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Judgment of the Court in Case C-279/21 | Udlændingenævnet (Language test for foreign nationals)

Danish legislation which makes family reunification between a Turkish worker residing legally in Denmark and his or her spouse subject to the condition that that worker has successfully taken a test demonstrating a certain level of knowledge of Danish constitutes an unlawful 'new restriction'

That restriction cannot be justified by the objective of ensuring the spouse's successful integration since Danish legislation does not take account either of the spouse's own ability to integrate or of other factors demonstrating the effective integration of the worker concerned

X entered Denmark on 14 August 2015 and submitted to the Immigration Office (Denmark) on 21 October 2015 an application for a residence permit for the purposes of family reunification with her spouse, Y, a Turkish national with a permanent residence permit for Denmark, where he has resided since 27 September 1979.

In that application, it was stated that Y had completed a course in Danish covering, inter alia, engineering computation, road works marking, understanding drawings, an introduction to the sector and work techniques and that, in any event, as a Turkish worker in employment in Denmark since 1980, a period of more than 36 years, as, inter alia, a mechanical technician, service operative, shop manager and warehouse manager, he was not required to satisfy the condition that a Danish language test be successfully taken laid down in the Danish legislation at issue. It was also stated that Y's four adult children, his mother and all his brothers and sisters lived in Denmark.

By decision of 1 March 2016, the Immigration Office rejected X's application on the ground that Y had not demonstrated that he had satisfied the aforementioned condition and that there were no special reasons justifying a derogation in that regard. The Immigration Office added that that decision was not called into question by the standstill clauses, as interpreted by the Court of Justice in its case-law.

X lodged an appeal against the rejection of her application for a residence permit in Denmark for the purpose family reunification which is pending before the referring court, the Østre Landsret (High Court of Eastern Denmark, Denmark). That court asks the Court of Justice whether Article 13 of Decision No 1/80¹ must be interpreted as meaning that national legislation, introduced after the entry into force of that decision in the Member State concerned, which makes family reunification between a Turkish worker residing legally in that Member State and his or her spouse subject to the condition that that worker has successfully taken a test demonstrating a certain level of knowledge of the official language of that Member State, constitutes a 'new restriction' within the meaning of that

¹ Decision No 1/80 of the Association Council of 19 September 1980 on the development of the association between the European Economic Community and Turkey. Article 13 of Decision No 1/80 states that 'the 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'.

article, and, if so, whether that condition can be justified by the objective of achieving successful integration of that spouse.

In its judgment delivered today, the Court states, in the first place, that the Danish legislation at issue was introduced after the date on which Decision No 1/80 entered into force in Denmark and that it brings about a tightening, as far as concerns family reunification, of the conditions governing the entry into Denmark of the spouses of Turkish workers residing legally in that Member State in relation to conditions applicable before that decision entered into force. **In those circumstances, the Court states that the legislation at issue constitutes a 'new restriction' within the meaning of Article 13 of Decision No 1/80. Such legislation may however be justified, inter alia, where it is justified by an overriding reason in the public interest, is suitable to achieve the legitimate objective pursued and does not go beyond what is necessary in order to attain it.**

The Court observes that, according to the referring court, the objective pursued by the Danish legislation at issue is to ensure successful integration of the family member applying for a right of residence in Denmark for the purpose of family reunification. The Court has already held that such an objective may constitute an overriding reason in the public interest for the purposes of Decision No 1/80. That said, the Court notes, first, that the Danish legislation at issue does not take account of the own ability to integrate of the family member who is seeking family reunification, but is based exclusively on the premiss that the successful integration of that family member is not sufficiently guaranteed if the Turkish worker concerned does not satisfy the condition that a Danish language test be successfully taken. Second, the Danish legislation at issue, moreover, does not allow the competent authorities, for the purposes of assessing whether it is possible to derogate from the requirement imposed by it that a language test be successfully taken, to take account of factors which are capable of demonstrating the effective integration of the Turkish worker concerned by the application for family reunification and, therefore, of the fact, notwithstanding his or her failure to pass that test, that that worker may, if necessary, contribute to the integration of his or her family member in that Member State.

Therefore, the Court holds that **the Danish legislation at issue goes beyond what is necessary in order to attain the objective pursued.**

The Court concludes that Article 13 of Decision No 1/80 must be interpreted as meaning that national legislation, introduced after the entry into force of that decision in the Member State concerned, which makes family reunification between a Turkish worker residing legally in that Member State and his or her spouse subject to the condition that that worker has successfully taken a test demonstrating a certain level of knowledge of the official language of that Member State, constitutes a 'new restriction' within the meaning of that provision. Such a restriction cannot be justified by the objective of ensuring successful integration of that spouse, since that legislation does not allow the competent authorities to take account of either the spouse's own abilities to integrate or of factors, other than successfully taking such a test, demonstrating the effective integration of that worker in the Member State concerned and, therefore, his or her ability to help his or her spouse integrate into that Member State.

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 and the abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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