Press and Information Division

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Judgment of the Court in Joined Cases C-317/01 and C-369/01

*Eran Abatay and Others* v *Bundesanstalt für Arbeit*

# THE WORK PERMIT REQUIREMENT IMPOSED ON TURKISH DRIVERS OF LORRIES REGISTERED IN GERMANY WHO DRIVE BETWEEN TURKEY AND GERMANY FOR AN UNDERTAKING ESTABLISHED IN TURKEY CONSTITUTES AN OBSTACLE TO THE FREEDOM TO PROVIDE SERVICES

*It is for the national courts to determine whether that requirement places the applicants in a worse position in relation to the rules applicable in Germany before the entry into force of the Additional Protocol to the EEC-Turkey Association Agreement*

To promote their economic relations, the European Community and Turkey signed an Association Agreement in 1963, which was supplemented in 1972 by an Additional Protocol. Decision No 1/80 of the Association Council was subsequently adopted under that agreement.

The Additional Protocol and Decision No 1/80 contain "*standstill clauses*", in other words, *provisions prohibiting new restrictions* in certain fields. The Additional Protocol contains a standstill clause concerning *freedom of establishment* and *freedom to provide services* between the EEC and Turkey. Decision No 1/80, which concerns *freedom of movement for workers*, contains a standstill clause concerning the conditions of access to employment for workers legally resident and employed in their respective territories.

Before 1 September 1993, German law provided that non-German travelling personnel working in international haulage for undertakings established in Germany did not need a work permit. After that date only travelling personnel working for employers established abroad were exempt from the work permit requirement. Since 10 October 1996, the work permit exemption has been applicable only if the vehicle is also registered in the State in which the foreign employer is established.

Mr Abatay and the other plaintiffs are Turkish nationals who live in Turkey and work as drivers in international haulage. They are employed by a Turkish company, established in Turkey,

which is a subsidiary of a German company, established in Germany. Both companies import fruit and vegetables into Germany from Turkey using lorries registered in Germany in the name of the German company and driven *inter alia* by Mr Abatay and Others. The Federal Employment Office had issued a work permit to each of those drivers until 30 September 1996. After that date it refused to issue them further permits. (Case C-317/01)

Mr Sahin, a former Turkish national who has been a German national since 1991, has a transport business in German, a branch of which is established in Turkey. The German undertaking owns several lorries, registered in Germany, which it uses for international haulage between Germany, Turkey, Iran and Iraq. Even before September 1993, Mr Sahin used Turkish drivers living in Turkey to drive the lorries registered in Germany. According to the Federal Employment Office those drivers did not need a work permit. However, from the middle of 1995, it took the view that they were no longer exempt from the work permit requirement. (Case C-369/01)

Mr Abatay and his colleagues and Mr Sahin argued before the German courts that lorry drivers working in international haulage are still exempt from the requirement for a German work permit for the journey between Turkey and Germany on the basis of the standstill clauses in the Additional Protocol and Decision No 1/80. The Bundessozialgericht referred questions on the interpretation of those clauses to the Court of Justice of the European Communities.

**According to the Court, the standstill clauses in the Additional Protocol of 1972 and Decision No 1/80 may be relied on by Turkish nationals in the Member State concerned to prevent the application of inconsistent national law**.

The Court finds that those provisions lay down clear, precise and unconditional obligations.

The Court has considered the scope of the two clauses and concluded that they are of the same kind and pursue the same objective. They are intended to create conditions conducive to the progressive establishment of freedom of movement for workers, of the right of establishment and of freedom to provide services by prohibiting national authorities from creating new obstacles to those fundamental freedoms.

The Court has then applied to the standstill clause in Decision No 1/80 the same interpretation it gave to the equivalent clause concerning freedom of establishment and freedom to provide services. As a result, it holds that the first of those clauses prevents Member States from applying to *Turkish nationals legally* present on their territory less favourable treatment as regards *access to first employment* than that applicable at the time of the entry into force of Decision No 1/80 (1.12.1980).

**However, *the standstill clause in Decision No 1/80* is not applicable to the present cases because that decision is aimed at the integration of Turkish workers in the Member State through lawful employment over a certain period**.

*The Court has held on that point that, although the Turkish drivers at issue are in Germany in a lawful position as regards employment they are not present in that State for long enough periods to allow them to be integrated in Germany as a host Member State.*

***None the less, the standstill clause of the Additional Protocol*** **may be relied on by an undertaking established in Turkey which is lawfully providing services in a Member State**

**and by the Turkish drivers employed by such an undertaking**.

On the other hand, the Court has held that, in order for a provider of services to rely on the freedom to provide services *vis-à-vis* the State where he is established, those services must be supplied to persons established in another Member State. Accordingly, a company like Mr Sahin's German undertaking cannot rely on the protection of that standstill clause because those using the services are also established in Germany.

**Finally, the Court finds that *the German legislation of 1996* entails restrictions on the freedom to provide services, but that it is for the national court to determine whether those restrictions are new**.

The Court has already held that national legislation which makes the provision of certain services on national territory by an undertaking established in another Member State subject to the issue of an administrative authorisation such as a work permit constitutes a restriction on the fundamental principle enshrined in the Treaty. In accordance with the Association Agreement, that case-law is applicable by analogy.

As regards the question whether the restrictions entailed by the German legislation are new, it is for the German court, which has jurisdiction to interpret national law, to determine whether the national legislation at issue results in a worse position for the applicants compared with the rules applicable in Germany before the entry into force of the Additional Protocol (1.1.1973).



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