

(3) Is the extension of current concessions for the distribution of natural gas, both in the case described in the first question and in the cases described in the second, contrary to the fourth, eighth, tenth and eighteenth recitals in the preamble to Directive 2003/55/EC⁽¹⁾ of 26 June 2003, and to Article 23(1) thereof, to Article 10 of the Treaty and to the principles of reasonableness and proportionality, having particular regard to:

- (a) the fact that the States are obliged to attain the objective of liberalising the market in natural gas before the dead-line of 1 July 2007;
- (b) the fact that the States are prohibited from adopting or maintaining in force domestic legislation incompatible with the liberalisation of the market in natural gas;
- (c) the fact that the States are obliged to set a reasonable term for the duration of the transitional period and subject it to objective requirements?

⁽¹⁾ OJ L 176, p. 57.

Reference for a preliminary ruling from the Verwaltungsgericht Darmstadt (Germany) lodged on 21 August 2006
— Murat Polat v Stadt Rüsselsheim

(Case C-349/06)

(2006/C 281/32)

Language of the case: German

Referring court

Verwaltungsgericht Darmstadt

Parties to the main proceedings

Applicant: Murat Polat

Defendant: Stadt Rüsselsheim

Questions referred

1. Is it compatible with Article 59 of the Additional Protocol to the Agreement of 12 September 1963 establishing an Association between the European Economic Community and Turkey⁽¹⁾ for the transitional phase if a Turkish national who, as a child, joined his parents who were employed as workers in the Federal Republic of Germany, does not lose his right of residence derived from the right under the second [indent] of the first sentence of Article 7 of Decision

No 1/80 of the EEC/Turkey Association Council (Decision No 1/80) to free access to any paid employment — except in cases under Article 14 of Decision No 1/80 or where he leaves the host Member State for a significant period of time without legitimate reason — even in the case where he has attained the age of 21 and no longer lives with his parents or is maintained by them?

In the event that the answer to Question 1 is negative:

2. Does a Turkish national, whose legal status under the second indent of the first sentence of Article 7 of Decision No 1/80 has been terminated on the basis of the conditions set out in Question 1, reacquire that legal status if, after reaching the age of 21, he returns to live in his parents' household for a period of more than three years, is permitted to live there free of charge and is given lodging, and the mother has minimal employment (as a cleaning lady generally for 30 to 70 hours per month and at times 20 hours per month) during that period?

In the event that the answer to Question 2 is affirmative:

3. Does the position in law change if the family member has a number of courses of residential treatments (30.8.2001 to 20.6.2002, 2.10.2003 to 8.1.2004) during the period of residence with the worker?

4. Does the position in law change if the Turkish national has regular personal income of at least EUR 400 to EUR 1 400 per month during the period of residence with the worker?

In the event that the continuance of a legal status under the second indent of the first sentence of Article 7 of Decision No 1/80 is to be assumed (if the answer to Question 1 is affirmative or the answer to Question 2 is affirmative and the answers to Questions 3 and 4 are negative):

5. May a Turkish national, whose legal status derives from the second indent of the first sentence of Article 7 of Decision No 1/80 and who has lived in the federal territory since 1972, rely on the special protection against expulsion under Article 28(3)(a) of Directive 2004/38/EC of 29 April 2004 (OJ 2004 L 158, p. 77; corrigendum at OJ 2004 L 229, p. 35)?

6. Does the position in law change if the Turkish national, within the ten years prior to the issue of the expulsion order, resided in Turkey from 1 February 1996 to 28 November 1997 for the purpose of performing his military service?

In the event that the answer to Question 5 is negative or the answer to Question 6 is affirmative:

7. May a Turkish national, whose legal status derives from the second indent of the first sentence of Article 7 of Decision No 1/80 and who has lived in the federal territory since 1972, rely on the special protection against expulsion under Article 28(2) of Directive 2004/38?

In the event that the answer to Question 7 is negative:

8. May a Turkish national, whose legal status derives from the second indent of the first sentence of Article 7 of Decision No 1/80, rely on the special protection against expulsion under Article 28(1) of Directive 2004/38?

In the event that the continuance of a legal status under the second indent of the first sentence of Article 7 of Decision No 1/80 is to be assumed (if the answer to Question 1 is affirmative or the answer to Question 2 is affirmative and the answers to Questions 3 and 4 are negative), a further question requires an answer:

9. Can a number of minor offences (essentially offences against property), which, taken individually, are not sufficient to form the basis of an actual and sufficiently serious danger to a fundamental interest of society, justify expulsion because of their great number, if further offences are likely and no measures are taken against German nationals in the same circumstances?

⁽¹⁾ OJ 1977 L 361, p. 60.

Reference for a preliminary ruling from the Landesarbeitsgericht Düsseldorf (Germany) lodged on 21 August 2006 — Gerhard Schultz-Hoff v Deutsche Rentenversicherung Bund

(Case C-350/06)

(2006/C 281/33)

Language of the case: German

Referring court

Landesarbeitsgericht Düsseldorf

Parties to the main proceedings

Appellant: Gerhard Schultz-Hoff

Respondent: Deutsche Rentenversicherung Bund

Questions referred

1. Is Article 7(1) of Directive 2003/88/EC ⁽¹⁾ (= Article 7 of Directive 93/104/EC) to be understood as meaning that workers must in any event receive minimum annual paid leave of four weeks [and that] in particular leave not taken by a worker because of illness during the leave year must be

authorised at a later date, or can national legal provisions and/or national practice stipulate that an entitlement to annual paid leave is extinguished if workers become incapacitated for work during the leave year before leave is authorised and do not recover their capacity for work before the end of the leave year or the carry-over period laid down by statute, collective agreement or individual agreement?

2. Is Article 7(2) of Directive 2003/88/EC to be understood as meaning that at the end of the employment relationship workers have, in any event, a claim to financial compensation in respect of leave accrued but not taken (an allowance in lieu of leave), or can national legislation and/or national practice stipulate that workers will not receive an allowance in lieu of leave if, up to the end of the leave year or the relevant carry-over period, they are incapacitated for work and/or if after the ending of the employment relationship they draw a disability or invalidity pension?
3. In the event that the Court of Justice answers Questions 1 and 2 in the affirmative:

Is Article 7 of Directive 2003/88/EC to be understood as meaning that the entitlement to annual leave or an allowance in lieu requires the worker actually to have worked during the leave year, or does the entitlement arise also in the case of excusable absence (by reason of illness) or inexcusable absence in the same leave year?

⁽¹⁾ OJ L 299, p. 9.

Reference for a preliminary ruling from the Finanzgericht Köln lodged on 25 August 2006 — Brigitte Bosmann v Bundesagentur für Arbeit, Familienkasse Aachen

(Case C-352/06)

(2006/C 281/34)

Language of the case: German

Referring court

Finanzgericht Köln

Parties to the main proceedings

Applicant: Brigitte Bosmann

Defendant: Bundesagentur für Arbeit, Familienkasse Aachen