Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

2 September 2021 *

(Reference for a preliminary ruling – EEC-Turkey Association Agreement – Decision No 1/80 – Article 13 – Standstill clause – New restriction – Family reunification of minor children of Turkish workers – Age condition – Requirement of compelling reasons in order to be granted family reunification – Overriding reason in the public interest – Successful integration – Proportionality)

In Case C-379/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (High Court of Eastern Denmark, Denmark), made by decision of 3 July 2020, received at the Court on 11 August 2020, in the proceedings

B

v

Udlændingenævnet,

THE COURT (First Chamber),

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

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

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

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

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

* Language of the case: Danish.

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

gives the following

Judgment

1 The present 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 between the European Economic Community and Turkey. The Association Council was set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed in 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 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).

2 The request has been made in proceedings between B, a Turkish national, and the Udlændingenævnet (Immigration Appeals Board, Denmark) concerning the latter's rejection of B's application for a residence permit in Denmark for the purpose of family reunification.

Legal context

EU law

Decision No 1/80

3 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.'

4 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.'

Directive 2003/86/EC

5 Article 4(6) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12) provides:

'By way of derogation, Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by [their]

existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification.'

Danish law

6 Paragraph 9(1)(2) of the Udlændingeloven (Law on foreign nationals), as amended by lov nr. 427 (Law No 427) of 9 June 2004, provides:

'Upon application, a residence permit may be issued to:

…

(2) an unmarried minor child under the age of 15 of a person permanently resident in Denmark or of that person's spouse, provided that the child resides with the person having custody of him or her and has not started his or her own family through regular cohabitation, and provided that the person resident in Denmark:

…

(e) holds a permanent residence permit or a residence permit with a possibility of permanent residence.

…'

7 The first sentence of Paragraph 9c(1) of the Law on foreign nationals, as amended by lov nr. 567 (Law No 567) of 18 June 2012, provides:

'Upon application, a residence permit may be issued to a foreign national if particularly compelling reasons, including consideration of family unity and, if the foreign national is under the age of 18 years, consideration of the best interests of the child, support this.'

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

8 B is a Turkish national who was born in Turkey on 5 August 1994. On 31 January 2012, he submitted an application to the Udlændingestyrelsen (the Immigration Service, Denmark) for a residence permit in Denmark for the purposes of family reunification with his father, F, a Turkish worker legally resident in that Member State since 13 October 2003.

9 By decision of 6 November 2012, the Immigration Service rejected that application on the basis of Paragraph 9(1)(2) and the first sentence of Paragraph 9c(1) of the Law on foreign nationals, on the ground that B, who was more than 15 years old at the date on which he submitted his application, had not demonstrated that particularly compelling reasons, including consideration of family unity and consideration of the best interests of the child, justified the grant to him of a residence permit under that provision.

10 On 5 January 2017, B brought an appeal against that decision before the Udlændinge- og Integrationsministeriet (Ministry of Immigration and Integration, Denmark), which, by decision of 30 January 2017, referred that appeal to the Immigration Service, requesting it to examine whether B was entitled to a right of residence on the basis of Decision No 1/80.

11 By decision of 5 July 2017, the Immigration Service held, on the basis of the judgment of 10 July 2014, *Dogan* (C-138/13, EU:C:2014:2066), that it was not necessary to re-examine the application submitted by B.

12 B appealed against that decision to the Udlændingenævnet (Immigration Appeals Board, Denmark). By decision of 15 January 2018, the Immigration Appeals Board confirmed the decision taken by the Immigration Service on 5 July 2017.

13 On 5 January 2017, B brought an action before the Københavns Byret (District Court, Copenhagen, Denmark) seeking an order requiring the Immigration Service to grant him a right of residence in Denmark under EU law. On 15 December 2017, that court referred the case to the Østre Landsret (High Court of Eastern Denmark, Denmark), as national law allows courts of first instance to refer cases raising issues of principle to the appeal courts in order that the latter may deliver judgment at first instance.

14 Proceeding on the assumption, as the parties to the main proceedings do, that the age limit laid down in Paragraph 9(1)(2) of the Law on foreign nationals, which was lowered in 2004 from 18 years to 15 years, constitutes a 'new restriction' within the meaning of Article 13 of Decision No 1/80, the referring court asks, in essence, whether such a restriction may be justified by the overriding reason in the public interest, relied on by the Immigration Appeals Board, of ensuring successful integration of third-country nationals.

15 In that regard, the Østre Landsret (High Court of Eastern Denmark) takes the view, in the first place, that a condition relating to an age limit may facilitate a child's integration in a Member State. A child's integration in Denmark is, it finds, facilitated by arriving at as young an age as possible in that Member State, in so far as that child will spend most of his or her childhood there and will undertake most of his or her schooling and education there.

16 In the second place, the Østre Landsret (High Court of Eastern Denmark) notes that Paragraph 9(1)(2) of the Law on foreign nationals must be read in conjunction with the first sentence of Paragraph 9c(1) of that law. It follows that the age limit laid down in Paragraph 9(1)(2) of that law is not an absolute condition, inasmuch as a residence permit may still be issued to a child under the age of 18, on the basis of the first sentence of Paragraph 9c(1) of that law, on condition that particularly compelling reasons, including the consideration of family unity and the consideration of the best interests of the child, support that issue.

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

'Does Article 13 of [Decision No 1/80] preclude the introduction and application of a new national measure under which family reunification between an economically active Turkish national who is legally resident in the Member State in question and that person's child who is 15 years of age or older is subject to the condition that particularly compelling grounds, including the consideration of family unity and the consideration of the best interests of the child, support such reunification?'

Consideration of the question referred

18 By its question, the referring court asks, in essence, whether Article 13 of Decision No 1/80 must be interpreted as meaning that a national measure lowering from 18 to 15 years the age below which the child of a Turkish worker residing legally in the host Member State may apply for family reunification constitutes a 'new restriction', within the meaning of that provision, and, if so, whether such a measure may be justified by the objective of ensuring successful integration of the third-country nationals concerned.

19 In that regard, it must be borne in mind that the standstill clause contained in Article 13 of Decision No 1/80 prohibits generally the introduction of any new national measure that has 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 that are more restrictive than those which applied at the time when Decision No 1/80 entered into force in the Member State concerned (judgment of 10 July 2019, *A*, C-89/18, EU:C:2019:580, paragraph 23 and the case-law cited).

20 In particular, it is apparent from settled case-law that national legislation which tightens 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 when Decision No 1/80 entered into force in that Member State, 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 10 July 2019, *A*, C-89/18, EU:C:2019:580, paragraph 28 and the case-law cited).

21 In the present case, it is apparent from the order for reference that Paragraph 9(1)(2) of the Law on foreign nationals, which lowered from 18 to 15 years the age below which minor children may apply for family reunification, 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 governing the first admission to Danish territory of children of Turkish nationals residing legally in that Member State, in relation to the conditions which were applicable when Decision No 1/80 entered into force in that Member State.

22 In those circumstances, it must be held that a national measure such as that at issue in the main proceedings constitutes a 'new restriction' within the meaning of Article 13 of Decision No 1/80.

23 It should be borne in mind that such a restriction is prohibited unless it comes within the restrictions referred to in Article 14 of Decision No 1/80 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 (judgment of 10 July 2019, *A*, C-89/18, EU:C:2019:580, paragraph 31 and the case-law cited).

24 In that regard, it is apparent from the file before the Court that the national measure at issue in the main proceedings does not come within the restrictions referred to in Article 14 of Decision No 1/80.

25 By contrast, it is apparent from that file that the objective pursued by that measure is, in essence, to ensure the successful integration of third-country nationals in Denmark.

26 The Court has already held that such an objective may constitute an overriding reason in the public interest for the purposes of Article 13 of Decision No 1/80 (judgment of 10 July 2019, *A*, C-89/18, EU:C:2019:580, paragraph 34 and the case-law cited).

27 Consequently, it is necessary to examine whether a national measure such as that at issue in the main proceedings, which restricts the family reunification of minor children aged 15 years and above, is appropriate for ensuring the attainment of the objective pursued and does not go beyond what is necessary to attain it.

28 With regard, in the first place, to the question whether such a measure is appropriate for the purpose of ensuring the objective pursued, it is apparent from the order for reference that the national measure at issue in the main proceedings seeks to take account of the integration capacity of minor children wishing to benefit from family reunification. In that regard, the Court has already stated that age is one of the factors which characterise the personal situation of the child which may affect his or her integration in the Member State concerned (see, to that effect, judgment of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraph 61). Indeed, children are more likely to integrate well in the host Member State if they arrive in that Member State at as early an age as possible. Arriving at as early an age as possible allows the children concerned, inter alia, to attend school in that Member State and to acquire language skills essential to their integration.

29 Moreover, it should be noted that the EU legislature itself provided, in Directive 2003/86, for Member States to have the option to limit the family reunification of minor children who have reached a certain age. Although that directive is not applicable in Denmark, it should be noted by way of context that Article 4(6) of that directive provides that Member States may require that applications for family reunification of minor children be submitted before they reach the age of 15.

30 The view must therefore be taken that a national measure such as that at issue in the main proceedings is appropriate for attaining the objective pursued.

31 With regard, in the second place, to the question whether an age condition such as that laid down in Paragraph 9(1)(2) of the Law on foreign nationals is proportionate, it should be borne in mind that Danish law provides for exceptions to the application of that provision.

32 The referring court notes that the first sentence of Paragraph 9c(1) of the Law on foreign nationals – according to which a residence permit may be issued to a foreign national if particularly compelling reasons, including considerations of family unity and, if the foreign national is under 18 years of age, the best interests of the child, support that – is applicable in the case where a residence permit cannot be issued to a minor child on the basis of Paragraph 9(1)(2) of that law.

33 Thus, a residence permit could still be issued to a minor child aged 15 years and over if reasons relating to family unity or to the best interests of the child justified it. The competent national authorities would then be required to carry out an individual assessment of the child's situation and, in each individual case, to take those interests into consideration.

34 Furthermore, it is apparent from the order for reference that, in practice, many residence permits have been issued to children aged 15 years and over, on the basis of the first sentence of Paragraph 9c(1) of the Law on foreign nationals. There does not therefore appear to be an administrative practice of systematically refusing such applications for family reunification.

35 In those circumstances, it does not appear that the national measure at issue in the main proceedings goes beyond what is necessary to attain the objective pursued, this, however, being a matter which it is ultimately for the referring court to determine.

36 In the light of all of the foregoing considerations, the answer to the question referred is that Article 13 of Decision No 1/80 must be interpreted as meaning that a national measure lowering from 18 to 15 years the age below which the child of a Turkish worker residing legally in the territory of the host Member State may submit an application for family reunification constitutes a 'new restriction' within the meaning of that provision. Such a restriction may, however, be justified by the objective of ensuring the successful integration of the third-country nationals concerned, on condition that the detailed rules for its implementation do not go beyond what is necessary to attain the objective pursued.

Costs

37 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 the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey must be interpreted as meaning that a national measure lowering from 18 to 15 years the age below which the child of a Turkish worker residing legally in the territory of the host Member State may submit an application for family reunification constitutes a 'new restriction' within the meaning of that provision. Such a restriction may, however, be justified by the objective of ensuring the successful integration of the third-country nationals concerned, on condition that the detailed rules for its implementation do not go beyond what is necessary to attain the objective pursued.

[Signatures]