Court of Justice of the European Union
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Press and Information

Advocate General's Opinion in Case C-138/13
Naime Dogan v Federal Republic of Germany

According to Advocate General Mengozzi, the requirement of having a basic knowledge of the German language, which Germany imposes for the grant of a visa for the purposes of family reunification of spouses who are third-country nationals, is contrary to EU law

That requirement, introduced in 2007, is compatible with neither the standstill clause under the Association Agreement with Turkey nor the Directive on family reunification

As regards the family reunification of spouses who are third-country nationals, it has been the rule in Germany since 2007 that the grant of a visa is to be conditional on the spouse who seeks a visa for the purposes of family reunification being able to demonstrate the ability to communicate orally and in writing, in a basic way, in the German language. That new condition seeks to facilitate the integration of those newly arrived in Germany and to combat forced marriages.

Mrs Dogan, a Turkish national residing in Turkey, has sought, for the last four years, to join her husband in Germany. Her husband, also a Turkish national, has lived in Germany since 1998, is the managing director of a limited company of which he is the majority shareholder and holds an unlimited duration residence permit. Prior to their civil marriage in 2007, Mr and Mrs Dogan had already participated in a religious wedding ceremony before an imam. The couple had four children between 1988 and 1993. In January 2012, the German embassy in Ankara again rejected Mrs Dogan's application for a visa for the purposes of family reunification, on the ground that she was illiterate and that she did not therefore have the necessary knowledge of the German language.

Mrs Dogan then brought an action before the Verwaltungsgericht Berlin (Administrative Court, Berlin (Germany)). The referring court asks the Court of Justice **whether the German language requirement introduced in Germany in 2007 is compatible with Union law and, in particular, with the standstill clause** agreed upon at the beginning of the 1970s in the context of the **Association Agreement with Turkey**[1]**.** That clause prohibits the introduction of any new restrictions[2] on the freedom of establishment.

In his Opinion delivered today, Advocate General Paolo Mengozzi answers that question in the negative. The Advocate General considers that the standstill clause prohibits Turkish nationals, such as Mr Dogan, who have exercised their right to freedom of establishment under the Association Agreement from being subject to new measures which, like the German-language requirement at issue in the present case, have the object or effect of making it more difficult to enter the territory of the Member State for the purposes of family reunification with their spouse.

[1] That clause appears in the Additional Protocol signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 establishing an Association between the European Economic Community and Turkey for the transitional stage of the Association, signed in Ankara on 12 September 1963 by Turkey, on the one hand, and by 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) (OJ 1973 C 113, p. 17).

[2] By comparison with those existing at the time of the entry into force of the standstill clause for the Member State concerned.

The lack of any real prospect, for a Turkish national, of family reunification in the territory of the Member State in which he is established (or intends to establish himself to carry out an independent activity) is capable of hindering or, at the very least, rendering less attractive the exercise by that national of the freedom of establishment conferred by the Association Agreement. Without that prospect, such a national could also be dissuaded from establishing himself within the European Union (where the family tie is already established) and forced to cease his business activity and leave that territory (where the family tie was established after his departure). In both those cases, that national would have to choose between his business activity and preservation of the family unit.

With regard to the question whether the language requirement may be justified by the need to combat forced marriages, Advocate General Mengozzi takes the view that that requirement is, **on any basis, disproportionate**. The requirement is capable of preventing indefinitely family reunification in the territory of the Member State concerned and, subject to a reduced number of exceptions defined exhaustively[3], applies regardless of whether an overall assessment of the relevant circumstances of the case is carried out.

The German Government maintains that an obligation for the spouse who seeks a visa for the purposes of family reunification to participate in integration and language courses after entry would be less effective, for the purposes of preventing the social exclusion of victims of forced marriages, than to make their entry conditional upon having prior knowledge of the language. Advocate General Mengozzi rejects that argument. He considers that the obligation to participate in integration and language courses would lead to those concerned being set apart from their family background, thereby facilitating their participation in German society. Family members exercising pressure on those persons would have to allow such contact, which might otherwise be hindered in practice regardless of whether the person concerned has a basic knowledge of the language. Moreover, maintaining regular contact with the bodies and persons responsible for organising those courses could help create favourable conditions for an unsolicited application for aid submitted by victims and facilitate the identification and reporting of situations requiring immediate action to the competent authorities.

Advocate General Mengozzi concludes that, having regard to the new restriction on the freedom of establishment of her husband, Mrs Dogan may object to the German-language requirement being imposed on her.

In addition, the Verwaltungsgericht asks whether the **Directive on family reunification**[4]**,** in accordance with which Member States may require potential beneficiaries of a visa for the purposes of family reunification to comply with integration measures, precludes the right of entry into Germany for the spouse of a third-country national who resides regularly in that Member State from being conditional on demonstrating basic knowledge of the German language.

In the light of his answer to the first question relating to the standstill clause, Advocate General Mengozzi does not consider it necessary to answer that more general question. However, in the event that the Court should take a different approach, Advocate General Mengozzi proposes that the answer to the question should be that the **directive precludes the grant of a visa for the purposes of family reunification from being conditional, as in the present case, on demonstrating that the spouse who seeks a visa for the purposes of family reunification has a basic knowledge of the language of the Member State in question, where no exemptions may be granted on the basis of an individual assessment.** Such an assessment should take account of the interests of minor children and all of the relevant circumstances of the case. Regard should also be had to whether, in the Member State of residence of the spouse who seeks a visa for the purposes of family reunification, teaching and other materials necessary to acquire a basic knowledge of the language are available and accessible (in particular in terms of

[3] Thus, a visa may, inter alia, be granted where the spouse who seeks a visa for the purposes of family reunification is not in a position to demonstrate basic knowledge of the German language due to a physical, mental or psychological illness or disability.

[4] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12).

cost) and whether the spouse has demonstrated difficulties, albeit temporary, related to health or personal situation (such as age, illiteracy, disability and level of education).

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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