ECLI:EU:C:2022:1019

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

22 December 2022 (*)

(Reference for a preliminary ruling – EEC-Turkey Association Agreement – Article 9 – Decision No 1/80 – Article 10(1) – Article 13 – Standstill clause – Family reunification – National rule introducing new more restrictive conditions in the area of family reunification for spouses of Turkish nationals who hold a permanent residence permit in the Member State concerned – Requirement that Turkish workers successfully take a test demonstrating a certain level of knowledge of the official language of that Member State – Justification – Objective of ensuring successful integration)

In Case C-279/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (High Court of Eastern Denmark, Denmark), made by decision of 15 March 2021, received at the Court on 28 April 2021, in the proceedings

X

v

Udlændingenævnet,

THE COURT (Second Chamber),

composed of A. Prechal, President of Chamber, K. Lenaerts, President of the Court, acting as Judge of the Second Chamber, F. Biltgen (Rapporteur), N. Wahl and J. Passer, Judges,

Advocate General: G. Pitruzzella,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 18 May 2022,

after considering the observations submitted on behalf of:

– X, by E.O.R. Khawaja, advokat,

– the Danish Government, by V. Pasternak Jørgensen and M. Søndahl Wolff, acting as Agents, and by R. Holdgaard, advokat,

– the European Commission, by L. Grønfeldt and D. Martin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 September 2022,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 9 of 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 hand, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1964 C 217, p. 3685; 'the Association Agreement'), and of Article 10(1) and Article 13 of Decision No 1/80 of the Association Council set up by that agreement of 19 September 1980 on the development of the association between the European Economic Community and Turkey ('Decision No 1/80').

2 The request has been made in proceedings between X, a Turkish national, and the Udlændingenævnet (Immigration Appeals Board, Denmark) concerning the rejection of an application for a residence permit in Denmark for the purpose of family reunification.

Legal context

European Union law

The Association Agreement

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

4 Article 9 of that agreement reads as follows:

'The Contracting Parties recognise that within the scope of this Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the Treaty establishing the Community.'

Decision No 1/80

5 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 of 20 December 1976 adopted by the Association Council.

6 Chapter II of Decision No 1/80, entitled 'Social Provisions', includes Section 1, entitled 'Questions relating to employment and the free movement of workers', which contains Articles 6 to 16 of that decision.

7 Article 6 of that decision provides:

'1. Subject to Article 7 on free access to employment for members of his family, a Turkish worker duly registered as belonging to the labour force of a Member State:

– shall be entitled in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available;

– shall be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation;

– shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.

…

3. The procedures for applying paragraphs 1 and 2 shall be those established under national rules.'

8 Article 10(1) of that decision provides:

'The Member States of the Community shall, as regards remuneration and other conditions of work, grant Turkish workers duly registered as belonging to their labour forces treatment involving no discrimination on the basis of nationality between them and Community workers.'

9 Article 13 of Decision No 1/80 states:

'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.'

10 Article 14(1) of that decision is worded as follows:

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

11 In accordance with Article 16 of that decision, the provisions of Section 1 of Chapter II thereof are applicable from 1 December 1980.

Danish law

12 Paragraph 9 of the udlændingeloven (Law on Foreign Nationals), in the version applicable to the facts in the main proceedings ('the Law on Foreign Nationals'), is worded as follows:

'1. Upon application, a residence permit may be issued to:

(1) any foreign national over 24 years of age, who shares a common residence in marriage or in a stable, long-term cohabitation with a resident of Denmark over 24 years of age, who

…

(d) has held a permanent residence permit in Denmark for more than 3 years.

…

12. Save for special reasons, including considerations of family unity, a residence permit under subparagraph 1(1)(d) of that provision may be issued only if the person resident in Danish territory:

…

(5) has successfully taken the "*Prøve i Dansk 1*" test, in accordance with Paragraph 9(1) of the lov om danskuddannelse til voksne udlændinge m.fl [(Law on Danish language courses for adult foreign nationals)] or a Danish test at an equivalent or higher level and,

…'

13 The condition that the '*Prøve i Dansk 1*' test or a Danish test at an equivalent or higher level be successfully taken, laid down in Paragraph 9(12)(5) of the Law on Foreign Nationals, was introduced by lov nr 572 om ændring af udlændingeloven (Law No 572 amending the Law on Foreign Nationals) of 18 June 2012, which entered into force on 1 July 2012.

The facts of the main proceedings and the questions referred for a preliminary ruling

14 X entered Denmark on 14 August 2015 and submitted to the Udlændingestyrelsen (Immigration Office, Denmark) on 21 October 2015 an application for a residence permit in Denmark for the purpose of family reunification with her spouse, Y, a Turkish national who has resided in that Member State since 27 September 1979 and who obtained a permanent residence permit in that Member State in 1985.

15 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, Y was not required to satisfy the condition that a Danish language test be successfully taken, as laid down in Paragraph 9(12)(5) of the Law on Foreign Nationals. It was also stated that Y's four adult children, his mother and all his brothers and sisters lived in Denmark.

16 By decision of 1 March 2016, the Immigration Office rejected that application on the basis of Paragraph 9(12)(5) of the Law on Foreign Nationals, on the ground that Y had not demonstrated that he had satisfied the condition laid down in that provision 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 in the judgment of 10 July 2014, *Dogan* (C-138/13, EU:C:2014:2066).

17 X lodged an administrative appeal with the Udlændinge-Integrations-og Boligministerium (Ministry of Immigration, Integration and Housing, Denmark), now the Udlændinge-og Integrationsministeriet (Ministry of Immigration and Integration, Denmark), against the section of the decision of 1 March 2016 which included an assessment in the light of the Association Agreement and the instruments relating thereto, inter alia, the standstill clauses. In her appeal, X sought a re-examination of the compatibility of that decision with the judgments of 10 July 2014, *Dogan* (C-138/13, EU:C:2014:2066), and of 12 April 2016, *Genc* (C-561/14, EU:C:2016:247).

18 On 25 April 2016, the Styrelsen for International Rekrutting og Integration (Agency for International Recruitment and Integration, Denmark) granted X a residence permit in Denmark on the basis of activity as an employed person which, after an extension, expired on 13 September 2021.

19 On 27 August 2018 X brought an action before the Københavns byret (District Court, Copenhagen, Denmark) for annulment and referral for reconsideration of the decision of the Ministry of Immigration and Integration of 6 December 2017 in so far as that decision confirmed that the standstill clauses did not preclude the rejection of her application for family reunification under the relevant national law. The Immigration Appeals Board replaced the Ministry of Immigration and Integration as the defendant in the main proceedings following a transfer of powers.

20 By order of 22 November 2019, the Københavns byret (District Court, Copenhagen) referred the case back to the referring court, the Østre Landsret (High Court of Eastern Denmark, Denmark), which agreed to give judgment at first instance.

21 In the first place, the referring court asks whether national legislation such as that at issue in the main proceedings which, as a condition for the grant of a residence permit for the purpose of family reunification to the spouse of a Turkish national residing legally and working in the host Member State, requires that a test establishing the level of knowledge of the language of that Member State be successfully taken constitutes a ‘new restriction’ within the meaning of the standstill clause in Article 13 of Decision No 1/80 and, if so, whether such a restriction may be justified by the objective of ensuring the successful integration of that spouse.

22 The referring court notes, in that regard, that it is clear from the Court’s extensive case-law concerning Article 13 of Decision No 1/80 that the standstill clause set out in that provision precludes the introduction by a Member State of new restrictions on family reunification with a spouse or children from Türkiye, unless such a 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 (judgment of 10 July 2019, *A*, C-89/18, EU:C:2019:580).

23 It is true that the Court has already recognised that the objective of ensuring successful integration may constitute an overriding reason in the public interest (judgments of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraphs 55 and 56, and of 10 July 2019, *A*, C-89/18, EU:C:2019:580, paragraph 34). However, first, it has not yet ruled on whether a condition that a language test be successfully taken may be imposed, not on the family member seeking family reunification with the Turkish worker residing in the Member State concerned, but on that worker. Second, it ruled that a condition requiring the spouse of a Turkish worker residing in the Member State concerned, who applies to enter the territory of that Member State for the purpose of family

reunification, to demonstrate beforehand that he or she has acquired basic knowledge of the official language of that Member State went beyond what is necessary in order to attain the objective pursued, in so far as the absence of evidence of sufficient linguistic knowledge automatically leads to the dismissal of the application for family reunification, without account being taken of the specific circumstances of each case (judgment of 10 July 2014, *Dogan*, C-138/13, EU:C:2014:2066, paragraph 38).

24 The referring court states, in that regard, that, following the delivery of that judgment, the Justitsministeriet (Ministry of Justice, Denmark) took the view that there was no need to amend the conditions for family reunification laid down by the Law on Foreign Nationals, since derogations may be made where there are special reasons the existence of which is assessed in the light of the particular circumstances of each case.

25 In the second place, the referring court enquires whether the prohibition of discrimination on the basis of nationality laid down in Article 10(1) of Decision No 1/80 precludes national legislation such as that at issue in the main proceedings in so far as it is not applied to Danish nationals or to nationals of Member States of the European Union or of the European Economic Area (EEA). It notes, in that regard, that, in accordance with its wording, that provision concerns remuneration and other conditions of work, areas which do not appear to fall within the scope of the national legislation at issue in the main proceedings.

26 If the Court were to consider that Article 10(1) of Decision No 1/80 is not applicable in the present case, the referring court asks, in the third place, whether the general rule of non-discrimination laid down in Article 9 of the Association Agreement is applicable and, if so, whether that provision precludes national legislation such as that at issue in the main proceedings.

27 In the fourth and last place, the referring court asks whether that provision has direct effect and can therefore be relied on directly by individuals before national courts.

28 In those circumstances the Østre Landsret (High Court of Eastern Denmark) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the standstill clause in Article 13 of Decision No 1/80 preclude the introduction and application of a national rule which, as a condition for the reunification of spouses, requires – unless there are particularly compelling reasons in a specific case – that a language test in the host Member State’s official language be successfully taken by the spouse/cohabitant who, as a Turkish worker in the EU Member State concerned, is covered by the Association Agreement and by Decision No 1/80, in a situation such as that in the main proceedings, in which the Turkish worker has acquired the right of permanent residence in the EU Member State concerned under the rules previously in force, which did not require that a test in the language of the Member State concerned be successfully taken as a precondition for the acquisition of that right?

(2) Does the specific prohibition of discrimination laid down in Article 10(1) of Decision No 1/80 cover a national rule which, as a condition for the reunification of spouses, requires – unless there are particularly compelling reasons in a specific case – that a language test in the host Member State’s official language be successfully taken by the spouse/cohabitant who, as a Turkish worker in the EU Member State concerned, is covered by the Association Agreement and by Decision No 1/80, in a situation such as that in the main proceedings, in which the Turkish worker has acquired the right of permanent residence in the EU Member State concerned under the rules previously in force, which did not require that a test in the language of the Member State concerned be successfully taken as a precondition for the acquisition of that right?

(3) If the answer to [the second question] is in the negative, does the general prohibition of discrimination laid down in Article 9 of the Association Agreement then preclude a national rule, such as that mentioned, in a situation such as that in the main proceedings, in which the Turkish worker has acquired the right of permanent residence in the EU Member State concerned under the rules previously in force, which did not require that a language test in the official language of the host Member State be successfully taken as a precondition for the acquisition of that right, when such a requirement is not imposed on nationals of the Nordic Member State concerned (in this case, Denmark) and of the other Nordic countries, or on others who are nationals of an EU country (and is thus not imposed on EU/EEA nationals)?

(4) If the answer to [the third question] is in the affirmative, can the general prohibition of discrimination laid down in Article 9 of the Association Agreement be relied on directly before national courts?'

Consideration of the questions referred

The first question

29 By its first question, the referring court asks, in essence, whether 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 article, and, if so, whether that condition can be justified by the objective of ensuring successful integration of that spouse.

30 It must be borne in mind that the standstill clause contained in Article 13 of Decision No 1/80 prohibits generally the introduction of any new national measure that 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 (judgment of 2 September 2021, *Udlændingenævnet*, C-379/20, EU:C:2021:660, paragraph 19 and the case-law cited).

31 In particular, the Court has repeatedly held that national legislation which tightens the conditions for family reunification with Turkish workers residing legally in the Member State in question, in relation to the conditions applicable at the time when Decision No 1/80 entered into force, 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 (see, to that effect, judgments of 10 July 2019, *A*, C-89/18, EU:C:2019:580, paragraph 28 and of September 2021, *Udlændingenævnet*, C-379/20, EU:C:2021:660, paragraph 20).

32 That is the case because the decision of a Turkish national to go to a Member State in order to take up paid employment there could be negatively affected where the legislation of that Member State makes family reunification difficult or impossible, as a result of which that national could, as the case may be, find himself or herself obliged to choose between his or her activity in that Member State and his or her family life in Türkiye (judgment of 10 July 2019, *A*, C-89/18, EU:C:2019:580, paragraph 29 and the case-law cited).

33 In the present case, it is apparent from the order for reference that the national legislation at issue in the main proceedings, namely Paragraph 9(12)(5) of the Law on Foreign Nationals, 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 the official language of that Member State, 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.

34 In those circumstances, it must be stated that national legislation such as that at issue in the main proceedings constitutes a 'new restriction' within the meaning of Article 13 of Decision No 1/80.

35 As regards the question whether such legislation may be justified, it should be borne in mind that a 'new restriction' within the meaning of Article 13 of Decision No 1/80 is prohibited unless it comes 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 2 September 2021, *Udlændingenævnet*, C-379/20, EU:C:2021:660, paragraph 23 and the case-law cited).

36 In that regard, it is established that the national legislation at issue in the main proceedings is not justified on grounds of public policy or public security and public health referred to in Article 14(1) of Decision No 1/80.

37 The referring court states, however, that the objective pursued by that legislation is to ensure successful integration of the family member applying for a right of residence in the Member State concerned for the purpose of family reunification.

38 It is true that 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 (judgments of 12 April 2016, *Genc*, C-561/14, EU:C:2016:247, paragraph 56, and of 2 September 2021, *Udlændingenævnet*, C-379/20, EU:C:2021:660, paragraph 26 and the case-law cited).

39 That said, it is necessary to examine whether national legislation such as that at issue in the main proceedings is suitable to achieve that objective and does not go beyond what is necessary in order to attain it.

40 In that regard, it is apparent from the order for reference and from the information provided by the Danish Government that such legislation seeks to ensure the successful integration of the family member of a Turkish worker residing legally in Denmark who applies for a right of residence in that Member State for the purpose of family reunification by ensuring that that worker demonstrates that he or she has a certain level of knowledge of Danish and is, therefore, able to prove that he or she is well integrated in that Member State and that he or she can help the family member concerned to learn that language and integrate into that Member State as well.

41 It is true that the possession, by a Turkish worker residing in the territory of a Member State, of a sufficient level of knowledge of the official language of that Member State, demonstrated by successfully taking a test such as that provided for by the national legislation at issue in the main proceedings, is such as to enable that worker to support the member of his or her family applying for a right of residence for the purpose of family reunification with that worker in that Member State in his or her process of integration into that Member State.

42 That said, it should be noted, first, that, even though the objective pursued by national legislation such as that at issue in the main proceedings is that of the successful integration of the family member seeking family reunification, such legislation does not in any way allow account to be taken of that family member's own ability to integrate, but is based exclusively on the premiss that the successful integration of that family member is not sufficiently guaranteed if the Turkish worker concerned by that application for family reunification does not satisfy the condition of having successfully acquired knowledge of the official language of the Member State concerned.

43 That finding is borne out by the fact that, at the hearing before the Court, the Danish Government conceded that, even if it were established that, in the present case, the spouse of such a worker had a perfect command of Danish, his or her application for the right of residence in Denmark for the purpose of family reunification would nevertheless be rejected, since that worker has not satisfied the condition that a Danish language test be successfully taken.

44 It is important, second, to point out, as observed, in essence, by the Advocate General in points 34 to 40 of his Opinion, that, moreover, national legislation such as that at issue in the main proceedings 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.

45 In particular, and subject to verification by the referring court, it is apparent from the documents before the Court that a derogation from the requirement that a Danish language test be successfully taken is possible for special reasons, including considerations of family unity, only in the limited situations referred to in point 39 of the Advocate General's Opinion and without allowing account to be taken, in the context of an individual assessment, of the own ability to integrate of the family member seeking family reunification and of the effective integration of the Turkish worker concerned by that application.

46 It must therefore be held that national legislation such as that at issue in the main proceedings goes beyond what is necessary in order to attain the objective pursued.

47 In the light of all the foregoing considerations, the answer to the first question is 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 either of the spouse's own ability 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.

The second to fourth questions referred

48 In view of the answer given to the first question, there is no need to answer the second to fourth questions.

Costs

49 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 (Second Chamber) hereby rules:

Article 13 of 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,

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 either of the spouse's own ability 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.

[Signatures]

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* Language of the case: Danish