

SUMMARY

# **ECJ 8 November 2012, case C-268/11 (Atilla Gülbahce - v - Freie und Hansestadt Hamburg), Free movement, Work and residence permit**

## **Facts**

Mr Gülbahce, a Turkish national, married a German woman in June 1997. One year later, he was granted a temporary residence permit on the basis of matrimonial cohabitation and a work permit of unlimited duration. The residence permit was extended in June 1999, in August 2001 and again in January 2004.

In July 2005, the German authorities learned that Mr Gülbahce's wife had been living apart from him since 1 October 1999. In February 2006, the municipality of Hamburg withdrew, with retroactive effect, the extensions to Mr Gülbahce's residence permit, as granted in 2001 and 2004. The withdrawal was based on two grounds. The first ground was that, under German law, a resident permit granted on the basis of matrimonial cohabitation loses its validity upon termination of that cohabitation unless the cohabitation on German territory had lasted for at least two years. In the case of Mr Gülbahce and his wife, their cohabitation within Germany had lasted less than two years (June 1998 - September 1999). The second ground was based on the EU-Turkey Association Agreement and Decision 1/80 of the Council of Association under that Agreement. Article 6(1) of Decision 1/80 provides that "a Turkish worker duly registered as belonging to the labour force of a Member State shall be entitled in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available". Although Mr Gülbahce had satisfied this requirement, because he had had over one year's legal

employment for the same employer at the time his residence permit was withdrawn retroactively (February 2006), this was not the case at the time of the extension of the permit in August 2001. Therefore, according to the Hamburg municipality, the periods of work completed by Mr Gülbahce after August 2001 should not be taken into account for the purpose of acquiring rights under Article 6(1) of Decision 1/80.

### **National proceedings**

Mr Gülbahce brought proceedings before the local administrative court. It dismissed his claim. On appeal, the regional administrative court found in his favour. The municipality appealed to the Federal Administrative Court, which overturned the regional court's judgment and remanded the case back to the regional court. That court referred five questions to the ECJ.

### **ECJ's findings**

1. The ECJ reformulated the referring court's five questions into one single question, namely whether Article 6(1) of Decision 1/80 precludes a Member State from withdrawing a Turkish worker's residence permit with retroactive effect from the point at which the worker ceased to comply with the conditions to his residence permit if the withdrawal occurs after the completion of one year's legal employment with one employer (§ 31 – 35).
2. The right to continue in paid employment with the same employer after one year's legal employment, in order to be effective, necessarily implies a concomitant right of residence (§ 36 – 39).
3. In 2011, after the reference for a preliminary ruling in this case, in its judgment in the Unal case (C-187/10), the ECJ held that, where a Turkish national may legitimately rely on rights pursuant to Decision 1/80, those rights are no longer dependent on the continuing existence of the circumstances which gave rise to them. Thus, a Turkish worker who has been employed for more than one year under a valid work permit fulfils the conditions of Decision 1/80, even though his residence permit had initially been granted for a purpose other than that of engaging in paid employment (§ 43 – 46).

### **Ruling**

The first indent of Article 6(1) of Decision 1/80 [...] must be interpreted as precluding the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the point when there was no longer compliance with the ground on which it had been issued under national law, provided there is no question of fraudulent

conduct on the part of the worker and the withdrawal occurs after the completion of one year of lawful employment under the first indent of Article 6(1) of Decision 1/80.

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**Creator:** European Court of Justice (ECJ)

**Verdict at:** 2012-11-08

**Case number:** C-268/11