Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 20 January 2016[1]

Case C-561/14

Caner Genc
v
Integrationsministeriet

(Request for a preliminary ruling from the Østre Landsret (Eastern Regional Courtal Court, Denmark))

(EEC-Turkey Association Agreement — Decision No 1/80 — Freedom of movement for workers — Family reunification — National legislation laying down new and more restrictive conditions on family reunification for economically inactive family members of economically active Turkish nationals residing and holding a residence permit in the Member State in question — Standstill clause — Scope — New restriction — Justification — Overriding reason in the public interest — Proportionality)

1. By this request for a preliminary ruling, the referring court asks the Court of Justice to interpret Article 13 of Decision No 1/80 of 19 September 1980 on the development of the Association ('Decision No 1/80') adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at 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[2] ('the Association Agreement'). This request was made in the course of proceedings between Mr Genc, a Turkish national, and the Danish authorities concerning the latter's rejection of his application for a residence permit for the purposes of family reunification.

I – **Introduction**

2. The applicant in the main proceedings, Mr Genc, is a Turkish national who was born in 1991. His father, also a Turkish national, has lived in Denmark since 1997 and has held a permanent residence permit there since 2001. After his parents divorced in 1997, and although his father obtained legal custody of him, Mr Genc continued to live in Turkey with his grandparents and saw his mother regularly. His two older brothers have held a residence permit in Denmark since May 2003.

3. On 5 January 2005 Mr Genc applied for a residence permit in Denmark in order to join his father, who was then an employed person in that country.

1 — Original language: French.
2 — OJ 1973 C 113, p. 1.

4. In August 2006, the Udlændingeservice, now the Udlændingestyrelsen (Danish Immigration Service) rejected his application. Mr Genc then lodged an appeal with the Ministry of Integration, which upheld the refusal decision on 18 December 2006. That ministry stated in particular that Mr Genc had never been to Denmark, that he has spent his entire life in Turkey, where he was educated, that he speaks only Turkish and that he had seen his father only very occasionally in the last two years, and went on to conclude that he had no connections with Danish society and neither has nor has the possibility of establishing sufficient ties to Denmark to allow successful integration in that country. That ministry also noted that Mr Genc's father could not be regarded as particularly well integrated or as himself having sufficient ties to Danish society and that, in any event, he was able to visit his son in Turkey.

5. On 17 September 2007, the Ministry of Integration refused to review its refusal decision. On 9 December 2011, the court of first instance, before which Mr Genc had brought an application to annul that decision, dismissed the action. Mr Genc then appealed to the referring court.

6. Both the analysis of the Danish Immigration Service and that of the Ministry of Integration are based on Paragraph 9(13) of the Law on aliens (udlændingeloven, 'the Law on aliens'). Under that provision, which was introduced in 2004,[3] 'In cases where the applicant and one of the applicant's parents are resident in their country of origin or another country, a residence permit … can be issued only if the applicant has, or has the possibility of establishing, sufficient ties to Denmark to allow successful integration in that country. However, this shall not apply if the application is submitted no later than two years after the person residing in Denmark satisfies the conditions [for the issue of a residence permit] or if there are particularly compelling reasons which weigh against it, including regard for family unity'.[4]

7. The discretionary assessment made by the competent authorities in order to determine whether an applicant has, or has the possibility of establishing, sufficient ties to Denmark (that is to say to assess the likelihood of his successful integration into Danish society) must, according to the referring court, take into account a certain number of parameters, including the duration and nature of the child's previous periods of residence in Denmark, the country in which the child has spent most of his life, the country in which he was educated, the language that he speaks and the level of assimilation, during his childhood, of Danish values and standards. In the course of that assessment, account is also taken of the level of integration into Danish society of the parent whom the child is seeking to join and the links established with Danish society by that parent. The referring court also refers to a number of cases in which evidence of sufficient ties to Denmark is not required, such as when the child or one of the parents is ill or handicapped or when the refusal to authorise reunification would be contrary to Denmark's international commitments or to the best interests of the child within the meaning of the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States.

8. The referring court points out that that requirement concerning sufficient ties to Denmark was introduced into the Danish legal order in 2004. It is clear from Article 13 of Decision No 1/80 that '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'.

3 — By Law No 427 amending the Law on aliens and the Law on integration (lov nr. 427 om ændring af udlændingeloven og integrationsloven) of 9 June 2004.

4 — That was the wording of Paragraph 9(13) of the Law on aliens at the time of the facts, following amendment by Law No 324 amending the Law on aliens, the Law on the conclusion and dissolution of marriage and the Law on repatriation (lov nr. 324 af 18. maj 2005 om ændring af udlændingeloven, lov om ægteskabs indgåelse og opløsning og repatrieringsloven) of 18 May 2005. That provision was also amended in 2012, then moved to Paragraph 9(16) of that law. I shall continue to refer, in this Opinion, to Paragraph 9(13) of the Law on aliens, as it embodies the state of Danish law applicable at the time when the authorities decided, for the first time, on Mr Genc's application. It should also be noted that, since the adoption of that legislative amendment in 2012, that paragraph is no longer applicable to applications for a residence permit submitted by, or on behalf of, children of less than six years of age.

9. It therefore asks whether that standstill clause is also applicable to circumstances in which Turkish employees belonging to the regular labour force may apply to be reunited with economically inactive members of their family in the territory of the Member State concerned. The referring court considers that the Court's case-law on that point is not very clear. If Paragraph 9(13) of the Law on aliens constitutes a new restriction, within the meaning of Article 13 of Decision No 1/80, the referring court wishes to obtain clarification from the Court concerning the nature of the test to be conducted in order to determine whether that restriction may be justified.

10. In those circumstances, faced with a difficulty concerning the interpretation of EU law, the Østre Landsret (Eastern Regional Court) decided to stay proceedings and, by order lodged at the Registry of the Court on 5 December 2014, to refer the following questions to the Court for a preliminary ruling:

'1. Must the standstill clause in Article 13 of Decision No 1/80 ... and/or the standstill clause in Article 41(1) of the Additional Protocol [of 23 November 1970, and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 ('the Additional Protocol')[5]] ... be interpreted as meaning that new and more stringent conditions on access to family reunification for family members who are not economically active, including minor children of economically active Turkish nationals who are resident and have a residence permit in a Member State, are covered by the standstill requirement having regard to:

   (a) the Court of Justice's interpretation of the standstill clauses in particular in its judgments in *Derin* [(C-325/05, EU:C:2007:442)], *Ziebell* [(C-371/08, EU:C:2011:809], *Dülger* [(C-451/11, EU:C:2012:504)] and *Demirkan* [(C-221/11, EU:C:2013:583)]

   (b) the aim and content of the [Association Agreement], as interpreted in particular in the *Ziebell* [(C-371/08, EU:C:2011:809)] and *Demirkan* [(C-221/11, EU:C:2013:583)] judgments, and having regard to:

      — the fact that the Agreement and the protocols and decisions, etc. attached thereto do not contain provisions on family reunification,

      and,

      — the fact that family reunification … has always been governed by secondary law, at present the Free Movement Directive (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)])?

2. In answering Question 1, the Court is asked to indicate whether any derived right to family reunification for family members of economically active Turkish nationals who reside and have a residence permit in a Member State applies to family members of Turkish workers under Article 13 of Decision No 1/80, or whether it applies only to family members of Turkish self-employed persons pursuant to Article 41(1) of the Additional Protocol.

3. If the answer to Question 1, read in conjunction with Question 2, is in the affirmative, the Court is asked to indicate whether the standstill clause in Article 13 … of Decision No 1/80 must be interpreted as meaning that new restrictions, which are 'justified by an overriding reason in the

5 — OJ 1977 L 361, p. 60.

public interest, … suitable to achieve the legitimate objective pursued and [do] not go beyond what is necessary in order to attain it' (beyond what is stated in Article 14 of Decision No 1/80) are lawful.

4. If the answer to Question 3 is in the affirmative, the Court is asked to indicate:

   (a) The guidelines which should be used to carry out the restriction test and proportionality assessment. The Court is asked, inter alia, to indicate whether the same principles must be followed as those laid down in its case-law on family reunification in connection with the free movement of EU citizens, which are based on the Free Movement Directive (Directive 2004/38) and the provisions of the Treaty, or whether another assessment must be applied.

   (b) If an assessment other than that which stems from the Court's case-law on family reunification in connection with the freedom of movement of EU citizens must be applied, the Court is asked to indicate whether the proportionality assessment carried out in relation to Article 8 of the European Convention of Human Rights[, signed at Rome on 4 November 1950,] on respect for family life and the case-law of the European Court of Human Rights should be adopted as the point of reference and, if not, what principles must be followed,

   (c) Irrespective of which assessment method is to be applied: Can a rule such as [Paragraph 9(13) of the Law on aliens] — under which it is a condition for family reunification between a person who is a third-country national and has a residence permit and is resident in Denmark, and his minor child, where the child and the child's other parent is resident in the country of origin or another country, that the child has, or has the possibility of establishing, such ties with Denmark that there is a basis for successful integration in Denmark — be regarded as "justified by an overriding reason in the public interest, … suitable to achieve the legitimate objective pursued and … not go[ing] beyond what is necessary in order to attain it"?'

11. The Danish Government and the European Commission have submitted written observations in this case. At the hearing which was held before the Court on 20 October 2015, the applicant in the main proceedings, the Danish and Austrian Governments and the Commission presented oral argument.

II – **Legal assessment**

A – *The first and second questions*

12. By its first and second questions, which should be examined together, the referring court asks the Court about the scope of Article 13 of Decision No 1/80 and the extent of the standstill requirement which it contains. In particular, it asks whether a new restriction on access to family reunification for economically inactive family members of a Turkish worker is subject to that requirement and whether the derived right to family reunification seemingly conferred in the judgment in *Dogan*[6] on the family members of a Turkish worker exercising the freedom of establishment must also be conferred in the context of the freedom of movement for Turkish workers.

13. In its written observations, the Danish Government, apparently reflecting the referring court's concerns, expressly invited the Court to depart from its judgment in *Dogan* (C-138/13, EU:C:2014:2066). By analysing a number of the Court's judgments interpreting the standstill clauses (whether Article 41(1) of the Additional Protocol or Article 13 of Decision No 1/80), that Government tried to show that the position adopted by the Court in that judgment is isolated and

6 — C-138/13, EU:C:2014:2066.

does not appear to be consistent with its previous judgments. The right to family reunification was, in its view, always regarded as falling outside the scope of the standstill requirement until the judgment in *Dogan*.[7] The Danish Government maintains that the Court must abandon that line of case-law and return to the purely economic essence of the Association Agreement and of the various measures based on it, as was recognised in the judgment in *Demirkan*.[8]

14. Before explaining why, in my view, the referring court's doubts and the Danish Government's concern are based on a misinterpretation of the case-law of the Court, which has not, in my opinion, established a derived right to family reunification, I should like to return to the standstill requirement as interpreted and defined by the Court.

1. General considerations on the standstill requirement laid down in Article 13 of Decision No 1/80 in the case-law of the Court

15. It is common ground that Mr Genc's father was in paid employment at the time when the applicant in the main proceedings submitted his application for a residence permit. The situation of Mr Genc's father therefore relates to freedom of movement for workers and is subject only to Article 13 of Decision No 1/80.[9]

16. The Court has held, in respect of that article, that it has direct effect[10] and that it must be read in the context of all the provisions of that decision.[11]

17. As regards the context, it is settled case-law that the aim of the Association Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties, which includes the freedom of movement for workers[12] which must be secured by progressive stages.[13] With regard to Decision No 1/80 in particular, the Court has held that it is intended to 'promote the gradual integration in the host Member State of Turkish nationals who satisfy the conditions laid down in one of the provisions of that decision and thus enjoy the rights conferred on them by the decision'[14] and that, 'without prejudice to the particular position of family members authorised to join a Turkish worker already legally present in the territory of a Member State, that decision is essentially aimed at the progressive integration of Turkish workers into that territory through the pursuit of lawful employment which should be uninterrupted'.[15]

18. The Court has also examined the relationship between the standstill clause in Article 41(1) of the Additional Protocol and that in Article 13 of Decision No 1/80. In spite of their markedly different wording,[16] it held that the two clauses pursue the same objective, namely the gradual establishment of freedom of movement for workers, of the right of establishment and of freedom to provide services, by prohibiting the creation of new obstacles to those freedoms so as not to make the gradual achievement

7 — C-138/13, EU:C:2014:2066.

8 — C-221/11, EU:C:2013:583.

9 — On the respective scopes of Article 13 of Decision No 1/80 and Article 41(1) of the Additional Protocol, the Court has repeatedly held that, although 'those two provisions have the same meaning, each of them has been given a very specific scope, with the result that they cannot be applied concurrently' [judgment in *Dereci and Others* (C-256/11, EU:C:2011:734, paragraph 81 and the case-law cited)].

10 — Judgment in *Savas* (C-37/98, EU:C:2000:224, paragraph 49 and the case-law cited).

11 — Judgment in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 91).

12 — Judgment in *Ziebell* (C-371/08, EU:C:2011:809, paragraph 63).

13 — See Article 12 of the Association Agreement. See, also, judgments in *Savas* (C-37/98, EU:C:2000:224, paragraph 63); *Ziebell* (C-371/08, EU:C:2011:809, paragraph 65) and *Demirkan* (C-221/11, EU:C:2013:583, paragraph 50).

14 — Judgment in *Derin* (C-325/05, EU:C:2007:442, paragraph 53 and the case-law cited).

15 — Judgment in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 90).

16 — Judgment in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:570, paragraph 69).

of those freedoms more difficult.[17] Therefore, those two provisions have the same meaning,[18] are of the same kind[19] and must be interpreted in a convergent manner.[20] There is therefore no reason to give to the standstill clause relating to freedom of movement for workers a narrower scope than that given to its equivalent relating to freedom of establishment and freedom to provide services.[21] As the Court's considerations relating to the standstill clause in Article 41(1) of the Additional Protocol apply equally to the interpretation of Article 13 of Decision No 1/80, 'the scope of the standstill obligation in Article 13 extends by analogy to any new obstacle to the exercise of free movement by workers which makes more stringent the conditions which exist at a given time'.[22]

19. Once the Court had established the direct effect of Article 13 of Decision No 1/80 and explained that its scope was to be the same as that of Article 41(1) of the Additional Protocol, it remained for the Court to determine its significance. For the Court, the standstill clause 'does not operate in the same way as a substantive rule by rendering inapplicable the relevant substantive law which it replaces, but as a quasi-procedural rule which stipulates, *ratione temporis*, which are the provisions of a Member State's legislation that must be referred to for the purposes of assessing the position of a Turkish national who wishes to exercise' freedom of movement for workers in a Member State.[23] It contains an obligation entered into by the Contracting Parties which amounts in law to a duty not to act.[24]

20. The Court has also repeatedly stated that the standstill clause does not, as such, create rights[25] and is not in itself capable of conferring upon a Turkish national a right to pursue an activity as an employed person or the right of residence which is its corollary,[26] since the right of entry into the territory of a Member State cannot be inferred from the EU legislation but, on the contrary, remains governed by national law.[27]. The Court has therefore recognised that 'Decision No 1/80 does not encroach upon the competence of the Member States to refuse Turkish nationals the right of entry into their territories and to take up first employment there'.[28] However, it does regulate the situation of Turkish workers already lawfully integrated into the labour force of Member States.[29] Yet the Court has nonetheless accepted that 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.[30]

17 — See judgments in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 72); *Commission* v *Netherlands* (C-92/07, EU:C:2010:228, paragraph 48); *Toprak and Oguz* (C-300/09 and C-301/09, EU:C:2010:756, paragraph 52) and *Dereci and Others* (C-256/11, EU:C:2011:734, paragraph 94).

18 — Judgments in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 70) and *Dereci and Others* (C-256/11, EU:C:2011:734, paragraph 81).

19 — Judgments in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 71) and *Commission* v *Netherlands* (C-92/07, EU:C:2010:228, paragraph 48).

20 — Judgments in *Toprak and Oguz* (C-300/09 and C-301/09, EU:C:2010:756, paragraph 54) and *Dereci and Others* (C-256/11, EU:C:2011:734, paragraph 94).

21 — Judgment in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 73).

22 — Judgment in *Toprak and Oguz* (C-300/09 and C-301/09, EU:C:2010:756, paragraph 54).

23 — See, by analogy, judgments in *Tum and Dari* (C-16/05, EU:C:2007:530, paragraph 55) and *Dereci and Others* (C-256/11, EU:C:2011:734, paragraph 89).

24 — Judgments in *Savas* (C-37/98, EU:C:2000:224, paragraph 47); *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 58); *Tum and Dari* (C-16/05, EU:C:2007:530, paragraph 46) and *Dereci and Others* (C-256/11, EU:C:2011:734, paragraph 87).

25 — Judgment in *Demirkan* (C-221/11, EU:C:2013:583, paragraph 58).

26 — See, by analogy, judgments in *Savas* (C-37/98, EU:C:2000:224, paragraph 64) and *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 62).

27 — See, by analogy, judgment in *Tum and Dari* (C-16/05, EU:C:2007:530, paragraph 54).

28 — Judgment in *Unal* (C-187/10, EU:C:2011:623, paragraph 41 and the case-law cited).

29 — See judgment in *Savas* (C-37/98, EU:C:2000:224, paragraph 58 and the case-law cited).

30 — See, by analogy, judgment in *Demirkan* (C-221/11, EU:C:2013:583, paragraph 55).

21. In particular, Article 13 of Decision No 1/80 prohibits generally the introduction of any new national measure having the object or effect of making the exercise by a Turkish national in its territory of the freedom of movement for workers subject to conditions more restrictive than those which applied at the time when Decision No 1/80 entered into force with regard to the Member State concerned.[31] That same provision also precludes the introduction into Member States' legislation, as from the date of entry into force in the Member State concerned of Decision No 1/80, 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 into the territory of that Member State of Turkish nationals intending to exercise that freedom.[32]

22. At this stage of the analysis, I note that the Court has not ruled out the possibility that the conditions for entry and residence of economically active Turkish nationals' family members who do not enjoy any rights under Decision No 1/80 may fall, indirectly, within the scope of the standstill requirement, provided that a link is established between the exercise by those nationals of the economic activity and that entry or residence. It is precisely that link which was confirmed in the judgment in *Dogan*.[33]

2. The social dimension of Decision No 1/80, 'economic dimension' of family reunification and standstill requirement

23. The subject of family reunification has not, in fact, been overlooked in the Court's case-law on standstill clauses in the context of the Association between the Economic European Community and Turkey ('the EEC-Turkey Association'). In view of the inherent link between the exercise of an economic activity and the rights enjoyed by Turkish nationals exercising it in the territory of a Member State, the Court has held that 'the members of the family of the migrant Turkish worker do not have a right to join him to live as a family; their ability to join him depends rather on a decision of the national authorities taken solely on the basis of the law of the Member State concerned, subject to the requirement of observance of fundamental rights'.[34] However, Decision No 1/80 has clearly enriched the EEC-Turkey Association in the social field.[35] Article 13 of Decision No 1/80 also forms part of the 'social provisions' of that decision which, according to the Court, is evidence of the fact that freedom of movement for workers, which was to be secured gradually, has reached a 'further stage'.[36] In interpreting the 'social' provisions of Decision No 1/80, the Court has recognised that the family reunification enjoyed by Turkish workers who belong to the labour force of the Member States contributes both to improving the quality of their stay and to their integration in those Member States and, therefore, promotes economic and social cohesion in the society concerned.[37] However, such family reunification is not unconditional and the Court's affirmation must be viewed in the context of its judgment in *Dülger*.[38] In that case, the Court ruled on Article 7(1) of Decision No 1/80, which lists the rights of the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State *who have been authorised to join him*. Although, in another context, the

31 — See judgment in *Demir* (C-225/12, EU:C:2013:725, paragraph 33 and the case-law cited). For a similar conclusion drawn by the Court in relation to the standstill clause in Article 41(1) of the Additional Protocol, see judgments in *Savas* (C-37/98, EU:C:2000:224, paragraph 69); *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 66); *Soysal and Savatli* (C-228/06, EU:C:2009:101, paragraph 47) and *Demirkan* (C-221/11, EU:C:2013:583, paragraph 39). Finally, for the sake of completeness, I should add that the existence of a new restriction is assessed either in relation to the date of entry into force of Decision No 1/80 in the Member State concerned or in relation to the more favourable legislation adopted after that entry into force; see judgments in *Toprak and Oguz* (C-300/09 and C-301/09, EU:C:2010:756, paragraphs 49 and 56) and *Dereci and Others* (C-256/11, EU:C:2011:734, paragraph 94.

32 — See judgment in *Demir* (C-225/12, EU:C:2013:725, paragraph 34 and the case-law cited).

33 — C-138/13, EU:C:2014:2066.

34 — Judgment in *Derin* (C-325/05, EU:C:2007:442, paragraph 64).

35 — See, in particular, judgment in *Pehlivan* (C-484/07, EU:C:2011:395, paragraph 45).

36 — Judgments in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 77) and *Dülger* (C-451/11, EU:C:2012:504, paragraph 48).

37 — See judgments in *Dülger* (C-451/11, EU:C:2012:504, paragraph 42) and *Dogan* (C-138/13, EU:C:2014:2066, paragraph 34).

38 — C-451/11, EU:C:2012:504.

Court held that Decision No 1/80 does not make the access to the territory of a Member State of family members of a Turkish worker already legally present in that state in order to join the rest of the family conditional on the exercise of paid employment,[39] it stated, regarding, in particular, Article 13 of that decision, that that provision refers 'to workers and members of their families legally resident and employed in their respective territories'.[40]

24. However, I would point out at this stage of the analysis that the applicant in the main proceedings is not yet in Danish territory but is applying to join his father there. His situation is not covered by Article 7(1) of Decision No 1/80 and he, himself, cannot therefore rely on Article 13 of that decision.

25. The judgment in *Dogan*,[41] from which the Danish Government asks the Court to depart on the ground that it constitutes a break with the previous case-law of the Court, is consistent with that case-law. That judgment did not confer an independent right to family reunification on members of the family of Turkish workers any more than it conferred the right to rely on Article 13 of Decision No 1/80 on those workers' spouses who had not yet entered the territory of the Member State where those workers exercise their economic freedom. In that judgment, the Court recognised, as, moreover, I had invited it to do, that that article could be relied on only by the economically active Turkish national who became established in the territory of a Member State and then alone enjoyed the rights conferred by the legal texts of the Association Agreement.[42] Also, there is nothing particularly innovative in the Court's acceptance, again in its judgment in *Dogan*,[43] that the standstill clause could be relied on against national legislation regulating the conditions of entry into the territory of the Member State concerned for the purposes of family reunification of the spouse of a Turkish citizen established in that Member State. In fact, the Court had already accepted that it could be relied on in the judgment in *Toprak and Oguz*.[44]

26. As to the Danish Government's wish for a return to the rule in *Demirkan*,[45] it must be stated that that precedent is not relevant to the present case. That case concerned a daughter-in-law, of Turkish nationality, who wished to join her father-in-law, who was a German citizen and resident, in Germany and the question whether it could be considered that she could rely on Article 41(1) of the Additional Protocol in so far as, upon arriving in German territory, she would be not a provider but a recipient of services. In that case, unlike in the present proceedings for a preliminary ruling, the person in question was not a Turkish worker who was already established in the territory of a Member State and already exercising an economic freedom there.

27. In spite of the 'social' nature of the provisions contained in Decision No 1/80, the Court has not, therefore, gone so far, in its case-law, as totally to disconnect the exercise of an economic freedom from the right to family reunification. Thus, as I have already observed, it is only in so far as the rules on family reunification affect the situation of Turkish workers that those rules have to be brought within the scope of Article 13 of Decision No 1/80.[46]

39 — See judgment in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 82).

40 — Judgment in *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 84).

41 — C-138/13, EU:C:2014:2066.

42 — See paragraph 32 of the judgment in *Dogan* (C-138/13, EU:C:2014:2066) and points 20 et seq. of my Opinion in that case (C-138/13, EU:C:2014:287).

43 — C-138/13, EU:C:2014:2066.

44 — C-300/09 and C-301/09, EU:C:2010:756.

45 — C-221/11, EU:C:2013:583.

46 — See point 23 and the case-law cited of my Opinion in *Dogan* (C-138/13, EU:C:2014:287).

28. However, in the light of the Court's ruling in *Dogan*,[47] the decision of a Turkish national to establish himself in a Member State of the European Union in order to exercise stable employment there could be negatively affected where the legislation of that Member State makes family reunification difficult or impossible, so that that national could find himself obliged to choose between his activity in the Member State concerned and his family life in Turkey.

29. In the light of all the foregoing considerations, it must be concluded that legislation such as that at issue in the main proceedings, which it is not disputed makes reunification of a Turkish employed person who is legally established in the territory of a Member State with his minor children more difficult by making the conditions of their first admission into the territory of the Member State concerned more stringent than those applicable on the entry into force of Decision No 1/80[48] constitutes a new restriction on the exercise of the freedom of movement of Turkish workers within the meaning of Article 13 of that decision.

B – *The third and fourth questions*

30. By its third and fourth questions, which I shall also examine together, the referring court asks whether a new restriction within the meaning of Article 13 of Decision No 1/80 can be justified and, if so, under what conditions proportionality must be assessed. Although that task is, in principle, a matter for the national courts, the referring court expressly requests the Court to adopt a position on the proportionality test relating to Paragraph 9(13) of the Law on aliens. However, before adopting a position on that point, it must first be determined whether there is in this case an overriding reason in the public interest capable of justifying the new restriction.

1. The promotion of successful integration as an overriding reason in the public interest

31. The Court has already held that a restriction whose 'purpose or effect is to make the exercise by a Turkish national of the freedom of movement of workers in national territory subject to conditions more restrictive than those applicable at the date of entry into force of Decision No 1/80, is prohibited, unless it falls within the restrictions referred to in Article 14 of that decision or in so far as 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'.[49] By reason of the convergence applicable in the interpretation of the standstill clauses, the Court confirmed that approach in the judgment in *Dogan*[50] with respect to new restrictions within the meaning of Article 41(1) of the Additional Protocol. Thus, the Court has expressly accepted that a new restriction can be justified not only on the grounds referred to in Article 14 of Decision No 1/80, namely public policy, public safety and public health, but also for overriding reasons in the public interest which are familiar grounds for justifying obstacles in the Court's case-law on fundamental freedoms. Although, in the judgment in *Demir*,[51] the Court recognised that the purpose of preventing unlawful entry and residence is an overriding reason in the public interest, it left open the question of the prevention of forced marriages and of the promotion of integration in the judgment in *Dogan*.[52]

47 — See, by analogy, judgment in *Dogan* (C-138/13, EU:C:2014:2066, paragraph 35).

48 — See paragraph 2.6 of the order for reference. Although it disputes that Article 13 of Decision No 1/80 can be applied to that type of legislation, the Danish Government recognises, on the other hand, that Paragraph 9(13) of the Law on aliens, which was introduced in 2004, constitutes a toughening of its previous legislation and, therefore, a new restriction.

49 — Judgment in *Demir* (C-225/12, EU:C:2013:725, paragraph 40).

50 — See point 41 of my Opinion in *Dogan* (C-138/13, EU:C:2014:287) and paragraph 37 of the judgment in *Dogan* (C-138/13, EU:C:2014:2066).

51 — Judgment in *Demir* (C-225/12, EU:C:2013:725, paragraph 41).

52 — See paragraph 38 of the judgment in *Dogan* (C-138/13, EU:C:2014:2066).

32. However, in the present case, the Danish Government maintains that Paragraph 9(13) of the Law on aliens must be regarded as justified by an overriding reason in the public interest, namely that of ensuring successful integration.

33. The Court is not particularly demanding in the matter of establishing an overriding reason in the public interest.[53] I would note that, in the judgment in *Demir*,[54] the Court confined itself to a finding which had not previously been established. Moreover, as I have pointed out above, it did not even adopt a position on that point in the judgment in *Dogan*.[55]

34. I am inclined to consider that, if the Court acts in that way, it is in order to recognise the discretion which the States enjoy in the matter. In view of those considerations, I am also inclined to accept that, in itself, the promotion of successful integration may constitute an overriding reason in the public interest, in particular since the Gordian knot of the present case lies more in the appropriateness, necessity and proportionality of the new restriction than in the ground justifying it.

35. So far as is relevant, I shall therefore merely point out that concerns relating to integration are not outside the scope of EU law[56] and that they do not appear, as such, contrary to the objective pursued by the EEC-Turkey Association. The overriding reason in the public interest relied on by the Danish Government therefore seems to me to be, at first sight, admissible.

2. Is Paragraph 9(13) of the Law on aliens suitable to achieve the objective pursued and does it go beyond what is necessary to attain it?

a) Determination of the scope of the proportionality test

36. First of all, an answer must be given to the referring court's question whether the proportionality test to be carried out in order to determine to what extent a new restriction within the meaning of Article 13 of Decision No 1/80 is admissible must be similar to that which may be conducted in order to verify compliance with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.

37. On that point, it seems to me logical to confirm that the test to be applied is indeed the test applicable in cases of infringement of one of the economic freedoms established by the Treaty. This follows clearly from the very wording of the test formulated by the Court in its judgments in *Demir*[57] and *Dogan*.[58] This can also be explained by the fact that the Court manifestly and voluntarily chose to

53 — It has been accused of a certain lack of rigour in that regard, see Hatzopoulos, V., 'Exigences essentielles, impératives ou impérieuses: une théorie, des théories ou pas de théorie du tout?', *Revue trimestrielle de droit européen*, 1998, p. 191; Martin, D., 'Discriminations, entraves et raisons impérieuses dans le traité CE: trois concepts en quête d'identité', *Cahiers de droit européen*, 1998, p. 261 and p. 561; Barnard, C., 'Derogations, justifications and the four freedoms: is state interest really protected?', in *The outer limits of EU law*, Hart Publishing, 2009, p. 273.

54 — C-225/12, EU:C:2013:725.

55 — C-138/13, EU:C:2014:2066. For a non-exhaustive list of overriding reasons in the public interest, see, in particular, recital 40 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

56 — See, in particular, Article 79(4) TFEU. The promotion of successful integration may be likened to the objective of economic and social cohesion mentioned not only in Article 4(2)(c) TFEU and the first paragraph of Article 174 TFEU but also in recitals 4 and 15 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12). I also note that Advocate General Kokott has accepted, in another context, that legislation aimed at integrating the person coming to join the family pursues legitimate objectives (see points 33 and 34 of the Opinion of Advocate General Kokott in *K and A* (C-153/14, EU:C:2015:186)).

57 — C-225/12, EU:C:2013:725.

58 — C-138/13, EU:C:2014:2066.

base its reasoning, in particular in the judgment in *Dogan* (C-138/13, EU:C:2014:2066), not on fundamental rights, but, on the contrary, on the economic freedoms as enjoyed by Turkish nationals under the conditions determined by the provisions governing the EEC-Turkey Association in respect of which family reunification appears only to be a 'corollary' or an 'extension'. [59]

38. I repeat, [60] to consider that Paragraph 9(13) of the Law on aliens constitutes a new restriction within the meaning of Article 13 of Decision No 1/80 does not mean that the right to family reunification of the father of the applicant in the main proceedings is being directly undermined. It does mean, however, that the possibility offered to him of taking up and continuing in paid employment in the territory of an EU Member State may be affected by the fact that his son, who is a minor and of whom he has legal custody, cannot, or can only with difficulty, join him. Just as the analysis of the existence of a new restriction was conducted from the perspective of the freedom of movement of the Turkish worker who is the father of the applicant in the main proceedings, so too any justification of that restriction must be examined under the same conditions as obstacles to that freedom of movement are examined.

39. When interpreting Article 13 of Decision No 1/80, transposing the test which the Court applies in the case of an obstacle does not seem to me to be going too far in treating the rights conferred on Turkish workers in the same way as those conferred on EU citizens, given that, in any event, the parties to the Association Agreement have agreed to be guided by the Treaty provisions on freedom of movement for workers [61] and the Court has held that the principles enshrined in those provisions must be extended, so far as possible, to Turkish nationals who enjoy the rights conferred by Decision No 1/80. [62]

40. That said, I shall now examine Paragraph 9(13) of the Law on aliens.

b) Application to the present case

41. According to the statements of the referring court and the Danish Government's observations, Paragraph 9(13) of the Law on aliens requires a minor child who submits an application for a residence permit in order to join one of his parents already established in Danish territory to have, or have the possibility of establishing, sufficient ties to Denmark to allow successful integration in that country. That requirement, which is imposed on children over six years of age, [63] applies only to applications made at least two years after the parent resident in Denmark has received his permanent residence permit and where the child is residing in his country of origin with the other parent. According to the Danish legislature, the objective of such a requirement is to prevent parents from choosing to leave the child in the country of origin, so that the child can be educated in accordance with the culture of that country and does not assimilate Danish standards and values.

42. It is clear both from the explanatory memorandum to the draft Law on aliens and from the practice notes partially reproduced in the case-file that, in order to determine whether the applicant has sufficient ties to Denmark, the assessment which must be conducted by the competent Danish authorities is a discretionary assessment taking into account a number of criteria in order to make a kind of diagnosis and/or prognosis of the applicant's likelihood of integration.

59 — Gazin, F., 'Regroupement familial dans le cadre de l'accord d'association UE-Turquie', *Europe*, October 2014, note 394.

60 — See point 27 of this Opinion.

61 — See Article 12 of the Association Agreement.

62 — See, for example, judgments in *Nazli* (C-340/97, EU:C:2000:77, paragraph 55 and the case-law cited) and *Ziebell* (C-371/08, EU:C:2011:809, paragraphs 58, 66 and 68).

63 — Following the legislative amendment made in 2012.

43. For that purpose, account must be taken of all the information available on the duration and nature of the child's periods of residence in Denmark and in his country of origin, the place where he has spent most of his childhood, his place of education [64] and his language knowledge. The Danish authorities must also decide whether the degree to which the child has assimilated Danish values and standards is sufficient for him to have, or have the possibility of establishing, sufficient ties to Danish society. Account is also taken of the degree of integration and the closeness of the ties with Danish society of the parent already present in Denmark and of the actual nature of that parent's relationship with the applicant. [65]

44. The Danish authorities are deprived of their power of assessment in a number of exceptional cases in which it is not necessary to demonstrate sufficient ties to Denmark to allow successful integration in that country. The child is, in principle, granted a residence permit even though the application is submitted more than two years after the parent already present in that Member State has received his residence permit in the following cases: if the child, the parent resident in the State of origin or the parent resident in Denmark is ill or seriously handicapped; if the parent resident in Denmark was until then unaware of the exact place of residence of the child; if the parent resident in Denmark now satisfies the conditions for claiming maintenance or custody; if the parent resident in Denmark cannot, in any event, stay in the child's State of origin and of residence or if the refusal of reunification appears contrary to Denmark's international commitments or to the child's best interests within the meaning of the New York Convention on the Rights of the Child, signed on 20 November 1989 and ratified by all the Member States.

45. On the other hand, the application must be refused if the authorities find that the parent resident in Denmark deliberately chose to leave the child behind, so that the child could receive an education in accordance with the culture of the country of origin. Account will then be taken of the applicant's age, it being understood that the possibility of requesting family reunification is open to that applicant up until he is 15 years old.

46. When set out in that way, the ratio legis of Paragraph 9(13) of the Law on aliens seems reasonable, since the Danish authorities, in exercising their discretion in interpreting each case, must take into account a number of criteria. Moreover, in certain cases, it is not necessary to demonstrate the existence of or possibility of establishing sufficient ties to Danish society.

47. The Danish Government maintains that the fact that the requirement of sufficient ties is not automatic is sufficient to regard the legislation at issue as proportionate, as the Court held in the judgment in *Dogan*. [66] Although it is true that the Court held, in that judgment, that a provision which states that the absence of evidence of sufficient linguistic knowledge automatically leads to the dismissal of the application, without account being taken of the specific circumstances of each case, goes beyond what is necessary in order to attain the objective pursued, [67] it cannot be inferred from this that a measure providing for such an examination of those circumstances fulfils the proportionality test on that condition alone. [68]

64 — It is clear, however, from a note describing the practice relating to Paragraph 9(13) of the Law on aliens, which is partially reproduced in the request for a preliminary ruling, that a period of residence or education in Denmark of less than one year will not be taken into account.

65 — The fact that the parent already present in Denmark has legal custody of the child is not decisive, however. It would also seem that, in practice, no importance is attached to whether or not the children who have already been reunited with their parent present in Danish territory have been successfully integrated.

66 — C-138/13, EU:C:2014:2066.

67 — See judgment in *Dogan* (C-138/13, EU:C:2014:2066, paragraph 38).

68 — It is also interesting to note that Mr Genc's representative stated at the hearing that no dispensation from demonstrating sufficient ties to Danish society has been granted and that, in practice, all applications based on Paragraph 9(13) of the Law on aliens have been rejected.

48. Since the reasoning on the proportionality of Paragraph 9(13) of the Law on aliens needs to be taken further, it should be examined from a systemic perspective. However, it is clear both from the wording of the provision and from national practice that that provision is based on a fundamental — and, in my view, difficult to rebut — assumption of incompatibility of cultures. A child who was born and raised in a third State can, almost by nature, no longer be integrated. I also note that applicants are required to prove that they have, to some degree, assimilated Danish standards and values, which are nowhere defined. Assuming that the Law on aliens is applicable to American nationals, for example, would the Danish authorities view a 'late' application for reunification with the same strictness? Would they complain with the same steadfastness that the child was deliberately kept for as long as possible in its culture of origin, thereby negating any likelihood of integration?

49. I must therefore admit that I am not convinced of the existence of any correlation between a period of prolonged residence in a third State and the impossibility of integration. It should be borne in mind that the economic situation of those families often explains the absence of more frequent stays in Europe and that the choice of residence is determined not solely by a hypothetical cultural preference, but also, and perhaps above all, by real economic constraints.

50. Nor am I convinced by the distinction which has been made in the rules on residence applications between applications made in the two years after the parent resident in Denmark was granted a residence permit (which are automatically accepted) and those made after that two-year period has elapsed. The expiry of that period does not seem to me to bear any relation to the prospects of future integration, in particular since children of minor age are concerned. It seems to me that there is in this instance a certain lack of consistency between the national measure and the objective which is allegedly being pursued.

51. Let us imagine that Mr Genc obtained his permanent residence permit when his son was seven and a half years old, that his son has never stayed in Denmark, spent his whole childhood in Turkey and speaks only Turkish, as seems to be the case in the main proceedings. Then let us imagine that that child made his application when he was 10 years old. Are those six additional months [69] spent in Turkey such as to so change his likelihood of integration in Danish society that he can no longer demonstrate sufficient ties when, up to the age of nine and a half, he would probably have been granted a residence permit without it being possible to say that he had a closer link with Denmark?

52. If Paragraph 9(13) of the Law on aliens were intended rather to combat late reunification situations, then the establishment of an age criterion would seem to me to be more appropriate, although insufficient.

53. Finally, although, as I stated above, the Danish authorities are required to make a 'diagnosis' of the extent to which the child has been assimilated, I note that that diagnosis is not accompanied by any 'therapeutic' measure, to continue the medical metaphor. Rather than deciding to refuse an application on the basis of a pessimistic prediction of non-integration, it would be conceivable to grant a temporary residence permit which could be renewed on condition that the child attend a Danish language or citizenship course.

54. It is true that, when deciding whether to grant a residence permit on the basis of Paragraph 9(13) of the Law on aliens, the Danish authorities are guided in their assessment by a number of criteria. However, those criteria are both too numerous and insufficiently precise to be foreseeable and prevent an administrative practice of systematic refusal. I would reiterate that I find it, for example, quite problematic that Danish standards and values are not made clear. The criteria on which the Danish authorities are to base their assessment are listed in explanatory remarks but, in respect of most of

69 — After the date until which he could submit an application without having to provide evidence of sufficient ties.

them, it is stated that they are not, viewed separately, decisive,[70] so that it may be asked whether they are not cumulative, in which case the extent of the requirement would be very high. Moreover, as I have pointed out, the handling of the criteria is not necessarily fully consistent with the objective pursued, since it is not really demonstrated how non-fulfilment of those criteria constitutes a serious and insurmountable obstacle to the successful integration of the minor child.

55. For all those reasons, I invite the Court to rule that the new restriction constituted by Paragraph 9(13) of the Law on aliens goes beyond what is necessary to attain the objective of successful integration. Accordingly, it must be held that Article 13 of Decision No 1/80 precludes a provision, introduced after the entry into force of that decision, requiring minor children seeking to be reunited with their Turkish father who is in paid employment in Denmark to demonstrate that they have sufficient ties in that Member State, when a period of two years has elapsed since that parent received his residence permit.

III – **Conclusion**

56. In the light of the foregoing considerations, I propose that the Court answer the questions referred by the Østre Landsret (Eastern Regional Court) as follows:

(1) Legislation such as that at issue in the main proceedings, which it is not disputed makes reunification of a Turkish employed person who is legally established in the territory of a Member State with his minor children more difficult by making the conditions of their first admission into the territory of the Member State concerned more stringent than those applicable on the entry into force of Decision No 1/80 of 19 September 1980 on the development of the Association adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at 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, constitutes a new restriction on the exercise of the freedom of movement of Turkish workers within the meaning of Article 13 of that decision.

(2) Article 13 of Decision No 1/80 precludes a provision introduced after the entry into force of that decision requiring minor children seeking to be reunited with their Turkish father who is in paid employment in Denmark to demonstrate that they have sufficient ties in that Member State, when a period of two years has elapsed since that parent received his residence permit.

70 — This is, in any event, what is indicated by the note from 2007 describing the practice.