



**C-16/05 Veli Tum and Mehmet Dari v Secretary of State for the Home Department, judgment of 20 September 2007**

**Citizenship and immigration policy – Conditions of admission of Turkish nationals**

**The Court of Justice ruled on the scope of the “standstill” clause of the Additional Protocol to the Association Agreement between the Community and Turkey. Noting that this provision prohibited the introduction of any new restrictions on the exercise of freedom of establishment and freedom to provide services by Turkish nationals in Member States after the entry into force of the Additional Protocol, the Court stated that the “standstill” obligation also applied to the first admission on the territory of a contracting State as of December 1972 and, for States which subsequently joined the Community, as of the date of their accession.**

Two Turkish nationals, Mr Tum and Mr Dari, were refused entry clearance to the United Kingdom for the purpose of setting themselves up in business on their own account, pursuant to the national immigration rules in force at the time they applied for clearance. They appealed against this decision on the ground that their application should be examined on the basis of the national rules applicable at the date of entry into force of the Additional Protocol to the Association Agreement between the Community and Turkey (hence at 1 January 1973) pursuant to the standstill clause under Article 41.1 of the said Protocol, which states that “the Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services”.

The question whether this standstill clause could be applied to national rules concerning the first admission of Turkish nationals into the United Kingdom was brought before the House of Lords, which referred the interpretation of Article 41 of the Protocol to the Court of Justice.

After pointing out that the provision in question had direct effect in the Member States, so that the rights which it conferred could be relied on before national courts, the Court underlined the fact that the clause did not, in itself, confer any right of establishment or right to stay on Turkish nationals. Nevertheless, it pointed out that the clause precluded a Member State from adopting any new measure having the object or effect of making the establishment of a Turkish national in its territory subject to stricter conditions than those which applied at the time when the Additional Protocol entered into force. Thus this clause did not challenge the competence of Member States to pursue immigration policy.

In relation to the substance, the Court considered that, given the wording of the clause and its objective of creating favourable conditions for the gradual introduction of freedom of establishment for Turkish nationals, the standstill clause had also to apply to rules concerning the first admission of Turkish nationals into a Member State in whose territory they intended to exercise, without wrongful intent, their freedom of establishment under the Association Agreement.