Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

10 July 2019*

(Reference for a preliminary ruling — EEC-Turkey Association Agreement — Decision No 1/80 — Article 13 — Standstill clause — Family reunification of spouses — New restriction — Overriding reason in the public interest — Successful integration — Efficient management of migration flows — Proportionality)

In Case C-89/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (High Court of Eastern Denmark, Denmark), made by decision of 24 January 2018, received at the Court on 8 February 2018, in the proceedings

A

v

Udlændinge- og Integrationsministeriet,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta (Rapporteur), Vice-President of the Court, C. Toader, A. Rosas and M. Safjan, Judges,

Advocate General: G. Pitruzzella,

Registrar: R. Şereş, administrator,

having regard to the written procedure and further to the hearing on 13 December 2018,

after considering the observations submitted on behalf of:

– A, by T. Ryhl and C. Friis Bach Ryhl, advokater,

– the Danish Government, by J. Nymann-Lindegren and M. Wolff, acting as Agents, and by R. Holdgaard, advokat,

– the European Commission, by M. Van Hoof and D. Martin and by L. Grønfeldt, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 March 2019,

gives the following

* Language of the case: Danish.

Judgment

1 This request 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. The Association Council was 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, 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; 'the Association Agreement').

2 The request has been made in proceedings between A and the Udlændinge- og Integrationsministeriet (Danish Ministry of Immigration and Integration, 'the Ministry of Immigration and Integration'), formerly Ministeriet for Flygtninge, Indvandrere og Integration (Ministry of Refugee, Immigration and Integration Affairs), concerning the latter's refusal of A's application for a residence permit in Denmark for the purpose of family reunification.

Legal context

EU law

The Association Agreement

3 It is apparent from Article 2(1) of the Association Agreement that the aim of that agreement is to promote the continuous and balanced strengthening of trade and economic relations between the contracting 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 According to 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'.

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 that decision:

'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 treatment for their nationals.'

Danish law

7 Under Paragraph 9 of the Udlændingeloven (Law on foreign nationals), in the version applicable to the case in the main proceedings:

‘1. Upon application, a residence permit may be issued to:

(1) a non-Danish national over 24 years of age, who shares a common residence in marriage or in a stable, long-term cohabitation with a permanent resident of Denmark over 24 years of age, who

…

(d) has had a permanent residence permit in Denmark for longer than the last 3 years,

…

7. A residence permit … under (1)(1)(b) to (d) can, unless particularly compelling reasons, including considerations of family unity, weigh against so doing, be granted only where the spouses’ or the cohabitants’ overall attachment to Denmark is greater than [their] overall attachment to another country …’

8 According to the referring court, it is apparent from the drafting history of Paragraph 9(7) of the Law on foreign nationals that, in the assessment of whether the spouses’ or the cohabitants’ overall attachment to Denmark is greater than their overall attachment to another country, the competent national authorities must take into account all the information made available to them.

9 Those authorities must strike a balance between, on the one hand, the sponsor’s attachment to Denmark and, on the other, the attachment of his spouse or cohabitant to their country of origin. The authorities must also take into account the sponsor’s attachment to his spouse’s country of origin.

10 In particular, the competent national authorities must take into account, inter alia, the duration and nature of the spouses’ residence in their respective countries of origin, the spouses’ family ties in Denmark compared with their family ties in the country of origin of the sponsor’s spouse, the spouses’ knowledge of languages and their educational and professional ties to Denmark or another country.

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

11 The applicant in the main proceedings, A, is a Turkish national, born in Turkey, who married B, also a Turkish national, on 24 May 1983. The couple had four children, born in Turkey, before divorcing on 24 June 1998.

12 On 7 January 1999, B married a German national resident in Denmark. As the spouse of an EU citizen, B was granted a residence permit in Denmark as from 6 July 1999. On 27 April 2006, he was granted a permanent residence permit under the Danish provisions implementing Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, and corrigenda OJ 2004 L 229, p. 35, and OJ 2005 L 197, p. 34).

13 The four children of the marriage between A and B were also granted residence permits in Denmark for the purposes of family reunification with B.

14 B was divorced from his German spouse on 25 June 2009. B subsequently remarried A in Denmark on 28 August 2009. On 3 September 2009, A filed an application with the Udlændingestyrelsen (Danish Immigration Service), formerly the Udlændingeservice (Department for foreign nationals) for a residence permit in Denmark, relying on her marriage to B, a salaried worker in that Member State.

15 By decision of 26 May 2010, the Danish Immigration Service refused that application on the basis of Paragraph 9 of the Law on foreign nationals.

16 By decision of 30 September 2010, the Ministry of Immigration and Integration dismissed the appeal brought by A against the decision of 26 May 2010, on the ground that A and B did not meet the requirement laid down in Paragraph 9(7) of the Law on foreign nationals. According to that ministry, A and B had greater overall attachment to Turkey than to Denmark.

17 More specifically, the Ministry of Immigration and Integration found, in particular, that A and B were born and raised in Turkey and were also educated there. In addition, they had led a long family life in that third country, during which time they had had four children together.

18 On 10 March 2014, A instituted proceedings before the Retten i Aalborg (Court of First Instance, Aalborg, Denmark) for annulment of the decision of 30 September 2010 of the Ministry of Immigration and Integration, requesting that her application for family reunification be re-assessed. The case was referred to the Københavns Byret (the District Court of Copenhagen, Denmark) on 26 May 2014. On 14 December 2016, that court referred the case to the Østre Landsret (High Court of Eastern Denmark, Denmark), as the national law allows courts of first instance to refer cases raising issues of principle to the appeal courts so that the latter may deliver judgment at first instance.

19 The referring court considers, in essence, that the national measure at issue in the main proceedings constitutes a 'new restriction', within the meaning of Article 13 of Decision No 1/80. However, it notes that the Court of Justice has held, in particular in the case giving rise to the judgment of 12 April 2016, *Genc* (C-561/14, EU:C:2016:247), that 'new restrictions' within the meaning of that provision may be justified by overriding reasons in the public interest, such as the objective of ensuring the successful integration of third-country nationals in the host Member State, provided that those reasons are suitable to achieve the legitimate objective pursued and do not go beyond what is necessary in order to attain it.

20 In that context, the referring court asks, in essence, whether the national measure at issue in the main proceedings, as implemented by the relevant authorities, is proportionate in the light of the objective pursued.

21 In those circumstances the Østre Landsret (High Court of Eastern Denmark, Denmark) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) In a case where "new restrictions" have been introduced for family reunification between spouses which prima facie infringe … Article 13 of Decision No 1/80 … and those restrictions are justified on the basis of the judgments of 12 April 2016, *Genc* (C-561/14, EU:C:2016:247) and of 10 July 2014, *Dogan* (C-138/13, EU:C:2014:2066), recognising the consideration of "successful integration", can a rule such as Paragraph 9(7) of the [Law on foreign nationals] — under which, inter alia, it is a general condition for family reunification between a person who is a third-country national and has a residence permit in Denmark and that person's spouse that the couple's attachment to Denmark be greater than to Turkey — be deemed to be "justified by an overriding reason in the public interest, suitable to achieve the legitimate objective pursued and not going beyond what is necessary in order to attain it"?

(2) If question 1 is answered in the affirmative, with the result that the attachment requirement is generally deemed to be suitable for ensuring attainment of the integration objective, is it then possible, without infringing the restriction test and the requirement of proportionality:

[(a)] to apply a practice under which, when the spouse with the residence permit in the Member State (the sponsor) first came to Denmark at the age of 12 to 13 or later, in the assessment of the sponsor's attachment to the Member State significant weight is attached to the following:

— whether the person either has had a long-term lawful period of residence of around 12 years in the Member State;

— or has had a period of residence and stable employment in the Member State involving a significant degree of contact and communication with colleagues and any customers in the Member State's language, and which has continued without significant interruptions for at least 4 to 5 years;

— or has had a period of residence and stable employment not involving a significant degree of contact and communication with colleagues and customers in the Member State's language, which has continued without significant interruptions for at least 7 to 8 years;

[(b)] to apply a practice under which it will weigh against fulfilment of the attachment requirement where the sponsor has maintained a significant attachment to his home country by making frequent or long-term visits to the home country, whilst short-term holiday or educational stays will not weigh against granting a permit;

[(c)] to apply a practice under which it will weigh heavily against fulfilment of the attachment requirement where there is a so-called "married, divorced and remarried" situation?'

Consideration of the questions referred

The first question

22 By its first question, the referring court asks, in essence, whether Article 13 of Decision No 1/80 must be interpreted as meaning that a national measure which makes family reunification between a Turkish worker legally resident in the Member State concerned and his spouse conditional upon their overall attachment to that Member State being greater than their overall attachment to a third country, constitutes a 'new restriction', within the meaning of that provision, and, if so, whether such a measure may be justified by the objective of achieving the successful integration of third-country nationals in the Member State concerned.

23 In that regard, it is apparent from settled case-law of the Court that the 'standstill' clause contained in 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 of the freedom of movement for workers on national territory 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 (judgment of 29 March 2017, *Tekdemir*, C-652/15, EU:C:2017:239, paragraph 25 and the case-law cited).

24 In the present case, it is common ground that the national measure at issue in the main proceedings, namely Paragraph 9(7) of the Law on foreign nationals, was introduced after the date on which Decision No 1/80 entered into force in Denmark, and that it tightened, in the area of family

reunification, the conditions of first admission to Danish territory of the spouses of Turkish nationals legally resident in that Member State, in relation to the conditions applicable when Decision No 1/80 entered into force in that Member State.

25 In addition, it is clear from the documents before the Court that B is a Turkish worker carrying out paid employment in Denmark and that his spouse, A, wishes to join him in that Member State. As is apparent, in essence, from paragraphs 15 and 16 above, the competent national authorities refused A's application for family reunification, on the basis of Paragraph 9(7) of the Law on foreign nationals.

26 Since the situation of B, a Turkish worker legally integrated in the labour market in Denmark, relates to an economic freedom, in this case the freedom of movement for workers, it must be found that such a situation comes within the scope of Article 13 of Decision No 1/80 (judgment of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraph 36).

27 Consequently, it is only the situation of the Turkish worker resident in the Member State concerned, in this case B, which should be referred to 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 (see, to that effect, judgment of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraph 37).

28 In that context, it should be borne in mind that national legislation tightening the conditions for family reunification of Turkish workers legally resident in the Member State in question, in relation to the conditions applicable at the time of the entry into force in that Member State of Decision No 1/80, constitutes a 'new restriction', within the meaning of Article 13 of that decision, on the exercise by such Turkish workers of the freedom of movement for workers in that Member State (judgment of 7 August 2018, *Yön*, C-123/17, EU:C:2018:632, paragraph 64 and the case-law cited).

29 That is the case because the decision of a Turkish national to go to a Member State in order to take up paid employment there could be negatively affected where the legislation of that State makes family reunification difficult or impossible, as a result of which 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 the effect, judgment of 7 August 2018, *Yön*, C-123/17, EU:C:2018:632, paragraphs 61 and 62).

30 In the present case, in tightening the conditions for the admission of the spouse of a Turkish national — that national being a lawful worker on the Danish labour market — for the purposes of family reunification, the national measure at issue in the main proceedings constitutes, as the Advocate General observed in point 15 of his Opinion, a 'new restriction', within the meaning of Article 13 of Decision No 1/80, on B's exercise of the freedom of movement for workers in the Member State concerned.

31 As is apparent from the Court's case-law, a restriction whose object 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 on 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 it is justified by an overriding reason in the public interest, is suitable to achieve the legitimate objective pursued and does not go beyond what is necessary in order to attain it (see judgment of 7 August 2018, *Yön*, C-123/17, EU:C:2018:632, paragraph 72 and the case-law cited).

32 In that regard, it is common ground that the national measure at issue does not fall within the limitations referred to in Article 14 of Decision No 1/80.

33 The referring court states that the objective pursued in Paragraph 9(7) of the Law on foreign nationals consists in ensuring the successful integration of third-country nationals in Denmark. According to the Danish Government, the national measure at issue in the main proceedings also pursues the objective of the efficient management of migration flows.

34 As regards, in the first place, the objective of achieving successful integration, the Court has held that such an objective may, in the light of the importance given, in the context of EU law, to integrating measures, constitute an overriding reason in the public interest, for the purposes of Article 13 of Decision 1/80 (judgment of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraphs 55 and 56).

35 The Court must, therefore, examine whether Paragraph 9(7) of the Law on foreign nationals, which makes family reunification between a Turkish worker legally resident in Denmark and his spouse conditional upon their overall attachment to that Member State being greater than their overall attachment to a third country, is suitable to achieve the objective pursued and does not go beyond what is necessary in order to attain it.

36 In that respect, as regards whether the national measure at issue in the main proceedings is suitable to achieve the objective pursued, it must be noted that, according to that measure, the successful integration in Denmark of the spouse of a Turkish worker legally resident in that Member State cannot be guaranteed when their overall attachment to a third country is greater than that to Denmark.

37 Since the ties maintained with the third country by both the spouse already present on Danish territory and by A have only a slight effect on A's chances of successful integration in that Member State, the national measure at issue does not enable it to be established, at the stage of examining a request for a residence permit under family reunification, that the successful integration of the applicant for a residence permit in Denmark cannot be guaranteed.

38 As the Advocate General essentially observed in point 31 of his Opinion, that measure does not enable the integration prospects of the spouse of a Turkish worker legally resident in Denmark or those of the couple comprising that spouse and that worker to be assessed.

39 In the present case, it is apparent from the documents before the Court that the competent national authorities found that B maintained a stronger attachment to Turkey than to Denmark. It must, however, be stated that B is a Turkish worker legally integrated in the labour market in Denmark, who has been legally resident with his children in that Member State for a number of years. It follows that the attachment of a Turkish national to his State of origin cannot limit his prospects of integration, since the relationship with that State of origin and the relationship with the host Member State are not such as to be mutually exclusive.

40 In addition, Paragraph 9(7) of the Law on foreign nationals does not provide for any integration measure likely to improve the integration prospects of the spouse of a Turkish worker legally resident in Denmark, who wishes to join that worker in that Member State.

41 Furthermore, it is apparent from the documents before the Court that the assessment by the competent national authorities of the condition laid down in Paragraph 9(7) of the Law on foreign nationals is based on diffuse and imprecise criteria, giving rise to diverse and unpredictable practices, in breach of the principle of legal certainty.

42 It follows that the national measure at issue in the main proceedings is not suitable for ensuring that the objective of successfully integrating third-country nationals in Denmark is achieved.

43 In the second place, as regards the objective of the efficient management of migration flows relied on by the Danish Government, the Court has held that such an objective may constitute an overriding reason in the public interest capable of justifying a new restriction within the meaning of Article 13 of Decision No 1/80 (judgment of 29 March 2017, *Tekdemir*, C-652/15, EU:C:2017:239, paragraph 39).

44 However, the Danish Government stated, in its written observations, that the national measure at issue in the main proceedings is suitable to achieve the objective of the efficient management of migration flows, because it enables the family reunification of spouses to be limited solely to cases where the likelihood of integration in Denmark of an applicant for a residence permit is higher.

45 As is apparent from paragraphs 37 and 38 above, that measure does not enable the integration prospects of the applicant for a residence permit for the purpose of family reunification in Denmark to be assessed.

46 In those circumstances, the measure at issue in the main proceedings is not suitable to achieve the objective of the efficient management of migration flows.

47 In the light of all the foregoing considerations, the answer to the first question is that Article 13 of Decision No 1/80 must be interpreted as meaning that a national measure which makes family reunification between a Turkish worker legally resident in the Member State concerned and his spouse conditional upon their overall attachment to that Member State being greater than their overall attachment to a third country, constitutes a 'new restriction', within the meaning of that provision. Such a restriction is unjustified.

The second question

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

Costs

49 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 (First Chamber) hereby rules:

Article 13 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, on the one hand, and by the Member States of the EEC and the Community, on the other hand, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, must be interpreted as meaning that a national measure which makes family reunification between a Turkish worker legally resident in the Member State concerned and his spouse conditional upon their overall attachment to that Member State being greater than their overall attachment to a third country, constitutes a 'new restriction', within the meaning of that provision. Such a restriction is unjustified.

[Signatures]