

## **BVerwG 1 C 29.02 – Urteil vom 03.August.2004**

### **New standards for expulsion of Turkish workers**

The plaintiff, a citizen of Turkey born in 1959, took up residence in Germany in 1977. He was arrested in 1990 for importing 12 kilogrammes of heroin and sentenced to 12 years imprisonment, of which he served eight years, before being released in 1998. In 1992, the respondent expelled the plaintiff. Objection and suit were unsuccessful. The plaintiff's appeal to the Higher Administrative Court (OVG) in 2001 was rejected on grounds that, although the plaintiff was entitled to particular protection against expulsion, he could be expelled in cases of grave concerns regarding public safety and order according to § 47/1 AuslG (Aliens Act), and that these applied in his case. There were also such grounds for expulsion as are required for individuals with rights of association according to Art. 14/1 of Decision 1/80 of the Association Council; nor did Art. 8 ECHR prevent expulsion.

The plaintiff appealed against the judgment and referred to recent judgments by the ECJ. The Federal Administrative Court (BVerwG) set aside the OVG's judgment and returned the matter to the OVG for re-examination of the 1992 expulsion order.

The BVerwG has adjudicated that Turkish workers in possession of residence rights according to the rights of association between the European Community and Turkey may only be expelled from Germany under limited circumstances. By reason of the ECJ judgment of 29.04.2004 – C-482/01 und C-493/01 - (DVBl 2004, 876) – , new standards for expulsion also apply for Turkish citizens who may claim rights of residence according to Decision 1/80 of the Association Council. The ECJ judgment applies to EU citizens in possession of rights to full freedom of movement, but it must also be applied to Turkish nationals in possession of rights of association.

Consequently, expulsion is permissible only after a decision in equity and good conscience by the aliens registration authority. Compulsory and automatic expulsion orders after serious crimes according to § 47 AuslG may no longer be issued against Turkish citizens in possession of rights of association. In addition, aliens registration authorities and courts must in future take into account circumstances arising after the expulsion order was granted.

When the matter has returned, the OVG must determine whether the plaintiff possesses rights of residence through his rights of association and whether the circumstances have materially changed in the last few years. If this be the case, the OVG must also grant the aliens registration authority the opportunity to exercise its discretionary power.