

Press and Information Division

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Opinion of Advocate General Mischo in Joined Cases C-317/01 and C-369/01

*Eran Abatay and Others v Bundesanstalt für Arbeit*

**ACCORDING TO THE ADVOCATE GENERAL, GERMANY IS ENTITLED TO INTRODUCE LEGISLATION WORSENING THE WORKING CONDITIONS OF TURKISH DRIVERS ENGAGED IN THE TRANSPORT OF GOODS BETWEEN TURKEY AND GERMANY IF THE EMPLOYER IS ESTABLISHED IN TURKEY AND THE VEHICLE IS REGISTERED IN GERMANY**

*The Advocate General states that the requirement of a German work permit from 1996 onwards does not infringe the standstill clauses in Community law prohibiting EU States and Turkey from creating new restrictions in the matter of Turkish workers' work permits*

Until 1 September 1993, according to German law, non-German drivers engaged in the international transport of goods for undertakings established in Germany did not need a work permit. Subsequently, that dispensation was granted only to drivers working for employers established abroad. Since 10 October 1996, dispensation from the need for a work permit continues only if, in addition, the vehicle is registered in the State of establishment of the foreign employer.

Mr Abatay and three other Turkish nationals live in Turkey and work as drivers in the international transport of goods. They are employees of a Turkish company established in Turkey which is a subsidiary of a German company established in Germany. The two companies import fruit and vegetables from Turkey to Germany in lorries registered in Germany in the name of the German company and driven, *inter alia*, by Mr Abatay and others. After the entry into force of the legislation of 1 September 1993, the Bundesanstalt für Arbeit (Federal Labour Office) again issued, on a temporary basis, work permits valid until 30 September 1996, but, after that date, it refused to issue them with new ones (*Case C-317/01*)

Mr Sahin, a former Turkish national who became a German national in 1991, has a transport undertaking in Germany. A subsidiary of that undertaking has its registered office in Turkey. The undertaking in Germany is the owner of several lorries which it uses for international transport between Germany, Turkey, Iran and Iraq; all those lorries are registered in Germany. From before 1 September 1993, Mr Sahin engaged Turkish drivers in Turkey to drive the lorries registered in Germany (*Case C-369/01*)

Mr Sahin, Mr Abatay, and his colleagues maintain before the German courts that Turkish international goods drivers remain exempted from the need for a German work permit in respect of trips between Turkey and Germany. They base that claim -- in the context of the EEC-Turkey Association Agreement of 1963 -- on *Article 13 of Decision No 1/80* of the Association Council and *Article 41(1) of the Additional Protocol of 1972*, which contain **standstill clauses** prohibiting the creation of new restrictions concerning the access of Turkish workers to employment and the freedom to provide services.

The Bundessozialgericht (Federal Social Court) referred questions on the interpretation of those clauses to the Court of Justice of the European Communities.

**Advocate General Mischo has presented his Opinion in those cases today.**

**The Opinion of the Advocate General is not binding upon the Court. His task is to propose to the Court, on a fully independent basis, a legal solution capable of helping it rule in the cases brought before it.**

**In the view of Advocate General Mischo, neither of the two clauses cited may be relied upon.**

*Concerning Article 13 of Decision No 1/80 of the Association Council*

Decision No 1/80 of the EEC-Turkey Association Council provides that 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.

The Advocate General draws attention to the fact that Decision No 1/80 does not give Turkish workers a right to freedom of movement. The conditions for access to the territory of a Member State of the European Union are always established exclusively by that State. Workers benefit from the rights conferred by Decision 1/80 only once they have been admitted to the labour market of a Member State. According to the Advocate General, even after 1 December 1980, Member States may still introduce new restrictions on the entry into their territory of Turkish workers wishing to have access to salaried employment there. However, under Article 13, such restrictions cannot affect workers who have already lawfully acquired a job and a right of residence in the Member State in question at some time prior to the introduction of those new restrictions.

The Advocate General takes the view that the expression "worker legally resident and employed" (Art. 13 of Decision No 1/80) is synonymous with the expression "worker duly registered as belonging to the labour force of a Member State" (Art. 6 of Decision No 1/80).

According to the Advocate General, Mr Abatay and the others are employees in Turkey who, in carrying out international transport of goods, make only brief stays in the Member State of the Union, Germany. **Therefore, they belong not to the German, but to the Turkish, registered labour force.**

*Concerning Article 41(1) of the Additional Protocol to the EEC-Turkey Association Agreement*

The Additional Protocol provides that the contracting parties are to refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services. They are to derive inspiration from the provisions of the EC Treaty in eliminating restrictions on the freedom to provide services.

However, the EC Treaty provides that the free movement of services, in transport matters, is governed by the provisions concerning transport, and the Association Council has not extended the provisions of the EC Treaty on transport to Turkey.

Since the new German legislation, which prohibits Turkish drivers from driving lorries that are registered not in Turkey but in Germany, falls within the field of transport, the standstill clause does not preclude its introduction.

**Note:** *The judges of the Court of Justice now begin deliberating in this case. The judgment will be pronounced at a later date.*

*Unofficial document for media use only; not binding on the Court of Justice.*

*Available in: Dutch, English, French and German.*

*For the full text of the Opinion, please consult our Internet page*

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*at approximately 3pm today.*

*For further information please contact Christopher Fretwell:*

*Tel: (00 352) 4303 3355; Fax: (00 352) 4303 2731*

*Pictures of the hearing are available on "Europe by Satellite"*

*European Commission, Press and Information Service, L-2920 Luxembourg*

*Tel: (00 352) 4301 35177; Fax: (00 352) 4301 35249,*

*or B-1049 Brussels, Tel: (00 32) 2 2964106, Fax: (00 32) 2 2965956, or (00 32) 2 301280*