

**BVerwG 1 C 47.06, 09.08. 2007**

**Right of residency for Turkish citizens on basis of family ties; right not extinguished by commencement of self-employment; no infringement of prohibition of unequal treatment compared with Community citizens; abolition of appeal procedure in expulsion of offenders; fatal procedural errors**

The plaintiff is an unmarried Turkish citizen who was born in the Federal Republic of Germany in 1975. He grew up with his parents, who were employed as Turkish workers ("Gastarbeiter"). After completing vocational training, he was initially unemployed before finding work with various employers. Between December 1999 and his imprisonment in 2003, he was self-employed in the used car trade. He has been in possession of an unlimited residency permit since June 1992.

On account of several criminal convictions – most recently a term of imprisonment of four years and six months for aggravated theft – and after a hearing, on 28 September 2004 the Regierungspräsidium Karlsruhe issued an order expelling the plaintiff from the Federal Republic of Germany and threatening him with deportation to Turkey.

After the Verwaltungsgericht Karlsruhe (administrative court) upheld the appeal against the expulsion order, the Verwaltungsgerichtshof Baden-Württemberg amended the judgment and dismissed the appeal. Upon appeal on point of law by the plaintiff, the Bundesverwaltungsgericht (Federal Administrative Court) in a ruling of 9 August 2007 set aside the judgment of second instance and reinstated the decision of the court of first instance.

The Bundesverwaltungsgericht decided that the plaintiff has a right deriving from Art. 7(1) and Art. 7(2) Decision No. 1/80 of the EEC-Turkey Association Council on the development of the association – ARB 1/80 – and that he may be expelled only under observation of the procedural requirements in Art. 9 (1) of Directive 64/221/EEC.

The Senate holds that the right of residency for children of Turkish workers deriving from Art. 7(1) and from Art. 7(2) ARB 1/80 is not extinguished when the holder commences self-employed occupation.

It does not constitute a violation of the prohibition of discrimination in favour of Turkish nationals over Community citizens according to Art. 59 of the supplementary protocol to the EEC-Turkey Association Agreement that the right of residency of children of Turkish workers deriving from Art. 7(1) and from Art. 7(2) ARB 1/80 is extinguished only in the cases specified in Art. 14(1) ARB 1/80, and if the holder leaves the host Member state for a not inconsiderable period of time without legitimate reason.

The expulsion of a Turkish national in possession of right of residency according to ARB 1/80 which is ordered in violation of the procedural requirements of Art. 9(1) of Directive 64/221/EEC - here: on account of the abolition of the appeal procedure – is, even after the repeal of Directive 64/221/EEC with effect of 30 April 2006, unlawful on account of a fatal procedural error.