

Joined Cases C-300/09 and C-301/09

Staatssecretaris van Justitie

v

F. Toprak and I. Oguz

(Reference for a preliminary ruling
from the Raad van State)

(EEC-Turkey Association Agreement — Freedom of movement for workers —
Standstill rule in Article 13 of Decision No 1/80 of the Association Council —
Prohibition for Member States to introduce new restrictions on
access to the labour market)

Judgment of the Court (Second Chamber), 9 December 2010 I - 12847

Summary of the Judgment

*International agreements — EEC-Turkey Association Agreement — Freedom of movement
for persons — Workers — Standstill rule in Article 13 of Decision No 1/80 of the Association
Council — Scope — New restriction — Concept
(Decision No 1/80 of the EEC-Turkey Association Agreement, Art. 13)*

As regards Turkish workers who have worked in a Member State in which, on 1 December 1980, Decision No 1/80 on the development of the Association adopted by the Association Council established by the Agreement establishing an Association between the European Economic Community and Turkey entered into force, Article 13 of that decision must be interpreted in the following manner: a tightening of a provision of that Member State relating to the obtaining of a residence permit by Turkish workers, introduced after 1 December 1980, which provided for a relaxation of the provision applicable on 1 December 1980, constitutes a ‘new restriction’ within the meaning of that article, even if that tightening does not make the conditions governing the acquisition of that permit more stringent than those resulting from the provision in force on 1 December 1980, which it is for the national court to determine.

In that regard, it should be observed that, since the wording of Article 13 of Decision No 1/80 does not stipulate any particular date from which the standstill rule is to apply, the existence of new restrictions, within the meaning of that article, can be assessed in relation to the date of entry into force of the text in which it appears, this being, in the present cases, the date on which Decision No 1/80 entered into force.

It does not follow, however, that that is the only relevant date. Thus, in order to determine the significance of the term ‘new restrictions’

for the purpose of Article 13 of Decision 1/80, it is necessary to refer to the objective pursued by that provision. Article 13 is designed to create conditions conducive to the gradual establishment of freedom of movement for workers by prohibiting national authorities from creating new obstacles to that freedom so as not to make its gradual achievement more difficult between the Member States and the Republic of Turkey. It must be held that the scope of the standstill obligation in Article 13 extends by analogy to any new obstacle to the exercise of free movement by workers which makes more stringent the conditions existing at a given time.

It is thus necessary to ensure that the Member States do not depart from the objective pursued by reversing measures which they have adopted in favour of the free movement of Turkish workers after Decision No 1/80 entered into force within their territory. It follows that the relevant date from which it is appropriate to assess whether the introduction of the new rules gives rise to ‘new restrictions’ is the date on which those provisions were adopted.

(see paras 49-52, 54-56, 62, operative part)