



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-221/11
Leyla Ecem Demirkan v Federal Republic of Germany

According to Advocate General Cruz Villalón, Turkish nationals do not have a right to enter the EU without a visa in order to receive services there

In any event, a reference to the mere possibility of receiving services during a family visit in the EU is not sufficient to create such a right

Leyla Ecem Demirkan, a Turkish national who was born in 1993, applied to the German Embassy in Ankara for the grant of a Schengen visa in order to be able to visit her stepfather in Germany¹. After her application was refused, and her action before the Verwaltungsgericht Berlin (Administrative Court, Berlin) was similarly unsuccessful, she appealed to the Oberverwaltungsgericht Berlin-Brandenburg (Higher Administrative Court, Berlin-Brandenburg). She claims that she has a right of entry without a visa under the Additional Protocol to the EEC-Turkey Association Agreement². Whilst there has been a general visa requirement for Turkish nationals since 1980³ in Germany, it cannot be applied in connection with the freedom to provide services, as the Agreement has, since 1973, prohibited the Member States from introducing new restrictions on the freedom to provide services in relation to Turkey. This standstill clause, which fixes the legal position in 1973, can be invoked not only by those wishing to provide services themselves ('active' freedom to provide services)⁴, but also by those wishing to receive services ('passive' freedom to provide services). Ms Demirkan claims that as she may receive services during her visit in Germany, she too can rely on the German legal position in 1973, according to which she would not have needed a visa. The Oberverwaltungsgericht Berlin-Brandenburg has, in that context, asked the Court of Justice to interpret the Agreement.

In his Opinion today, Advocate General Pedro Cruz Villalón takes the view that the standstill clause of the Additional Protocol to the EEC-Turkey Association Agreement does not apply in respect of the passive freedom to provide services. The Agreement does not, therefore, preclude a visa requirement for Turkish nationals wishing to enter a Member State for the purpose of receiving services, even where that requirement was introduced only after 1973.

While the freedom to provide services that is guaranteed for citizens and undertakings under the EU Treaties covers both the active and passive freedom to provide services, this broad interpretation cannot be extended to the EEC-Turkey Agreement, as the objective and structure of the Agreement differ from those of the EU Treaties. While the purpose of the latter was, inter alia, to create a genuine internal market by the merging of national markets into a single market, the Agreement merely opened up the prospect of Turkey's accession to the EU. The Association Council established to ensure the further development of the Association has not yet made any substantial progress in the area of freedom to provide services in relation to Turkey.

¹ Together with her mother who, in the course of the first-instance proceedings, obtained a visa for the purposes of family reunification with her German husband.

² The Republic of Turkey, the European Economic Community and its Member States signed the Agreement establishing an Association between the European Economic Community and Turkey in Ankara on 12 September 1963 (OJ 1977 L 361, p. 29). The 1970 Additional Protocol, which forms part of the Agreement (OJ 1977 L 361, p. 60), entered into force on 1 January 1973 and has been binding on the Federal Republic of Germany also since that date.

³ Since 5 October 1980. In accordance with Regulation (EC) No 539/2001 (OJ 2001 L 81, p. 1), EU law also, in principle, requires that Turkish nationals have a visa for entry into the EU.

⁴ In Case [C-228/06 Soysal and Savatli](#), the Court made clear that the introduction by a Member State of a visa requirement for the entry of Turkish providers of services may infringe the standstill clause.

In the absence of any express provision it cannot, therefore, be assumed that the Agreement was intended to influence an area of such sensitivity as freedom of movement between Turkey and the EU to such an extent as would in practice be the case if the standstill clause were extended to the passive freedom to provide services. The Advocate General emphasises in that regard that, unlike the active freedom to provide services, the beneficiaries of which are a relatively clearly definable group, the passive freedom to provide services could potentially benefit everyone.

In the event that the Court of Justice takes a different view and applies the standstill clause to the passive freedom to provide services also, Advocate General Cruz Villalón proposes that the **protection** thereby afforded **should in any event not extend to Turkish nationals who wish to enter a Member State for the purpose of visiting relatives for a stay of up to three months and who rely on the mere possibility of receiving services in that State.**

That is because a person's ability to rely on the passive freedom to provide services depends on the purpose of his journey. If its purpose is not the receipt of services, or if those services are purely ancillary, that person does not enjoy the protection of the passive freedom to provide services. The mere assertion of the possibility of receiving unspecified services is not therefore sufficient for a person to claim the protection afforded by the passive freedom to provide services.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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