



Reports of Cases

Case C-221/11

Leyla Ecem Demirkan
v
Bundesrepublik Deutschland

(Request for a preliminary ruling from the Oberverwaltungsgericht Berlin-Brandenburg)

(EEC-Turkey Association Agreement — Additional Protocol — Article 41(1) — ‘Standstill’ clause — Visa requirement for admission to the territory of a Member State — Freedom to provide services — The right of a Turkish national to enter a Member State in order to visit a family member and, potentially, to receive services)

Summary — Judgment of the Court (Grand Chamber), 24 September 2013

1. *Freedom of movement for persons — Freedom to provide services — Scope — Passive freedom to provide services — Included*

(Art. 56 TFEU)

2. *International agreements — EEC-Turkey Association Agreement — Freedom of movement for persons — Freedom of establishment — Standstill rule in Article 41(1) of the Additional Protocol — Direct effect*

(Additional Protocol to the EEC-Turkey Association Agreement, Art. 41(1))

3. *International agreements — EEC-Turkey Association Agreement — Freedom of movement for persons — Freedom of establishment — Freedom to provide services — Standstill rule in Article 41(1) of the Additional Protocol — Scope — Right to enter a Member State in order to receive services (passive freedom to provide services) — Not included*

(Additional Protocol to the EEC-Turkey Association Agreement, Art. 41(1))

1. The freedom to provide services conferred by Article 56 TFEU on Member State nationals, and thus on European Union citizens, includes passive freedom to provide services, namely the freedom for recipients of services to go to another Member State in order to receive a service there, without being hindered by restrictions. Accordingly, tourists, persons receiving medical treatment and persons travelling for the purpose of education or business are to be regarded as recipients of services.

(see paras 35, 36)

2. See the text of the decision.

(see paras 38, 40)

3. The notion of freedom to provide services in Article 41(1) of the Additional Protocol signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Regulation No 2760/72 must be interpreted as not encompassing freedom for Turkish nationals who are the recipients of services to visit a Member State in order to obtain services.

There are differences between the Association Agreement and its Additional Protocol on the one hand, and the Treaty on the other, on account, *inter alia*, of the link that exists between freedom to provide services and freedom of movement for persons within the European Union. In particular, the objective of Article 41(1) of the Additional Protocol and the context of that provision are fundamentally different from those of Article 56 TFEU, especially in so far as concerns the applicability of those provisions to recipients of services.

First of all, the EEC-Turkey Association pursues a solely economic purpose, intended essentially to promote the economic development of Turkey. On the other hand, the development of economic freedoms for the purpose of bringing about freedom of movement for persons of a general nature which may be compared to that afforded to European Union citizens under Article 21 TFEU is not the object of the Association Agreement. Neither that agreement and its Additional Protocol nor Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association, which concerns only freedom of movement for workers, establishes any general principle of freedom of movement of persons between Turkey and the European Union. Furthermore, the Association Agreement guarantees the enjoyment of certain rights only within the territory of the host Member State. Accordingly, it is only where the activity in question is the corollary of the exercise of an economic activity that the ‘standstill’ clause may relate to the conditions of entry and residence of Turkish nationals within the territory of the Member States.

In second place, a ‘standstill’ clause such as that in Article 41(1) of the Additional Protocol does not itself create rights. It is a provision which prohibits the introduction of any new restrictive measure by reference to a specific date.

(see paras 49, 50, 53, 55, 58, 62, operative part)