Case C-375/23 [Meislev] [1]

Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice

Date lodged:

13 June 2023

Referring court:

Højesteret (Denmark)

Date of the decision to refer:

6 June 2023

Appellant:

EN

Respondent:

Udlændingenævnet

Subject matter of the main proceedings

The dispute in the main proceedings concerns whether the refusal of a permanent residence permit which the Udlændingenævnet (Immigration Appeals Board, Denmark) notified to the appellant, EN, on 18 July 2018, is compatible with the standstill clause in Article 13 of Decision No 1/80. The parties agree that, at the time the decision refusing a permanent residence permit was issued, EN had the status of a Turkish worker residing lawfully in Denmark and that he could therefore derive independent rights from the standstill clause

Subject matter and legal basis of the request

The Højesteret (Supreme Court, Denmark) has decided, pursuant to Article 267 TFEU, to request a preliminary ruling from the Court of Justice of the European Union on the interpretation of the standstill clause in Article 13 of Decision No 1/80.

[1] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

The first question raised by this case is whether making the conditions under which a Turkish worker may obtain a permanent residence permit in a Member State more onerous constitutes a new restriction covered by the standstill clause in Article 13 of Decision No 1/80. If the answer to that question is in the affirmative, the question then arises whether the more onerous conditions relating to the length of the prior period during which a worker must have resided and worked lawfully in the Member State (that is to say more onerous temporal conditions) can be regarded as justified by an overriding reason in the general interest and proportionate – that is to say, whether those conditions are appropriate for attaining the objective pursued and do not go beyond what is necessary in order to attain it.

Questions referred for a preliminary ruling

1. Do provisions of national law laying down conditions for obtaining a permanent residence permit in a Member State fall within the scope of the standstill clause in Article 13 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Agreement establishing an Association between the European Economic Community and Turkey signed on 12 September 1963 at Ankara by the Republic of Turkey, of the one part, and the Member States of the EEC and the Community, of the other part, which was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963?

2. If they do, can making the temporal conditions for obtaining a permanent residence permit for a Member State more onerous (that is to say, making the minimum requirements laid down as regards the length of a foreign national's prior residence and employment in the Member State more onerous) be regarded as appropriate for facilitating the successful integration of third-country nationals?

Provisions of European Union law relied on

Treaty on the Functioning of the European Union, Article 45(3)(d)

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance); Articles 16 and 28

Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Agreement establishing an Association between the European Economic Community and Turkey signed on 12 September 1963 at Ankara by the Republic of Turkey, of the one part, and the

Member States of the EEC and the Community, of the other part (Decision No 1/80) (OJ); Articles 6 and 13

Council Decision 64/732/EEC of 23 December 1963 on the conclusion of the Agreement establishing an Association between the European Economic Community and Turkey (OJ 1973 C 113, p. 1)

Judgments of the Court of Justice of the European Union:

Judgment of 22 December 2022, Case C-279/21, *X* (EU:C:2022:1019, paragraphs 30 to 46)

Judgment of 10 July 2019, Case C-89/18, *A* (EU:C:2019:580, paragraphs 31 to 34, 39, 40, and 45 to 47)

Judgment of 9 December 2010, Joined Cases C-300/09 and C-301/09, *Toprak and Oguz* (EU:C:2010:756, paragraph 44)

Judgment of 6 June 1995, Case C-434/93, *Bozkurt* (EU:C:1995:168, paragraphs 19 to 20 and 40)

Judgment of 8 December 2011, Case C-371/08, *Ziebell* (EU:C:2011:809, paragraphs 66, and 68 to 69)

Judgment of 7 October 2010, Case C-162/09, *Lassal* (EU:C:2010:592, paragraphs 32 and 37)

Judgment of 10 July 2014, Case C-138/13, *Dogan* (EU:C:2014:2066, paragraphs 38 to 39)

Judgment of 12 April 2016, Case C-561/14, *Genc* (EU:C:2016:247, paragraphs 51 to 52, 56, and 66 to 67)

Judgment of 29 March 2017, Case C-652/15, *Tekdemir* (EU:C:2017:239, paragraph 53)

Judgment of 7 August 2018, Case C-123/17, *Yön* (EU:C:2018:632, paragraph 72)

Judgment of 2 September 2021, Case C-379/20, *B* (EU:C:2021:660, paragraphs 19 to 35)

Judgment of 16 January 2014, Case C-378/12, *Onuekwere* (ECLI:EU:C:2014:13, paragraphs 24 and 25)

Case-law of the European Court of Human Rights

Judgment of 23 June 2008, Case 1639/03, *Maslov v. Austria*

Provisions of national law relied on

The conditions for obtaining a permanent residence permit that were in force on 1 December 1980 when the standstill clause in Article 13 of Decision No 1/80 entered into force in Denmark were laid down in bekendtgørelse nr. 196 af 23. maj 1980 (Decree No 196 of 23 May 1980), adopted pursuant to the udlændingelov (Danish Law on foreign nationals) in force at that time (see lovbekendtgørelse nr. 344 af 22. juni 1973 (Consolidated Law No 344 of 22 June 1973)).

The contested decision refusing a permanent residence permit was made pursuant to Paragraph 11(3) to (5) of the Law on foreign nationals, as it was worded, at the time of the decision, in lovbekendtgørelse nr. 412 af 9. maj 2016 (Consolidated Law No 412 of 9 May 2016), as amended.

Paragraph 11(3) to (5) and (16) of the Law on foreign nationals of **2016** lays down the conditions under which a permanent residence permit can be granted, including the condition that a foreign national must have lived lawfully in the country for at least six years (subparagraph 3) or at least four years (subparagraph 5). In addition to lawful residence for at least six years, all foreign nationals must fulfil two of the four additional integration-related conditions in order to obtain a permanent residence permit. If the basic conditions and all four additional integration-relevant conditions are met, a foreign national can obtain a permanent residence permit after just four years.

It is apparent from the *travaux préparatoires* for Paragraph 11, which was introduced by lov nr. 572 af 31. maj 2010 (Law No 572 of 31 May **2010**), and by which the rules on the granting of permanent residence permits were amended, that the amendment aimed at ensuring that there is a clear connection between the rules of the Law on foreign nationals on permanent residence permits and the integration of foreign nationals.

As regards the provisions on permanent residence permits, it is apparent from the legislative proposal for the subsequent amendment to Paragraph 11 of the Law on foreign nationals, which was implemented by lov nr. 572 af 18. juni 2012 (Law No 572 of 18 June **2012**), inter alia, that the main purpose of the rules on granting permanent residence permits must be to stimulate and ensure better integration in Denmark. The proposed [and subsequently adopted] amendment meant that the residence requirement was changed from four years of residence to five years of residence and that the employment requirement was increased from two and a half years' full-time employment out of three years to three years' full-time employment out of five years. The intention of that amendment was to strengthen the individual foreign national's ability to organise his or her integration process more flexibly.

Lastly, it is apparent from the legislative proposal for the amendment of the Law on foreign nationals made by lov nr. 102 af 3. februar 2016 (Law No 102 of

3 February **2016)**, inter alia, that it proposed that the possibility of obtaining a permanent residence permit should be narrowed as follows: the temporal condition relating to lawful residence should be changed to six years and the employment requirement should be narrowed to a requirement for ordinary full-time employment for two and a half years within the last three years. [That proposal was adopted.] More specifically, the temporal condition was increased to six years' lawful residence, as a general rule, for all foreign nationals, who must also fulfil a number of stricter basic conditions. Those basic conditions concern the requirement of good repute and requirements relating to knowledge of Danish and employment. In addition, there is an exception to the general temporal rule on six years' lawful residence, so that foreign nationals who have demonstrated a particular ability and willingness to integrate into Danish society can obtain a permanent residence permit after at least four years' lawful residence in Denmark. A foreign national must be considered to have demonstrated a particular ability and willingness to integrate into Danish society if he or she, in addition to meeting the basic conditions, fulfils all four additional conditions relating to integration. The additional conditions concern criteria relating to integration in the form of civic participation, a higher degree of involvement in the labour market, an annual taxable income of a certain amount, and particularly good knowledge of Danish. The conditions are of equal rank and it is thus for the individual foreign national to decide which two of the four conditions her or she can demonstrate to have satisfied.

Overall, the 2016 legislative proposal (see the general comments, paragraphs 1.2. and 1.3.) was justified by the large number of refugees coming to Europe during that period, and contained a number of proposals for specific tightening of conditions in the field of asylum and immigration.

It is only the more onerous conditions, under the Law of 2016, concerning the length of the prior period during which the worker must have been lawfully resident and employed, that are relevant to the specific case and not the other conditions laid down in Paragraph 11.

Succinct presentation of the facts and procedure in the main proceedings

1 EN was born in Türkiye and is a Turkish citizen. On 24 May 2013, he was granted a residence permit in Denmark on the basis of his marriage to a Danish citizen living in Denmark. On 27 March 2017, EN submitted an application for a permanent residence permit in Denmark to the Udlændingestyrelsen (Immigration Office, Denmark). At that time, EN had the status of worker in Denmark and was covered by the Association Agreement, including Decision No 1/80.

2 On 10 November 2017, the Immigration Office refused EN a permanent residence permit in Denmark on the grounds that he did not satisfy the condition laid down in Paragraph 11 that he must have resided lawfully in Denmark continuously for at least six years. The Immigration Office also considered, inter alia, that he did

not fulfil the special conditions for obtaining a permanent residence permit after just four years of lawful residence in Denmark.

3 On 14 November 2017, EN appealed the Immigration Office's decision with the respondent, the Udlændingenævnet (Immigration Appeals Board, Denmark). In support of his appeal, EN argued, inter alia, that, as a Turkish worker lawfully resident in Denmark, he is protected against a worsening of his legal position in comparison with the rules which were in force on 1 December 1980.

4 On 18 July 2018, the Immigration Appeals Board upheld the Immigration Office's decision of 10 November 2017, stating, inter alia, that in order to obtain a permanent residence permit EN had to satisfy the conditions laid down in Paragraph 11(3)(1) (lawful residence for six years) and Paragraph 11(3)(8) (ordinary full-time employment for two and a half years out of the last three) of the Law on foreign nationals (as amended in 2016), which he did not.

5 The parties agree that the conditions relating to prior residence and employment laid down in Paragraph 11(3)(1) and (8) of the Law on foreign nationals, in the version of Consolidated Law No 412 of 9 May 2016, as subsequently amended, that was in force at the time of the decision, were more onerous than the conditions for obtaining a permanent residence permit that were in force on 1 December 1980 when the standstill clause in Article 13 of Decision No 1/80 entered into force in Denmark.

6 On 15 October 2018, EN brought an action before the Københavns Byret (Copenhagen District Court, Denmark), seeking annulment of the Immigration Appeals Board's decision, and the case was referred the Østre Landsret (High Court of Eastern Denmark) for consideration at first instance. On 2 February 2022, the High Court of Eastern Denmark gave judgment in the case, granting the application brought by the Immigration Appeals Board for the action to be dismissed. On 1 March 2022, EN appealed the High Court of Eastern Denmark's judgment to the Supreme Court, claiming that the Immigration Appeals Board's decision of 18 July 2018 should be annulled and the case be referred back for reconsideration.

7 By decision of the Immigration Office of 15 October 2020, EN's residence permit was extended until 15 October 2026. The decision states that the residence permit entitles him to work and study in Denmark and is conditional on him having a valid passport.

The essential arguments of the parties in the main proceedings

8 EN claims that making the temporal conditions for obtaining a permanent residence permit in Denmark more onerous constitutes a new restriction on the free movement of workers which falls within the scope of the standstill clause in Article 13 of Decision No 1/80. New conditions for the grant of a permanent right of residence must be regarded as falling within the scope *ratione materiae* of the

standstill clause, if only because Article 45(3)(d) TFEU and the corresponding earlier Treaty provisions that were in force when Denmark acceded to the European Communities expressly state that freedom of movement for workers includes the right to remain in a Member State, under defined conditions, after having been employed there. Turkish workers cannot obtain a legal position under the standstill clause which they did not already have at the time of the entry into force of the standstill clause or which they obtained subsequently [according to other rules]. Therefore, Turkish workers cannot invoke a right to remain in a Member State after the end of their working life by relying on the implementing acts which the European Commission adopted with effect only for EU workers and/or EU citizens. However, Turkish workers can derive a right of permanent residence in a Member State from the standstill clause, in conjunction with Article 45(3)(d) TFEU and the provisions of national law which had already been adopted with effect not only for EU workers but also for Turkish workers at the time when Decision No 1/80 entered into force in the Member State concerned.

9 EN goes on to claim that making the temporal conditions for granting a permanent residence permit more onerous is not appropriate to meet the requirement relating to an overriding reason in the public interest, invoked by the Immigration Appeals Board, of ensuring the successful integration of third-country nationals. Stricter temporal conditions for the right of permanent residence apply by their very nature to Turkish nationals who already are lawfully resident and working in the Member State concerned. Making the temporal conditions more onerous is therefore merely an expression of the fact that 'residence for an even longer period' and 'work for an even longer period' are required before a Turkish worker can obtain the privilege of a permanent residence permit. The length of a Turkish worker's prior residence and employment may serve as a measure of the degree of integration which he or she has achieved at a given point in time. However, temporal conditions for obtaining a permanent residence permit cannot serve as a means of ensuring successful integration. On the contrary, a permanent residence permit promotes social cohesion and creates a feeling of being fully part of the society of the host Member State. The objective of promoting and ensuring successful integration is therefore best served by granting a permanent residence permit as soon as possible.

10 The Immigration Appeals Board argues that narrowing the possibility of obtaining a permanent residence permit by means of the abovementioned residence and employment requirements is not covered by the notion of restriction set out in Article 13 of Decision No 1/80. That is because, first, the conditions for obtaining a permanent residence permit do not concern the conditions of access to employment applicable to Turkish workers within the meaning of Article 13 and thus do not affect their situation and, second, the right of Turkish workers to reside in the Member State under Decision No 1/80 is merely ancillary to the performance of lawful employment and cannot be extended to subsequent residence in the Member State. In the view of the Immigration Appeals Board, the rights of Turkish workers under Decision No 1/80 cannot be compared to the right to free movement of EU citizens.

11 Even if making the residence and employment requirements that were in force at the time more onerous could be considered to constitute a new restriction covered by Article 13, the requirements are in any event appropriate to serve the interest of successful integration of third-country nationals in Denmark. The residence and employment requirements are appropriate to serve both interests, since the purpose of the requirements is to ensure that an applicant seeking a permanent residence permit in Denmark must, as a general rule, show that he or she is well-integrated and acts as an active citizen in Danish society, including by having been lawfully resident and employed in Denmark for a number of years.

Succinct presentation of the reasoning in the request for a preliminary ruling

12 According to the judgment of the Court of Justice in Joined Cases *Toprak and Oguz* (paragraph 44), changes in the conditions governing the granting of residence permits are covered by Article 13 of Decision No 1/80 'in so far as those changes affect the situation of Turkish workers'.

13 In more recent case-law, the Court has instead used wording according to which the decisive factor is whether a new national measure within the meaning of Article 13 *'has the object or effect of making the exercise by a Turkish national of the freedom of movement for workers on national territory subject to conditions that are more restrictive than those which applied at the time when that decision entered into force in the territory of that Member State'* (in this respect, see, inter alia, paragraph 30 of the judgment of the Court of Justice in Case C-279/21, *X*).

14 In addition, inter alia in paragraphs 19 and 20 of its judgment in *Bozkurt* and paragraph 66 of its judgment in *Ziebell*, the Court of Justice held that the principles enshrined in Articles 39 EC to 41 EC must be extended, as far as possible, to Turkish nationals who enjoy rights under the EEC-Turkey Association.

15 However, at the same time, in paragraph 68 of its judgment in *Ziebell* the Court of Justice also held that such a transposition of the principles underlying the freedom of movement under EU law may be justified only by the objective of progressively securing freedom of movement for Turkish workers pursued by the EEC-Turkey Association, as laid down in Article 12 of the Association Agreement, which confirms that the purpose underpinning that association is solely economic in nature. It follows, in accordance with paragraph 69 of the judgment in *Ziebell*, that the wider objective of ensuring the exercise by EU citizens of the primary and individual right to move and reside freely within the territory of the Member States, which (see, inter alia, paragraphs 32 and 37 of the judgment of the Court of Justice in Case C-162/09, *Lassal*) underlies the Residence Directive, does not apply to Decision No 1/80.

16 The Court of Justice also held in paragraph 40 of its judgment in *Bozkurt* that, in the absence of any specific provision conferring on Turkish workers a right to remain in the territory of a Member State after working there, a Turkish national's

right of residence, as implicitly but necessarily guaranteed by Article 6 of Decision No 1/80 as a corollary of legal employment, ceases to exist if the person concerned becomes totally and permanently incapacitated for work.

17 However, the Court of Justice does not appear to have had the opportunity to assess whether making it more difficult to obtain a permanent residence permit constitutes a new restriction covered by the standstill clause in Article 13 of Decision No 1/80.

18 In the light of the foregoing, the Supreme Court asks the Court of Justice to determine whether provisions of national law, such as those at issue in the main proceedings, which lay down new and more onerous conditions for obtaining a permanent residence permit in a Member State, constitute a new restriction falling within the scope of the standstill clause in Article 13 of Decision No 1/80.

19 If that question is answered in the affirmative, it becomes relevant to determine whether the restriction 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 (see, inter alia, judgment of the Court of Justice in Case C-279/21, *X*, paragraph 35).

20 As regards the issue of how the proportionality of a national rule constituting a new restriction is to be assessed in the context of the standstill clause in Article 13 of Decision No 1/80, there is extensive case-law of the Court of Justice (see, inter alia, the judgments in *Dogan*, paragraphs 38 to 39, in *Genc*, paragraphs 51 to 52 and 66 to 67, in *Tekdemir*, paragraph 53, in *Yön*, paragraph 72, in Case C-89/18, *A*, paragraphs 31 and 34 and 45 to 47, in Case C-379/20, *B*, paragraphs 19 to 35, and, most recently, in Case C-279/21, *X*, paragraphs 30 to 39).

21 The Court of Justice has thus held that successful integration may constitute an overriding reason in the public interest in relation to Decision No 1/80 (see the judgment in *Genc*, paragraph 56).

22 However, the Court of Justice has not had the opportunity to assess whether more onerous temporal conditions for obtaining a permanent residence permit, that is to say, conditions relating to the length of a Turkish worker's prior residence and employment in the Member State concerned, can be regarded as suitable to achieve the legitimate objective pursued.

23 On the one hand, it follows from paragraph 32 of the judgment in *Lassal*, in conjunction with paragraph 37 thereof, that the right of permanent residence is at one and the same time a privilege which may be made conditional on, and thus used as a reward for, effective integration and a means of ensuring successful integration. Similarly, the Court of Justice has recognised both aspects of the right of permanent residence in paragraphs 24 and 25 of its judgment in *Onuekwere*. It could thus be concluded that since the granting of a right of permanent residence itself is classified as a suitable means to ensure the successful integration of a worker, a temporal restriction on the possibility of obtaining a permanent

residence must be considered to run counter to the objective of ensuring successful integration.

24 On the other hand, a requirement to have been resident in a host State for a certain length of time is generally recognised as a factor that affects a person's degree of integration in the country of residence and thus the degree of protection the person concerned should have against losing his or her right of residence and against being expelled (see, inter alia, Articles 16 and 28 of the Residence Directive, Article 6 of Decision No 1/80, and the European Court of Human Rights' case-law on protection against expulsion under Article 8 of the European Convention on Human Rights in, inter alia, the *Maslov v. Austria* judgment).

25 The Supreme Court therefore asks the Court of Justice to determine whether making more onerous the temporal conditions for obtaining a permanent residence permit, such as the one at issue in the case, can be considered as suitable to promote the successful integration of third-country nationals.

26 The above case-law provides sufficient interpretative guidance for the Supreme Court itself to make a concrete assessment of whether the temporal conditions for obtaining a permanent residence permit in Denmark, that is to say, the residence and employment requirements, *go beyond what is necessary to attain the objective* (see, recently, the judgment of the Court of Justice in Case C-279/21, *X*, paragraphs 39 to 46).