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Turkish tourists and European justice

The Demirkan ruling and how Turkey can obtain visa-free travel

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Contents

Cover page from left to right: Rolf Gutmann, the lawyer in the Demirkan case; Leyla Ecem Demirkan, the plaintiff; Pedro Cruz Villalon, the court's advocate-general. Below: the EU's Court of Justice.

A young woman and the European court

On 24 September 2013 many eyes across the EU and Turkey turned to Luxembourg. There, at just after nine-thirty in the morning, the Court of Justice of the European Union (or European Court of Justice, ECJ) delivered a judgement in one of its most important cases this year.[1] The issue at stake was visa-free access to EU countries for Turkish citizens.

At the centre of the court case was Leyla Ecem Demirkan, a 20-year old Turkish woman from the city of Mersin, now a student in Izmir. When Leyla was a teenager, her mother married a German, Jorg Huber. In October 2007, Leyla wanted to visit her stepfather and applied at the German consulate in Ankara for a visa.[2] Her request was denied. She went to court, arguing that Germany's visa requirement for Turkish citizens was illegal to start with, as it conflicted with the rights accorded to Turkish citizens by the 1963 Turkey-EU Association Agreement.

The case reached the ECJ, the highest court in the European Union. On 24 September 2013, the court rejected her claim.

To thousands of Turks, Leyla's problem is a familiar one. In 2012 alone, the consulates of EU countries in Turkey rejected more than 30,000 applications for a Schengen visa.[3] The story of Leyla is typical in another way, too. It is young people who suffer most from the EU's visa requirement. Consulates are instructed by their capitals to be wary of unmarried young people who travel, as they might be tempted to stay on after their visas expire. The fact that Leyla assured the consular authorities that she had no such intention – she wanted to finish school in Turkey, she said – made no difference.

Many Turkish civil servants and their dependants obtain special passports that allow visa-free travel to the EU. There are some 1.2 million such passports in circulation.[4] However, the vast majority of young people and students do not have them.

In Leyla's case, the denial of a visa was not the end but the beginning of her story. Leyla's family knew Rolf Gutmann, a lawyer from Stuttgart, who had a history of defending the rights of foreign citizens before German courts and the ECJ.[5] At the time, he was representing two Turkish truck drivers before the ECJ who, like Leyla, objected to the visa requirement. So Leyla decided to go to court with Rolf Gutmann as her lawyer.

Gutmann argued that Germany did not have the right to ask Leyla for a visa. He insisted that Turkish citizens had rights based on the Association Agreement concluded in 1963 between Turkey and the EU's predecessor, the European Economic Community (EEC). These included the right to visit Germany without a visa.

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1 This is ECJ case C-221/11, Leyla Ecem Demirkan v Germany.

2 Turkish citizens need a visa to enter the EU and the associated Schengen members Iceland, Liechtenstein, Norway and Switzerland. Holders of Turkish diplomatic, special and service passports are exempt from this requirement. The Schengen zone comprises 26 countries: 22 of 28 EU countries (all except Ireland, the UK, Bulgaria, Romania, Cyprus and Croatia) as well as the four non-EU members. Ireland and the UK do not participate in the Schengen zone. Bulgaria, Romania and Croatia are due to join eventually. Cyprus will join once the division of the island is overcome. However, all of them have a visa requirement for Turkish citizens. See EU visa regulation: Council Regulation (EC) No 539/2001.

3 Visa statistics on the website of the Directorate-General for Home Affairs of the European Commission, section "Schengen, Borders & Visas", subsection "Visa policy".

4 According to the Turkish Ministry of Foreign Affairs, 1,236,275 special (green) passports and service (grey) passports were in circulation on 12 March 2012.

5 See website of Rolf Gutmann (in German).

In 2009, a first-instance court rejected Leyla's claim.[6] She filed an appeal to the Higher Administrative Court of Berlin-Brandenburg. This court concluded that the legal questions raised by her case were complex, involved EU law and required clarification – a "preliminary ruling" – from the highest court of the European Union, the ECJ. Preliminary rulings make up the bulk of the rulings of the ECJ. In 2012, 386 out of 595 completed cases before the ECJ were preliminary rulings.[7] Preliminary rulings cannot be appealed. EU institutions explain their importance:

> "The national courts in each EU country are responsible for ensuring that EU law is properly applied in that country. But there is a risk that courts in different countries might interpret EU law in different ways. To prevent this happening, there is a 'preliminary ruling procedure'. If a national court is in doubt about the interpretation or validity of an EU law, it may – and sometimes must – ask the Court of Justice for advice."[8]

They are binding not only on the courts that referred questions to the ECJ, but also on all national courts across the EU. In this way the court creates law that is immediately applicable across the EU. This impact of preliminary rulings explains the significance of the Demirkan case.

If the ECJ had decided in her favour, it would not only have allowed her and other Turkish citizens to visit Germany without a visa. The same would have applied, in all likelihood, to ten other EU member states.

A strong association

In September 1963 the European Economic Community and Turkey signed an Association Agreement in Ankara.[9] The agreement, also known as the Ankara Agreement, entered into force on 1 December 1964. Its aim was "to "promote the continuous and balanced strengthening of trade and economic relations between the Parties."[10] The objectives included developing the Turkish economy and improving the level of employment and living conditions of the Turkish people. The parties also aimed to create a customs union and to prepare Turkey for eventual EEC membership.

Half a century has since passed. The association agreement with Turkey is the farthest-reaching that the EU has ever concluded. The institutions created under the agreement still function. The Association Council – where the governments of Turkey and the EU member states, the European Commission and the Council are represented – continues to meet every year. It takes binding, unanimous decisions that develop the association further. The customs union, only a distant goal in 1963, was set up in 1995 and has since been taken for granted by countless entrepreneurs. Economic and trade relations have deepened at an ever accelerating pace, enabling millions of individuals to trade and to invest. In 2005 EU accession negotiations were launched.

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6 For the proceedings before the Administrative Court in Berlin, see Opinion of Advocate-General Cruz Villalon, Case C-221/11, Leyla Ecem Demirkan v Germany, delivered on 11 April 2013.

7 Court of Justice of the European Union, Annual Report 2012. Synopsis of the work of the Court of Justice, the General Court and the Civil Service Tribunal, 2013, p. 94.

8 "Europa website" of the EU institutions, section "Court of Justice of the European Union".

9 Agreement establishing an Association between the European Economic Community and Turkey.

10 *Ibid.*

The Ankara Agreement of 1963, an Additional Protocol in force since 1973, the decisions of the Association Council, and ECJ case law make up the EU-Turkey association law. This body of law is binding for EU member states. It has supremacy over EU regulations and directives and over national legislation in the member states. Altogether, the ECJ has issued over 50 rulings concerning EU-Turkey association law.[11] It has played an important role in clarifying and strengthening the rights that this law confers on Turkish citizens concerning employment, residence and free movement in the EU.

In 1963, the Association Agreement envisaged a gradual move towards full freedom of establishment (the freedom to pursue an economic activity as a self-employed person and to set up and manage a company) and *freedom to provide services*.[12] The EEC and Turkey later agreed an Additional Protocol to the Association Agreement, which entered into force on 1 January 1973. Its article 41 stipulated:

> "The Contracting Parties shall refrain from introducing between themselves *any new restriction on the freedom of establishment and the freedom to provide services*."[13]

The same article 41 also noted what needed to be done next:

> "The Council of Association shall ... determine the timetable and rules for the progressive abolition by the Contracting Parties, between themselves, of restrictions on freedom of establishment and on freedom to provide services."[14]

Until today the Association Council has not determined any such timetable for the "progressive abolition of restrictions". Instead, article 41 has served as a "standstill clause", preventing the parties from introducing new obstacles to the freedom of establishment and the freedom to provide services.

A victory in court

At the time when the Additional Protocol entered into force in 1973, Turkish citizens could travel freely to all nine countries that made up the EEC – France, Germany, Italy, Belgium, Luxembourg, the Netherlands, Denmark, Ireland and the UK. In fact, they could travel freely to all Western European countries except Greece. They only needed a visa if they wanted stay longer than three months or work, even though there were exceptions to that, too.

This changed after the military coup of September 1980. The fear of thousands of Turkish political refugees coming to Europe led countries to impose visa requirements. Germany did so in 1980, together with France, Belgium, the Netherlands and Luxembourg. Others followed: Denmark in 1981, the UK and Ireland in 1989, Spain and Portugal in 1991.[15] When

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11 Kees Groenendijk & Elspeth Guild, Visa Policy of Member States and the EU Towards Turkish Nationals After Soysal, Revised and Updated Second Edition, Economic Development Foundation Publication No. 249, Istanbul September 2011, p. 11 and pp. 74-75.

12 The EEC too has pursued the same economic freedoms within its common market since its establishment in 1958. Treaty establishing the European Economic Community, signed in Rome on 25 March 1957, entry into force on 1 January 1958; for English, see an unofficial version.

13 Additional Protocol and Financial Protocol signed on 23 November 1970.

14 *Ibid.*

15 Kees Groenendijk & Elspeth Guild, Visa Policy of Member States and the EU Towards Turkish Nationals After Soysal, p. 80.

the EU established the Schengen zone and developed a common visa policy in the 1990s, the visa requirement for Turkish citizens became EU policy.

This visa requirement was only much later challenged in court by two Turkish lorry drivers, Mehmet Soysal and Ibrahim Savatli. Soysal and Savatli had long covered the Turkey-Germany route for a Turkish transport company. Until 2000 they had no problems obtaining Schengen short-stay visas from Germany. In 2001 and 2002, however, the German consulate repeatedly rejected their applications.

The case reached the ECJ. Rolf Gutmann, Soysal and Savatli's lawyer, argued that as providers of transport services his clients should not be required to hold a visa in the first place, in line with the standstill clause that bans new restrictions on the freedom to provide services. The ECJ agreed. When it issued its judgment in February 2009 it found that the visa requirement constituted such a restriction:

> "... liable to interfere with the actual exercise of [the freedom to provide services], 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." [16]

It also recognised that the visa requirement violated the standstill clause and thus EU law:

> "Article 41(1) of the Additional Protocol … 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.*"[17] [emphasis added]

At the time, this looked like a breakthrough. All EU member states and EU institutions that had made submissions – Germany, Denmark, Greece, Slovenia and the European Commission – had argued against such a ruling. The Court of Justice had demonstrated its independence. "We have entered the EU in trucks!" led the popular daily Sabah the next day.[18] "The first step to a Europe without visas," was the headline in the daily Vatan.[19] EU Affairs Minister Egemen Bagis told the press: "This decision is an important step to eliminate the concerns that EU authorities are behaving in prejudiced and biased way towards Turks and to establish a mutual partnership." He added that he now hoped that the visa problem would be resolved. "Turkey does not want any privileges from the EU, but neither do we accept any discriminatory treatment."[20]

However, the actual impact of the Soysal and Savatli judgement has been deeply disappointing for Turkish travellers. Only three EU member states have changed their visa rules. The way they have done so has not made travel any easier for Turkish service providers.

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16 European Court of Justice, Judgment in the case Mehmet Soysal and Ibrahim Savatli v Bundesrepublik Deutschland, Case C-228/06, 19 February 2009, paragraph 55.

17 European Court of Justice, Judgment in the case Mehmet Soysal and Ibrahim Savatli v Bundesrepublik Deutschland, paragraph 63.

18 Sabah on 20 February 2009.

19 Vatan on 20 February 2009.

20 The Journal of Turkish Weekly and Anadolu Agency, "Turkish Minister Bagis: Turkey does not want any privileges from the EU", 20 February 2009.

The first reason for this is that not all EU countries are affected by this decision. The standstill clause does not ban visa requirements per se. It bans *new* restrictions. If there was already a visa requirement in place when the standstill clause became effective, it does not constitute a new restriction.

The standstill clause also entered into force for today's 28 EU countries at different times. For those nine who were members of the European Economic Community in 1973,[21] the Additional Protocol entered into force on 1 January 1973. For those that joined later, it entered into force on the day of their accession. Of the current 28 EU members, 17 had a general visa requirement for Turkish nationals in place when the standstill clause became effective for them. For them, the Soysal judgement changed nothing.

Eleven EU members, including Germany, did *not* have a general visa requirement in place at the relevant time, but imposed it later. However, some of them had specified that while tourists did not need a visa, Turkish citizens coming for work did. To make matters even more complex there were exceptions to that rule too.

Following the 2009 judgement Germany reinstated the rules that were in force in 1973. At that time, Turkish visitors could enter Germany without a visa *unless they came for work*. However, certain categories of service providers were exempt from the visa requirement even when they came for work: these included Turkish citizens providing transport services or coming to maintain or repair machinery, as well as Turkish artists, scientists and professional sportspeople who travelled to Germany for a performance or an event.

As of 2009, therefore, these categories of service providers again do not need a visa for Germany. However, they need to prove that they belong to the visa-exempt categories. This is complicated[22] In fact, collecting all the evidence Germany demands in order to prove that one falls into the category of a service provider exempted from the visa requirement is as cumbersome as applying for a visa. Germany even recommends to applicants to obtain "on a voluntary basis" a "cost-free" confirmation from its consular services certifying that they do not need a visa "in order to avoid potentially time-consuming examinations at the border.[23] All this explains the very low number of "Soysal confirmations." According to the German Embassy in Ankara, the consular department issued 4,021 such confirmations in 2010. In 2011 it was only 1,357.[24]

The second country that changed its rules for Turkish service providers was Denmark. Here it can be tricky for a Turkish service provider to establish whether he or she falls in the category of service providers that are exempt from the visa requirement. If a service provider needed *a*

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21 France, Germany, Italy, Belgium, Luxembourg, Netherlands, Denmark, Ireland and UK.

22 Turkish citizens providing transport services or going to Germany to service machinery have to show the following documents at the border: an attestation of their Turkish employer, in German or translated into German; an order from the German recipient of the service; evidence of payments to the Turkish social insurance organisation. Artists, scientists and sportspeople need an invitation of the organiser that includes a description of their planned activity and the amount of their fee. They have to prove that they are artists, scientists or sportspeople by showing diplomas, employment contracts or evidence of membership of professional associations.[22] Website of the German Embassy in Ankara, Merkblatt über die Möglichkeit einer visumsfreien Einreise (Information about the possibility for Turkish citizens to enter without a visa to provide services in Germany).

23 *Ibid.*

24 Email to ESI by the German Foreign Ministry, Office of the Special Envoy for South-Eastern Europe, Turkey and the EFTA States, referring to statistics provided by the German Embassy in Ankara, 21 June 2012.

work permit in 1973, then he or she also needed a visa – then and today. However, Danish legislation on who needs and does not need a work permit is complex.[25] A Turkish traveller who believes that he is eligible to enter Denmark without a visa has to show relevant documents at the border, in Danish or English.[26] Neither the Danish Embassy in Ankara nor the Danish border police have information about how many Turkish citizens have used these provisions.[27] A Danish official told ESI that it is possible, indeed likely, that so far *no* Turkish citizens have actually made use of their right as service providers to enter Denmark without a visa. It is also not clear if airlines would actually be prepared to let such a person board a plane for Copenhagen.

Other countries have done even less. In fact, even today it is still unclear exactly which member states are obliged to change their visa rules in line with the Soysal ruling.

A few months before the ruling, the European Commission asked all EU member states to provide information about their visa policies concerning Turkish service providers when the standstill clause became effective for them.[28] The Commission then accepted the information that it obtained without any thorough investigation. The former European Commissioner for Justice, Liberty and Security Jacques Barrot told the European Parliament in September 2009:

> "… it appears that the exemption from the visa requirement only benefits, under certain circumstances, Turkish nationals travelling to some Schengen countries (i.e. Germany and Denmark), as well as to the United Kingdom and Ireland, in order to provide services there."[29]

He was wrong, however. The government of the Netherlands had told the Commission that when the Netherlands and Turkey agreed on a visa-free travel regime in 1953, persons travelling with the aim of carrying out a profession or a gainful activity, including service providers, needed a visa. Then, in March 2012, the highest administrative court in the Netherlands, the Raad van State, found that this exemption was in fact never transposed into Dutch legislation and thus did not apply at the relevant date of 1 January 1973.[30]

As a result the Netherlands also had to change their rules. Like Germany, the authorities recommend that Turkish service providers request a "service provider's declaration" from a Dutch consulate before the trip. "While travellers are not required to present such a declaration at the Dutch border, the document may make their dealings with the airline and

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25 See the Danish Aliens Order, chapter 5, Work Permits.

26 The Danish border guard ask for documents demonstrating "the legal existence and trade relations of the company in Turkey (i.e. a copy of a registration certificate); and (unless the applicant is self-employed) documentation that the person in question is employed by the legally established company in Turkey (i.e. a copy of a contract or ID-card from the company); as well as documentation that the person in question is to provide a service for a company in Denmark (i.e. a copy of the confirmation of the commission).Website of the Danish Immigration Service, Visa exemption for Turkish citizens who are to perform a service in Denmark.

27 Email to ESI by Hulya Yarar, Head of the Consular Department of the Danish Embassy in Ankara, 28 September 2012.

28 Summary of discussions in the Council Visa Working Group in Brussels where all EU member states are represented, on 1-2 October 2008, Council document 14908/08 of 29 October 2008. See also Kees Groenendijk & Elspeth Guild, Visa Policy of Member States and the EU Towards Turkish Nationals After Soysal, pp. 40-45.

29 European Parliament, Parliamentary questions, Answer given by then Commissioner for Justice, Liberty and Security Jacques Barrot on behalf of the Commission, E-3747/2009, 25 September 2009.

30 In 1973, all Turks could enter the Netherlands freely for a stay of up to three months. See Ruling by the Raad van State in Case no. 201102803/1/V3, 14 March 2012.

Dutch border officials much easier," the Dutch Embassy in Ankara explains.[31] The list of documents to be submitted is similar to the German one.[32]

Although the Commission mentioned the UK and Ireland as countries affected by the Soysal ruling, they have not done much to comply with it. In a letter to ESI, an official of the Home Office explained that the UK does not regard the visa requirement to be a new restriction. He wrote that in 1973 a service provider seeking admission to the UK was examined at the border and might have been refused. "A requirement that a visa is obtained in advance of travel both minimises that risk and ensures the efficient processing of such travellers at the port of entry," he explained. "Such a requirement may therefore facilitate a service provider's admission."[33] Turkey has not, so far, raised this issue publicly with the UK.

Whilst the Commission failed to investigate seriously which other EU member states should change their visa rules to comply with the Soysal ruling, two professors at Radboud University in Nijmegen in the Netherland, Kees Groenendijk and Elspeth Guild, attempted to do just that. They examined 11 EU member states[34] and found that Belgium, France and Italy may be affected too. They concluded in 2011 that:

> "... the reaction of governments in Belgium, France, Ireland, Italy, the Netherlands and the UK appears to be something like that of ostriches."[35]

These half-hearted efforts on the part of EU member states and the European Commission to respect association law constitute an embarrassment. This has given rise to entirely justified arguments by Turkish officials that the EU preaches the rule of law to Turkey, but is not so eager to fully comply with all ECJ decisions itself.

Are (Turkish) tourists service-providers?

The Soysal judgment confirmed the right of some Turkish service providers to enter certain EU member states without a visa. It also raised a further issue: who qualified as a service provider?

For Rolf Gutmann, the lawyer in both the Soysal and Demirkan cases, this was the central question. Under EU case law – confirmed numerous times by the ECJ – the *freedom to provide services* encompasses two sides: an active side (somebody offering a service) and a passive side (somebody receiving it). The freedom to provide services requires that neither side should face any restrictions while *providing and receiving* services across borders within the EU.

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31 Press release of the Netherlands Embassy in Ankara, Press Release Visa Requirements, 27 August 2012. See also website of the Netherlands Embassy in Ankara, Informatieblad over de mogelijkheid voor Turkse onderdanen om zonder visum naar Nederland te reizen om daar diensten te verrichten (Information about the possibility for Turkish nationals to travel without a visa to the Netherlands in order to provide services), 8 August 2012.

32 Website of the Netherlands Embassy in Ankara, Informatieblad over de mogelijkheid voor Turkse onderdanen om zonder visum naar Nederland te reizen om daar diensten te verrichten.

33 Letter to ESI from Ragnar Clifford, Home Office, Immigration and Border Policy Directorate, Migration Policy Unit, 13 January 2013.

34 Groenendijk and Guild looked closely at Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Romania and the UK.

35 Kees Groenendijk & Elspeth Guild, Visa Policy of Member States and the EU Towards Turkish Nationals After Soysal, pp. 38-39.

The most famous ECJ ruling, which explicitly established the two sides of the freedom to provide services, was the Luisi and Carbone judgement in 1984. Two Italians had been fined for exporting foreign currencies above the legal limits set by Italy. They argued that they needed the money to pay for services in Germany and France (tourism and medical treatment). The ECJ upheld their claim. It concluded:

> "... that the freedom to provide services includes the freedom, for the recipients of services, to go to another Member State in order to receive a service there, without being obstructed by restrictions, even in relation to payments, and that *tourists, persons receiving medical treatment and persons travelling for the purpose of education or business are to be regarded as recipients of services.*"[36] [emphasis added]

Gutmann argued that this definition of the freedom to provide services also applied to Turkish citizens and EU-Turkey association law. During a lecture in May 2010 at Yeditepe University in Istanbul he explained:

> "Tourism, travel for the purposes of business, education or medical treatment in European law are included in the definition of 'services'. This definition needs to be extended to the law of association with Turkey."[37]

In fact:

> "Turkish tourists still have the explicit right to travel to Germany (and also Belgium, the Netherlands, Great Britain, France, Italy, Spain and Portugal) without a visa. Nevertheless, the European governments deny them this right. So we need a case in Luxemburg!"[38]

Some courts in Germany had already begun to rule in this sense. In August 2009, a court in the town of Cham ordered the immediate release of a Turkish man who had been arrested at the nearby German-Czech border for illegal residence. He had entered Germany without a visa to buy a car. The court noted:

> "As a Turkish national and *a passive recipient of services*, the concerned party can rely on visa-free travel according to the so-called standstill clause. As he irrefutably declared that the sole purpose of his entering Germany was to purchase a motor vehicle, the court considers that he did not need a visa, so that there was no case of illegal residence."[39]

In 2009, a Turkish businesswoman travelling from Los Angeles to Istanbul via Munich missed her connecting flight in Munich. She was rebooked on another flight the next morning and wanted to spend the night in a hotel. However, German police prevented her from leaving the airport. Later she pressed charges. A court in Munich ruled in February 2011 that she was:

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36 European Court of Justice, Judgment, Joined Cases 286/82 and 26/83, Graziana Luisi and Giuseppe Carbone v the Italian Ministry of the Treasury, 31 January 1984, paragraph 16.

37 Rolf Gutmann's inaugural lecture at Yeditepe University, Istanbul May 2010.

38 *Ibid.*

39 Migazin, "Visumsfreiheit für Türken: Kein unerlaubter Aufenthalt" (Visa freedom for Turks: No illegal residence), 13 August 2009.

> "... permitted to enter the Federal Republic of Germany for a period of up to three months to receive services, especially for tourism purposes, without a residence permit and without a visa."[40]

Another German court in Erding, not far from Munich, dealt with the case of a Turkish businessman who had been fined 300 Euro for overstaying his visa by eight days. It stated that it would be bizarre to apply different definitions of the freedom to provide services depending on whether the concept was mentioned in the EU Treaty or in the standstill clause.

> "Neither the ECJ's [Soysal] ruling, nor the Additional Protocol envisages a distinction in an active and a passive freedom to provide of services. It would seem out of touch with reality not to apply the Soysal ruling to Turkish businessmen and tourists who receive services on the grounds that this constitutes just a passive service that the Additional Protocol was not supposed to cover."[41]

These were still only individual cases in lower courts. Gutmann wanted the ECJ to rule on the issue, following the same legal logic and applying it across the EU. Leyla Demirkan provided him with the case he needed.

The definition of the freedom to provide services thus became the main question that the Higher Administrative Court of Berlin-Brandenburg referred to the Court of Justice in May 2011 concerning Demirkan's case:

> "Does the passive freedom to provide services also fall within the scope of the concept of freedom to provide services within the meaning of Article 41(1) of the Additional Protocol to the Agreement establishing an Association between the European Economic Community and Turkey of 23 November 1970 (Additional Protocol)?"[42]

Leyla Demirkan had not explicitly stated that she wanted to go to Germany to receive services. She had declared that she wanted to visit her stepfather. Thus the German court also put a second question to the ECJ:

> "… does the protection of the passive freedom to provide services … also extend to Turkish nationals, who — like the claimant — do not wish to enter the Federal Republic of Germany in order to receive a specific service, but for the purposes of visiting relatives for a stay of up to three months and rely on the mere possibility of receiving services in the Federal territory?"[43]

The ECJ accepted the case. It also decided that it would go before a Grand Chamber with 15 judges. This is done for very important decisions.

The court also assigned one of its eight advocates-general to the Demirkan case to present an independent opinion. Advocates-generals are assigned to cases where new points of law are

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40 Administrative court (Verwaltungsgericht) Munich, Urteil der 23. Kammer vom 9. Februar 2011 (Judgment of the 23rd Chamber of 9 February 2011), Az. M 23 K 10.1983, in: Migazin, "Migration in Deutschland, Visumfreiheit für Türken, Visa-Urteil des Verwaltungsgerichts München," (Migration in Germany, Visa freedom for Turks, Visa judgment of the Administrative Court Munich), 9 February 2011.

41 Basic Court (Amtsgericht) Erding, Judgmnent in Case 5 Cs 35 Js 28732/08, 29 April 2009.

42 Reference for a preliminary ruling from the Oberverwaltungsgericht Berlin-Brandenburg (Germany) lodged on 11 May 2011 — Leyla Ecem Demirkan v Federal Republic of Germany, (Case C-221/11), in: Official Journal of the European Union, C 232/15, 6 August 2011.

43 *Ibid.*

raised. They have the same qualifications as the court's judges. Their opinions are non-binding, but the court has often follows them.[44]

In summer 2011 eight EU member states (Germany, the Czech Republic, Denmark, Estonia, France, the Netherlands, Slovakia and the UK) as well as the European Commission and the Council all submitted written observations to the ECJ. They were united in suggesting that the court answer both questions with 'No'. The hearing for the case was scheduled for 6 November 2012.

Rolf Gutmann argued, both in his written submission and in court, that the parties negotiating the Additional Protocol, the EEC and Turkey, had clearly been aware even then that the freedom to provide services had an active and a passive side. As evidence, he cited an EU directive adopted in 1964. This directive mentioned as intended beneficiaries "nationals of Member States wishing to go to another Member State as recipients of services."[45] This was years before the EEC and Turkey concluded the Additional Protocol in 1970.

Gutmann also pointed out that the Ankara Agreement stipulated how the "freedom to provide services" in the Ankara Protocol was to be interpreted. Interpretation was to be "guided by" the relevant passages in the EEC treaty:

> "The Contracting Parties agree *to be guided by* Articles 55, 56 and 58 to 65 of the Treaty establishing the Community for the purpose of abolishing restrictions on freedom to provide services between them."[46]

These articles deal with the right of establishment and services.[47] They provide definitions, stipulate rights and specify limitations. For Gutmann the formulation "to be guided" implied that the concept "freedom to provide services" was to be understood in the same way in the Association Agreement with Turkey as in the EU Treaties.

Gutmann also underlined that the ultimate objective of the Association Agreement was to prepare Turkey for EU membership, so that it had ultimately the same objectives as the EU Treaties. Therefore, EU case law applied. He noted that the freedom of movement of goods guaranteed by the EU-Turkey customs union of 1995 had to be accompanied by freedom of movement for the people producing and selling them.

Gutmann was ploughing a lone furrow. No other party agreed with him. Instead, the European Commission, the Council and member states put forward a barrage of arguments that the freedom to provide services meant something different in EU-Turkey association law than in the EU's own internal law. Almost all advanced one argument that the French representative put as follows:

> "According to settled case law, a mere similarity in the wording of a provision of the EU Treaty and of an international agreement between the Union and a third country does not suffice to give the provision in the international agreement the same meaning as it has in

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44 See website of the Court of Justice, Presentation, and Rules of Procedure 2012, as well as P. Mathijsen, A Guide to European Union Law as amended by the Treaty of Lisbon, 2010, pp. 125-172.

45 Council Directive 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, Art. 1(1).

46 Agreement establishing an Association between the European Economic Community and Turkey.

47 Today Articles 51, 52 and 56 to 61 of the Treaty on the Functioning of the EU. See: Treaty on the Functioning of the European Union, consolidated version, Art. 77, paragraph 1(a).

> the EU Treaties … According to the ECJ, the transfer of the interpretation ... depends on the objectives that these provisions pursue in their respective frameworks. It is therefore of considerable significance to compare the purpose and context of the agreement and of the EU Treaty."[48]

All member states argued that the 1963 Association Agreement and the EU Treaty pursued different goals. They cited cases where the ECJ had previously found that association agreements and the EU Treaty had different objectives, and that therefore the same terms could be interpreted differently. Some referred to cases concerning association agreements with Poland, the Czech Republic and Bulgaria. Others pointed to the 2002 Agreement with the Swiss Federation. They mentioned a 2003 ECJ ruling that had found that EU Treaty provisions "must be extended, *so far as possible*, to Turkish nationals" covered by EU-Turkey association law – but they emphasised that "so far as possible" did not mean "fully". [49] Member states also referred to the December 2011 Ziebell ruling, where the ECJ had found that the Association Agreement with Turkey pursued "a solely economic purpose". [50]

EU member states stressed that until the 1984 Luisi and Carbone ruling by the ECJ the exact meaning of the freedom to provide services had not been established. They underlined that one of the stated aims of the Association Agreement was "to ensure an accelerated development of the Turkish economy." "In particular with regard to tourists, it is hardly evident how the promotion of trips of Turkish tourists to member states can help the economic development of Turkey," the French representative stated.[51]

The Council representative warned that a broad interpretation of the standstill clause would be in conflict with the EU Treaty, which envisages a common visa policy.[52] A situation in which potentially all Turkish nationals would not need a visa for 9 Schengen countries but for 14 others would be "in violation of the objective of a common visa policy that is anchored in EU primary law."[53]

The German representative warned that a positive ruling would in fact lead "to the collapse of the common European visa system".[54] He also saw the threat of huge migration pressure from Turkey: "It is the opinion of the Federal Government that the abolition of the visa requirement for Turkish nationals would be against the public interest of the Federal Republic of Germany in effective migration control."[55]

Slovakia pointed to the administrative burden if countries that would be allowed to keep the visa requirement – like Slovakia – would have to issue (transit) visas for visits to EU member states that would no longer be able to demand visas.[56]

The UK even argued that the visa requirement for Turkish nationals was in fact not a restriction. The visa requirement had advantages for Turkish travellers since it "gives them

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48 Written submission of the French government to the court in the Demirkan case, 26 August 2011.

49 European Court of Justice, Judgement of 21 October 2003 in the Joined Cases C-317/01 and C-369/01, Abatay and Others, paragraph 112.

50 Court of Justice of the EU, Judgment of 8 December 2011 in the Case C-371/08 Nural Ziebell vs Land Baden-Württemberg, paragraph 74.

51 Written submission of the French government to the court in the Demirkan case, 26 August 2011.

52 Treaty on the Functioning of the European Union, consolidated version, Art. 77, paragraph 1(a).

53 Written submission of the Council of the EU to the court in the Demirkan case, 26 August 2011.

54 Written submission of the German government to the court in the Demirkan case, 29 August 2011.

55 *Ibid.*

56 Written submission of the Slovak government to the court in the Demirkan case, 3 August 2011.

the security that they meet the conditions for entry and stay and that they will not be refused entry upon arrival at the border."[57]

The case against Leyla Demirkan

On 11 April 2013, a major development occurred when Advocate-General Pedro Cruz Villalon from Spain presented his arguments to the ECJ in a 20-page opinion. The advocate-general stressed that he did not agree with some of the arguments made by member states in court:

> "Visa applicants are subject to costs and an administrative burden which a person seeking to enter another country not subject to a visa requirement does not have to endure … Moreover, a visa does not ensure legal certainty as the mere possession of a visa does not automatically entail a right of entry."[58]

However, on the key issues he agreed with the member states. Above all he noted that:

> "... it cannot be determined with *absolute certainty* what the Contracting Parties understood under the concept of 'freedom to provide services' at the time the Additional Protocol was concluded." [emphasis added]

He then continued:

> "Admittedly, it appears clear that they made use of the terminology of the EEC Treaty on the freedom to provide services. However, at the relevant time, the substance of that notion was unclear ... until 1984 with the Court's judgment in Luisi and Carbone. Prior to that case, indicia existed which were favourable and, equally, others which were unfavourable to the inclusion of the passive freedom to provide services."[59]

There were some "favourable indicia" even before the Luisi and Carbone decision in 1984 that settled the issue. He noted the 1964 directive that mentioned the passive freedom to provide services, which Rolf Gutmann had referred to. However, there was no "absolute certainty":

> "As late as 1976, in his Opinion in *Watson and Belmann*, Advocate General Trabucci expressly rejected such a wide interpretation."[60]

On the issue of the meaning of the phrase "to be guided" by EU Treaty provisions in interpreting the Association Agreement with Turkey, he wrote:

> "The phrase 'be guided by' demonstrates that the freedom to provide services established in primary law is intended to serve as a model. However, it makes it equally clear that the freedom to provide services is not to be extended in its entirety to the Association relationship. The expression 'be guided by' does not imply uniformity and, instead, permits, in principle, different interpretations."[61]

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57 Written submission of the UK government to the court in the Demirkan case, 31 August 2011.

58 Opinion of Advocate-General Cruz Villalón, Case C-221/11, Leyla Ecem Demirkan v Germany, delivered on 11 April 2013, paragraph 40.

59 Opinion of Advocate-General Cruz Villalón, Case C-221/11, paragraph 55.

60 Opinion of Advocate-General Cruz Villalón, Case C-221/11, paragraph 57.

61 Opinion of Advocate-General Cruz Villalón, Case C-221/11, paragraph 60.

He referred to article 31 of the UN's 1969 Vienna Convention on the Law on Treaties:

> "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[62]

He then continued:

> "According to that case-law, the similarity or even uniformity between the wording of provisions of an agreement with a non-member country and the corresponding provisions of the Union Treaties does not in itself suffice to extend the case-law on the provisions of the Union Treaties to the agreement with the non-member country."[63]

And this, he argued, meant that "entirely in accordance with Article 31 of the Vienna Convention on the Law of Treaties, the possibility of extension is dependent on the objectives of the relevant agreements." [64] The advocate-general agreed with the finding in an earlier case (Ziebell) that the Association Agreement "is intended to promote trade and economic relations between Turkey and the European Union and has an exclusively economic purpose". [65] The purpose of EU Treaties, on the other hand, is "to create an internal market, that is, to merge the national markets into a single market, the establishment of which involves the abolition of obstacles to the free movement of goods, persons, services and capital between Member States." [66] The extension of the freedom to provide services to service *recipients* constituted "an initial step towards the establishment of free movement for Union citizens."[67] He concluded:

> "Thus, having regard to the aims of the agreements … the answer to the first question must be that the concept of freedom to provide services in Article 41(1) of the Additional Protocol does not include the passive freedom to provide services."[68]

Not surprisingly, he also recommended a negative answer to the second question of the Berlin court: "where there are no services at issue or the services are purely of marginal significance, free movement for service recipients does not come into play."[69]

The final ruling

In its judgment of 24 September 2013, the court followed its advocate's-general opinion on all important points.

The court first established that EU Treaty provisions and the related case law "must be extended, so far as possible, to Turkish nationals to eliminate restrictions on the freedom to provide services."[70] Then the judges cautioned:

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62 Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969, entry into force on 27 January 1980, Art. 31(1).

63 Opinion of Advocate-General Cruz Villalón, Case C-221/11, paragraph 62.

64 *Ibid.*

65 Opinion of Advocate-General Cruz Villalón, Case C-221/11, paragraph 65.

66 Opinion of Advocate-General Cruz Villalón, Case C-221/11, paragraph 67.

67 Opinion of Advocate-General Cruz Villalón, Case C-221/11, paragraph 69.

68 Opinion of Advocate-General Cruz Villalón, Case C-221/11, paragraphs 70 and 72.

69 Opinion of Advocate-General Cruz Villalón, Case C-221/11, paragraph 77.

> "However, the interpretation given to the provisions of European Union law, including Treaty provisions, concerning the internal market cannot be automatically applied by analogy to the interpretation of an agreement concluded by the European Union with a non-Member State, unless there are express provisions to that effect laid down by the agreement itself … A comparison between the objectives and context of the agreement and those of the Treaty is of considerable importance in that regard."[71]

Based on this the court noted that "with regard to objectives, the Court has already held that the EEC-Turkey Association pursues a solely economic purpose ... The Association Agreement and its Additional Protocol are intended essentially to promote the economic development of Turkey." [72] As further evidence the court cited the issues that the agreement deals with: "customs union", "agriculture", "other economic provisions". It concluded that:

> "The development of economic freedoms for the purpose of bringing about freedom of movement for persons of a general nature which may be compared to that afforded to European Union citizens ... is not the object of the Association Agreement."[73]

> "By contrast, under European Union law, protection of passive freedom to provide services is based on the objective of establishing an internal market, conceived as an area without internal borders, by removing all obstacles to the establishment of such a market. It is precisely that objective which distinguishes the Treaty from the Association Agreement, which pursues an essentially economic purpose ...."[74]

On the meaning of the phrase that the contracting parties are "to be guided by" EEC Treaty provisions in abolishing restrictions on freedom to provide services, the court found that it in fact indicates "that the Contracting Parties are not obliged to apply the provisions of the Treaty ... but simply to consider them as a source of guidance for the measures to be adopted."[75]

Like the advocate-general, the court also stressed that the original concept of the freedom to provide services in the EEC had only an active side. It was the Luisi and Carbone judgment in 1984 that extended it to the passive side.[76] So the ECJ it concluded:

> "Accordingly, there is nothing to indicate that the Contracting Parties to the Association Agreement and the Additional Protocol envisaged, when signing those documents, freedom of provision of services as including passive freedom of provision of services."[77]

Its overall conclusion, based on all this, was:

> "In those circumstances, the answer to the first question is that the notion of 'freedom to provide services' in Article 41(1) of the Additional Protocol must be interpreted as not

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70 Court of Justice, Judgment of 24 September 2013 in the case C-221/11, Leyla Ecem Demirkan v Germany, paragraph 43.
71 Court of Justice,Judgment of 24 September 2013, paragraphs 44 and 47.
72 Court of Justice,Judgment of 24 September 2013, paragraph 50.
73 Court of Justice,Judgment of 24 September 2013, paragraph 53.
74 Court of Justice,Judgment of 24 September 2013, paragraph 56.
75 Court of Justice, Judgment of 24 September 2013, paragraph 45.
76 Court of Justice,Judgment of 24 September 2013, paragraph 59.
77 Court of Justice,Judgment of 24 September 2013, paragraph 60.

> encompassing freedom for Turkish nationals who are the recipients of services to visit a Member State in order to obtain services."[78]

Concerning the second question, the court only added that "given the answer to the first question, there is no need to answer the second question."[79]

This verdict, handed down six years after Leyla Demirkan's request for a visa was denied and two-and-a-half years after the Berlin court turned to the ECJ, is a watershed. From now on, German local courts and all other courts in EU countries will have to follow it. For those who hoped that Turkey might achieve visa-free travel through court rulings, a door has been shut.

What now?

The ruling has caused understandable disappointment in Turkey. It is now obvious: the abolition of the visa requirement will not be achieved through court rulings.

However, this is not the end of the road to visa-free travel for Turkish citizens. It is worth noting that even a positive court ruling would not have brought Turkish citizens full visa-free access to the European Union. Turkish citizens would have gained visa-free access to only 11 EU countries: Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, the UK, Portugal and Spain. The visa requirement in the remaining 17 - including Greece, Bulgaria, Romania, Hungary and Austria[80] – as well as, by implication, the four Schengen associated countries[81] would have remained in place.

Turkish citizens would have even needed visas to *transit* these countries by car, bus or train en route to the 11 EU countries without a visa requirement. Following the Soysal ruling, which so far provides Turkish service providers with visa-free access to Germany, Denmark and the Netherlands, the Commission specified in the "Practical Handbook for Border Guards" that:

> "... when a Turkish national wishes to enter the territory of one of these three Member States via the territory of one or more other Member States, he/she still needs a visa to transit through the territories of these other Member States. ... "As he/she does not need a visa for entering into the Member State that constitutes his/her main destination, but for passing through other Member States, the Turkish national shall apply for a short-stay visa from the consular authorities of the Member State of his/her first entry in the Schengen area." [82]

Thus even in a best-case scenario the Turkish government would have had to sit down and negotiate visa liberalisation with all 28 EU countries and the Schengen zone.

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78 Court of Justice,Judgment of 24 September 2013, paragraph 63.

79 Court of Justice, Judgment of 24 September 2013, paragraph 65.

80 The 17 are: Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Sweden.

81 Iceland, Norway, Liechtenstein and Switzerland.

82 Commission Recommendation of 14.12.2012 amending the Recommendation establishing a common "Practical Handbook for Border Guards (Schengen Handbook)" to be used by Member States' competent authorities when carrying out the border control of persons (C (2006) 5186 final)

The negative ruling makes it all the more imperative that the government takes action now to launch a visa liberalisation dialogue with the EU. If the Turkish government notifies the European Commission that it is ready to do so, the dialogue could start within a few weeks.

Last year, the EU offered Turkey a formal visa liberalisation process.[83] In December, it finalised a "roadmap towards a visa-free regime with Turkey".[84] This roadmap lists the conditions that Turkey needs to meet in order to qualify for visa-free travel.[85] In order to launch the visa liberalisation dialogue, Turkey also needs to sign a readmission agreement with the EU and implement it during the dialogue. So far, Turkey has been hesitant. In our report "Cutting the Visa Knot. How Turks can travel freely to Europe" (21 May 2013)[86] we discussed the Turkish concerns and showed a way forward.

Turkish officials fear above all the readmission agreement, the EU's condition for launching the visa liberalisation dialogue. However, under the terms of the negotiated readmission agreement, Turkey will be obliged to take back irregular third-country nationals from Afghanistan, Pakistan, Syria, Iraq and other countries *only three years after the entry into force of the agreement*. This means it can decide on its own how many foreign migrants it is prepared to take back during the transitional period. If the visa liberalisation dialogue does not lead to a lifting of the visa obligation before long, they can – acting perfectly legally – stop taking back third country nationals.

Turkey could also set a deadline: by the end of 2012, at the latest, the EU should lift the visa requirement for Turkish travellers. If in this period there is no vote, or if the vote is negative, Turkey will notify the EU that the readmission agreement will cease to be in force.

Both sides approaching the dialogue must overcome their often irrational concerns. Some in the EU unnecessarily fret about the threat of mass migration from Turkey proper. They still see the Turkey of 50 years ago. However, Turkey is today the 16th largest economy of the world. Since 2006, Germany's migration balance concerning Turkish residents has been negative: more Turks are moving from Germany to Turkey than in the other direction.[87]

On the other hand, Turkey's position on the readmission agreement is based on irrational fears about its possible impact. The Turks should have a look at Ukraine. Like Turkey, Ukraine has been a major transit country for irregular migrants.[88] It concluded a readmission agreement with the EU, which entered into force on 1 January 2008. It stipulated a two-year transitional period concerning the return of third-country nationals. Many Ukrainians were

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83 Council of the EU, Council Conclusions on developing cooperation with Turkey in the areas of Justice and Home Affairs, Council document no. 11748/12, 21 June 2012.

84 Roadmap towards a visa-free regime with Turkey, Annex II of the Note from the General Secretariat of the Council to the Permanent Representatives' Committee, Council document no. 16929/12, 30 November 2012.

85 The benchmarks are roughly the same that as those given countries that went through the process previously. Five Western Balkan countries – Albania, Bosnia, Montenegro, Macedonia and Serbia – successfully completed a visa liberalisation process between 2008 and 2010. Kosovo, Moldova, Ukraine and Georgia are implementing similar conditions for visa liberalisation now.

86 ESI, "Cutting the Visa Knot. How Turks can travel freely to Europe", 21 May 2013.

87 See the annual "Migrationsberichte" (migration reports) from the German Federal Office for Migration and Refugees (BAMF).

88 Ukrainian authorities apprehended on average 10,000 irregular migrants per year during 2005-2009. Martin Hofmann and David Reichel, Ukrainian Migration: An analysis of migration movements to, through and from Ukraine, International Centre for Migration Policy Development (ICMPD)/ Österreichischer Integrationsfond, March 2011.

alarmed, convinced that the readmission agreement would "turn Ukraine into a storehouse for illegal migrants,"[89] as one tabloid wrote. Reality proved to be very different. In 2010, the first year after the expiry of the transitional period, 398 third-country nationals were returned to Ukraine. In 2011, they were even fewer: 243 third-country nationals. In 2012, the number of returned third-country nationals dropped to 108.[90] Even if the number of EU requests for readmission to Turkey were to be ten times higher, it would still be low; all the more so when Turkey is hosting more than 600,000 refugees from Syria already.

In the wake of the judgement, it is also important that EU governments demonstrate to the Turkish public that they take the visa issue seriously. Member states should reject as few visa applications from Turkish citizens as possible, emulating Italy and Greece whose rejection rates are below 1 per cent. They should increase the share of multiple-entry visas with a validity of up to five years. In 2012, the share of Schengen multiple-entry visas issued to Turkish citizens was 50 per cent. There is no reason why it cannot be 99 per cent (like in the case of Austria) or 97 per cent (Italy).[91] Member states should also reduce or waive the visa fee of 60 Euro wherever possible under the EU's Visa Code.[92] Finally, they should waive requirements such as personal attendance each time a visa application is submitted. (Under the Visa Code, the "biometric identifiers" – fingerprints and photo – are valid for five years.)

Member states and the European Commission should also seriously address the issue of compliance with the Soysal ruling. The EU countries that are potentially affected by the Soysal ruling and have so far done nothing about it should examine in good faith the visa rules for Turkish service providers that applied when the standstill clause entered into force for them. In parallel, the Commission should undertake an independent study into this question. Based on this, the Commission should press reluctant member states to change their visa rules for Turkish service providers.

Germany, the Netherlands and Denmark should reduce the requirements for documentation that a Turkish national intends to enter their territory to provide services. All three should agree on a reasonable set of documents that the travellers need to show *at the border*, and they should inform all EU border guards *and airlines* about it.

Finally, the Demirkan case has highlighted that the two sides have never acted on their obligation from the standstill clause to:

> "... determine the timetable and rules for the progressive abolition by the Contracting Parties, between themselves, of restrictions on freedom of establishment and on freedom to provide services."[93]

If EU members are satisfied with the gist of the Demirkan decision, they should also take note of the warning by the ECJ that the Association Council has, contrary to its obligation from the

89 "The parliament has agreed to turn Ukraine into a storehouse for illegal migrants" (translated from Ukrainian), *Segodnya* (weekly newspaper), 15 January 2008.

90 In addition to the third-country nationals, 71 Ukrainian citizens were returned in 2010, 149 in 2011 and 180 in 2012. "State Border Service of Ukraine reports that the number of people readmitted to Ukraine has steadily decreased" (translated from Ukranian), *Interfax Ukraine* (news agency), 22 February 2013.

91 The visa statistics are available on the website of the Directorate-General for Home Affairs of the European Commission, section "Schengen, Borders & Visas", subsection "Visa policy". On the "Visa policy" page, the statistics are right at the bottom.

92 Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

93 Additional Protocol and Financial Protocol signed on 23 November 1970.

standstill clause, "not adopted any substantive measure for the liberalisation of services."[94] As the Association Agreement reaches its 50th anniversary this month, addressing this would be an appropriate and long overdue gesture.

[94] Court of Justice, Judgment of 24 September 2013 in the case C-221/11, Leyla Ecem Demirkan v Germany, paragraph 46.

About ESI's Schengen White List Project

ESI White List Project team and Stiftung Mercator meeting President Abdullah Gul

ESI has been working on the issue of visa liberalisation since 2006.

We would like to express our gratitude to our advisory board, in particular Chairman **Giuliano Amato** and Board Members **Otto Schily** and **Charles Clark** for providing guidance in this endeavour. We are also grateful to all donors that have enabled us to do this analysis. Since 2012, we have focused on Turkey, seeking to contribute to the launch of a process between Turkey and the EU. Our main donor for this work has been the **Stiftung Mercator**.

ERSTE Stiftung and OSI's **Think-Tank Fund** have helped us deal with wider issues, related to visa liberalisation in the Balkans and other countries trying to obtain visa-free travel with the EU. In 2009/2010 we ran a project aimed at ensuring a fair visa liberalisation process for five Western Balkan countries. This was supported by the Robert Bosch Stiftung. Visit our website "Europe's Border Revolution and the Schengen White List Project" at www.esiweb.org/whitelistproject.

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