



Press and Information

Court of Justice of the European Union

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Judgment in Case C-221/11

Leyla Ecem Demirkan v Bundesrepublik Deutschland

Turkish nationals do not have the right to enter the territory of an EU Member State without a visa in order to obtain services

The Additional Protocol to the EEC-Turkey Association Agreement does not preclude the introduction, after its entry into force, of a visa requirement where the purpose of the visit is to obtain services

In 1963, Turkey and the European Economic Community, together with its Member States, concluded an association agreement¹, the aim of which was to promote the continuous and balanced strengthening of trade and economic relations between the contracting parties, with a view to improving the standard of living of the Turkish people and facilitating the accession of Turkey to the Community. The agreement provides, inter alia, that the contracting parties are to be guided by the provisions of the EEC Treaty concerning freedom to provide services between Member States for the purpose of abolishing all restrictions on such freedom between the contracting parties.

The Additional Protocol to that agreement², signed in 1970, contains a 'standstill' clause, which prohibits the contracting parties from introducing new restrictions on freedom to provide services with effect from the date of its entry into force.

Ms Demirkan, a Turkish national whose application for a visa to visit her stepfather who lives in Germany was refused by the German authorities, has invoked that 'standstill' clause before the German courts. According to Ms Demirkan, the clause precludes the introduction of new restrictions, such as a visa requirement, not only as regards persons seeking to *carry out* the provision of services ('active' freedom to provide services)³ but also those who seek to *obtain* services ('passive' freedom of provision of services). Ms Demirkan maintains that, as a visit to a family member in Germany will necessarily entail the possibility of obtaining services there, she must be regarded as a potential recipient of services. Moreover, Turkish nationals intending to visit a family member in Germany were not required under German law to obtain a visa at the date of entry into force of the Additional Protocol as regards that Member State, that is, in 1973. Therefore, the effect of the 'standstill' clause is that the general visa requirement subsequently introduced by Germany for Turkish nationals in 1980⁴ cannot be applied to her.

The Oberverwaltungsgericht Berlin-Brandenburg (Higher Administrative Court, Berlin-Brandenburg), before which the case was brought on appeal, asks the Court of Justice to clarify the scope of the 'standstill' clause.

¹ Signed in Ankara on 12 September 1963 and 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 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).

³ The Court has already recognised that the 'standstill' clause precluded the introduction, from the date of entry into force of the Additional Protocol, of a requirement for Turkish nationals 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 (Case [C-228/06 Soysal and Savatli](#)).

⁴ It should be noted that, since 2001, Turkish nationals have been required to obtain a visa also under EU law; see Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of a visa when crossing the external borders and those whose nationals are exempt from that requirement (OJ 2001 L 81, p. 1).

By its judgment today, the Court finds that the notion of ‘freedom to provide services’ referred to in **the ‘standstill’ clause of the Additional Protocol does not encompass passive freedom of provision of services, namely the freedom for Turkish nationals who are the recipients of services to visit a Member State in order to obtain services.**

The Court points out that the freedom to provide services conferred by the EU Treaties on Member State nationals, and thus on EU citizens, encompasses not only active freedom to provide services but also – as the Court accepted in its judgment in *Luisi and Carbone* in 1984⁵ – as the necessary corollary, passive freedom of provision of services. Accordingly, EU citizens who visit another Member State where they intend or are likely to receive services, such as tourists or patients, enjoy the protection of passive freedom of provision of services. That protection 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.

On account of fundamental differences of both purpose and context between the EU Treaties on the one hand and the Association Agreement and its Additional Protocol on the other, the interpretation of the notion of freedom to provide services advocated by the Court in 1984 for the EU Treaties as encompassing passive freedom of provision of services cannot be extended to the ‘standstill’ clause of the Additional Protocol.

Unlike the EU Treaties, the EEC-Turkey Association has a purely economic purpose, the Association Agreement and its Additional Protocol being intended essentially to promote the economic development of Turkey. 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 EU citizens under the EU Treaties is not the object of the Association Agreement. The Court also points out that the Association Council, which, in accordance with the Additional Protocol, is required to determine the timetable and rules for the progressive abolition of restrictions on freedom of establishment, has not, to date, adopted any measure which would suggest that substantive progress has been achieved towards the realisation of such freedom. Moreover, there is nothing to indicate that the contracting parties to the Association Agreement and the Additional Protocol envisaged, when signing those documents – that is, 21 and 14 years before the judgment in *Luisi and Carbone*, respectively – freedom of provision of services as including passive freedom of provision of services

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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⁵ Joined Cases [C-286/82](#) and [C-26/83](#).