ECLI:EU:C:2018:632

Provisional text

JUDGMENT OF THE COURT (First Chamber)

7 August 2018 (*)

(Reference for a preliminary ruling — EEC-Turkey Association — Decision No 2/76 — Article 7 — Standstill clause — Right of residence of family members of a Turkish worker — Visa requirement for admission to the territory of a Member State)

In Case C-123/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 26 January 2017, received at the Court on 10 March 2017, in the proceedings

Nefiye Yön

v

Landeshauptstadt Stuttgart

interveners:

Vertreter des Bundesinteresses beim Bundesverwaltungsgericht,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, C.G. Fernlund, J.-C. Bonichot, A. Arabadjiev and S. Rodin, Judges,

Advocate General: E. Sharpston,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 January 2018,

after considering the observations submitted on behalf of:

– Ms Yön, by H. Baiker, Rechtsanwalt,

– the Landeshauptstadt Stuttgart, by C. Schlegel-Herfelder, acting as Agent,

– the German Government, by R. Kanitz, T. Henze and J. Möller, acting as Agents,

– the European Commission, by T. Maxian Rusche and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 April 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7 of Decision No 2/76 of 20 December 1976 adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed in Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1, 'the Association Agreement'), and of Article 13 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association.

2 The request has been made in proceedings between Nefiye Yön and the Landeshauptstadt Stuttgart (City of Stuttgart, Land capital, Germany) ('the City of Stuttgart') concerning the rejection by the latter of her application for a residence permit in Germany for the purposes of family reunification.

Legal context

European Union law

Association Agreement

3 It is apparent from Article 2(1) of the Association Agreement that that agreement is intended to promote the continuous and balanced strengthening of trade and economic relations between the parties, while taking full account of the need to ensure an accelerated development of the economy of the Republic of Turkey and to improve the level of employment and the living conditions of the Turkish people.

4 To that end, the Association Agreement provides for a preparatory stage enabling the Republic of Turkey to strengthen its economy with aid from the Community (Article 3 of the agreement), a transitional stage, during which the Contracting Parties are to progressively establish a customs union and align economic policies more closely (Article 4 of the agreement) and a final stage which is to be based on the customs union and is to entail closer coordination of the economic policies of the Contracting Parties (Article 5 of the agreement).

5 Article 6 of the Association Agreement reads as follows:

‘To ensure the implementation and progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred on it by [the Association] Agreement.’

6 Article 8 of the Association Agreement, which is in Title II, headed ‘Implementation of the transitional stage’, provides as follows:

‘In order to attain the objectives set out in Article 4, the Council of Association shall, before the beginning of the transitional stage and in accordance with the procedure laid down in Article 1 of the [additional] Protocol, determine the conditions, rules and timetables for the implementation of the provisions relating to the fields covered by the [EC Treaty] which must be considered; this shall apply in particular to such of those fields as are mentioned under this Title and to any protective clause which may prove appropriate.’

7 Article 12 of the Association Agreement, which appears in Chapter 3, entitled ‘Other economic provisions’, of Title II, provides:

‘The Contracting Parties agree to be guided by Articles [39, 40 and 41 TFEU] for the purpose of progressively securing freedom of movement for workers between them.’

The Additional Protocol

8 The Additional Protocol, signed on 23 November 1970 in Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1977 L 361, p. 60) (‘the Additional Protocol’) which, according to Article 62 thereof, forms an integral part of the Association Agreement, lays down, in Article 1, the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of that agreement.

9 The additional protocol includes Title II, headed ‘Movement of persons and services’, Chapter I of which concerns ‘workers’ and Chapter II of which is headed ‘rights of establishment, services and transport.’

10 Article 36 of the Additional Protocol, which forms part of Chapter I thereof, provides:

‘Freedom of movement for workers between Member States of the Community and Turkey shall be secured by progressive stages in accordance with the principles set out in Article 12 of the Agreement of Association between the end of the twelfth and the twenty-second year after the entry into force of that Agreement.

The Association Council is to decide on the rules necessary to that end.’

11 Article 41(1) of the Additional Protocol, which is in Chapter II of Title II, is worded as follows:

‘The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services.’

Decision No 2/76

12 Article 1 of Decision No 2/76 states:

‘1. This Decision establishes for a first stage the detailed rules for the implementation of Article 36 of the Additional Protocol.

2. This first stage shall last four years, as from 1 December 1976.’

13 Article 7 of the decision provides:

‘The Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers legally resident and employed in their territory.’

14 Article 9 of Decision No 2/76 provides that ‘the provisions of this Decision shall be applied subject to limitations justified on grounds of public policy, public security or public health.’

15 Article 11 of that decision is worded as follows:

‘One year before the end of the first stage and in the light of the results achieved during it, the Association Council shall commence discussions to determine the content of the subsequent stage and to ensure that the Decision on that stage is enforced as from the date of expiry of the first stage. The provisions of this Decision shall continue to apply until the beginning of the subsequent stage.’

16 Pursuant to Article 13 of Decision 2/76, that decision entered into force on 20 December 1976.

Decision No 1/80

17 According to the third recital thereof, Decision No 1/80 is designed to improve, in the social field, the treatment accorded to workers and members of their families in relation to the arrangements introduced by Decision No 2/76.

18 Section 1, entitled ‘Questions relating to employment and the free movement of workers’, of Chapter II, entitled ‘Social Provisions’, of Decision No 1/80 contains Article 13, which provides:

‘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.’

19 Article 14 of that decision, which is also part of Section 1, provides:

‘1. The provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health.

2. They shall not prejudice the rights and obligations arising from national legislation or bilateral agreements between Turkey and the Member States of the Community where such legislation or agreements provide for more favourable treatment of their nationals.’

20 In accordance with Article 16 of Decision No 1/80, the provisions of Section 1 of Chapter II thereof are applicable from 1 December 1980.

German law

21 Under the heading ‘Purpose of the present Law: scope’, the first sentence of Paragraph 1(1) of the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, employment and integration of foreign nationals in federal territory) of 30 July 2004 (BGBl. 2004 I, p. 1950) (‘the Law on residence’), in the version in force at the material time, provided:

‘The purpose of the present Law is to control and restrict the entry of foreigners in the Federal Republic of Germany’.

22 Paragraph 4, entitled ‘Requirement for a residence permit’, of the AufenthG provides, in subparagraph 1 thereof:

‘In the absence of any provisions to the contrary in EU law or a statutory instrument and except where a right of residence exists by virtue of the Association Agreement, third-country nationals must have a residence permit in order to enter into and reside in the Federal Republic [of Germany]. Residence permits are granted in the form of:

1. a visa within the meaning of Paragraph 6(1), point 1, and (3);

2. a fixed-term residence permit (Paragraph 7),

...’

23 Paragraph 5, entitled ‘General conditions of issue’, of the AufenthG provides, in subparagraph 2 thereof, that:

‘The grant of a fixed-term residence permit is also subject to the conditions [...] that the foreign national

(1) entered with the required visa and

(2) has already provided, in his visa application, the relevant information for the grant of a [fixed-term residence permit].

Those requirements may be waived where the substantive requirements for the grant of a residence permit are satisfied or where, having regard to the particular circumstances of the case, it would be unreasonable to restart the procedure for the grant of a visa.’

24 Paragraph 6, headed ‘Visa’, of the AufenthG reads as follows:

‘1. Pursuant to [Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ 2009 L 243, p. 1)], the following visas may be issued to a foreign national:

(1) a visa for transit through or intended stays in the territory of the Schengen States of a duration of no more than three months within a six-month period from the date of first entry (Schengen visa).

...

3. For long-term stays, a visa for the federal territory (national visa) issued before entry into that territory, is necessary.'

25 Paragraph 30, entitled 'Reunification of spouses', of the AufenthG provides, in subparagraph 1 thereof, that:

'The spouse of a foreign national shall be granted a fixed-term residence permit if:

...

(2) the spouse is able to communicate at least to a basic level in German

...

A fixed-term residence permit may be granted notwithstanding point 2 of the first sentence where:

...

(2) the spouse is not able to demonstrate basic knowledge of the German language due to a physical, mental or psychological illness or disability,

...

(6) it is not possible or reasonable to require the spouse, due to the particular circumstances of the case, to undertake efforts to acquire basic knowledge of the German language before entering the territory.

...'

26 It is apparent from the order for reference that the requirement to obtain a visa for the purposes of family reunification was introduced by Article 1 of the Elfte Verordnung zur Änderung der Verordnung zur Durchführung des Ausländergesetzes (Eleventh Regulation amending the Regulation implementing the Law on residence, employment and integration of foreign nationals in federal territory) of 1 July 1980 (BGBl. 1980 I, p. 782), which entered into force on 5 October 1980.

The dispute in the main proceedings and the questions referred for a preliminary ruling

27 Ms Yön, the applicant in the main proceedings, is a Turkish national whose spouse, also a Turkish national, has lived in Germany since 1995. He has held a permanent residence permit in that Member State since at least 2005 and been employed in a bakery since April 2009. Mr and Mrs Yön got married during August 2004. The couple have three adult children living in Austria, Germany and Turkey.

28 In 2007 and 2011, Ms Yön lodged three successive applications for a visa with the German embassy in Ankara (Turkey) in order to join her husband in Germany. Those applications were rejected on the basis that the applicant had insufficient knowledge of the German language.

29 In March 2013, Ms Yön visited the Netherlands under a Schengen visa granted by the Dutch Embassy in Ankara in order to visit her sister. In April 2013, she entered Germany from the Netherlands in order to join her husband.

30 In May 2013, Ms Yön asked the German authorities to grant her a fixed-term residence permit for the purposes of family reunification, stating that she was dependent on the assistance of her husband due to the state of her health and her illiteracy.

31 By decision of March 2014, the City of Stuttgart dismissed that application on the ground, first, that Ms Yön had not shown that she had knowledge of the languages required, in accordance with Paragraph 30(1), first sentence, point 2, of the AufenthG and, secondly, that she had entered the Federal territory without the required national visa.

32 Ms Yön brought an action against that decision before the Verwaltungsgericht (Administrative Court, Germany), which, by judgment of 21 July 2014, upheld the action by recognising the right of the applicant in the main proceedings to the grant of the residence permit sought, since both the requirement of linguistic knowledge and the requirement to obtain a visa for the purposes of family reunification constituted new restrictions contrary to the standstill clauses set out in the Association Agreement. As regards, in particular, the requirement to obtain a visa, the court held that such a requirement was contrary to the standstill clause set out in Article 7 of Decision No 2/76.

33 The City of Stuttgart brought an appeal on a point of law against that judgment before the Bundesverwaltungsgericht (Federal Administrative Court, Germany).

34 The referring court has doubts as to the compatibility of the requirement for a third-country national to obtain a visa, imposed by the national law of a Member State, in order to join her spouse of Turkish nationality who works in the territory of that State, in the light of the 'standstill' clause set out in Article 7 of Decision No 2/76.

35 However, that court has not expressed any doubts as to the compatibility of the language requirement with EU law. It notes in that respect that a hardship clause was introduced in Paragraph 30(1), third sentence, point 6, of the AufenthG, by the Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung (Law on the reform of the right of residence and cessation of residence), of 27 July 2015 (BGBl. 2015 I, p. 1386), in order to implement the judgment of 10 July 2014, *Dogan* (C-138/13, EU:C:2014:2066). Since that hardship clause entered into force during the action in the main proceedings, and since therefore the Verwaltungsgericht (Administrative Court) did not assess whether it was possible in the present case to derogate from the requirement for evidence of basic linguistic knowledge in accordance with that clause, the referring court also takes the view that it would be appropriate, where relevant, to carry out that assessment after the Court's ruling on the compatibility of the visa requirement with EU law.

36 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Has the standstill clause laid down in Article 7 of [Decision No 2/76] been completely superseded by the standstill clause laid down in Article 13 of [Decision No 1/80], or is the lawfulness of new restrictions on the free movement of workers, which were introduced between the entry into force of Decision No 2/76 and the time when Article 13 of Decision No 1/80 became applicable, to continue to be assessed pursuant to Article 7 of Decision No 2/76?

2. If the answer to the first question is that Article 7 of Decision No 2/76 was not completely replaced: should the case-law of the Court of Justice of the European Union concerning Article 13 of Decision No 1/80 also be carried over in full to the application of Article 7 of Decision No 2/76,

with the result that [that provision] also covers a national provision, introduced with effect from 5 October 1980, under which the ability of the spouse of a Turkish worker to join that worker for the purpose of family reunification is made dependent on a national visa being issued?

3. Is the introduction of such a national provision justified on the basis of an overriding reason in the public interest, in particular the objective of effective immigration control and the management of migration flows, where the particular circumstances of the individual case are taken into account through the operation of a hardship clause?'

Consideration of the questions referred

37 By its three questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 7 of Decision No 2/76 or Article 13 of Decision No 1/80 must be interpreted as meaning that a national measure, such as that at issue in the main proceedings, introduced during the period from 20 December 1976 to 30 November 1980, which makes the grant of a residence permit for the purposes of family reunification to third-country nationals who are family members of a Turkish worker residing lawfully in the Member State concerned, subject to such nationals obtaining, before entry onto national territory, a visa for the purpose of that reunification, constitutes a 'new restriction' within the meaning of those provisions, and, if so, whether such a measure may nevertheless be justified on grounds of effective immigration control and the management of migratory flows.

38 As is apparent from the case-law of the Court, both Article 7 of Decision No 2/76 and Article 13 of Decision No 1/80 lay down an unequivocal standstill clause as regards the introduction of new restrictions on the access to employment of workers legally resident and employed in the territory of the contracting States (judgment of 20 September 1990, *Sevince*, C-192/89, EU:C:1990:322, paragraph 18).

39 The 'standstill' clauses contained in Article 7 of Decision No 2/76 and Article 13 of Decision No 1/80 thus generally prohibit the introduction of any new national measure having 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 more restrictive than those which applied at the time when those decisions entered into force with regard to the Member State concerned (see, to that effect, judgment of 29 March 2017, *Tekdemir*, C-652/15, EU:C:2017:239, paragraph 25 and the case-law cited).

The application *ratione temporis* of Article 7 of Decision No 2/76 or Article 13 of Decision No 1/80 to the national measure at issue in the main proceedings

40 As is apparent from paragraph 26 of the present judgment, the national measure at issue in the main proceedings, namely the requirement to obtain a visa for the purpose of family reunification, was inserted by national legislation dated 1 July 1980 which entered into force on 5 October 1980. It is therefore necessary to consider whether such a measure falls within the temporal scope of Decision No 2/76 or Decision No 1/80.

41 In that regard, it should be recalled at the outset that, in accordance with Article 2(1) of the Association Agreement, the purpose of that agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties.

42 To that end, that agreement establishes, between the Community and the Republic of Turkey, an association which comprises a preparatory stage to enable the Republic of Turkey to strengthen

its economy with aid from the Community, a transitional stage for the progressive establishment of a customs union and for the alignment of economic policies, and a final stage based on the customs union and entailing closer coordination of economic policies (judgment of 30 September 1987, *Demirel*, 12/86, EU:C:1987:400, paragraph 15).

43 As regards, in particular, the free movement of workers, Article 12 of the Association Agreement, in Title II thereof, relating to the implementation of the transitional stage of the association, provides that the Contracting Parties agree to be guided by Articles 39, 40 and 41 EC for the purpose of progressively securing freedom of movement for workers between them. The Additional Protocol lays down, in Article 36 thereof, the timetable for the progressive attainment of such freedom of movement and stipulates that the Association Council is to determine the detailed rules required to that end (judgment of 10 February 2000, *Nazli*, C-340/97, EU:C:2000:77, paragraphs 50 and 51).

44 On the basis of Article 12 of the Association Agreement and Article 36 of the Additional Protocol, the Association Council, set up by that Agreement to ensure the implementation and the progressive development of the Association, first adopted, on 20 December 1976, Decision No 2/76 which is presented in Article 1 thereof as constituting a first stage in securing freedom of movement for workers between the Community and Turkey, which was to last for four years from 1 December 1976 (judgment of 10 February 2000, *Nazli*, C-340/97, EU:C:2000:77, paragraph 52). As is apparent from Article 13 thereof, that decision entered into force on 20 December 1976.

45 Article 11 of Decision 2/76 provided for the adoption by the Association Council of a decision implementing, in the second stage, Article 36 of the Additional Protocol, stating, first, that such a decision had to be implemented on the date of expiry of the first stage and, secondly, that the provisions of Decision No 2/76 were to apply until the beginning of the second stage.

46 It is in those circumstances that, on 19 September 1980, the Association Council adopted Decision No 1/80 which is intended, according to the third recital, to improve, in the social field, the treatment accorded to workers and members of their families in relation to the arrangements introduced by Decision No 2/76 (judgment of 23 January 1997, *Tetik*, C-171/95, EU:C:1997:31, paragraph 19).

47 The provisions of Section 1, entitled ‘Questions relating to employment and the free movement of workers’, of Chapter II, entitled ‘Social provisions’, of Decision No 1/80, of which Article 13 forms part, thus constitute a further stage in securing freedom of movement for workers (see, to that effect, judgment of 23 January 1997, *Tetik*, C-171/95, EU:C:1997:31, paragraph 20 and the case-law cited), and are applicable, pursuant to Article 16 of that decision, since 1 December 1980.

48 It follows from the foregoing that Article 7 of Decision No 2/76 applies *ratione temporis* to the national measures introduced during the period between 20 December 1976, the date of entry into force of that decision, to 30 November 1980, the date of expiry of the first stage in securing freedom of movement for workers between the Community and Turkey. Article 13 of Decision No 1/80 applies *ratione temporis* to the national measures introduced after 1 December 1980, which is the date marking the entry into force of that decision and the start of the second stage in securing freedom of movement for workers between the Community and Turkey.

49 That assessment cannot be called into question by the arguments of the City of Stuttgart and the German Government that Article 13 of Decision No 1/80 replaced Article 7 of Decision No 2/76, in that, since the entry into force of Decision No 1/80, it is only in relation to the standstill

clause set out in Article 13 of that decision that it falls to be determined whether a ‘new restriction’ within the meaning of that provision has been inserted into national law.

50 Contrary to the submissions of the City of Stuttgart and the German Government, such an effect cannot be inferred from the finding made by the Court, in the context of the interpretation of Article 2 of Decision No 2/76 and of Article 6 of Decision No 1/80 in paragraph 14 of the judgment of 6 June 1995, *Bozkurt* (C-434/93, EU:C:1995:168), to which the national court refers, that, from 1 December 1980, the provisions of Article 6 of Decision No 1/80 replaced the corresponding, less favourable, provisions of Decision No 2/76.

51 Although it is true that Decision No 2/76 ended on the date of expiry of the first stage in securing freedom of movement for workers between the Community and Turkey, namely 30 November 1980, and that it was superseded, as of 1 December 1980, by Decision No 1/80, as is apparent from paragraphs 44 to 47 of the present judgment, such a replacement cannot, however, be interpreted as meaning that Decision No 2/76 was repealed retroactively by Decision No 1/80, as a result of which the first decision is no longer applicable.

52 First, neither Decision No 1/80 nor any other provision of EU law provides for such retroactive effect.

53 Secondly, the retroactive repeal of Decision No 2/76 would lead to a deterioration of the status of Turkish workers, since ‘new restrictions’, within the meaning of Article 7 of that decision, introduced by Member States after the date of entry into force of that provision, but before the date of entry into force of Article 13 of Decision No 1/80, would no longer be caught by a standstill clause, which would not be consistent with either the improvement of the treatment accorded to Turkish workers and members of their families referred to in Decision No 1/80, or the basic project of progressively securing freedom of movement for workers between the Community and Turkey which underpins the Association Agreement.

54 Therefore, in the absence of a retroactive repeal of Decision No 2/76, the ‘standstill’ clause laid down in Article 7 of that Decision is to apply in relation to any measure introduced by a Member State during the period from 20 December 1976 to 30 November 1980, as noted in paragraph 48 of the present judgment.

55 Consequently, the national measure at issue in the main proceedings falls within the scope *ratione temporis* of Article 7 of Decision No 2/76.

56 In those circumstances, it is in the light of the standstill clause laid down in Article 7 of Decision No 2/76 that the referring court must assess the compatibility of that measure and, consequently, only that provision must be interpreted.

The application *ratione materiae* of Article 7 of Decision No 2/76 to the national measure at issue in the main proceedings

57 Secondly, it is necessary to check whether the national measure at issue in the main proceedings falls within the material scope of Article 7 of Decision No 2/76.

58 It is apparent from the order for reference that that measure, applicable since 5 October 1980, makes the grant of a residence permit for the purposes of family reunification subject to the requirement of obtaining a visa for that reunification before entering German territory, and that that condition did not need to be met before that date.

59 It thus appears that the national measure at issue in the main proceedings tightened the conditions for the family reunification of third-country nationals residing lawfully in Germany as employed persons, including, therefore, Turkish workers, such as Ms Yön's husband, in comparison to those existing at the time of the entry into force of Decision No 2/76 in that Member State.

60 In that context, it is necessary to bear in mind that, first of all, in interpreting the standstill clause set out in Article 41(1) of the Additional Protocol, the Court has held that legislation which makes family reunification more difficult, by tightening the conditions of first admission to the territory of the Member State concerned by spouses of Turkish nationals in relation to those conditions applicable when the Additional Protocol entered into force, constitutes a 'new restriction', within the meaning of Article 41(1) of the Additional Protocol, on the exercise of the freedom of establishment by those Turkish nationals (judgment of 10 July 2014, *Dogan*, C-138/13, EU:C:2014:2066, paragraph 36).

61 The Court stated that this was the case since the decision of a Turkish national to establish himself in a Member State in order to exercise a stable economic activity there could be negatively affected where the legislation of that State makes family reunification difficult or impossible, as a result of which that national could, as the case may be, find himself obliged to choose between his activity in the Member State concerned and his family life in Turkey (see, to that effect, judgment of 10 July 2014, *Dogan*, C-138/13, EU:C:2014:2066, paragraph 35).

62 Secondly, when interpreting Article 13 of Decision No 1/80, the Court noted that the interpretation of Article 41(1) of the Additional Protocol, set out in paragraph 60 of the present judgment, should be the same as that relating to Article 13 of Decision No 1/80 (see, to that effect, judgment of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraph 42).

63 As already noted by the Court, as the standstill clause in Article 13 of Decision No 1/80 is of the same kind as that contained in Article 41(1) of the Additional Protocol, and as the objective pursued by those two clauses is identical, the interpretation of Article 41(1) must be equally valid as regards the standstill obligation which is the basis of Article 13 in relation to freedom of movement for workers (judgment of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraph 41).

64 The Court has thus held that national legislation tightening the conditions for family reunification of Turkish workers lawfully residing in the Member State in question, in relation to the conditions applicable at the time of the entry into force in that Member State of Decision No 1/80, constitutes a new restriction, within the meaning of Article 13 of that decision, on the exercise by such Turkish workers of the freedom of movement for workers in that Member State (judgment of 29 March 2017, *Tekdemir*, C-561/15, EU:C:2017:239, paragraph 31 and the case-law cited).

65 It should be noted, however, that, as the Court has already noted, the standstill clause set out in Article 7 of Decision No 2/76 is of the same kind as those set out in Article 13 of Decision No 1/80 and Article 41(1) of the Additional Protocol (see, to that effect, judgment of 11 May 2000, *Savas*, C-37/98, EU:C:2000:224, paragraphs 49 and 50 and the case-law cited).

66 Moreover, in the light of the nature, context and purpose of both the Additional Protocol and Decisions Nos 2/76 and 1/80, of which Article 41(1) and Articles 7 and 13 respectively form part, and the Association Agreement to which those provisions relate, as set out in paragraphs 41 to 47 of the present judgment, the standstill clause in Article 7 of Decision No 2/76 must be regarded as having the same purpose, with respect to the free movement of workers, as that pursued by the standstill clauses in Article 41(1) of the Additional Protocol and Article 13 of Decision No 1/80,

namely, as is apparent from the case-law of the Court, in particular the judgment of 21 October 2003, *Abatay and Others* (C-317/01 and C-369/01, EU:C:2003:572, paragraph 72), to create favourable conditions for the progressive putting in place, respectively, of the freedom of establishment and the freedom to provide services, as well as the free movement of workers, by prohibiting national authorities from introducing new obstacles to those freedoms in order not to make their gradual realisation between the Member States and the Republic of Turkey more difficult.

67 Furthermore, the difference in wording of Article 7 of Decision No 2/76 and Article 13 of Decision No 1/80, the latter referring for the first time, in addition to workers, to their family members, cannot justify a narrower scope being given to the first of those two standstill clauses, in respect of national measures concerning family reunification of Turkish workers lawfully residing in the Member State at issue.

68 In that regard, it is sufficient to note that, as the Court has already held, it is only in so far as national legislation tightening the conditions for family reunification, such as that at issue in the main proceedings, is likely to affect the exercise by Turkish nationals lawfully residing in the Member State concerned, such as Ms Yön's spouse, of paid employment in the territory of that State, that it must be held that such legislation is covered by the standstill clause in Article 13 of Decision No 1/80 (see, to that effect, judgment of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, point 44).

69 It follows that legislation such as that described in the preceding paragraph of the present judgment constitutes a new restriction on the reference Turkish worker rather than on the family member concerned.

70 It follows from the foregoing that the interpretation which the Court gave in paragraph 31 of the judgment of 29 March 2017, *Tekdemir* (C-652/15, EU:C:2017:239), in respect of Article 13 of Decision No 1/80, as set out in paragraph 64 of the present judgment, must also be applied to Article 7 of Decision No 2/76.

71 Therefore, a national measure, such as that at issue in the main proceedings, constitutes a 'new restriction', within the meaning of Article 7 of Decision No 2/76, on the exercise by a Turkish national of the free movement of workers in the Member State concerned, and therefore falls within the material scope of that provision.

On the possible admissibility of the new restriction within the meaning of Article 7 of Decision No 2/76

72 In the context of the interpretation of Article 13 of Decision No 1/80, the Court has already held that a restriction whose object or effect is to make the exercise by a Turkish national of the freedom of movement of workers in national territory subject to conditions more stringent than those applicable on the date of entry into force of Decision No 1/80 is prohibited, unless it falls within the restrictions referred to in Article 14 of that decision or 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 (judgment of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraph 51 and the case-law cited).

73 That assessment may be transposed in the context of Article 7 of Decision No 2/76.

74 Under Article 12 of the Association Agreement, the parties thereto have, in accordance with the exclusively economic aim which forms the basis of the association between the Community and the Republic of Turkey, agreed to be guided by the provisions of primary EU law on the freedom of movement for workers, so that the principles accepted in the context of those provisions must be extended, so far as possible, to Turkish nationals who enjoy rights under that Association Agreement (judgment of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraph 52 and the case-law cited).

75 It must therefore be determined, thirdly, whether the national measure at issue in the main proceedings satisfies the criteria set out in paragraph 72 of the present judgment.

76 In that regard, it should be noted, first, that the national measure at issue in the main proceedings does not fall within the restrictions referred to in Article 9 of Decision No 2/76, which corresponds to Article 14 of Decision No 1/80, to the extent that, as is apparent from the information provided by the referring court, that measure satisfies grounds of effective immigration control and the management of migratory flows.

77 On the other hand, it follows from the case-law of the Court that the objective of effective management of migratory flows may constitute an overriding reason in the public interest capable of justifying a further restriction, within the meaning of Article 7 of Decision No 2/76 (see, by analogy, judgment of 29 March 2017, *Tekdemir*, C-652/15, EU:C:2017:239, paragraph 39).

78 It must therefore be ascertained whether, as the City of Stuttgart and the German Government contend, the national measure at issue in the main proceedings is suitable to achieve the objective pursued and does not go beyond what is necessary in order to attain it.

79 As regards, first of all, the appropriateness of that measure for the purposes of the objective pursued, the requirement for nationals of third countries who are family members of a Turkish worker residing lawfully in the Member State concerned, to obtain, before the entry into German territory, a visa for the purposes of family reunification, as a prerequisite for being granted a residence permit under that grouping, does admittedly make it possible to review the lawfulness of the residence of those nationals in that Member State. Thus, in so far as the effective management of migration flows requires those flows to be monitored, such a measure is suitable to achieve that objective.

80 As to whether that measure goes beyond that which is necessary in order to attain the objective pursued, it must be observed that, in principle, the requirement for nationals of third countries to obtain a visa in order to enter and reside in Germany for the purposes of family reunification cannot in itself be regarded as disproportionate in relation to the objective pursued.

81 However, the principle of proportionality also requires that the procedure for implementing such a requirement does not exceed what is necessary for achieving the objective pursued (judgment of 29 March 2017, *Tekdemir*, C-652/15, EU:C:2017:239, paragraph 43).

82 In that regard, it should be noted that, as is apparent from paragraph 23 of the present judgment, national law provides for a hardship clause which permits derogations from the obligation to obtain a visa where the conditions for the grant thereof are fulfilled or where, because of the particular circumstances of the case, it is unreasonable to require the procedure for granting visas to be restarted from the country of origin.

83 In the present case, it is apparent from the file before the Court that Ms Yön entered Germany from the Netherlands not with the visa required for the purposes of family reunification, but with a Schengen visa issued by the Dutch Embassy in Ankara.

84 As is apparent from the order for reference, in accordance with national law, the entry of Ms Yön on German territory without the required visa cannot lead automatically to the rejection of her application for a residence permit for the purposes of family reunification. However, the decision to derogate, pursuant to the hardship clause, from the obligation to obtain the requisite visa falls within the discretion of the competent authorities, having regard to the individual circumstances of the case before them.

85 In the present case, as is apparent from the order for reference, Ms Yön relies on her condition as dependent on her husband because of her state of health and her illiteracy.

86 Assuming, on the one hand, that where, because of health problems or other difficulties, Ms Yön depends on the assistance and personal support of her husband to such an extent that the latter would need to accompany her to Turkey so that she can restart the procedure for obtaining the required visa from that third State and, on the other, that, where the margin of discretion available to the competent authorities would, in those circumstances, entitle them, however, to decide that there is no scope for derogating from the obligation to obtain the required visa, even though they already have all the information needed to rule on the right of residence in Germany of the applicant in the main proceedings, which it is for the referring court to verify, the application of the national measure at issue in the main proceedings goes beyond what is necessary to achieve that objective.

87 In those circumstances, it cannot be validly argued that only the departure of Ms Yön from German territory in order to restart, in Turkey, the procedure for obtaining the visa required, would enable the competent authority to be in a position to assess the lawfulness of her residence on the ground of family reunification, and thus to guarantee the objective of effective control of immigration and the management of migratory flows.

88 However, in those circumstances, because of Ms Yön's dependence on her husband, the latter would have to give up his paid employment in Germany, in order to go to Turkey with his wife for the purposes of the visa procedure, without any guarantee of professional reintegration on his eventual return to Turkey, even though the assessment of the conditions for family reunification could be carried out by the competent authorities in Germany, so that that objective could be achieved while avoiding the disruption referred to.

89 In the light of the foregoing considerations, the answer to the questions referred is that Article 7 of Decision No 2/76 must be interpreted as meaning that a national measure, such as that at issue in the main proceedings, taken during the period from 20 December 1976 to 30 November 1980, which makes the grant, for the purposes of family reunification, of a residence permit to third-country nationals who are family members of a Turkish worker residing lawfully in the Member State concerned, subject to such nationals obtaining, before entering national territory, a visa for the purpose of that reunification, constitutes a 'new restriction' within the meaning of that provision. Such a measure may nevertheless be justified on the grounds of the effective control of immigration and the management of migratory flows, but may be accepted only provided that the detailed rules relating to its implementation do not go beyond what is necessary to achieve the objective pursued, which it is for the national court to verify.

Costs

90 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 7 of Decision No 2/76 of 20 December 1976 adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed in Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, must be interpreted as meaning that a national measure, such as that at issue in the main proceedings, taken during the period from 20 December 1976 to 30 November 1980, which makes the grant, for the purposes of family reunification, of a residence permit to third-country nationals who are family members of a Turkish worker residing lawfully in the Member State concerned, subject to such nationals obtaining, before entering national territory, a visa for the purpose of that reunification, constitutes a 'new restriction' within the meaning of that provision.

Such a measure may nevertheless be justified on the grounds of the effective control of immigration and the management of migratory flows, but may be accepted only provided that the detailed rules relating to its implementation do not go beyond what is necessary to achieve the objective pursued, which it is for the national court to verify.

[Signatures]

* Language of the case: German