A new CJEU judgment on the EC Turkey Agreement – the standstill clause and the meaning of integration

C- 561/14 *Caner Genc* 12 April 2016

The finding of the Court:

"A national measure such as that at issue in the main proceedings, making family reunification between a Turkish worker residing lawfully in the Member State concerned and his minor child subject to the condition that the latter have, or have the possibility of establishing, sufficient ties with Denmark to enable him successfully to integrate, when the child concerned and his other parent reside in the State of origin or in another State, and the application for family reunification is made more than two years from the date on which the parent residing in the Member State concerned obtained a permanent residence permit or a residence permit with a possibility of permanent residence constitutes a 'new restriction', within the meaning of Article 13 of Decision 1/80 of the Association Council of 19 September 1980 on the development of the Association 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. Such a restriction is not justified."

The facts:

Mr Genc is a Turkish citizen born on 17 August 1991. His father, who is also a Turkish citizen, came to Denmark on 14 December 1997 and, since 21 April 2001, has held a permanent residence permit in that Member State.

Mr Genc's parents were divorced in Turkey in 1997. Although the father obtained legal custody of both Mr Genc and his two older brothers, after the divorce Genc himself continued to live in Turkey with his grandparents. Genc's two older brothers have held residence permits in Denmark since May 2003. On 5 January 2005, Genc applied for a residence permit in Denmark for the first time. At that time, his father was employed in that Member State. On 15 August 2006, the Danish Immigration Service refused Genc's application for a residence permit on the ground that he did not or could not have sufficient ties to Denmark to enable him successfully to integrate there. That decision was confirmed by the Ministry of Integration on 18 December 2006. In particular, the Ministry of Integration, took into account the fact that Genc was born in Turkey where he spent all his childhood and has been educated there, that he has never travelled to Denmark, that he speaks only Turkish, that he has no tie of any kind to Danish society and that his father has seen him only twice in the last two years. It concluded that Genc has not been influenced by Danish standards and values to such a degree that he has or can establish sufficient ties to Denmark to enable him successfully to integrate. Similarly, the Ministry of Integration was of the view that Genc's father could not be regarded either as being so well integrated and as having sufficiently extensive ties himself to Danish society to justify allowing his son to live in Denmark.

Comment

This is the first reference by a Danish court to the CJEU on the EC Turkey Agreement and it is an interesting one as it applies the standstill provision of the agreement to the EU's own family reunification directive thus This decision is not particularly surprising in so far as the CJEU expressly follows its consistent jurisprudence on the meaning of the standstill clause in the EC Turkey Agreement's subsidiary legislation – Article 13 Decision 1/80 (applicable because the father was a worker at the relevant time). The CJEU states that its interpretation of the standstill clause is valid not only for workers (Article 13 Decision 1/80) but also for the self employed and service providers (Article 41 Additional Protocol) (para 33). The standstill provisions prohibit generally the introduction of new internal measures which are intended to or have the effect of making the exercise by a Turkish citizen of an economic freedom subject, on the territory of the Member State concerned, to conditions more stringent than those which were applicable at the date of entry into force of that decision (para 33). The Court confirms that the relevant Danish provision brings about a tightening of the conditions of admission concerning family reunification which existed previously, for minor children of third-country national workers, so that it makes such reunification more difficult (para 34). The parties agreed that at the time that Genc's father made the family reunification application for him to go to Denmark, the father was a worker within the meaning of the EC Turkey agreement.

The CJEU had fairly recently held that the standstill clause also applies to family reunification for Turkish workers in the Member States in *Dogan* (10 July 2014) but that case was about the language requirement. The Court is careful to clarify that it is only in so far as national legislation tightening the conditions for family reunification is likely to affect the exercise by Turkish workers of an economic activity on the territory of the Member State that the view must be taken that such legislation is covered by the standstill clause in Article 13 of Decision No 1/80 (para 44). The standstill clauses in no way imply recognition of a right to family reunification or to a right of establishment and residence for family members of Turkish workers (para 45). The standstill clause has no effect other than precluding family reunification being made subject to new conditions likely to affect the exercise by a Turkish national of economic freedoms in a Member State (para 46).

The CJEU goes on to defend its decision (against Germany) in *Dogan* on the basis of the objective of the EC Turkey agreement (para 49). In doing so it accepts that new restrictions can be lawful if 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 (para 51 – reference to the C-225/12 *Demir* judgment). However, as the EC Turkey Agreement is specifically designed so that similar provisions in it should be given the same meaning as their counterparts in EU free movement law, the criteria of EU law on restrictions to free movement rights on public interest grounds also applies (para 52). The CJEU notes that Article 79(4) TFEU provides for the promotion of integration of third country nationals as an objective of legislation on family reunification and other directives in the AFSJ (para 55). So the objective of ensuring the successful integration of third-country nationals (the Danish Government's argument) may constitute an overriding reason in the public interest (para 56). But the measures must be proportionate and it is here that the CJEU disagrees with the Danish authorities.

The CJEU notes that the Danish law only requires proof of sufficient ties where the application is made more than two years after the date on which the relevant parent obtains a permanent residence permit of a permit with the possibility of permanent residence. The CJEU finds this link between length of time between getting a residence permit and making a family reunification application to be unconnected to the likelihood of achieving integration (paras 61 and 62). The CJEU stats that the application of the ties criterion only on the basis of the length of time between a residence permit and a family reunification application leads to incoherent results as regards the

assessment of their ability to achieve integration in that Member State (para 64). A family reunification application must be assessed on the basis of the personal situation of the child concerned and on the basis of sufficiently precise, objective and non-discriminatory criteria which must be examined on a case-by-case basis, giving rise to a reasoned decision which may be subject to an effective appeal in order to prevent a systematic administrative practice of refusal (para 66). This is strong language indeed. However, on a more sober note, the CJEU seems to suggest that other criteria specifically the children's ages and their ties to the host state might be relevant (para 61).

This is an important judgment where the CJEU uses a rather feeble reference on the meaning of the standstill clause in the EC Turkey Agreement to launch a detailed inquiry into the lawfulness of integration requirements in the context of family reunification applications. This interpretation of integration requirements places them firmly in the territory of exceptions to the right to family reunification which as a result must be justified on the threshold of overriding reasons in the public interest. While the CJEU does not exclude integration requirements from ever possibly meeting this high threshold it does set out some very useful principles. First and foremost is the requirement that the personal situation of the child is the key. This must be made on a case-by-case basis followed by a reasoned decision subject to an effective appeal right.

This judgment is useful in the UK for all applications for family reunification where at least one of the parties is a Turkish national. Not only can fees not be applied but also income, language and life in the UK tests are also prohibited by this judgment as they did not apply at the time the UK became bound by the agreement 1 January 1973.

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