

Case C-228/06

Mehmet Soysal

and

Ibrahim Savatli

v

Bundesrepublik Deutschland

(Reference for a preliminary ruling from the
Oberverwaltungsgericht Berlin-Brandenburg)

(EEC-Turkey Association Agreement – Freedom to provide services – Visa
requirement for admission to the territory of a Member State)

Summary of the Judgment

1. *International agreements – EEC-Turkey Association Agreement – Freedom of movement for persons – Freedom of establishment – Freedom to provide services – Standstill rule in Article 41(1) of the Additional Protocol*

(Additional Protocol to the EEC-Turkey Association Agreement, Art. 41(1))

2. *International agreements – EEC-Turkey Association Agreement – Freedom of movement for persons – Freedom of establishment – Freedom to provide services – Standstill rule in Article 41(1) of the Additional Protocol*

(EEC-Turkey Association Agreement; Additional Protocol to the EEC-Turkey Association Agreement, Art. 41(1))

1. Article 41(1) of the Additional Protocol to the EEC-Turkey Association Agreement, which provides that the Contracting Parties are to refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services, has direct effect. That provision lays down, clearly, precisely and unconditionally, an unequivocal 'standstill' clause, which contains an obligation entered into by the Contracting Parties which amounts in law to a duty not to act. Consequently, the rights which Article 41(1) of the Additional Protocol confers on the Turkish nationals to whom it applies may be relied on before the courts of the Member States.

In addition, Article 41(1) of the Additional Protocol may be invoked validly by Turkish lorry drivers who are employed by an undertaking established in Turkey that lawfully provides services in a Member State, on the ground that the employees of the provider of services are indispensable to enable him to provide his services.

(see paras 45-46)

2. Article 41(1) of the Additional Protocol to the EEC-Turkey Association Agreement, which provides that the Contracting Parties are to refrain from

introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services, is to be interpreted as meaning that it precludes the introduction, as from the entry into force of that protocol, of a requirement that Turkish nationals such as the appellants in the main proceedings must have a visa to enter the territory of a Member State in order to provide services there on behalf of an undertaking established in Turkey, since, on that date, such a visa was not required.

That provision prohibits generally the introduction of any new measures having the object or effect of making the exercise by a Turkish national of the freedom of establishment or the freedom to provide services on the territory of that Member State subject to stricter conditions than those which applied to him at the time when the Additional Protocol entered into force, that is to say, 1 January 1973, with regard to the Member State concerned.

As regards Turkish nationals who intend to make use in the territory of a Member State of the right to freedom to provide services under the Association Agreement, national legislation that makes that activity conditional on the issuing of a visa, which can moreover not be required from Community nationals, is liable to interfere with the actual exercise of that freedom, in particular because of the additional and recurrent administrative and financial burdens involved in obtaining such a permit which is valid for a limited time. In addition, where a visa is denied, legislation of that kind prevents the exercise of that freedom.

It follows that such legislation, which did not exist on 1 January 1973, has at least the effect of making the exercise, by Turkish nationals, of their economic freedoms guaranteed by the Association Agreement subject to conditions that are stricter than those that were applicable in the relevant Member State at the time of the entry into force of the Additional Protocol. In those circumstances, such legislation constitutes a 'new restriction', within the meaning of Article 41(1) of the Additional Protocol, of the right of Turkish nationals resident in Turkey freely to provide services in the Member State concerned.

That conclusion cannot be called into question by the fact that the national legislation in question merely implements a provision of secondary Community legislation. In this respect, the primacy of international agreements concluded by the Community over provisions of secondary Community legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements.

However, the 'standstill' clause laid down by Article 41(1) of the Additional Protocol to the EEC-Turkey Association Agreement does not prevent the adoption of rules that apply in the same manner to Turkish nationals and to Community nationals.

(see paras 47, 55-59, 61-62, operative part)