



## Reports of Cases

### JUDGMENT OF THE COURT (Grand Chamber)

24 September 2013\*

(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)

In Case C-221/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberverwaltungsgericht Berlin-Brandenburg (Germany), made by decision of 13 April 2011, received at the Court on 11 May 2011, in the proceedings

**Leyla Ecem Demirkan**

v

**Bundesrepublik Deutschland,**

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen, T. von Danwitz, A. Rosas (Rapporteur) and M. Berger, Presidents of Chambers, E. Levits, A. Ó Caoimh, J.-C. Bonichot, A. Arabadjiev, C. Toader, J.-J. Kasel, M. Safjan and D. Šváby, Judges,

Advocate General: P. Cruz Villalón,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 6 November 2012,

after considering the observations submitted on behalf of:

- Ms Demirkan, by R. Gutmann, Rechtsanwalt,
- the German Government, by T. Henze, J. Möller and K. Hailbronner, acting as Agents,
- the Czech Government, by M. Smolek, acting as Agent,
- the Danish Government, by C. Vang and V. Pasternak Jørgensen, acting as Agents,
- the Estonian Government, by M. Linntam, acting as Agent,

\* Language of the case: German.

- the Greek Government, by G. Karipsiades and T. Papadopoulou, acting as Agents,
- the French Government, by G. de Bergues, D. Colas and B. Beaupère-Manokha, acting as Agents,
- the Netherlands Government, by B. Koopman, M. Bulterman and C. Wissels, acting as Agents,
- the Slovak Government, by B. Ricziová, acting as Agent,
- the United Kingdom Government, by S. Ossowski and L. Christie, acting as Agents, and by R. Palmer, Barrister,
- the Council of the European Union, by J. Monteiro, E. Finnegan and Z. Kupčová, acting as Agents,
- the European Commission, by G. Braun and G. Wils, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 April 2013,

gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 41(1) of the Additional Protocol which was signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 17) ('the Additional Protocol'), in particular the notion of 'freedom to provide services' in that provision.
- 2 The request has been made in proceedings between Ms Demirkan, a Turkish national, and the Bundesrepublik Deutschland concerning the rejection by the German authorities of her application for a visa to visit her step-father, who lives in Germany.

### **Legal context**

#### *European Union law*

#### The Association Agreement

- 3 The Agreement establishing an Association between the European Economic Community and Turkey was signed at Ankara on 12 September 1963 by the Republic of Turkey and by the Member States of the EEC and the Community 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) ('the Association Agreement').
- 4 According to Article 2(1) of the Association Agreement, the aim of the 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 of the agreement) and on freedom to provide services (Article 14 of the agreement), 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 to and Article 28 of the agreement).

5 For the attainment of those objectives, provision is made for the gradual introduction of a customs union in three stages. The association established by the agreement ('the EEC-Turkey Association') thus provides for a preparatory stage to enable the Republic of Turkey to strengthen its economy with aid from the Community (Article 3 of the agreement), a transitional stage, during which a customs union is to be progressively established and economic policies aligned more closely (Article 4 of the agreement) and a final stage, which is to be based on the customs union and is to entail closer coordination of the economic policies of the Contracting Parties (Article 5 of the agreement).

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

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

7 Article 8 of the Association Agreement, which is in Title II, headed 'Implementation of the transitional stage', provides as follows:

'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.'

8 Article 14 of the Association Agreement, which is also in Title II, is worded as follows:

'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.'

9 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. ...'

#### The Additional Protocol

10 The Additional Protocol – which, in accordance with Article 62 thereof, forms an integral part of the Association Agreement – lays down, as stated in Article 1, the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of the Association Agreement.

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

12 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.'

13 On the basis of Article 41(2) of the Additional Protocol, the Association Council adopted Decision No 2/2000 of 11 April 2000 on the opening of negotiations aimed at the liberalisation of services and the mutual opening of procurement markets between the Community and Turkey (OJ 2000 L 138, p. 27). However, as yet, no substantive liberalisation of services of that kind has been agreed by the Association Council.

14 Article 59 of the Additional Protocol, which appears in Title IV ('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

15 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 and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1) provides as follows:

'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.'

16 The Republic of Turkey is on the list in Annex I. Recital 1 in the preamble to Regulation No 539/2001 refers to the fact that Article 61 EC cites the list of 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'.

*German law*

German law as it stood on 1 January 1973

17 It is apparent from the order for reference that, on 1 January 1973, the date on which the Additional Protocol entered into force as regards the Federal Republic of Germany, that Member State's domestic law did not require Turkish nationals to obtain a visa to enter German territory if the purpose of the stay was to visit a family member.

18 On the basis of point 1 of Article 5(1) of the Verordnung zur Durchführung des Ausländergesetzes (Regulation implementing the Law on foreign nationals) of 10 September 1965 (BGB1. 1965 I, p. 1341), in the version of 13 September 1971 (BGB1. 1971 I, p. 1743), in conjunction with the annex to the implementing regulation, Turkish nationals were required to obtain a residence permit in the form of a visa in order to enter German territory only if they intended to work in Germany.

- 19 Turkish nationals were not subject to a general visa requirement until the Eleventh Regulation amending the Regulation implementing the Law on foreign nationals of 1 July 1980 (BGBl. 1980 I, p. 782).

The relevant provisions of German law at the material time in the main proceedings

- 20 It is apparent from the order for reference that, for Turkish nationals such as the applicant in the main proceedings, the requirement to obtain a visa in order to enter Germany is established by the first sentence of Article 4(1) of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz – AufenthG) (the Law on the residence, employment and integration of foreign nationals in national territory) (BGBl. 2004 I, p. 1950) ('the Law on the residence of foreign nationals').
- 21 Under the heading 'Requirement for a residence permit', Article 4(1) of the Law on the residence of foreign nationals provides as follows:

'Foreign nationals shall require a residence permit 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 [Association Agreement] ...'

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

- 22 In October 2007, Ms Demirkan, a Turkish national born in 1993, applied to the German embassy in Ankara (Turkey) for a visa in order to visit her step-father, a German national living in Germany. In response to the rejection of her application, Ms Demirkan brought an action before the Verwaltungsgericht Berlin (Administrative Court, Berlin).
- 23 Ms Demirkan sought a declaration from that court that she was entitled to enter German territory without a visa. In the alternative, she sought annulment of the decision rejecting her visa application and a declaration that the Federal Republic of Germany was obliged to grant her a visitor's visa.
- 24 According to Ms Demirkan, it is apparent from the 'standstill' clause in Article 41(1) of the Additional Protocol that she does not need a visa for her proposed stay in Germany, the purpose of which is to visit her step-father. As such a visit will necessarily entail the decisive element – receipt of services – she is entitled, as the beneficiary of such services, to the tourist visa applied for. At the date of the entry into force of the Additional Protocol as regards the Federal Republic of Germany, that Member State's domestic law exempted Turkish nationals from the requirement to obtain a residence permit to enter German territory if they did not intend to stay there for more than three months or to work there.
- 25 By judgment of 22 October 2009, the Verwaltungsgericht Berlin dismissed that application, taking the view that Ms Demirkan did not enjoy any right to enter German territory without a visa. In particular, she could not rely on the 'standstill' clause in Article 41(1) of the Additional Protocol, since that clause was not applicable to a residence permit for the purposes of a family visit. According to that court, the 'standstill' clause did not confer on Turkish nationals a general right to freedom of movement independent of any economic activity pursued.
- 26 Ms Demirkan appealed against that decision before the Oberverwaltungsgericht Berlin-Brandenburg (Higher Administrative Court, Berlin-Brandenburg).

- 27 That court observes that under both national law, namely the first sentence of Article 4(1) of the Law on the residence of foreign nationals, and under European Union law, that is, Article 1(1) of and Annex I to Regulation No 539/2001, Ms Demirkan is required to obtain a visa in order to enter German territory. Consequently, if she had a right to enter without a visa, that could only be on the basis of Article 41(1) of the Additional Protocol.
- 28 The referring court points out that, on 1 January 1973, the date of entry into force of the Additional Protocol as regards the Federal Republic of Germany, there was no requirement under German law to obtain a visa for a stay the purpose of which was a family visit, such as that proposed by Ms Demirkan. However, that court observes that the Court's case-law, in particular Case C-228/06 *Soysal and Savatli* [2009] ECR I-1031, gives no indication as to whether the prohibition on introducing any new restrictions on the freedom to provide services laid down in Article 41(1) of the Additional Protocol extends to what is referred to as 'passive' freedom to provide services, namely the freedom for the recipients of services in one Member State to travel to another Member State in order to take advantage of the provision of services. In Germany, that issue has been the subject of much debate in both case-law and legal literature. The prevailing opinion in Germany is that the 'standstill' clause covers both active and passive freedom to provide services.
- 29 Should the answer to the first question referred be that the notion of freedom to provide services within the meaning of Article 41(1) of the Additional Protocol also encompasses passive freedom to provide services, it will remain to be considered, according to the national court, whether Turkish nationals who wish to travel to Germany to visit relatives for a stay of up to three months and who simply rely on the mere possibility of obtaining services are covered by the 'standstill' clause.
- 30 The referring court states that some German academic legal writers rely, for the purpose of advocating a broad interpretation of the scope of passive freedom to provide services, on paragraph 15 of the judgment in Case C-274/96 *Bickel and Franz* [1998] ECR I-7637, in which the Court held that passive freedom to provide services applies to all nationals of Member States who, independently of other freedoms guaranteed by European Union law, visit another Member State 'where they intend or are likely to receive services'.
- 31 In those circumstances, the l'Oberverwaltungsgericht Berlin-Brandenburg decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:
- '(1) Does passive freedom to provide services fall within the scope of the concept of freedom to provide services within the meaning of Article 41(1) of the [Additional Protocol]?
- (2) In the event that the first question is answered in the affirmative: does the protection of passive freedom to provide services under Article 41(1) of the Additional Protocol also extend to Turkish nationals who – like the appellant in the main proceedings – do not wish to enter the Federal Republic of Germany in order to receive a specific service, but for the purposes of visiting relatives for a stay of up to three months and rely on the mere possibility of receiving services in Germany?

### Question 1

- 32 By its first question, the referring court asks, in essence, whether the notion of 'freedom to provide services' in Article 41(1) of the Additional Protocol is to be interpreted as encompassing the freedom for Turkish nationals who are service recipients to visit a Member State in order to obtain services.
- 33 It should be noted at the outset that under Article 56 TFEU restrictions on freedom to provide services within the Union are prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.



- 34 At paragraph 10 of the judgment in Joined Cases 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377, the Court interpreted the notion of ‘freedom to provide services’ within the meaning of Article 59 of the EEC Treaty (subsequently Article 59 of the EC Treaty, which, in turn, after amendment, became Article 49 EC), which now corresponds to Article 56 TFEU. It found that, in order to enable services to be provided, the person providing the service may go to the Member State where the person for whom it is provided is established or else the latter may go to the State in which the person providing the service is established. It stated, inter alia, that whilst the former case is expressly mentioned in the third paragraph of Article 60 of the EEC Treaty (subsequently the third paragraph of Article 60 of the EC Treaty, which in turn became the third paragraph of Article 50 EC), which now corresponds to the third paragraph of Article 57 TFEU and permits the person providing the service to pursue his activity temporarily in the Member State where the service is provided under the same conditions as are imposed by that State on its own nationals, the latter case is the necessary corollary thereof, which fulfills the objective of liberalising all gainful activity not covered by the free movement of goods, persons and capital.
- 35 Accordingly, it is the Court’s established case-law that 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 (*Luisi and Carbone*, paragraph 16; Case 186/87 *Cowan* [1989] ECR 195, paragraph 15; *Bickel and Franz*, paragraph 15; Case C-348/96 *Calfa* [1999] ECR I-11, paragraph 16; and Case C-215/03 *Oulane* [2005] ECR I-1215, paragraph 37).
- 36 Article 56 TFEU therefore covers all European Union citizens who, independently of other freedoms guaranteed by the FEU Treaty, visit another Member State where they intend or are likely to receive services (see, to that effect, *Bickel and Franz*, paragraph 15). According to that case-law, tourists, persons receiving medical treatment and persons travelling for the purpose of education or business are to be regarded as recipients of services (*Luisi and Carbone*, paragraph 16).
- 37 As regards the status conferred on Turkish nationals under the Association Agreement, Article 41(1) of the Additional Protocol lays down – as is apparent from its very wording – in clear, precise and unconditional terms, an unequivocal ‘standstill’ clause, which prohibits the Contracting Parties from introducing new restrictions on freedom of establishment and freedom to provide services with effect from the date of entry into force of the Additional Protocol (see, with regard to restrictions on freedom of establishment, Case C-37/98 *Savas* [2000] ECR I-2927, paragraph 46).
- 38 It is the Court’s established case-law that Article 41(1) of the Additional Protocol has direct effect. As a consequence, that provision may be relied on by the Turkish nationals to whom it applies before the courts or tribunals of the Member States (see, to that effect, *Savas*, paragraph 54; Joined Cases C-317/01 and C-369/01 *Abatay and Others* [2003] ECR I-12301, paragraphs 58 and 59; Case C-16/05 *Tum and Dari* [2007] ECR I-7415, paragraph 46; and *Soysal and Savatli*, paragraph 45).
- 39 It should be noted that the ‘standstill’ clause prohibits generally the introduction of any new measure having the object or effect of making the exercise by a Turkish national of such economic freedoms in the territory of a Member State subject to stricter conditions than those which applied at the time when the Additional Protocol entered into force with regard to that Member State (see, to that effect, *Savas*, paragraphs 69 and the fourth indent of paragraph 71; *Abatay and Others*, paragraph 66 and the second indent of paragraph 117; and *Tum and Dari*, paragraphs 49 and 53).
- 40 The Court has already held that Article 41(1) of the Additional Protocol may be relied on by an undertaking established in Turkey which lawfully provides services in a Member State and by Turkish nationals who are lorry drivers employed by such an undertaking (*Abatay and Others*, paragraphs 105 and 106).

- 41 It is apparent from *Soysal and Savatli* that the ‘standstill’ clause in Article 41(1) of the Additional Protocol precludes the introduction, from the date of entry into force of that protocol, of a requirement that Turkish nationals are to 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, prior to that date, such a visa was not required.
- 42 In the present case, it is necessary to examine whether the ‘standstill’ clause in Article 41(1) of the Additional Protocol is also applicable to Turkish nationals who, unlike the nationals in the case which gave rise to the judgment in *Soysal and Savatli*, are not engaged in the provision of cross-border services but wish to go to a Member State in order to obtain services.
- 43 It is true that, according to established case-law, the principles enshrined in the provisions of the Treaty relating to freedom to provide services must be extended, so far as possible, to Turkish nationals to eliminate restrictions on the freedom to provide services between the Contracting Parties (see, to that effect, *Abatay and Others*, paragraph 112 and the case-law cited).
- 44 However, the interpretation given to the provisions of European Union law, including Treaty provisions, concerning the internal market cannot be automatically applied by analogy to the interpretation of an agreement concluded by the European Union with a non-Member State, unless there are express provisions to that effect laid down by the agreement itself (see, to that effect, Case 270/80 *Polydor and RSO Records* [1982] ECR 329, paragraphs 14 to 16; Case C-351/08 *Grimme* [2009] ECR I-10777, paragraph 29; and Case C-70/09 *Hengartner and Gasser* [2010] ECR I-7233, paragraph 42).
- 45 The use in Article 14 of the Association Agreement of the verb ‘to be guided by’ indicates that the Contracting Parties are not obliged to apply the provisions of the Treaty on freedom to provide services or indeed those adopted for the implementation of those provisions but simply to consider them as a source of guidance for the measures to be adopted in order to implement the objectives laid down in that agreement.
- 46 As stated at paragraph 13 above, the Association Council has not adopted any substantive measure for the liberalisation of services. To date, the association has confined itself to adopting Decision No 2/2000.
- 47 Moreover, as the Court has repeatedly held, whether it is possible to extend the interpretation of a provision in the Treaty to a comparably, similarly or even identically worded provision of an agreement concluded by the European Union with a non-Member State depends on, inter alia, the aim pursued by each provision in its own particular context. A comparison between the objectives and context of the agreement and those of the Treaty is of considerable importance in that regard (see Case C-312/91 *Metalsa* [1993] ECR I-3751, paragraph 11; Case C-63/99 *Gloszczuk* [2001] ECR I-6369, paragraph 49; and Case C-162/00 *Pokrzepowicz-Meyer* [2002] ECR I-1049, paragraph 33).
- 48 With regard in particular to the EEC-Turkey Association, it is apparent from paragraph 62 of the judgment in Case C-371/08 *Ziebell* [2011] ECR I-12735 that, in deciding whether a provision of European Union law lends itself to application by analogy under that association, a comparison must be made between the objective pursued by the Association Agreement and the context of which it forms a part, on the one hand, and those of the European Union law instrument in question, on the other.
- 49 It should be noted that 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.

- 50 First of all, with regard to objectives, the Court has already held that the EEC-Turkey Association pursues a solely economic purpose (*Ziebell*, paragraph 64). The Association Agreement and its Additional Protocol are intended essentially to promote the economic development of Turkey (*Savas*, paragraph 53).
- 51 The fact that the purpose of the Association Agreement is purely economic is reflected in the wording of the agreement. That is apparent from the titles of Chapters 1, 2 and 3 in Title II to the agreement, relating to the implementation of the transitional stage, those titles being, respectively, ‘Customs union’, ‘Agriculture’ and ‘Other economic provisions’. Moreover, Article 14 of the Association Agreement, which states that ‘[t]he 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’, is in Chapter 3 of Title II of the agreement, the title of which, as indicated above, expressly refers to economic matters.
- 52 Moreover, the Association Agreement is intended, in the words of Article 2(1), ‘to promote the continuous and balanced strengthening of trade and economic relations between the parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people’. Furthermore, the second subparagraph of Article 41(2) of the Additional Protocol states that the Association Council, when determining the timetable and rules for the progressive abolition of restrictions on freedom of establishment and freedom to provide services for the various classes of activity, is to take into account analogous measures already adopted by the European Union in these fields and also the special economic and social circumstances of Turkey.
- 53 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 (see, to that effect, Case C-325/05 *Derin* [2007] ECR I-6495, paragraph 66).
- 54 The Court has repeatedly held that the ‘standstill’ clause in Article 41(1) of the Additional Protocol is not, in itself, capable of conferring on Turkish nationals – on the basis of European Union legislation alone – a right of establishment or, as a corollary, a right of residence, or indeed a right of freedom to provide services or to enter the territory of a Member State (see, to that effect, *Savas*, paragraphs 64 and 71, third indent; *Abatay and Others*, paragraph 62; *Tum and Dari*, paragraph 52; and *Soysal and Savatli*, paragraph 47).
- 55 Consequently, irrespective of whether freedom of establishment or freedom to provide services in invoked, 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.

- 56 By contrast, under European Union law, protection of passive freedom to provide services is based on the objective of establishing an internal market, conceived as an area without internal borders, by removing all obstacles to the establishment of such a market. It is precisely that objective which distinguishes the Treaty from the Association Agreement, which pursues an essentially economic purpose, as stated at paragraph 50 above.
- 57 In second place, the interpretation of the notion of freedom to provide services within the meaning of the provisions of the Association Agreement and its Additional Protocol on the one hand, and the provisions of the Treaty on the other, also depends on the temporal context of those provisions.
- 58 It should be noted in that regard that 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.
- 59 As observed by the Governments which have submitted observations to the Court, as well as the Council of the European Union and the European Commission, freedom of provision of services was originally conceived as freedom to supply services. It was only in 1984, with the judgment in *Luisi and Carbone*, that the Court clearly indicated that freedom of provision of services within the meaning of the Treaty included passive freedom of provision of services.
- 60 Accordingly, there is nothing to indicate that the Contracting Parties to the Association Agreement and the Additional Protocol envisaged, when signing those documents, freedom of provision of services as including passive freedom of provision of services.
- 61 As the Advocate General observed at point 71 of his Opinion, the practice of the Contracting Parties to the Association Agreement provides certain indications to the contrary. Indeed, numerous Member States introduced a visa requirement for tourist visits by Turkish nationals after the entry into force of the Additional Protocol, and did not consider this to be precluded by Article 41(1) of the Additional Protocol. The Republic of Turkey itself – according to the uncontested submissions of the German Government – did likewise in relation to the Kingdom of Belgium and the Kingdom of the Netherlands by revoking, in October 1980, the exemption from the visa requirement in place in 1973 for Belgian and Dutch nationals who are not workers.
- 62 It follows from all the foregoing considerations that because of differences of both purpose and context between the Treaties on the one hand, and the Association Agreement and its Additional Protocol on the other, the Court’s interpretation of Article 59 of the EEC Treaty in *Luisi and Carbone* cannot be extended to the ‘standstill’ clause in Article 41(1) of the Additional Protocol.
- 63 In those circumstances, the answer to the first question is that the notion of ‘freedom to provide services’ in Article 41(1) of the Additional Protocol 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.

## Question 2

- 64 By its second question, which depends on an affirmative answer to the first question, the referring court asks whether passive freedom to provide services encompasses visits to family members and the mere possibility of obtaining services.
- 65 Given the answer to the first question, there is no need to answer the second question.

## Costs

- <sup>66</sup> 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 (Grand Chamber) hereby rules:

**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 Council Regulation (EEC) No 2760/72 of 19 December 1972 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.**

[Signatures]