JUDGMENT OF THE COURT (First Chamber)

19 February 2009 *

In Case C-228/06,

REFERENCE for a preliminary ruling under Article 234 EC from the Oberverwaltungsgericht Berlin-Brandenburg (Germany), made by decision of 30 March 2006, received at the Court on 19 May 2006, in the proceedings

Mehmet Soysal,

Ibrahim Savatli,

v

Bundesrepublik Deutschland,

joined party:

Bundesagentur für Arbeit,

* Language of the case: German.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, M. Ilešič, A. Tizzano, A. Borg Barthet and J.-J. Kasel (Rapporteur), Judges,

Advocate General: M. Poiares Maduro,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 8 October 2008,

after considering the observations submitted on behalf of:

— Messrs Soysal and Savatli, by R. Gutmann, Rechtsanwalt,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

— the Danish Government, by R. Holdgaard, acting as Agent,

— the Greek Government, by G. Karipsiadis and T. Papadopoulou, acting as Agents,

— the Slovenian Government, by T. Mihelič, acting as Agent,

— the Commission of the European Communities, by M. Wilderspin and G. Braun, acting as Agents,

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

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 41(1) of the Additional Protocol, which was 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').

2 The reference was made in the context of proceedings brought by Messrs Soysal and Savatli, Turkish nationals, against the Bundesrepublik Deutschland in respect of the

requirement for Turkish lorry drivers to obtain visas in order to provide services consisting in the international transport of goods by road.

Legal context

Community legislation

The Association between the EEC and Turkey

3 According to Article 2(1) of the Agreement establishing an Association between the European Economic Community and Turkey, which was signed on 12 September 1963 at Ankara by the Republic of Turkey, of the one part, and the Member States of the EEC and the Community, of the other part, and which was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1; 'the Association Agreement'), the aim of that agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties which includes, in relation to the workforce, the progressive securing of freedom of movement for workers (Article 12 of the Association Agreement), and the abolition of restrictions on freedom of establishment (Article 13) and on freedom to provide services (Article 14), with a view to improving the standard of living of the Turkish people and facilitating the accession of Turkey to the Community at a later date (fourth recital in the preamble and Article 28 of that agreement).

4 To that end, the Association Agreement involves a preparatory stage, enabling the Republic of Turkey to strengthen its economy with aid from the Community (Article 3 of the agreement), a transitional stage covering the progressive establishment of a customs union and the alignment of economic policies (Article 4) and a final stage

based on the customs union and entailing closer coordination of the economic policies of the Contracting Parties (Article 5).

5 Article 6 of the Association Agreement is worded as follows:

'To ensure the implementation and progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred on it by this Agreement.'

6 According to Article 8 of the Association Agreement, in Title II headed 'Implementation of the transitional stage':

'In order to attain the objectives set out in Article 4, the Council of Association shall, before the beginning of the transitional stage and in accordance with the procedure laid down in Article 1 of the provisional Protocol, determine the conditions, rules and timetables for the implementation of the provisions relating to the fields covered by the Treaty establishing the Community which must be considered; this shall apply in particular to such of those fields as are mentioned under this Title and to any protective clause which may prove appropriate.'

7 Articles 12 to 14 of the Association Agreement also appear in Title II thereof, under Chapter 3 headed 'Other economic provisions'.

8 Article 12 provides:

'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.'

9 Article 13 provides:

'The Contracting 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.'

10 Article 14 states:

'The Contracting Parties agree to be guided by Articles [45 EC], [46 EC] and [48 EC] to [54 EC] for the purpose of abolishing restrictions on freedom to provide services between them.'

11 Article 22(1) of the Association Agreement provides as follows:

'In order to attain the objectives of this Agreement, the Council of Association shall have the power to take decisions in the cases provided for therein. Each of the parties shall take the measures necessary to implement the decisions taken...'

12 The Additional Protocol, which, according to Article 62 thereof, forms an integral part of the Association Agreement, lays down, in Article 1, the conditions, detailed arrangements and timetables for implementing the transitional stage referred to in Article 4 of that agreement.

13 The Additional Protocol includes Title II, headed 'Movement of persons and services', Chapter I of which concerns '[w]orkers' and Chapter II of which concerns '[r]ight of establishment, services and transport'.

14 Article 36 of the Additional Protocol, which is included in Chapter I, provides that freedom of movement for workers between Member States of the Community and Turkey is to be secured by progressive stages in accordance with the principles set out in Article 12 of the Association Agreement between the end of the 12th and the 22nd year after the entry into force of that agreement and that the Council of Association is to decide on the rules necessary to that end.

15 Article 41 of the Additional Protocol, which is in Chapter II of Title II, is worded as follows:

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

2. The Council of Association shall, in accordance with the principles set out in Articles 13 and 14 of the Agreement of Association determine the timetable and rules for the progressive abolition by the Contracting Parties, between themselves, of restrictions on freedom of establishment and on freedom to provide services.

The Council of Association shall, when determining such timetable and rules for the various classes of activity, take into account corresponding measures already adopted by the Community in these fields and also the special economic and social circumstances of Turkey. Priority shall be given to activities making a particular contribution to the development of production and trade.'

16 It is common ground that, to date, the Council of Association, which was set up by the Association Agreement and consists, on the one hand, of members of the Governments of the Member States, of the Council of the European Union and of the Commission of the European Communities and, on the other hand, of members of the Turkish Government, has not adopted any decision on the basis of Article 41(2) of the Additional Protocol.

17 Article 59 of the Additional Protocol, which appears in Title IV headed 'General and final provisions', is worded as follows:

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

Regulation (EC) No 539/2001

18 Article 1(1) of Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders [of the Member States] and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1) provides:

'Nationals of third countries on the list in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States.'

19 It is apparent from Annex I that the Republic of Turkey is one of the States on that list.

20 The first recital in the preamble to Regulation No 539/2001 recalls that Article 61 EC cites determination of the list of those third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States and those whose nationals are exempt from that requirement 'among the flanking measures which are directly linked to the free movement of persons in an area of freedom, security and justice'.

National legislation

21 It is apparent from the order for reference that, on 1 January 1973, the date on which the Additional Protocol entered into force with regard to the Federal Republic of Germany, Turkish nationals who, like the appellants in the main proceedings, were engaged in that Member State for no more than two months in the international transport of goods by road, did not need a permit to enter Germany. Under Paragraph 1(2)(2) of the Regulation Implementing the Law on Aliens (Verordnung zur Durchführung des Ausländergesetzes), in the version published on 12 March 1969 (BGBl. 1969 I, p. 207), such Turkish nationals were entitled to enter Germany without a visa.

22 Turkish nationals were not subject to a general visa requirement until the Eleventh Regulation amending the Regulation Implementing the Law on Aliens of 1 July 1980 (BGBl. 1980 I, p. 782) came into force.

23 Today, the requirement that Turkish nationals such as the appellants in the main proceedings must be in possession of a visa to enter Germany is based on Paragraphs 4(1) and 6 of the German Law on residence (Aufenthaltsgesetz) of 30 July 2004 (BGBl. 2004 I, p. 1950; 'the Aufenthaltsgesetz'), which replaced the Law on

Aliens (Ausländergesetz) and entered into force on 1 January 2005, and Article 1(1) of Regulation No 539/2001 in conjunction with Annex I thereto.

24 Headed 'Residence authorisation requirement', Paragraph 4(1) of the Aufenthaltsgesetz provides:

'(1) Aliens shall require residence authorisation to enter and reside within Federal German territory unless the law of the European Union or regulations should provide otherwise or unless there is a right of residence under the Agreement of 12 September 1963 establishing an Association between the European Economic Community and Turkey … Residence authorisation shall be granted as

1. a visa (Paragraph 6)

2. a residence permit (Paragraph 7), or

3. authorisation for establishment (Paragraph 9).'

25 Paragraph 6 of the Aufenthaltsgesetz, headed 'Visa', provides:

'(1) An alien may be granted:

1. a Schengen visa for transit purposes, or

2. a Schengen visa for residence of up to three months within a period of six months from the date of first entry (short stays)

if the conditions for the grant of a visa laid down in the Schengen Convention and its implementing regulations are satisfied. In exceptional cases a Schengen visa may be granted for reasons of international law, on humanitarian grounds or to safeguard the political interests of the Federal Republic of Germany if the conditions for the grant of a visa laid down in the Schengen Convention are not satisfied. In such cases validity shall be geographically confined to the sovereign territory of the Federal Republic of Germany.

(2) A visa for short stays can also be granted for multiple stays with a period of validity of up to five years provided that the duration of each stay does not exceed three months within a period of six months from the date of first entry.

(3) A Schengen visa granted under the first sentence of subparagraph 1 can be extended in special cases for a total period of three months within a period of six months from the date of first entry. This applies even if the consular representative of another Schengen Agreement State has granted the visa. The visa may be extended for a further three months within the six-month period concerned only in accordance with the conditions laid down in the second sentence of subparagraph 1.

(4) For long-term stays a visa for Federal German territory is required (national visa), which must be granted before entry. The grant of a visa is governed by the provisions applicable to residence permits and authorisations for establishment....'

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

26 The order for reference states that Messrs Soysal and Savatli are Turkish nationals resident in Turkey working for a Turkish company engaged in the international transport of goods, as drivers of lorries that are owned by a German company and registered in Germany.

27 Until 2000, upon receipt of applications, the Federal Republic of Germany had on many occasions issued each of the appellants in the main proceedings with an entry visa as drivers of lorries registered in Turkey, for the purposes of providing services in Germany.

28 After it was found that the appellants in the main proceedings were driving lorries registered in Germany, Germany's consulate-general in Istanbul rejected further visa applications submitted by them in the course of 2001 and 2002.

29 Messrs Soysal and Savatli brought actions before the Verwaltungsgericht Berlin (Administrative Court, Berlin) against the decisions refusing them visas, for a declaration that, as lorry drivers providing services consisting in the international transport of goods, they are entitled to enter Germany without a visa for that purpose. They based their claim on the 'standstill' clause in Article 41(1) of the Additional Protocol, which prohibits the application to them of conditions for access to German territory that are less favourable than the conditions that were applicable on the date of entry into force of the Additional Protocol with regard to the Federal Republic of Germany, namely 1 January 1973. On that date, no visa was required for the activity they are engaged in; a visa requirement was introduced only in 1980. Moreover, the 'standstill' clause takes priority over the visa requirement provided for under Regulation No 539/2001, which was adopted after 1 January 1973.

30 After the Verwaltungsgericht Berlin had dismissed their actions by judgment of 3 July 2002, Messrs Soysal and Savatli lodged an appeal with the Oberverwaltungsgericht Berlin-Brandenburg (Higher Administrative Court, Berlin-Brandenburg) which takes the view that the outcome of the proceedings before it depends on the interpretation of Article 41(1) of the Additional Protocol.

31 In this respect, the Oberverwaltungsgericht Berlin-Brandenburg observes that the appellants in the main proceedings are employed as lorry drivers by a company whose registered office is in Turkey, which lawfully provides services in Germany. In particular, the appellants do not carry out their work for the German company, in whose name the lorries used to transport the goods are registered, in the course of a contracting-out of labour that requires a permit under German law, since the right to

give work-related instructions to the employees at issue is essentially exercised by the Turkish company that employs them, even during the period for which they work on behalf of the German company.

32 In addition, the judgment in Joined Cases C-317/01 and C-369/01 *Abatay and Others* [2003] ECR I-12301, paragraph 106, shows that Turkish workers such as the appellants in the main proceedings may invoke, in respect of the activity carried out, the protection of Article 41(1) of the Additional Protocol.

33 Finally, at the time of the entry into force of the Additional Protocol, Turkish workers engaged in Germany in the international transport of goods by road had the right to enter the territory of that Member State without a visa, since a visa requirement was introduced into German law only from 1 July 1980 onwards.

34 However, there is as yet no case-law of the Court of Justice on the question of whether the introduction of a visa requirement under national legislation on aliens or under Community law is one of the 'new restrictions' on the freedom to provide services within the meaning of Article 41(1) of the Additional Protocol.

35 On the one hand, although paragraphs 69 and 70 of the judgment in Case C-37/98 *Savas* [2000] ECR I-2927 support the interpretation that Article 41(1) of the Additional Protocol imposes a general prohibition on the worsening of a situation even in respect

of the right to enter and reside, so that it is enough to determine whether the measure at issue has the object or effect of making the Turkish national's position with respect to freedom of establishment or freedom to provide services subject to stricter conditions than those which applied at the time when the Additional Protocol entered into force (see, to the same effect, *Abatay and Others*, paragraph 116), an argument against such an interpretation is that Article 41(1) of the Additional Protocol cannot obstruct the general legislative power of the Member States that may affect the position of Turkish nationals in one way or another.

36 On the other hand, even though the wording of Article 41(1) of the Additional Protocol, which refers to the 'Contracting Parties', supports the argument that the 'standstill' clause in that provision applies not only to the rules of the Member States but also to those under secondary Community legislation, the Court has not yet ruled on the matter.

37 In those circumstances, the Oberverwaltungsgericht Berlin-Brandenburg decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Is Article 41(1) of the Additional Protocol … to be interpreted in such a way that it constitutes a restriction on freedom to provide services if a Turkish national who works in international transport for a Turkish undertaking as a driver of a lorry registered in Germany has to be in possession of a Schengen visa to enter Germany under Paragraphs 4(1) and 6 of the Aufenthaltsgesetz … and Article 1(1) of

Regulation … No 539/2001 even though on the date on which the Additional Protocol entered into force he was permitted to enter … Germany without a visa?

(2) If the answer to the first question is in the affirmative, should Article 41(1) of the Additional Protocol be interpreted as meaning that the Turkish nationals mentioned in (1) do not require a visa to enter Germany?'

Jurisdiction of the Court

38 The German Government submits that this reference for a preliminary ruling is 'inadmissible', on the ground that the reference was made by a court that is not amongst those against whose decisions there is no judicial remedy under national law within the meaning of Article 68(1) EC, even though the questions referred concern the validity of a Council regulation adopted on the basis of Title IV of Part Three of the EC Treaty.

39 However, that argument cannot be accepted.

40 The wording of the questions referred by the Oberverwaltungsgericht Berlin-Brandenburg shows, in and of itself, that the questions concern, explicitly and exclusively, the interpretation of the law governing the association between the EEC and Turkey and, more specifically, Article 41(1) of the Additional Protocol.

41 Therefore, the bringing of the matter before the Court under Article 234 EC is valid (see Case C-192/89 *Sevince* [1990] ECR I-3461, paragraphs 8 to 11, and the case-law cited), and it is irrelevant that the court making the reference for a preliminary ruling is not among those mentioned in Article 68(1) EC, which derogates from Article 234 EC.

42 In those circumstances, the Court has jurisdiction to rule on the questions referred by the Oberverwaltungsgericht Berlin-Brandenburg.

The questions referred for a preliminary ruling

43 By its two questions, which must be examined together, the referring court essentially asks whether Article 41(1) of the Additional Protocol is to be interpreted as meaning that it precludes the introduction, as from the entry into force of that protocol, of a requirement that Turkish nationals such as the appellants in the main proceedings must have a visa to enter the territory of a Member State in order to provide services there on behalf of an undertaking established in Turkey.

44 It must be recalled, as a preliminary point, that the appellants in the main proceedings are Turkish lorry drivers — resident in Turkey and employed by an international transport company established in Turkey — who at regular intervals transport goods between Turkey and Germany using lorries registered in Germany. In this respect, the

referring court found that both the transport operations and the drivers' activities in that connection are entirely lawful.

45 With a view to determining the exact scope of Article 41(1) of the Additional Protocol in a situation such as that at issue in the main proceedings, it must be recalled, first, that, in accordance with consistent case-law, the provision has direct effect. It lays down, clearly, precisely and unconditionally, an unequivocal 'standstill' clause, which contains an obligation entered into by the contracting parties which amounts in law to a duty not to act (see *Savas*, paragraphs 46 to 54 and 71, second indent; *Abatay and Others*, paragraphs 58, 59 and 117, first indent, and Case C-16/05 *Tum and Dari* [2007] ECR I-7415, paragraph 46). Consequently, the rights which Article 41(1) of the Additional Protocol confers on the Turkish nationals to whom it applies may be relied on before the courts of the Member States (see, in particular, *Savas*, paragraph 54, and *Tum and Dari*, paragraph 46).

46 Further, it must be noted that Article 41(1) of the Additional Protocol may be invoked validly by Turkish lorry drivers such as the appellants in the main proceedings who are employed by an undertaking established in Turkey that lawfully provides services in a Member State, on the ground that the employees of the provider of services are indispensable to enable him to provide his services (see *Abatay and Others*, paragraphs 106 and 117, fifth indent).

47 Finally, according to consistent case-law, even if the 'standstill' clause set out in Article 41(1) of the Additional Protocol is not, in itself, capable of conferring on Turkish nationals — on the basis of Community legislation alone — a right of establishment or,

as a corollary, a right of residence, nor a right to freedom to provide services or to enter the territory of a Member State (see *Savas*, paragraphs 64 and 71, third indent; *Abatay and Others*, paragraph 62; and *Tum and Dari*, paragraph 52), the fact remains that such a clause prohibits generally the introduction of any new measures having the object or effect of making the exercise by a Turkish national of those economic freedoms on the territory of that Member State subject to stricter conditions than those which applied to him at the time when the Additional Protocol entered into force with regard to the Member State concerned (see *Savas*, paragraphs 69 and 71, fourth indent; *Abatay and Others*, paragraphs 66 and 117, second indent; and *Tum and Dari*, paragraphs 49 and 53).

48 Therefore, the Court has held that Article 41(1) of the Additional Protocol precludes the introduction into the legislation of a Member State of a requirement — not in place at the time of the entry into force of that protocol with regard to that Member State — of a work permit in order for an undertaking established in Turkey and its employees who are Turkish nationals to provide services in the territory of that State (*Abatay and Others*, paragraph 117, sixth indent).

49 Similarly, the Court has held that Article 41(1) of the Additional Protocol also precludes the adoption, as from the entry into force of that protocol, of any new restrictions on the exercise of freedom of establishment relating to the substantive and/or procedural conditions governing the admission to the territory of the relevant Member State of Turkish nationals intending to establish themselves in business there on their own account (*Tum and Dari*, paragraph 69).

50 In those cases, the issue was whether national legislation that introduced substantive and/or procedural conditions for Turkish nationals wishing to gain access to the

territory of a Member State or to a professional activity, that were stricter than those that had applied to them in the relevant Member State at the time of the entry into force of the Additional Protocol, could be considered to be new restrictions within the meaning of Article 41(1) of that protocol.

51 That is also true of the case in the main proceedings. The order for reference shows that, at the time of the entry into force of the Additional Protocol with regard to the Federal Republic of Germany, namely 1 January 1973, Turkish nationals such as the appellants in the main proceedings, engaged in the provision of services in Germany in the international transport of goods by road on behalf of a Turkish undertaking, had the right to enter German territory for those purposes without first having to obtain a visa.

52 It is only as from 1 July 1980 that the German legislation on aliens made nationals of non-member countries, including Turkish nationals, who wished to carry out such activities in Germany, subject to a visa requirement. At present, the requirement that Turkish nationals such as the appellants in the main proceedings must possess a visa to enter German territory is laid down in the Aufenthaltsgesetz, which replaced the legislation on aliens as of 1 January 2005.

53 It is true that the Aufenthaltsgesetz merely implements, at the level of the Member State concerned, an act of secondary Community legislation, namely Regulation No 539/2001, which, as is clear from the first recital in its preamble, is a flanking measure directly linked to the free movement of persons in an area of freedom, security and justice which was adopted on the basis of Article 62(2)(b)(i) EC.

54 It is also true, as the Commission submitted at the hearing, that the conditions governing a Schengen visa, such as that referred to in Paragraphs 4(1) and 6(2) of the Aufenthaltsgesetz, have certain advantages compared with the conditions that applied in Germany, at the time of the entry into force of the Additional Protocol in that Member State, to Turkish nationals in the position of the appellants in the main proceedings. Whereas the right of access enjoyed by such nationals was limited to the territory of Germany alone, a visa issued under Paragraph 6(2) of the Aufenthaltsgesetz allows them to move freely throughout the territories of all the States that are parties to the Agreement on the gradual abolition of checks at their common borders, signed at Schengen (Luxembourg) on 14 June 1985 by the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic (OJ 2000 L 239, p. 13), an agreement which was implemented by the signature at Schengen, on 19 June 1990, of a convention (OJ 2000 L 239, p. 19), laying down cooperation measures designed to ensure, as compensation for the abolition of internal borders, the protection of all the territories of the contracting parties.

55 The fact remains that, as regards Turkish nationals such as the appellants in the main proceedings, who intend to make use in the territory of a Member State of the right to freedom to provide services under the Association Agreement, national legislation that makes that activity conditional on the issuing of a visa, which can moreover not be required from Community nationals, is liable to interfere with the actual exercise of that freedom, in particular because of the additional and recurrent administrative and financial burdens involved in obtaining such a permit which is valid for a limited time. In addition, where a visa is denied, as in the case in the main proceedings, legislation of that kind prevents the exercise of that freedom.

56 It follows that such legislation, which did not exist on 1 January 1973, has at least the effect of making the exercise, by Turkish nationals such as the appellants in the main proceedings, of their economic freedoms guaranteed by the Association Agreement subject to conditions that are stricter than those that were applicable in the relevant Member State at the time of the entry into force of the Additional Protocol.

57 Under those circumstances, it must be concluded that legislation such as that at issue in the main proceedings constitutes a 'new restriction', within the meaning of Article 41(1) of the Additional Protocol, of the right of Turkish nationals resident in Turkey freely to provide services in Germany.

58 That conclusion cannot be called into question by the fact that the legislation currently in force in Germany merely implements a provision of secondary Community legislation.

59 In this respect, it is sufficient to recall that the primacy of international agreements concluded by the Community over provisions of secondary Community legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements (see Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 52).

60 Moreover, the objection, also raised by the referring court, according to which application of the 'standstill' clause in Article 41(1) of the Additional Protocol would obstruct the general legislative power devolved to the legislature, cannot be accepted.

61 The adoption of rules that apply in the same manner to Turkish nationals and to Community nationals is not inconsistent with the 'standstill' clause. Moreover, if such rules applied to Community nationals but not Turkish nationals, Turkish nationals would be put in a more favourable position than Community nationals, which would be clearly contrary to the requirement of Article 59 of the Additional Protocol, according

to which the Republic of Turkey may not receive more favourable treatment than that which Member States grant to one another pursuant to the Treaty.

62 In the light of all the foregoing considerations, the answer to the questions referred is that Article 41(1) of the Additional Protocol is to be interpreted as meaning that it precludes the introduction, as from the entry into force of that protocol, of a requirement that Turkish nationals such as the appellants in the main proceedings must have a visa to enter the territory of a Member State in order to provide services there on behalf of an undertaking established in Turkey, since, on that date, such a visa was not required.

Costs

63 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 41(1) of the Additional Protocol, which was 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, is to be interpreted as meaning that it precludes the introduction, as from the entry into force of that protocol, of a requirement that Turkish nationals such as the appellants in the main proceedings must have a visa to enter the territory of a Member State in order to provide services there on behalf of an undertaking established in Turkey, since, on that date, such a visa was not required.

[Signatures]