgment in *Sahin*, in which the Court ruled on the compatibility with

Article 13 of Decision No 1/80 of charges such as those imposed during 2002 by Netherlands legislation for the issue of a residence permit or its extension. The charges applied to Turkish workers amounted, in that case, to EUR 169 for the extension of a residence permit, compared with the charge of only EUR 30 which, according to the referring court in that case, was required from citizens of the Union for the issue of residence papers.

54 It follows from the judgment in *Sahin*, in particular from paragraphs 72 and 74, that the application for a residence permit or for the extension of the validity of such a document presented by a Turkish national and the application for the issue of a residence permit presented in another Member State by a citizen of the Union are similar.

55 The Court held that legislation, such as the Netherlands legislation, must not amount to creating, with regard to Turkish nationals, a restriction within the meaning of Article 13 of Decision No 1/80. It stated that, read in conjunction with Article 59 of the Additional Protocol, Article 13 implies that, although a Turkish national to whom those provisions apply must certainly not be placed in a position more advantageous than that of citizens of the Union, he cannot, on the other hand, be subjected to new obligations which are disproportionate as compared with those established for those citizens (*Sahin*, paragraph 71).

56 The Court found that the financial impact of charges such as those introduced in 2002 is significant for Turkish nationals, the more so as those Turkish nationals are required to apply for renewal of their residence permits more frequently than citizens of the Union and, if their application is rejected, the sum paid is not reimbursed. The Court concluded that the Netherlands Government had not advanced any relevant argument capable of justifying such a significant difference between the charges imposed on Turkish nationals and those charged to citizens of the Union. It did not accept the argument of the Netherlands Government that the enquiries and checks required before a residence document can be issued to a Turkish national are more complex and more costly than those needed for the issue of a residence permit to a citizen of the Union.

57 The Court concluded that legislation such as that at issue in the main proceedings constituted a restriction prohibited by Article 13 of Decision No 1/80 to the extent to which, for the purposes of examination of an application for the grant of a residence permit or an extension thereof, the legislation requires payment, by Turkish nationals to whom Article 13 applies, of charges in an amount which is disproportionate in comparison with that demanded in similar circumstances from citizens of the Union (see *Sahin*, paragraph 72 to 74).

58 It is necessary to take those developments into account in the present case, which relates to all of the charges applied to Turkish nationals by Netherlands legislation since 1994 for the granting and extension of residence permits, as amended in particular during 2002, 2003 and 2005, and summarised in the table set out in paragraph 13 above.

59 Compared with that noted during 2002 at issue in the case leading to the judgment in *Sahin*, the difference between the amounts of the charges applied to Turkish nationals and those imposed on citizens of the Union increased further during 2003 and 2005. Moreover, the Turkish nationals concerned by the present action are not only workers, as in *Sahin*, but also persons wishing to avail themselves of freedom of establishment or freedom to provide services under the Association Agreement.

60 The existence of a failure to comply with the standstill rules must thus be examined in the light of the rules laid down in Article 13 of Decision No 1/80 and in Article 41(1) of the Additional Protocol.

61 In that regard, it is common ground that the contested charges constitute new measures since they were adopted after the entry into force of Decision No 1/80, in so far as they affect the situation of Turkish workers, and after the entry into force of

the Additional Protocol, in so far as they concern Turkish nationals wishing to avail themselves of freedom of establishment or freedom to provide services under the Association Agreement.

62 However, the imposition of any new measure in that context is not prohibited. The adoption of measures which apply in the same way to both Turkish nationals and citizens of the Union is not inconsistent with the standstill rules. If such measures applied to nationals of Member States but were not also imposed on Turkish nationals, Turkish nationals would be placed in a more favourable position than citizens of the Union, which would be clearly contrary to the requirement laid down in Article 59 of the Additional Protocol, under which the Republic of Turkey may not receive more favourable treatment than that which Member States grant to one another pursuant to the EC Treaty (see, to that effect, *Soysal and Savatli*, paragraph 61, and *Sahin*, paragraph 67).

63 It is necessary, therefore, to determine whether the contested charges impose on Turkish nationals new obligations which are disproportionate in relation to those provided for citizens of the Union.

64 While it acknowledges that the charges previously applied were too high, the Kingdom of the Netherlands contends that the amount of the charges applicable to Turkish nationals can be explained by the higher costs involved in processing their files. In that regard, it should be pointed out that, in paragraph 73 of the judgment in *Sahin*, the Court did not take the view that that ratio justified such a difference, which it found to be significant, between the charges applied to Turkish nationals and those imposed on citizens of the Union for the issue of similar documents.

65 Thus, the argument of the Kingdom of the Netherlands that the contested charges represent 70% of the costs of processing files is not capable of justifying their application and that Member State's assertion that those charges are not disproportionate must be rejected.

66 The Kingdom of the Netherlands also contends that the contested charges are non-discriminatory because differences exist, which it classifies as fundamental, between the situation of Turkish nationals and that of citizens of the Union. According to that Member State, the fundamental objective of the European Union, which is to establish an internal market, put in place European citizenship and ensure the free movement of citizens within the Union, cannot be applied 'in an unlimited way' to Turkish nationals.

67 It must, however, be stated that, as follows from Article 2(1) of the Association Agreement, that agreement has the objective of bringing the situation of Turkish nationals and citizens of the Union closer together through the progressive securing of free movement for workers and the abolition of restrictions on freedom of establishment and freedom to provide services.

68 In that regard, the general principle of non-discrimination on grounds of nationality, laid down in Article 9 of the Association Agreement, and the application of that principle to the specific field of workers, in accordance with Article 10 of Decision No 1/80, contribute to facilitating the progressive integration of migrant Turkish workers and Turkish nationals who move for the purposes of establishment or in order to provide services in a Member State (see, to that effect, with regard to workers, *Wählergruppe Gemeinsam*, paragraph 78).

69 The Kingdom of the Netherlands cannot therefore justify the difference existing between the contested charges and those required from citizens of the Union by referring to the circumstance that free movement of workers, freedom of establishment or freedom to provide services in the Union do not benefit Turkish nationals as completely as they benefit citizens of the Union. The Commission correctly relied on the non-discrimination rules as well as on Article 59 of the Additional Protocol for the purpose of verifying whether the contested charges did not make the situation of those nationals worse in comparison with that of citizens of the Union, in a manner which was contrary to the standstill rules.

70 The Kingdom of the Netherlands maintains, moreover, that there is a distinction between the concept of higher charges referred to in the Commission's application and that of disproportionate charges in the judgment in *Sahin*.

71 In that regard, it must be stated that the first of those concepts includes the second and that not all higher charges are necessarily disproportionate.

72 In response to a question at the hearing concerning the implications of that distinction in the present case, the Kingdom of the Netherlands contended that the charges applied to Turkish nationals could be slightly higher than the charges applied to citizens of the Union if the actual costs of processing the files of the former are higher than those of processing the files of the latter. It contended in particular that the charges applied to Turkish nationals, from 17 September 2009, comply in full with the condition of proportionality.

73 Concerning the charges applied with effect from that date, it must be pointed out that these were introduced after the period laid down in the reasoned opinion. It is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes (see, inter alia, Case C-168/03 *Commission* v *Spain* [2004] ECR I-8227, paragraph 24, and judgment of 3 June 2008 in Case C-507/07 *Commission* v *France*, paragraph 7). Consequently, those charges cannot be taken into account by the Court for the purposes of examining the present action for failure to fulfil obligations.

74 As to the contested charges, it cannot be ruled out that the charges applicable to Turkish nationals, slightly higher than those claimed from citizens of the Union for

the issue of similar documents, may, in certain specific instances, be considered proportionate. However, the amounts of the contested charges vary within a range in which the lowest amount is more than two-thirds higher than that of the charges applied to citizens of the Union for the issue of similar documents. Such a difference cannot be regarded as being minimal and, consequently, the view must be taken that the contested charges are disproportionate in their entirety.

75 The Commission is also of the view that the contested charges are contrary to the non-discrimination rules set out in Article 9 of the Association Agreement and Article 10(1) of Decision No 1/80. In that regard, it is necessary to state that, by applying to Turkish nationals charges of a disproportionate amount for obtaining a residence permit or the extension of one in comparison with the charges applied to citizens of the Union for similar documents, the Kingdom of the Netherlands, by so doing, imposed charges of a discriminatory nature. To the extent to which those charges are applied to Turkish workers or members of their family, they introduce a discriminatory condition of work contrary to Article 10 of Decision No 1/80. In so far as those charges are applied to Turkish nationals wishing to avail themselves of freedom of establishment or freedom to provide services pursuant to the Association Agreement, or to members of their family, they are contrary to the general rule of non-discrimination laid down in Article 9 of the Association Agreement.

76 It follows that, by introducing and maintaining a system for the issue of residence permits providing for charges which are disproportionate in relation to those imposed on nationals of Member States for the issue of similar documents, and by applying that system to Turkish nationals who have a right of residence in the Netherlands on the basis of the Association Agreement, the Additional Protocol or Decision No 1/80, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 9 of the Association Agreement, Article 41(1) of the Additional Protocol and Articles 10(1) and 13 of Decision No 1/80.

Costs

77 Under the first subparagraph of Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under the first subparagraph of Article 69(4), the Member States which have intervened in the proceedings are to bear their own costs.

78 Since the Commission has applied for costs and the Kingdom of the Netherlands has been unsuccessful, the latter must be ordered to pay the costs. The Federal Republic of Germany, which has intervened in the proceedings, is to bear its own costs.

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

1. Declares that, by introducing and maintaining a system for the issue of residence permits providing for charges which are disproportionate in relation to those imposed on nationals of Member States for the issue of similar documents, and by applying that system to Turkish nationals who have a right of residence in the Netherlands on the basis of:

— the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other hand, and con-

cluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963;

— **the Additional Protocol, signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972; and of**

— **Decision No 1/80, adopted on 19 September 1980 by the Association Council, set up by the Association Agreement and consisting, on the one hand, of members of the Governments of the Member States, of the Council of the European Union and of the Commission of the European Communities and, on the other hand, of members of the Turkish Government,**

the Kingdom of the Netherlands has failed to fulfil its obligations under Article 9 of that Association Agreement, Article 41 of that Additional Protocol and Articles 10(1) and 13 of Decision No 1/80;

2. **Orders the Kingdom of the Netherlands to pay the costs and the Federal Republic of Germany to bear its own costs.**

[Signatures]