Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

12 April 2016*

(Reference for a preliminary ruling — EEC-Turkey Association Agreement — Decision No 1/80 — Article 13 — Standstill clause — Family reunification — National legislation laying down new, more stringent conditions on access to family reunification for family members, who are not economically active, of economically active Turkish nationals who are resident and have a residence permit in the Member State in question — Condition requiring ties sufficient to enable successful integration)

In Case C-561/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (Eastern Regional Court, Denmark), made by decision of 3 December 2014, received at the Court on 5 December 2014, in the proceedings

Caner Genc

v

Integrationsministeriet,

THE COURT (Grand Chamber)

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta (Rapporteur), M. Ilešič, L. Bay Larsen, F. Biltgen, C. Lycourgos, Presidents of Chambers, A. Rosas, A. Borg Barthet, J. Malenovský, E. Levits, K. Jürimäe, M. Vilaras, Judges,

Advocate General: P. Mengozzi,

Registrar: T. Millett, Deputy Registrar,

having regard to the written procedure and further to the hearing on 20 October 2015,

after considering the observations submitted on behalf of:

— Mr Genc, by T. Ryhl, advokat,

— the Danish Government, by C. Thorning, acting as Agent, and by R. Holdgaard, advokat,

— the Austrian Government, by G. Hesse, acting as Agent,

— the European Commission, by M. Clausen, C. Tufvesson, D. Martin and F. Erlbacher, acting as Agents,

* Language of the case: Danish.

after hearing the Opinion of the Advocate General at the sitting on 20 January 2016,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed in 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, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1) ('Decision No 1/80' and 'the Association Agreement' respectively).

2 The request has been made in proceedings between Mr Genc and the Integrationsministeriet (Ministry of Integration) concerning the rejection by the latter of his application for a residence permit in Denmark for the purposes of family reunification.

Legal context

EU law

The Association Agreement

3 It is apparent from Article 2(1) of the Association Agreement that it is intended to promote the continuous and balanced strengthening of trade and economic relations between the parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people.

4 Under Article 12 of the Association Agreement, 'the Contracting Parties agree to be guided by Articles [39 EC], [40 EC] and [41 EC] for the purpose of progressively securing freedom of movement for workers between them' and, under Article 13 of that agreement, those parties 'agree to be guided by Articles [43 EC] to [46 EC] and [48 EC] for the purpose of abolishing restrictions on freedom of establishment between them'.

Decision No 1/80

5 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.'

6 According to Article 14 of Decision No 1/80:

'1. The provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health.

2. They shall not prejudice the rights and obligations arising from national legislation or bilateral agreements between Turkey and the Member States of the Community, where such legislation or agreements provide for more favourable arrangements for their nationals.'

The Additional Protocol

7 As is clear from Article 62 thereof, 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 (OJ 1977 L 361, p. 60) ('the Additional Protocol'), forms an integral part of the Association Agreement.

8 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.'

Danish law

9 The Law on aliens (Udlændingeloven), in the version applicable to the main proceedings ('the UL'), provides, in Paragraph 9(1)(2)(d), that upon application, a residence permit may be issued to an unmarried minor child under the age of 15 of a person permanently resident in Denmark or of that person's spouse, provided that the child resides with the person having custody of him or her and has not started his or her own family through regular cohabitation, and provided that the person resident in Denmark holds a permanent residence permit or a residence permit with a possibility of permanent residence.

10 Paragraph 9(13) of the UL, which was inserted by Law No 427 of 9 June 2004 on the amendment of the UL and the Law on integration, provides:

'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 under [Paragraph 9(1)(ii) of the UL] can be issued only if the applicant has, or has the possibility of establishing, such ties with Denmark that there is a basis for successful integration in Denmark. However, this shall not apply if the application is submitted no later than two years after the person residing in Denmark satisfies the conditions laid down in [Paragraph 9(1)(ii) of the UL] or if there are particularly compelling reasons which weigh against it, including regard for family unity.'

11 The travaux préparatoires for Paragraph 9(13) of the UL state that the purpose of that provision is to discourage parents from deliberately choosing to leave their child in the State of origin together with one of the child's parents until the child is almost an adult, despite the fact that the child could have obtained a residence permit in Denmark earlier, in order to ensure that the child grows up in accordance with the culture and practices of the State of origin and in his childhood is not influenced by Danish standards and values.

12 It is apparent from the order for reference that, under the practice described in the note of 2 July 2007 of the Ministry of Integration, a minor child's ability successfully to integrate is the subject of a discretionary assessment, in which account is taken particularly of criteria such as the length and nature of the residence of the child concerned in the respective States and, in particular, any previous residence of that child in Denmark, the State in which the child spent the majority of his childhood and adolescence, where it attended school, whether the child speaks Danish, whether it speaks the language of the State of origin and whether that child was influenced during his childhood by Danish standards and values to a degree sufficient that the child has or has the possibility of establishing sufficient ties to Denmark enabling him successfully to integrate in that Member State. In addition, a certain importance attaches, in connection with the other factors, to whether the parent resident in Denmark is well integrated and is closely involved in Danish society.

13 It is also apparent from the order for reference that, in certain exceptional cases, there are very specific grounds where there is no requirement of sufficient ties to the Member State concerned enabling satisfactory integration. That is the case, in particular, where refusal of family reunification would run counter to the international commitments of the Kingdom of Denmark or would be contrary to the overriding interest of the child concerned pursuant to the New York Convention on the Rights of the Child, signed on 20 November 1989 and ratified by all the Member States, or where, because of a serious illness or handicap, it would be indefensible, on a humanitarian level, to send the parent resident in Denmark to a State which does not offer any possibility of reception and treatment, or where the parent who lives in the State of origin is incapable of caring for the child concerned.

14 The referring court states that Paragraph 9(13) of the UL applies only to applications for family reunification between third-country nationals resident in Denmark and the members of their family and that, when Decision No 1/80 entered into force, no rule such as that of Paragraph 9(13) of that Law on aliens applied.

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

15 Mr Genc, the applicant in the main proceedings, is a Turkish citizen born on 17 August 1991. His father, who is also a Turkish citizen, came to Denmark on 14 December 1997 and, since 21 April 2001, has held a permanent residence permit in that Member State.

16 Mr Genc's parents were divorced by virtue of a judgment of 30 December 1997 delivered by the court of Haymana (Turkey). Although the father of the applicant in the main proceedings obtained legal custody of both Mr Genc and his two older brothers, after the divorce the applicant in the main proceedings continued to live in Turkey with his grandparents.

17 Mr Genc's two older brothers have held residence permits in Denmark since May 2003.

18 On 5 January 2005, the applicant in the main proceedings applied for a residence permit in Denmark for the first time. At that time, his father was employed in that Member State.

19 On 15 August 2006, the Danish Immigration Service (Udlændingeservice) refused Mr Genc's application for a residence permit on the basis of Paragraph 9(13) of the UL, on the ground that he did not or could not have sufficient ties to Denmark to enable him successfully to integrate in that Member State. That decision was confirmed by the Ministry of Integration on 18 December 2006.

20 In particular, in its decision of 18 December 2006, the Ministry of Integration, taking account in particular of the fact that Mr Genc was born in Turkey where he spent all his childhood and has been educated there until that date, that he has never travelled to Denmark, that he speaks only Turkish, that he has no tie of any kind to Danish society and that his father has seen him only twice in the last two years, concluded that the applicant in the main proceedings has not been influenced by Danish standards and values to such a degree that he has or can establish sufficient ties to Denmark to enable him successfully to integrate.

21 Similarly, the Ministry of Integration was of the view that Mr Genc's father could not be regarded either as being so well integrated and as having sufficiently extensive ties himself to Danish society enabling a conclusion to be reached, as regards the applicant in the main proceedings, different from that set out in the preceding paragraph.

22 Finally, the Ministry of Integration noted that there was no specific ground, other than family unity, militating in favour of the issue of a residence permit to Mr Genc, notwithstanding the fact that he does not or cannot have ties to Denmark sufficient to enable him successfully to integrate, and that

neither are there any major obstacles to the father of the applicant in the main proceeding going to Turkey to carry on a family life with him, or to the father carrying on a family life on the same basis as that following his voluntary entry into Denmark in 1997.

23 On 17 September 2007, the Ministry of Integration refused to review the application for a residence permit made by Mr Genc.

24 The applicant in the main proceedings applied to Glostrup Ret (Glostrup Court, Denmark) which, by a judgment of 9 December 2011, confirmed the decision of the Ministry of Integration to refuse the requested residence permit.

25 Mr Genc appealed against that judgment to the Østre Landsret (Eastern Regional Court, Denmark).

26 The Østre Landsret (Eastern Regional Court) notes that, in the judgment in *Dogan* (C-138/13, EU:C:2014:2066), the Court held that the standstill clause set out in Article 41(1) of the Additional Protocol must be interpreted as precluding the introduction by a Member State of any new restrictions as regards the possibility of obtaining family reunification with a spouse of Turkish origin.

27 Nonetheless, first of all, the Østre Landsret (Eastern Regional Court) has doubts as to the conformity of that judgment both with the earlier case-law of the Court on the standstill clauses and the historical context and purpose of the Association Agreement.

28 Next, the referring court is doubtful as to whether the legal principle which emerges from the judgment in *Dogan* (C-138/13, EU:C:2014:2066) with regard to the standstill clause referred to in Article 41(1) of the Additional Protocol also applies as regards the provision set out in Article 13 of Decision No 1/80, having regard to the different wording of those provisions.

29 Finally, that court, on the basis of the finding that, in the judgments in *Demir* (C-225/12, EU:C:2013:725) and *Dogan* (C-138/13, EU:C:2014:2066), the Court held that new restrictions concerning a standstill clause may be admitted if the restriction is justified by an overriding reason in the public interest, is appropriate to achieve the legitimate objective pursued and does not go beyond what is necessary to achieve it, is doubtful as to the conformity of such an interpretation in the light of the judgment in *Dereci and Others* (C-256/11, EU:C:2011:734), and the guidelines which should be used to carry out the restriction test and proportionality assessment.

30 In those circumstances, the Østre Landsret (Eastern Regional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice 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] 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 judgments in *Ziebell* (C-371/08, EU:C:2011:809) and *Demirkan* (C-221/11, EU:C:2013:583), and having regard to

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

— the fact that family reunification within the then European Community and the present European Union has always been governed by secondary law, at present 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 the first question, 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 the first and second questions is in the affirmative, the Court is asked to indicate whether the standstill clause in Article 13(1) of Decision No 1/80 must be interpreted as meaning that new restrictions, which are "justified by an overriding reason in the public interest, [are] 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 the third question is in the affirmative, the Court is asked to indicate in particular:
   (a) the guidelines which should be used to carry out the restriction test and proportionality assessment. The Court is asked 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 Directive 2004/38 and the provisions of the FEU 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 and Fundamental Freedoms, signed in Rome on 4 November 1950, on the right to respect for family life in 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(16) of the UL, as amended (formerly Paragraph 9(13)) — 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 are 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 [which] does not go beyond what is necessary in order to attain it"?'

31 By letter lodged at the Registry of the Court on 30 March 2015, the Danish Government, by virtue of the third paragraph of Article 16 of the Statute of the Court of Justice of the European Union, requested that the Court sit in a Grand Chamber.

Consideration of the questions referred

32 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether a national measure such as that at issue in the main proceedings, making family reunification between a Turkish worker residing lawfully in the Member State concerned and his minor child, provided that the latter has, or has the possibility of establishing, sufficient ties with Denmark to

enable him successfully to integrate, when the child concerned and his other parent reside in the State of origin or in another State, and that the application for family reunification is made more than two years from the date on which the parent residing in the Member State concerned has obtained a permanent residence permit or a residence permit with a possibility of permanent residence constitutes a 'new restriction' within the meaning of Article 13 of Decision 1/80 and/or of Article 41(1) of the Additional Protocol and, if so, whether such a restriction may nonetheless be justified.

33 It is settled case-law that the standstill clauses set out in Article 13 of Decision No 1/80 and Article 41(1) of the Additional Protocol prohibit generally the introduction of new internal measures which are intended to or have the effect of making the exercise by a Turkish citizen of an economic freedom subject, on the territory of the Member State concerned, to conditions more stringent than those which were applicable at the date of entry into force of that decision or that protocol as regards that Member State (see, to that effect, judgments in *Savas*, C-37/98, EU:C:2000:224, paragraph 69, and *Sahin*, C-242/06, EU:C:2009:554, paragraph 63 and the case-law cited).

34 In the present case, it is apparent from the order for reference that the national provision at issue in the main proceedings, namely Paragraph 9(13) of the UL, was introduced after the date of entry into force in Denmark of Decision No 1/80 and of the Additional Protocol and that that provision brings about a tightening of the conditions of admission concerning family reunification which existed previously, for minor children of third-country national workers, so that it makes such reunification more difficult.

35 Furthermore, it is not in dispute that Mr Genc wishes to enter Denmark to join his father there. Nor is it in dispute that, at the date on which Mr Genc made his application for residence, his father was employed in Denmark.

36 In those circumstances, it is the father of the applicant in the main proceedings whose situation relates to an economic freedom, in this case the freedom of movement for workers, and who, as a worker legally integrated in the labour market in Denmark, is therefore covered by Article 13 of Decision No 1/80 (see, to that effect, judgments in *Savas*, C-37/98, EU:C:2000:224, paragraph 58, and *Abatay and Others*, C-317/01 and C-369/01, EU:C:2003:572, paragraphs 75 to 84).

37 Consequently, it is only the situation of the Turkish worker residing in the Member State concerned, in this case Mr Genc's father, to which it is appropriate to refer in order to determine whether, under the standstill clause referred to in Article 13 of Decision No 1/80, a national measure such as that at issue in the main proceedings must be disapplied, if it proves to be the case that it is likely to affect his freedom to carry out paid employment in that Member State.

38 Accordingly, it is necessary to examine whether the introduction of new rules tightening the conditions for the first admission of minor children of Turkish nationals residing in the Member State concerned as salaried workers, such as Mr Genc's father, in relation to those applicable at the date of the entry into force of Decision No 1/80 in that Member State, may constitute a 'new restriction', within the meaning of Article 13 of that decision, on the exercise by those Turkish nationals of the freedom of movement for workers in that Member State.

39 In that regard, it is necessary to bear in mind that the Court has previously held that legislation which makes family reunification more difficult, by tightening the conditions of first admission to the territory of the Member State concerned by spouses of Turkish nationals in relation to those conditions applicable when the Additional Protocol entered into force, constitutes a 'new restriction', within the meaning of Article 41(1) of the Additional Protocol, on the exercise of the freedom of establishment by those Turkish nationals (judgment in *Dogan*, C-138/13, EU:C:2014:2066, paragraph 36).

40 That is the case since the decision of a Turkish national to establish himself in a Member State in order there to exercise a stable economic activity could be negatively affected where the legislation of that Member State makes family reunification difficult or impossible, so that that national could, as the case may be, find himself obliged to choose between his activity in the Member State concerned and his family life in Turkey (see, to that effect, judgment in *Dogan*, C-138/13, EU:C:2014:2066, paragraph 35).

41 Furthermore, the Court has 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 (judgment in *Commission* v *Netherlands*, C-92/07, EU:C:2010:228, paragraph 48).

42 It follows that the interpretation which the Court gave in paragraph 36 of the judgment in *Dogan* (C-138/13, EU:C:2014:2066) may be transposed to the main proceedings.

43 In so far as the referring court and the Danish Government are doubtful as to the compatibility of the interpretation which emerges from the judgment in *Dogan* (C-138/13, EU:C:2014:2066) with the exclusively economic objective of the Association Agreement, it must be borne in mind that, as is clear from paragraph 40 of the present judgment, what led the Court, in the judgment in *Dogan*, to conclude that the legislation at issue in the main proceedings in the case which gave rise to that judgment is covered by the standstill clause in Article 41(1) of the Additional Protocol was the existence of a link between the exercise by a Turkish national of economic freedoms in a Member State and family reunification, since the conditions for entry and residence of family members of that national under family reunification were likely to affect his exercise of such freedoms.

44 Thus, it is only in so far as national legislation tightening the conditions for family reunification, such as that at issue in the main proceedings, is likely to affect the exercise by Turkish workers, such as Mr Genc's father, of an economic activity on the territory of the Member State concerned that the view must be taken that such legislation is covered by the standstill clause in Article 13 of Decision No 1/80, as the Advocate General noted in point 27 of his Opinion.

45 Accordingly, the standstill clauses set out in Article 13 of Decision No 1/80 and in Article 41(1) of the Additional Protocol, as interpreted by the Court, in no way imply recognition of a right to family reunification or to a right of establishment and residence for family members of Turkish workers.

46 With regard to family reunification, as is apparent from the judgment in *Dogan* (C-138/13, EU:C:2014:2066), the case-law of the Court gives the standstill clause no effect other than precluding family reunification being made subject to new conditions likely to affect the exercise by a Turkish national of economic freedoms in a Member State.

47 Finally, a link such as that described in paragraph 43 of the present judgment was not at all present in the case which gave rise to the judgment in *Demirkan* (C-221/11, EU:C:2013:583), to which the Danish Government refers in particular.

48 In fact, that judgment concerned a Turkish national who wished to avail herself of the standstill clause set out in Article 41(1) of the Additional Protocol, on her entry into the Member State concerned, since, once present on the territory of that Member State, she was the beneficiary of services. Since, however, the Court held that the notion of 'freedom of provision of services' referred to in that provision did not include the passive freedom of provision of services (see, to that effect, judgment in *Demirkan*, C-221/11, EU:C:2013:583, paragraphs 60 and 63), there was no link between the entry and residence of that national in the Member State concerned and the exercise of an economic freedom and accordingly prevented her from relying on that standstill clause.

49 The interpretation based on the judgment in *Dogan* is, furthermore, coherent with that given by the Court with regard to the first paragraph of Article 7 of Decision No 1/80, in accordance with which the objective of that provision of the decision is to create conditions conducive to family unity in the host Member State by facilitating the employment and residence of Turkish workers duly registered as belonging to the labour force of the Member State concerned (see judgments in *Kadiman*, C-351/95, EU:C:1997:205, paragraphs 34 to 36; *Eyüp*, C-65/98, EU:C:2000:336, paragraph 26, and *Ayaz*, C-275/02, EU:C:2004:570, paragraph 41).

50 Consequently, it must be concluded that national legislation, such as that at issue in the main proceedings, which makes family reunification more difficult by tightening the conditions for first admission to the territory of the Member State concerned of minor children of Turkish workers residing in that Member State, in relation to that applicable at the time of entry into force of Decision No 1/80, and which, accordingly, is likely to affect the exercise of an economic activity by those workers in that territory, constitutes a 'new restriction', within the meaning of Article 13 of that decision, on the exercise by those Turkish nationals of the freedom of movement for workers in that Member State.

51 Finally, it must be borne in mind 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 stringent 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 (judgment in *Demir*, C-225/12, EU:C:2013:725, paragraph 40).

52 Under Article 12 of the Association Agreement, the parties thereto have, in accordance with the exclusively economic aim which forms the basis of the EEC-Turkey Association, agreed to be guided by the provisions of primary EU law on the freedom of movement for workers, so that the principles accepted in the context of those provisions must be extended, so far as possible, to Turkish nationals who enjoy rights under that Association Agreement (see, to that effect, judgment in *Ziebell*, C-371/08, EU:C:2011:809, paragraphs 58 and 65 to 68).

53 It is therefore appropriate to ascertain whether the national legislation at issue in the main proceedings is lawful in that it satisfies the criteria set out in paragraph 51 of this judgment.

54 In that regard, it must be noted that the condition laid down in Paragraph 9(13) of the UL is not covered by Article 14 of Decision No 1/80. However, the Danish Government submits that that condition is justified by an overriding reason in the public interest, namely to ensure successful integration, and that it is proportionate since that provision is both suitable to achieve the legitimate objective pursued and does not go beyond what is necessary to achieve it.

55 As regards whether the objective of achieving successful integration may constitute such an overriding reason, it is necessary to recall the importance given, in the context of EU law, to integrating measures, as is clear from Article 79(4) TFEU, which refers to promoting the integration of third-country nationals in the host Member States as an action by the Member States to be encouraged and supported, and from a number of directives, such as Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) and Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44), which provide that the integration of third-country nationals is a key factor in promoting social and economic cohesion, a fundamental objective of the European Union set out in the Treaty.

56 In those circumstances, the objective of ensuring the successful integration of third-country nationals in the Member State concerned, referred to by the Danish Government, may constitute an overriding reason in the public interest, as the Advocate General noted in point 35 of his Opinion.

57 With regard to the proportionality of the national provision at issue in the main proceedings, since such a provision constitutes a restriction on the freedom of movement for Turkish workers, as stated in paragraph 50 of the present judgment, it must be noted that such an assessment must be made in the light of that freedom, as it is enjoyed by Turkish nationals, in accordance with the provisions governing the EEC-Turkey Association, as the Advocate General noted in points 37 and 38 of his Opinion.

58 It is apparent from the order for reference that the national provision at issue in the main proceedings means that, in order to be able to take advantage of family reunification in circumstances such as those where the child concerned and one of his parents live in the State of origin or in another State, it is required, in principle, that that child have or be able to establish sufficient ties to Denmark to enable him successfully to integrate in that Member State.

59 Nonetheless, that condition applies only if the application is made more than two years after the date on which the parent residing in Danish territory obtained a permanent residence permit or a residence permit with a possibility of permanent residence.

60 Given that the requirement to prove sufficient ties to Denmark is intended to ensure that the children concerned successfully integrate in that Member State, as the Danish Government argues, the view must be taken that the national legislation at issue in the main proceedings is based on the presumption that children in respect of whom the application for family reunification has not been made within the deadline set are in a situation such that their integration in Denmark is guaranteed only if they meet that requirement.

61 It appears that that requirement, allegedly justified by the objective of enabling the integration of the minor children concerned in Denmark, becomes applicable, however, as a function not of the personal situation of the children which could adversely affect their integration in the Member States concerned, such as their age or their ties to that Member State, but of a criterion which, at first sight, appears unconnected to the likelihood of achieving such an integration, namely the period separating the grant to the parent concerned of a definitive residence permit in Denmark and the date on which the application for family reunification is made.

62 In that regard, it is difficult to understand how the making of an application for family reunification more than two years after the parent residing in Denmark obtained a definitive residence permit in that Member State would place the child in a situation less conducive to his integration in Denmark, such that the applicant is required to prove that that child has sufficient ties to that Member State.

63 The fact that the application for family reunification was made during or after the two years following the obtaining of a definitive residence permit by the parent residing in the Member State concerned cannot in itself be a decisive indication as to the intentions of the parents of the minor concerned by that application as regards his integration in that Member State.

64 Furthermore, the adoption of the criterion at issue, in order to ascertain which are the children whose sufficient ties to Denmark must be proven, leads to incoherent results as regards the assessment of their ability to achieve integration in that Member State.

65 As the Advocate General noted in point 51 of his Opinion, that criterion, on the one hand, applies without account being taken of the personal situation of the child concerned and his ties to the Member State in question and, on the other, runs the risk of leading to discrimination, based on the

date on which the application for family reunification was made, between children in entirely similar personal situations, both as regards their age and their ties with Denmark and their relationship with the parent residing there.

66 In that regard, it must be pointed out that, with regard in particular to the assessment of the personal situation of the child concerned, that assessment by the national authorities must be made, as the Advocate General noted in point 54 of his Opinion, on the basis of sufficiently precise, objective and non-discriminatory criteria which must be examined on a case-by-case basis, giving rise to a reasoned decision which may be subject to an effective appeal in order to prevent a systematic administrative practice of refusal.

67 Having regard to the foregoing considerations, the answer to the questions referred is that a national measure such as that at issue in the main proceedings, making family reunification between a Turkish worker residing lawfully in the Member State concerned and his minor child subject to the condition that the latter have, or have the possibility of establishing, sufficient ties with Denmark to enable him successfully to integrate, when the child concerned and his other parent reside in the State of origin or in another State, and the application for family reunification is made more than two years from the date on which the parent residing in the Member State concerned obtained a permanent residence permit or a residence permit with a possibility of permanent residence, constitutes a 'new restriction', within the meaning of Article 13 of Decision 1/80. Such a restriction is not justified.

Costs

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

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

A national measure such as that at issue in the main proceedings, making family reunification between a Turkish worker residing lawfully in the Member State concerned and his minor child subject to the condition that the latter have, or have the possibility of establishing, sufficient ties with Denmark to enable him successfully to integrate, when the child concerned and his other parent reside in the State of origin or in another State, and the application for family reunification is made more than two years from the date on which the parent residing in the Member State concerned obtained a permanent residence permit or a residence permit with a possibility of permanent residence constitutes a 'new restriction', within the meaning of Article 13 of Decision 1/80 of the Association Council of 19 September 1980 on the development of the Association set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed in 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, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963. Such a restriction is not justified.

[Signatures]