**Akdeniz University**
**Institute of Social Sciences**

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**School of Business, Economics and Social Sciences**

**Buket DEMİRBAŞ**

# STANDSTILL CLAUSE AND ITS IMPACT ON THE VISA AND SOME OTHER ISSUES BETWEEN TURKEY AND EU MEMBER STATES

**Joint Master's Programme European Studies Master Thesis**

**Antalya / Hamburg, 2014**

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# STANDSTILL CLAUSE AND ITS IMPACT ON THE VISA AND SOME OTHER ISSUES BETWEEN TURKEY AND EU MEMBER STATES

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Buket DEMİRBAŞ'ın bu çalışması, jürimiz tarafından Uluslararası İlişkiler Ana Bilim Dalı Avrupa Çalışmaları Ortak Yüksek Lisans Programı tezi olarak kabul edilmiştir.

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Tez Başlığı: Standstill Clause and Its Impact On The Visa and Some Other Issues Between Turkey and EU Member States

"Standstill Hükmü Kapsamında AB'deki Türk Vatandaşlarının Hakları"

Onay : Yukarıdaki imzaların, adı geçen öğretim üyelerine ait olduğunu onaylarım.

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Müdür

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## SUMMARY

Turkey has recently achieved a remarkable economic growth. In this regard, it is easily said that European Union Member States going through an economic crisis might benefit from commercial, educational, cultural and touristic visits of Turkish people. However, Turkey is currently the only European Union candidate county whose citizens are obliged to get a visa before to enter to the mentioned States. The Schengen visa regime and restrictions concerning the freedom of movement for workers, freedom of establishment and, freedom to provide and receive services to the detriment of Turkish citizens present a significant obstacle to the strengthening of relations between Turkey and the European Union.

Association agreements and their additions with third countries such as the ones with Turkey are primary legal sources of EU legislation and so directly applicable; additionally, standstill clauses laid down in these sources protect previously given and acquired rights of citizens of both contracting parties. Turkey is bound to the European Union Member States through the Ankara Agreement (signed in 1963), including the Additional Protocol (signed in 1970 and elaborated the Ankara Agreement and determined conditions of its implementation). The mentioned Agreement and Protocol have been extended with the lots of Association Council Decisions and formed the Association Law between two parties. The mentioned Association Law has been interpreted by only the European Court of Justice. In recent years, by virtue of its decisions, the mentioned Court, as a guardian of the EU law, has performed a very significant function through condemning European Union Member States to pay, which states do not adapt European Union Law into their domestic law, not fully reflect it or not adapt it in time. In this regard, there are numerous restrictions on visa and other issues which have been implemented by the mentioned States for Turkish nationals. Therefore, it should be beneficial to remember and keep in mind some details about relationships between both sides, rights and freedoms of Turkish nationals arising from European Union-Turkey Association Law, interpretations of the European Court of Justice in light of the mentioned Association Law and some new steps such as the Positive Agenda, Readmission Agreement and notably Visa Liberalization Dialogue. Additionally, all Turkish authorities and nationals should be more aware of their acquired rights laid down in Association Law.

# ÖZET

Türkiye son zamanlarda gözle görülür oranda ekonomik bir büyüme sağladı. Bu bağlamda kolayca görülebilir ki ekonomik krizdeki AB Üye Ülkelerinin Türk insanının ticari, eğitimsel, kültürel ve turistik ziyaretlerinden fayda sağlayacağı söylenebilinir. Halbuki, Türkiye günümüzde vatandaşlarının söz konusu Ülkelere girmeden önce vize almak zorunda olduğu tek AB aday ülkesidir. Türk vatandaşları aleyhine olan Şengen vize rejimi ve işçilerin hareket serbestisi, yerleşme serbestisi ve hizmet sunma ve alma serbestisi ile ilgili kısıtlamalar Türkiye ve AB arasındaki ilişkilerin güçlenmesine önemli bir engel oluşturmaktadır.

Türkiye ile yapılan anlaşma örneğindeki gibi, üçüncü dünya ülkeleri ile yapılan Ortaklık anlaşmaları ve onların ekleri AB mevzuatının başlıca yasal kaynaklarıdır ve direk etkilidirler; ilaveten, bu kaynaklardaki standstill (mevcut durumu koruma) ilkeleri iki akit tarafın vatandaşlarına verilmiş ve onların önceden kazanılmış haklarını korumaktadır. Türkiye, AB Üye Ülkelerine (1970'te imzalanan ve Ankara Anlaşması'nı detaylandırıp nasıl uygulanacağını belirleyen) Katma Protokol' ü içeren (1963'te imzalanan) Ankara Anlaşması ile bağlanmıştır. Söz konusu Anlaşma ve Protokol Ortaklık Konseyi Kararları ile genişletilmiştir ve iki tarafın arasında Ortaklık Hukuku' nu oluşturmaktadır. Söz konusu Ortaklık Hukuku sadece Avrupa Adalet Divanı tarafından yorumlanmaktadır. Son zamanlardaki kararlarıyla, söz konusu Divan, AB Hukuku'nun bir koruyucusu olarak, AB Hukuku'nu kendi ulusal yasalarına adapte etmeyen, tam yansıtmayan ya da zamanında yansıtmayan AB Üye Ülkelerini ödeme yapmaya mahkum eden çok önemli bir fonksiyon icra etmiştir. Bu bağlamda, vize ve başka konularda AB Üye Ülkeleri tarafından Türkler için uygulanan birçok kısıtlama vardır. Bu yüzden, iki taraf arasındaki ilişkiler ile ilgili bazı detayları, söz konusu AB-Türkiye Ortaklık Hukuku ışığında Avrupa Birliği Adalet Divanı'nın yaptığı yorumları ve Pozitif Gündem, Geri Kabul Anlaşması ve özellikle Vize Serbestisi Diyaloğu gibi bazı yeni adımları hatırlamak ve akılda tutmak faydalı olacaktır. Ayrıca, tüm Türk yetkililerin ve milletinin Ortaklık Hukuku'nda belirtilen kazanılmış haklarının farkında olması gerekmektedir.

# ABBREVIATIONS

| | |
|---|---|
| AA | Ankara Agreement |
| AC | Association Council |
| ACDs | Association Council Decisions |
| AG | Advocate General |
| AP | Additional Protocol |
| Art. | Article |
| CofE | Council of Europe |
| CoR | Committee of the Regions |
| CRvB | Centrale Raad van Beroep |
| CVCE | Centre Virtuel de la Connaissance sur l'Europe |
| CU | Customs Union |
| EC | European Community |
| ECJ | European Court of Justice |
| Ed. | Edition |
| Eds. | Editors |
| EEC | European Economic Community |
| EESC | European Economic and Social Committee |
| EP | European Parliament |
| EU | European Union |
| EuBC | European Business Circle |
| EU-MSs | European Union Member States |
| FDP | Free Democratic Party |
| FP | Financial Protocol |
| GDP | Gross Domestic Product |
| Ibid | Ibidem (the same) |
| IKV | Economic Development Foundation (Iktisadi Kalkinma Vakfi, in Turkish) |
| IPA | Instrument of Pre- Accession Assistance |
| MSs | Member States |
| NGOs | Non-governmental Organizations |

| | |
|---|---|
| op. cit | Opus Citatum (the work cited) |
| TEEC | Treaty Establishing the European Community |
| TFEU | Treaty on the Functioning of the European Union |
| TGNA | Turkish Grand National Assembly (TBMM, in Turkish) |
| TUIK | Turkish Statistical Institute |
| UK | the United Kingdom |

# INTRODUCTION

Turkey has achieved a remarkable economic growth in the last 5 years. In this regard, several different information sources including types of statistics help people to become informed about the mentioned growth.[1] For instance; according to the economic indicators of the Turkish Statistical Institute (TUIK) on May 2013, in the second quarter of 2013 compared to the same quarter of the previous year, the Gross Domestic Product (GDP) of Turkey increased to 4,4% at 1998 prices and increased by 10,2% at current prices in production based, that GDP rate was minus (-) 4. 8% in 2009 and 0, 7% in 2008.[2] Additionally, one of another source mentions about the European Union (EU)-Turkey relations (on August 14, 2012) that: "*Amid the euro crisis drama, Turkey has seen economic growth as its European neighbors have suffered...The Turkish economy is booming...The country has a young population and the consumer culture is robust*"[3]. Concordantly, it is easily seen that EU Member States (MSs) going through an economic crisis[4] might benefit from commercial, educational, cultural and touristic visits of Turkish people. However, "*...the EU-Turkey relations...are burdened by the clash over the question how the association freedom of movement...shall be implemented...it seems, the ...(ECJ) is the only institution that acts in the spirit of the Association Agreement. The Member States and the Commission seem very reluctant and partly unwilling to fulfill their obligations*"[5]. Furthermore, Turkey is currently the only EU candidate county whose citizens are obliged to get a visa before being allowed to enter to the EU-MSs and,[6] the Schengen visa regime and restrictions concerning the freedom

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[1] For further information, please look at: "*Latest economic indicators of Turkey*", from: http://www.hazine.org.tr/en/index.php/turkish-economy/economic-indicators (accessed date: 26.02.2013); see also, "*GDP Growth (annual %)*", from: http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG (accessed date: 26.02.2013); see also, "*Output& Growth*", from: http://www.hazine.org.tr/en/index.php/turkish-economy/output-growth (accessed date: 26.02.2013); see also, "*Annual Average Real GDP Growth (%) Forecast in OECD Countries 2011-2017)*", from: http://www.invest.gov.tr/en-us/turkey/factsandfigures/pages/economy.aspx (accessed date: 26.02.2013).

[2] Please look at: "*Economic Indicators 2013 (May 2013)*", TUIK, Publication Number: 4125, ISSN 1305-3353, ISBN 978-975-19-5872-3, October 2013, Ankara, from: https://www.google.com/url?q=http://www.tuik.gov.tr/IcerikGetir.do%3Fistab_id%3D241&sa=U&ei=RsaVUvSWM9DMtAaU4oDIAQ&ved=0CAYQFjAA&client=internal-uds-cse&usg=AFQjCNH9sNqSF0QqlNiYQheJ7wWa9o0IDg (accessed date: 27.11.2013).

[3] For further information, please look at: "*Turkey and the Euro crisis: EU Membership loosing its Appeal*", from: http://www.spiegel.de/international/europe/turkey-and-the-eu-turks-question-advantages-of-eu-membership-a-849982.html (accessed date: 06.09.2012).

[4] For the relevant sources of information relating to the EU's economic crisis, see n.1, n.2 and n.3.

[5] Gumrukcu H. "*Introduction*", in Gumrukcu H. & Voegeli W. (Eds), (2012), "*Turkey on the Way to a Visa Free Europe*", (1st Ed.), Vizesiz Avrupa Dizisi 5, Akdeniz University & University of Hamburg, Oncu Press, Ankara, p. 17.

[6] For further information, please look at: Stiglmayer A., (2012), "*Visa-Free Travel for Turkey: In everybody's Interest*", Turkish Policy Quarterly, Vol. 11 No. 1, from: http://www.turkishpolicy.com/dosyalar/files/2012-1-AlexandraStiglmayer.pdf (accessed date: 21.05.2013).

of movement for workers, freedom of establishment and, freedom to provide and receive services to the detriment of Turkish citizens present an obstacle to the strengthening of relations between Turkey and the EU. For instance, nonexistence of a proof of Basic German language ability is an obstacle for a Turkish worker's spouse (living in Turkey), whose husband is working in Germany. The Schengen regime and the restrictions are also an obstacle for Turkish universities, Non-governmental Organizations (NGOs), entrepreneurs and businessmen and, the youth in benefiting from the EU funds and projects.[7] Concerning the visa obligatory for Turkish citizens, the EU states seem as though they competed with each other. Because, at first, Germany began to make a visa obligatory for Turkish nationals in 1980, after annulment of the German-Turkish Visa Agreement of 1953. And then, other European states followed Germany and consequently, the EU with a regulation (No. 539/2001) entered Turkey into the list of third countries, whose are required to obtain a visa in order to cross the external borders of the EU.[8] In this regard, there are two separate claims. Some academicians such as Prof. Dr. Wolfgang Voegeli from University of Hamburg and Prof. Dr. Harun Gumrukcu from Akdeniz University[9] and; politicians such as Mr. Egemen Bagis, who was the former Minister for EU Affairs and Chief Negotiator[10] and; Ms. Cecilia Malmstrom, who is European Commissioner for Internal Affairs,[11] think the visa requirements for Turkish nationals are inconsistent with the standstill clauses of the EU-Turkey Association Law and the EU-MSs disregard these clauses. On the other hand, some other academicians such as Mr. Kai von Hailbronner[12] and politicians such as members of the Council of the EU[13] and the Netherlands, Austria, Germany, France and Greek Cypriot

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[7] For further information, please look at: "*Turkey Calls on the EU Member States and European Commission to Take Action for Visa Free Travel of Turkish Citizens*", 29 March 2012, from: http://www.abgs.gov.tr/index.php?p=47470&l=2 (accessed date: 10.02.2012)

[8] The dates of the visa obligatories of the EU-MSs for Turkish citizens will be mentioned below. Art. 1 of the Regulation No. 539/2001 of the 15 March 2001 states that: "*Nationals of third countries on the list in Annex I shall be required to be in possession of a visa when crossing the external borders of the Member States*", and the mentioned Annex I includes Turkey. For the Regulation, please look at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF (accessed date: 31.01.2014).

[9] Please look at:*"Antalya Senatosu'ndan 'Vizesiz Avrupa' Deklarasyonu",* 26 October 2010, from: http://www.abbasguclu.com.tr/universite/antalya_senatosundan_%E2%80%98vizesiz_avrupa_deklarasyonu.html (accessed date: 27.11.2013); see also, "*Turklere Vizesiz Avrupa Yolu* Acik", 23 March 2012, from, http://www.sabah.de/turklere-vizesiz-avrupa-yolu-acik.html (accessed date: 27.11.2013).

[10] Please look at: "*Turkey Calls on EU for Visa Free Travel of Turkish Citizens*", 28 March 2012, from: http://egemenbagis.com/en/4409 (accessed date: 27.11.2013).

[11] Please look at: "*EU Interior Ministers to debate Readmission Agreement with Turkey*", 24 February 2011, from: http://www.europeanunionplatform.org/2011/02/24/eu-interior-ministers-to-debate-readmissionagreement-with-turkey/ (accessed date: 27.11.2013).

[12] Prof. Dr. Kai von Hailbronner is a German state attorney and an academician. For further information, please look at: Gutmann R., "*Doner ve Gumruk* Birligi", in Gumrukcu H. & Voegeli W. (Eds.) (2012), op. cit., p. 171; see also, "*EU attempts to dissuade top court from granting visa-free travel to Turks*", 7 November 2012, from: http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=297487 (accessed date: 27.11.2013).

[13] Please look at: "*Council conclusions on EU-Turkey Readmission Agreement and related issues*", Council of the European Union, 3071st Justice and Home Affairs Council meeting, 24 and 25 February 2011, Brussels, from: http://www.consilium.europa.eu/uedocs/cmsUpload/119501.pdf (accessed date: 27.11.2013).

administration object to the above-mentioned view, some of these countries even object to facilitating visa requirements for Turkish nationals. Thus, it will be beneficial to remember and keep in mind some details about relationships between both sides.

At the beginning of this Master-thesis, features of EU Law, the terms of "supranational", "supremacy" and "standstill", "Association Law" and association relation between both sides will be briefly explained. In the context of association relation, Turkey as a negotiating country has a long-standing relationship with the EU and so it enjoys numerous legal rights deriving from the association status. Within this context, in the year 1963 an association agreement (known as the Ankara/Association Agreement, AA) and in the year 1970 an Additional Protocol (AP) were signed between the European Economic Community (EEC)/European Community (EC)/EU[14] and Turkey.[15] They and Turkey-EU Association Council Decisions/ACDs (which mentioned below) have been foundation stones of relationships between both sides. Besides it is significant to mention that, "*Preamble of Ankara Agreement and its resemblance to the preamble of Rome Treaty as well as sharing the same cornerstone and preamble with Greece-EEC Agreement.*[16] That is to say, there is no any difference between Greece-EEC/Atina Agreement[17] and AA contextually; for instance, the most significant point on both Agreements is that the aim of both is becoming a full membership of the EU for Greece and Turkey after a specific time. Additionally, Turkey was most probably seen as a part of Europe much more than that today. Because the AA and the EEC share the same cornerstone. Thus; the AA, the AP and the ACDs are parts of the EU.[18] If the Ankara Agreement had been signed in these days, would have the AA and the EEC shared the same cornerstone? This is a thought-provoking question.

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[14] EEC refers to the Rome Treaty. "EEC/EC/EU" will be hereinafter referred to as the "EU" in this thesis. Because the EEC had been renamed the EC and then the EC ceased to exist and the EU has become the legislative entity because of the taking into effect of the Lisbon Treaty on 1 December 2009. For further information, please look at: "*European Union-European Community-European Communities: What is the difference between the European Union and the European Community/European Communities?*", from: http://www.consilium.europa.eu/contacts/faq?lang=en&faqid=79264 (accessed date: 19.05.2012)

[15] The relevant articles of the AA and the AP to the scope of this Thesis will be discussed in depth below.

[16] Sariibrahimoglu Y.S. (2011): "*European Union's Visa Application for Turkey: Turkey's Mistakes and Legal Rights in Framework of EU-Turkey Relations*", Ankara Bar Review, Cem Veb Ofset, Ankara, p. 99, from: http://www.ankarabarreview.org/pdf/abr_2011-1.pdf (accessed date: 24.05.2013).

[17] Association (Atina) Agreeement was signed by the EC/EU and Greece in 1961 and it came into effect in 1962. Art.72 of that Agreement stated that Greece would eventually accede to the Community. The accession negotiations started in 1976 and completed in 1979. Hence, Greece became a full membership of the Community in 1981 and started to enjoy very favourable conditions of accession. For further information, please look at: "*The Accession of Greece*", Centre Virtuel de la Connaissance sur l'Europe (CVCE), Publication date: 11/09/2012, p. 2 and 4, from, http://www.cvce.eu/content/publication/1999/1/1/61a2a7a5-39a9-4b06-91f8-69ae77b41515/publishable_en.pdf (accessed date: 27.11.2013); see also, "*AB Genişlemesi: Avrupa Birliği Genişleme Süreci*", from: http://www.ikv.org.tr/icerik.asp?konu=abgenislemesi&baslik=AB%20Geni%FElemesi (accessed date: 27.11.2013).

[18] This comment was also stated by the ECJ in its Demirel (Case 12/86) and Sevince (Case C-192/89) judgments. They will be mentioned below.

On the other hand, the EU's internal/single/common market aims to guarantee the four freedoms within the EU's 28 MSs, these freedoms consist of the free movement of goods, capital, services and persons established in the Treaty of Rome/the EEC Treaty and they form the basis of the single market framework.[19] The meaning of the mentioned freedoms is that goods, capital/money, services and persons can move around freely; i.e, they have direct access to current 27 (now 28) EU member countries and more than 500 million people.[20] Then, the same principles are also extended by the Single European Act and strengthened by the Lisbon Treaty and a special Protocol 27, too.[21] In the context of the association relation between the EU and Turkey, the AP of the AA stipulates the prohibition of introducing new restrictions concerning the right of establishment and freedom to provide services to the parties in its Article 41/1. This provision is an unequivocal "standstill" clause which forbids both the EU's Member States and Turkey from changing conditions to the detriment of the applicant from how they stand at the date of entry into force of the AP. For instance, Art.41(1) of the AP prohibits visa requirement for Turkish citizens in the context of freedom to provide services. This interpretation concerning visa requirement was made by the ECJ as a top court of the EU in Luxembourg on the 19th of February 2009 in the famous Soysal judgment.[22] This standstill clause should also have prohibited the visa requirement for Turkish citizens in context of freedom to receive services.[23] The ECJ judgments concerning visa issue for Turkish citizens has started with Abdulnasir Savas judgment (Case C-37/98) in 2000 and continued until to the Demirkan judgment (Case C-221/11) today (September 2013). In addition to the Art. 41(1) of the AP, there is another legal act having a standstill clause, it is called the Art. 13 of 1/80 ACD which regulates the freedom of movement for Turkish workers.[24] Both the Art. 41(1) of the AP and the Art. 13 of the 1/80 ACD will be analyzed in this thesis. In the context of three standstill legal acts [Art. 41(1) of the AP, Art. 13 of 1/80 ACD (and its old version Art. 7 of 2/76 ACD], there has been in total three (3) Peskeloglu judgments (in 1963-4 and 1983) and; seven (7) ECJ judgments [Savas (Case C-37/98) in 2000, Abatay/Sahin (Case C-317/01) in 2003, Tum/Dari (Case C-16/05) in 2007,

[19] For further information, please look at: Craig P. & De Burca G., (2011): "*EU Law: Text, Cases, and Materials*", (5th Ed.), Oxford University Press, New York, p. 715; see also, "*General Policy Framework"*, from: http://ec.europa.eu/internal_market/top_layer/ (accessed date: 06.05.2013).

[20] For further information, please look at: "*Population and population change statistics*", from: http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Population_and_population_change_statistics (accessed date: 20.04.2013).

[21] For further information, please look at n. 14.

[22] For the Case Mehmet Soysal and Ibrahim Savatli v Bundesrepublik Deutschland, C-228/06, (2009) ECR 1031, please look at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0228:EN:NOT (accessed date: 06.05.2013).

[23] This comment will be explained below.

[24] Candan T. (2008), "*ATAD'in Son Kararlari Isiginda Ortaklik Iliskisinde Yerlesme Hakki ve Serbest Dolasim"*, in Akcay B., Baykal S., Kahraman S., (Eds.): "*Avrupa Birligi'nin Guncel Sorunlari ve Gelismeler*", Seckin Publishing, Ankara, p. 351.

Soysal/Savatli (Case C-228/06) in 2009, T. Sahin (Case C-242/06), Toprak (Case C-300/09) and Demirkan (Case C-221/11)] relevant to standstill clauses and visa issue until now. Furthermore; in recent years, some Member States' national courts began giving judgments that recognize the rights of Turkish citizens on the basis of the case law of the ECJ. In this Master thesis, secondly, it will be outlined and interpreted all ECJ's and national courts' judgments concerning rights of Turkish citizens arising from the standstill clause after stating the above-mentioned standstill clause and its fields of application on the basis of the AA, AP, Association Council Decisions and relevant case law of the ECJ. The focus will be on the freedom of movement for workers, freedom of establishment and freedom to provide and receive services rather than free movement of goods and capital. Thirdly, it will be shortly mentioned the current Positive Agenda, Readmission Agreement and Visa Liberalization and made some political analysis. While analyzing above-mentioned points, this Master-thesis can hopefully throws some light on these main questions; what is the background of all developments (which will be mentioned in this study), when and why do EU-MSs apply a visa for Turkish citizens, what was the reaction in Turkey on visa issues at that time, what do the terms "standstill clause" and "supranational", "supremacy", "association law" and "association relation" mean, what are the relevant agreements, protocols, Turkey-EU Association Council Decisions, case law of both the EU-MSs' national courts and ECJ in Association Law, what are the standstill clauses in Association Law, what are the fields of application of these standstill clause, how do the fields of application of standstill clauses affect the case law of both EU-MSs' national courts and ECJ, how they are interpreted by both courts, how is the current legal regulation of visa requirements for Turkish citizens in EU Law and (mostly) German Law, where and especially why was the ECJ's argumentation in the ECJ's Demirkan judgment (Case C-221/11) flawed and, what are the expectations from the Positive Agenda (some chapters of which concern about the right of establishment and freedom to provide services, notably visa between two parties), from the Readmission Agreement and Visa Liberalization?. Economically speaking, this Thesis hopes to answer these major questions; "which rights arising from standstill clauses in EU-Turkey Association Law do Turkish nationals have, what is their impact on the visa issue and some other issues for Turkish nationals, how has the ECJ the rules applying the standards set by EU-Turkey Association Law interpreted, why was the ECJ' Demirkan Case flawed and what is the expectation of Visa Liberalization?".

# CHAPTER 1
# BACKGROUND

The EU has signed different types of agreements with other countries; in this regard, association Agreements as being international agreements between the EU-MSs and other non-EU member (third) countries represent one type of them.[25] The mentioned Agreements, whose the legal basis is Article (Art.) 217 of the Treaty on the Functioning of the European Union (TFEU) [previously Art. 310 of the Treaty of the European Community (TEC)/ Art. 310 of the Treaty establishing the European Community (TEEC)][26], aim to form a framework to conduct bilateral relations and prepare for likely future EU membership of the third counties.[27] The EEC (present EU) signed such an association agreement with Turkey in Ankara on the 12th September 1963 and it came into effect on the 1st December 1964. Additionally, one of the purposes of the mentioned Agreement [also known as the "Agreement establishing an Association between the European Economic Community and Turkey" or briefly "Ankara Agreement (AA)]"[28], is to bring Turkey into a Customs Union (CU)[29] with the EEC and to eventual membership.[30] In this regard, Art. 2(1) of the AA declares its purpose by stating that: "*The aim of this Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people*".[31] The Art. 2(1) of the AA states in general terms that the purpose of the Agreement is to strengthen the

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[25] For further information, please look at: "*Association Agreements"*, from: http://eeas.europa.eu/association/index_en.htm (accessed date: 26.02.2012); see also, "*Association Agreement*", from: http://en.euabc.com/word/67 (accessed date: 26.02.2012).

[26] For the TFEU Treaty, please look at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF (accessed date: 27.02.2013).

[27] For further information, please look at: Gumrukcu H. (2002): "*Turkiye ve Avrupa Birligi: İliskinin Unutulan Yonleri, Dunu ve Bugunu*" (1st Ed.), Avrupa-Turkiye Arastirmalari Enstitusu, Hamburg, p. 57-8; see also, "*Association Agreements*" and "*Association Agreement*", n. 25.

[28] The mentioned Agreement is briefly mentioned as "Ankara Agreement" or "AA" in this thesis.

[29] CU came into force on 1 July 1996 based on a decision taken by the EU-Turkey Association Council (Decision 1/95 of the Association Council of 22 December 1995, OJ 1996 L 35). For further information, please look at: Tobler C. (2010), "*Equal Treatment of Migrant Turkish Citizens in the EU: Contrasting the Kahveci Case with the Olypique Lyonnais Case*", Ankara Law Review, Vol. 7, No. 1, p. 2., from: http://dergiler.ankara.edu.tr/dergiler/64/1630/17468.pdf (accessed date: 27.02.2013). The CU will not be analyzed in this thesis because the key basic concept of it is the free movement of goods produced in its member states and free movement of goods. This is not in the scope of this Thesis.

[30] For further information, please look at: "*EU-Turkey relations*", from: http://ec.europa.eu/enlargement/candidate-countries/turkey/eu_turkey_relations_en.htm (accessed date 26.02.2012); see also, "*Ankara Agreement*", from: http://www.ab.gov.tr/index.php?p=117&l=2 (accessed date: 26.02.2012); see also, "*Turkey-EU Relations*", from: http://www.mfa.gov.tr/relations-between-turkey-and-the-european-union.en.mfa (accessed date: 12.03.2013).

[31] For the AA, please look at: "*Ankara Agreement*", n. 30.

trade and economic relations between the both sides. This Article "*sets as an objective the gradual attainment of full freedoms to the movement of persons, to provide services and of establishment*".[32] The law of the AA concerns the both sides, i.e. the Turkey, on the one hand, and the EU and its MSs, on the other hand.[33] This Agreement is valid indefinitely and there is no any provision concerning conditions for abrogation in this Agreement.[34]

On the other hand, the AP as being a second framework stone of relations between the EU and Turkey was signed in Brussels on 23 November 1970 and came into effect in 1 January 1973.[35] The goal of the AP is stated in its Article 1 that: "*This Protocol lays down the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of the Agreement establishing an Association between the European Economic Community and Turkey*".[36]

Concerning the AP, it is also stated in its Art. 62 that: "*This Protocol and the Annexes thereto shall form an integral part of the Agreement establishing an Association between the European Economic Community and Turkey*". According to this Article, the AP and its Annex are integral parts of the AA and thus, they became an integral part of the EU Law as from their entry into force. Therefore, it can be said that the AA and the AP aims to prepare Turkey for accession to the EU through increasing the coordination of economic policy and creating the CU since 1 January 1996.[37] Additionally, concerning the AA and the AP, the ECJ stated in its judgment in the Demirel Case (Case 12/86) that; "*...the provisions of such an Agreement form an integral part of the Community Legal System; within the framework of that system the Court has jurisdiction to give preliminary rulings concerning the interpretation of such an Agreement*".[38] That is to say, the AA and AP became an integral part of the EU Law making it a primary source of legislation as from their entry into force and in this regard, any legislation

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[32] Voegeli W. "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 160.
[33] Tobler C. (2010), op. cit., p. 2.
[34] Gumrukcu H. (2002), op. cit., p. 59.
[35] For further information, please look at: "*Turkey-EU Relations*", n. 30.
[36] Additional Protocol and Financial Protocol signed on 23 November 1970. For the AP, please look at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:21970A1123(01):EN:HTML (accessed date: 02.03.2013).
[37] Sariibrahimoglu Y.S. (2011), op. cit., p. 98.
[38] Meryem Demirel v Stadt Schwaebisch Gmund, Case 12/86 (30 September 1987) , ECR I-3719, para. 7, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61986J0012:EN:HTML (accessed date: 07.05.2013); see also, Greece v Commission Case 30/88 (1989) ECR I-3711, para. 12, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61988CJ0030:EN:PDF (accessed date: 07.05.2013); see also; Salih Zeki Sevince v. Staatssecretaris van Justitie Case C-192/89 (1990) ECR I-3461, para. 8, from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61989J0192 (accessed date: 07.05.2013).

as being a secondary legal act should be compatible with the association agreements (like the AA) signed with the EU.[39] A similar judgment to that had also stated before by the ECJ in its Haegeman Case (Case 181-73) as follows: "*The provisions of the Agreement, from the coming into force thereof, form an integral part of Community Law*".[40] This Agreement refers to the Atina Agreement between the EU (EEC at that time) and Greece and this statement says that the Atina Agreement as one of the association agreements of the Community is an integral part of Community Law and the ECJ has jurisdiction to give preliminary rulings on their interpretation; i.e., the interpretations of the associations agreements including their parts such as the AP and the Association Council Decisions, ACDs (which mentioned below) belongs to the ECJ.[41]

The third and last framework stone of relations between EU and Turkey is the existence of an Association Council (AC) and its decisions. The AC, which meets at the ministerial level as being a main decision making body between Turkey and the EU, was established by the AA signing between two parties in Brussels in 1963.[42] The ECJ stated in its judgment in the Sevince Case that: "*...the decisions of the Council of Association, in the same way as the Agreement itself, form an integral part, as from their entry into force, of the Community legal system*".[43] According to that case law, ACDs like the AP and its Annex are integral parts of the AA and so also integral parts of the EU Law as from their entry into force. Before the ECJ's judgment in Sevince Case, the legal acts between Turkey and the EU were a matter in question 'whether these acts were only documents for the EU's good intention or bound each EU-MSs' national law; and after Sevince Case, this debate came to an end.[44] In this context, it will be seen below that "*Association agreements, the additional protocol and the decisions adopted by the association council serve their preparations for the admission of Turkey to the European Union. These preferential treatments contain a 'skinny' freedom of movement rights for Turkish national and companies*".[45] Thus, the association relationship between Turkey and

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[39] For further information, please look at: Sariibrahimoglu Y.S. (2011), op. cit., p. 96.

[40] R.&V. Heageman v Belgian State Case 181-73 (30 April 1974), para. 5, from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61973J0181 (accessed date: 29.11.2013).

[41] Craig P. & De Burca G., (2011), op. cit., p. 353.

[42] For further information, please look at: "*The 50th meeting of EU-Turkey Association Council was held*", from: http://www.abgs.gov.tr/index.php?p=47884&l=2 (accessed date: 12.03.2013).

[43] Sevince Case C-192/89 (1990), para. 9, n. 38; see also, Greece v Commission Case 30/88 (1989), para. 13, n. 38.

[44] Karluk R., "*Avrupa Birligi Turk Vatandaslarina Vize Uygulama Hakkina Sahip Degildir!*", in Gumrukcu H. & Karabacak Y. (Eds.) (2011): "*AVRUPA-TURKIYE ILISKILERI Vizesiz Avrupa ve Vize Ötesi ATAD Kararları: Avrupa'nin Avrupaliligi Inkarciligi*", (2nd Ed.), Association for Visa-Free Europa, Vizesiz Avrupa Dizisi-4, Ankara, p. 90.

[45] Gutmann R. (Dr.), (2003), "*Standstill as a new form of movement in the association EEC-Turkey*", OJ L29/10114, Stuttgart, p. 1, from:

the EU (the EEC at that time) which established with the AA has been improved with the AP and the ACDS.[46] The increase of the existence of the rights [which arise from the Association Law (mentioned below) and the status of being invoked by Turkish nationals before a national or European court] in getting diversified in the light of stated judgments of the ECJ are also enhancing the significance level of the mentioned association relationship in terms of individual rights.[47]

When reviewing the AA, it should be mentioned some relevant articles of it with the aim of understanding the integration process of Turkey to the EU. In this regard, its Art. 4 states that: "*1. During the transitional stage the Contracting Parties shall, on the basis of mutual and balanced obligations: –establish progressively a customs union between Turkey and the Community; – align the economic policies of Turkey and the Community more closely in order to ensure the proper functioning of the Association and the progress of the joint measures which this requires. 2. This stage shall last not more than twelve years, subject to such exceptions as may be made by mutual agreement. The exceptions must not impede the final establishment of the customs union within a reasonable period*".[48]

Concerning the transitional stage, it should be also stated Art. 2(2), 2(3), 3 and 5 of the AA as follows: Art. 2: "*2. In order to attain the objectives set out in paragraph 1, a customs union shall be progressively established in accordance with Article 3, 4 and 5.*
*3. Association shall comprise: (a) a preparatory stage; (b) a transitional stage; (c) a final stage*".
Art. 3: "*1. During the preparatory stage Turkey shall, with aid from the Community, strengthen its economy so as to enable it to fulfil the obligations which will devolve upon it during the transitional and final stages. The detailed rules for this preparatory stage, in particular those for aid from the Community, are set out in the Provisional Protocol and in the Financial Protocol to this Agreement. 2. The preparatory stage shall last five years, unless it should be extended in accordance with the conditions laid down in the Provisional*

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https://www.google.com.tr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCoQFjAA&url=http%3A%2F%2Fwww.migrationsrecht.net%2Fdoc_download%2F30-standstill-as-a-new-form-of-movement-in-the-association-eec-turkey.html&ei=CyCfUb7XKYvtPKr4gMgB&usg=AFQjCNF8C4MY40NVLxVG9x4OBknQdlFT6g&sig2=MBtV9d0tI3qnqdJTOz8KMg (accessed date: 24.05.2013).

[46] Candan T. (2008), "*ATAD'ın Son Kararları Işığında Ortaklık İlişkisinde Yerleşme Hakkı ve Serbest Dolaşım*", in Akcay B., Baykal S., Kahraman S., (Eds.), op. cit., p. 349.

[47] For further information, please look at: Ibid., p. 350; see also, Baykal S., (2007),"*Turk Vatandaslarinin AB ulkelerinde Is kurma ve Hizmet Sunma Serbestisi: Turkiye-AT Ortaklik Hukuku ve ATAD Kararlari Cercevesinde Katma Protokol'un 41/1 Maddesinde Duzenlenen Standstill Hukmunun Kapsami ve Yorumu*", IKV Publications: 214, Istanbul, p. 6.

[48] For the AA, n. 30.

*Protocol. The change-over to the transitional stage shall be effected in accordance with Article 1 of the Provisional Protocol*".
Art. 5: "*The final stage shall be based on the customs union and shall entail closer coordination of the economic policies of the Contracting Parties*"[49].

All in all, these articles said above generally indicate the purposes of the AA and the details of the preparatory, transitional and final stages of the association between Turkey and the EU and; notably, the Art. 3(1) of the AA refers to the annexed protocols for the definition of the implementing rules of the preparatory stage.

On the other hand, there is a significant point that should be mentioned here. This point is the meaning of "association law". Because the term "association" was put into words several times until here and the mentioned term will be used as "association law" below. This term, which refers to the AA and other acts such as the AP forming an integral part of the AA, has been a source of rights for certain Turkish citizens and; in this regard, the EU-Turkey Association Law are legally enforceable before the national authorities and the courts of the EU-MSs, thanks to the decisions of the ECJ.[50] Art. 7 of the AA states that: "*The Contracting Parties shall take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations arising from this Agreement. They shall refrain from any measures liable to jeopardize the attainment of the objectives of this Agreement*".[51]

As seen above, the Art. 7 of the AA states that the EU-MSs must ensure the fulfillment of the obligations covered under the AA. It rules that the EU-MSs *"...shall refrain from any measures liable to jeopardize the attainment of the objectives of the agreement. Despite these obligations, European Union uses any failure to legitimate its hard policy stance towards Turkey's membership instead of taking precautions*".[52]

As being a sole rule, concerning non-discrimination in the AA,[53] the Art. 9 of the AA states that: "*The Contracting Parties recognize that within the scope of this Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any*

[49] Ibid.
[50] Gocmen I., (2011), "*The Freedom of Establishment and to Provide Services: A Comparison of the Freedoms in European Union Law and Turkey-EU Association Law*", Ankara Law Review, Vol. 8, No. 1, Ankara, pages 71-2.
[51] For the AA, n. 30.
[52] Sariibrahimoglu Y.S. (2011), op. cit., p. 99.
[53] Gocmen I., 2011, op. cit., p. 84.

*discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in*".[54] This Article is the only one that has a rule of non-discrimination concerning the above mentioned freedoms in Association Law; therefore, it serves as a prohibition of discrimination on grounds of nationality together with other articles.[55] Furthermore, this Article along with the Art. 41(1) of the AP (mentioned below) may be referred by legal Turkish nationals inhabited in any of territories of the EU-MSs for the protection against expulsion (illegal Turkish nationals may only rely on the Art. 41(1) of the AP).[56] The Art. 41(1) of the AP, which is the key article having a standstill principle, provides that: "*The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services*".[57]

The AA aims to assist the development of Turkish economy and in this regard, the Art. 41(1) of the AP notably serves this aim.[58] And this Article is a standstill clause preventing EU-MSs from taking more restrictive national rules before that the AP came into force.

According to Lawyer Ali Durmus,[59] the Art. 7 of the AA is one of another standstill clause since it regulates an obligation on both Turkey and the EU-MSs to refrain from measures and actions which are inconsistent with the aim of objectives of the Association Law; additionally, the same interpretation can be made for the Art. 9 of the AA.[60] For instance, Turkish workers and their families can enjoy the benefits of the standstill clause of the Art. 13 of the 1/80 ACD (Art. 13 of the 1/80 ACD will be mentioned below) and Turkish businessman and service providers can enjoy Art. 41(1) of the AP; nevertheless, there is no any standstill clause for the social security field in the 3/80 ACDs and Art. 7 of the AA has a necessary protection for this field, too.[61] For instance, this protection prohibits to be imposed integration and language requirements and measures as preconditions to Turkish nationals.[62] As a result, with the aim

[54] For the AA, n. 30. See also, the Art. 18 of the TFEU (Art.12 of the TEC), for the TFEU, n. 26.
[55] Gocmen I., 2011, op. cit., p. 84; see also, Commission of the European Communities v. Kingdom of the Netherlands Case C-92/07 (2010) ECR I-3683, para. 75, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62007CJ0092:EN:NOT (accessed date: 21.12.2013).
[56] Gocmen I., 2011, op. cit., p. 95; see also, Rogers N & Scannel R. (2005): "*Free Movement of Persons in the Enlarged European Union*", Sweet & Maxwell, London p. 377; see also, Peers S. (1996), "*Towards Equality: Actual and Potential Rights of Third-Country Nationals in the European Union*", Common Market L.Rev., pages 39-40 and 47.
[57] For the AP, n. 36.
[58] For further information, please look at: Gutmann R. (Dr.), (2003), op. cit., p. 3.
[59] Mr. Ali Durmus is an attorney at Law, Rotterdam Bar. For information, please look at: Durmus A., "*Integration Requirements in EU migration Law and the EEC-Turkey Association*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 240.
[60] Ibid., p. 248.
[61] Ibid., p. 248-9.
[62] Ibid., p. 249.

of enjoying the benefits of the standstill clause Turkish workers in the EU-MSs and their families should base on 1 December 1980 (with the occasion of the 1/80 ACDs) and this date for Turkish businessman and service providers is 1 January 1973 (with the occasion of the AP), (that date is the membership date for the EU-MSs countries which became members after 1973).[63] Additionally, Mr. Durmus claims that the principle of the standstill clause is valid until 1 December 1964 (the enforcement date of the AA) thanks to the Art. 7 of the AA.[64]

Art. 28 of the AA is a key article of the AA, it "*sets as a final goal the bona fide examination of the possibility of full membership*"[65] by stating as follows: *"As soon as the operation of this Agreement has advanced far enough to justify envisaging full acceptance by Turkey of the obligations arising out of the Treaty establishing the Community, the Contracting Parties shall examine the possibility of the accession of Turkey to the Community*".[66] Dr. Heinz Kramer, who is a scientist on EU-Turkey relations, based on the above-mentioned Art. 28 of the AA through stating that the final purpose of the AA including an association relation itself is eventually an EU's membership for Turkey; in addition to this, one of the judges in the Sevince Case of the ECJ, Dr. Manfred Zuleeg has the same opinion with Mr. Kramer and he also stated that the AA does not include any precondition for becoming a member of the EU.[67]

When considering the above-mentioned Articles 2, 7, 12-13-14 [which articles are directly addressed to the gradual attainment of full freedoms to the movement of persons, to provide services and of establishment (will be mentioned below)] and 28 of the AA together, "*it is clear that the general scheme of the Additional Protocol puts the Standstill Clause of article 41 into the context of norms that have the purpose of regulating a process which in the medium term clearly should implement the stated basic freedoms for Turkish citizens and in the long term enable the examination of the possibility of full membership*".[68] All in all, together with AP and the decisions taken by the Association Council, the AA set up a legal

[63] Ibid., p. 235.
[64] Ibid., p. 235.
[65] Voegeli W. "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 160.
[66] For the AA, n. 30.
[67] Karluk R. (2006): "*Guney Kibris'in Gumruk Birligi'ne Katilim Surecinde Karsilasilan Sorunlar*", Ankara European Studies Journal, Vol. 5, No. 2, p. 72, from: http://dergiler.ankara.edu.tr/dergiler/16/1122/13214.pdf (accessed date: 20.12.2013).
[68] Voegeli W. "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 160.

framework for a close and long-standing relationship between two parties.[69] It sets out a goal of full free movement of workers, services, and self-employed individuals.[70]

Before stating the application fields of standstill clause, it can be also beneficial to explain what the meaning of "standstill clause" is. Author Nicola Rogers states in her book titled "A Practitioner's Guide to the EC-Turkey Association Agreement" that: "*A standstill clause is a provision in an agreement that forbids a party from changing conditions to the detriment of the applicant from how they stand at the time of entry into force of the agreement...*".[71] Additionally, Dr. Wilfried Ludwig Weh[72] describes the standstill-clause as a propitiousness-clause, a kind of most-favouredclause.[73] It is significant here to note that the standstill clause does not directly give any rights to the parties; however, it preserves the legal situation at the time of entry into force of the agreement, and by this way it confirms the applicability of the "favourability principle"[74]. "*Changes to the legal situation in favour of a party are possible and may be called for. By contrast, the party in question may refer, in the case of changes that are disadvantageous to him/her, to the more favourable legal situation at the time when the standstill clause came into force*".[75] When considered from this point of view, the ECJ ruled in its judgment in Case C-228/06 (Soysal) that: "... *such a clause prohibits generally the introduction of any new measures having the object or effect of making the exercise by a Turkish national of those economic freedoms on the territory of that Member State subject to stricter conditions than those which applied to him at the time when the Additional Protocol*

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[69] For further information, please look at: "*50th EU-Turkey Association Council*", from: http://egemenbagis.com/en/5046 (accessed date: 27.02.2013); Tobler C. (2010), op. cit., p. 2.

[70] Peers S. (2011): "*EU Justice and Home Affairs Law*", Oxford University Press, New York, p. 418.

[71] Rogers N., (2000): "*A Practitioner's Guide to the EC-Turkey Association Agreement*", Kluwer Law International, London, p. 27.

[72] Dr. Wilfried Ludwig Weh is an attorney at Law at Bregenz, Vorarlberg, Austria and he is also a sworn court interpreter for English, French und Spanish. For further information, please look at: "*Curriculum Vitae - Dr. Wilfried Ludwig Weh*", from: http://www.weh.at/Dokumente/CV_englisch.pdf (accessed date: 17.12.2013).

[73] For the mentioned comments, please look at: Weh L.: "*Tum and Dari - the standstill clause as European dynamite*", in Gumrukcu H. & Ilbuga T. (Eds.) (2013): "*Hukuki Inkarciligin Yarattigi ABAD'in Demirkan Davasi: Sorgulanan Avrupalilik – Yorumlar - Belgeler*", Akdeniz University, Faculty of Economics and Administrative Sciences, Department of International Relations, Vizesiz Avrupa Dizisi-6, Antalya, p. 40.

[74] "*Favorability principle/Günstigkeitsprinzip is known in German labor law which is laid down in Art. 4(3) of Tarifvertragsgesetz pursuant thereto, deviations from the industry-wide collective agreement are only permitted if they contain a change in favor of the employee, or are allowed for by the collective agreement*". For further information, please look at: Lesch H., (2010): "*Free Collective Bargaining, Support Column or Crumbling Pillar of the Social Market Economy*, *60 years of social market economy : formation, development and perspectives of a peacemaking formula*", Overview of a conference organised by the Konrad-Adenauer-Stiftung (KAS) in cooperation with the European Business Circle (EuBC) and the University of Oxford in Sankt Augustin, 30th November 2009, Sankt Augustin (u.a.): Konrad-Adenauer-Stiftung, ISBN 978-3-941904-60-6, pages 104-126 and 109, from: http://www.kas.de/upload/dokumente/2010/06/60_Years_SME/lesch.pdf (accessed date: 03.03.2013).

[75] For further information, please look at: "*Effects of Soysal decision (European Court of Justice) / Visa process Turkish citizens Germany*", written by: Klaus Dienelt, from: http://www.migrationsrecht.net/european-immigration-migration-law/soysal-decision-european-court-justice.html (accessed date: 03.03.2013).

*entered into force with regard to the Member State concerned*".[76] On the other hand, any restrictions, which were enacted by one of the Contracting Parties before standstill clauses come into effect, are excluded from this application. For instance, if a national legislation of an EU-MS introduced a visa requirement for Turkish citizens before the mentioned standstill clauses, this requirement can continue to be implemented. In this regard, it can be mentioned three significant standstill clauses theme (Free movement for workers, freedom of establishment and, freedom to provide and receive services) in the context of the AA, the AP and the ACDs which constitute further guarantees in EU-Turkey relations while stopping new restrictions for Turkish nationals that can be put forward in the national courts of the EU-MSs. First of them is about access to employment and self-employment in the MSs regulated under the Art. 12 of the AA, the 2/76, 1/80 and 3/80 Association Council Decisions (ACDs) and the relevant case law of the ECJ in its judgments. Other two clauses are about freedom of establishment and, freedom to provide and receive services regulated under Articles 13 and 14 of the AA, the Art. 41(1) of the AP and the relevant case law of the ECJ. Before examining the above-mentioned freedoms, it should be primarily stated when and why the relevant requirements of visa, which are incompatible with the freedom to provide and especially receive services, were introduced by the EEC-MSs.

### 1.1 Introduction of Visa Applications by the EEC-MSs

Before analyzing the case law of the ECJ in depth, it can be beneficial to mention a point about EU-Turkey relations in the context of visa requirements for Turkish citizens before and after the 1973 (the effective date of the AP). As is probably known, Turkish citizens had the right to enter without a visa to the almost all of the territories of the founding EU-MSs (excluding Greece) before 1980.[77] These countries were 6 founding European countries (Germany, France, Belgium, the Netherlands, Italy and Luxembourg) and three member countries [the United Kingdom (UK), Denmark, Ireland].[78] The date to base on for these 9 countries is 1973 and; the one for EU-MSs which became a member after 1973, is the date when they join the EU. For instance, Croatia joined the EU as 28th member on the 1st July

[76] Mehmet Soysal and Ibrahim Savatli v Bundesrepublik Deutschland, C-228/06, (2009) ECR 1031, para. 47, see n. 22; see also Minister voor Vreemdelingenzaken en Integratie v T. Sahin C-242/06 (2009) ECR I-8465, para. 63, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62006J0242:EN:NOT (accessed date: 04.03.2013); and also, Joined Cases Eran Abatay et al. (C-317/01) and Nadi Sahin (C-369/01) (2003) ECR I-12301, para. 66 and the second indent of para. 117, from: http://curia.europa.eu/juris/liste.jsf?num=C-317/01&language=en (accessed date: 21.12.2013).

[77] For further information, please look at: "*Hukukun Ustunlugu ve AB' nin Vize Uygulamalari*", from: http://www.gif.org.tr/SliderDetails.aspx?sliderId=68 (accessed date: 19.05.2013); see also, Bal I. (Ed.), (2004): "*Turkish Foreign Policy in Post Cold War Era"*, Brown Walker Press, Florida, pages 188 and 194.

[78] Bal I. (Ed.) (2004), op. cit., pages 188 and 194.

2013.[79] The date to base on for it is 2013. If one of the nine founders did not apply a visa for Turkish citizens before 1973, it cannot apply after that date.[80] And, if one of other 19 members did not apply a visa before the date it became a member of the EU, it cannot apply later.

On the other side, there are two legal basis of that right; the first and primary one was the existence of the bilateral agreements to abolish visa regime which were signed by Turkey with several European countries on various dates,[81] the other one is the European Agreement which was opened for signature by Council of Europe (CofE) member states on 13 December 1957 and became effect on 1 January 1958.[82] Pursuant to the Article 7 of the Agreement, the signatory Parties could suspend the implementation of the mentioned Agreement on grounds relating to public order, security or public health through delaying the entry into force of the Agreement or order the temporary suspension thereof in respect of all or some of the other signatory Parties.[83] Nine of signatory parties have suspended the implementation of that Agreement for Turkish citizens and implemented visas because of below mentioned reasons; therefore, Turkish citizens have no more right to enter the territories of those countries for only three months.[84] And then; the Treaty of Amsterdam came into force on 1 May 1997 and incorporated the "Schengen area"[85] cooperation into the EU legal framework; thus, the relevant articles of the European Agreement of the CofE and earlier bilateral agreements

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[79] For further information, please look at: "*Croatia*", from: http://ec.europa.eu/enlargement/countries/detailed-country-information/croatia/ (accessed date: 30.11.2013). There are currently 28 EU-MSs; [Germany, France, Belgium, the Netherlands, Italy, Luxemburg (six founders in 1957)], [the UK, Denmark, Ireland (1972)], Greece (1981), [Portugal, Spain (1985)], [Austria, Finland and Sweden (1995)], [Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Czech Republic (2004)], [Bulgaria, Romania (2007)], Croatia (2013). For further information: "*From 6 to 28 members*", from: http://ec.europa.eu/enlargement/policy/from-6-to-28-members/index_en.htm (accessed date: 30.11.2013).

[80] Likewise the above-mentioned visa issue; if one of the nine above-mentioned founders did not apply a restriction on one of the freedoms (stated above) for Turkish citizens before 1973, it cannot apply after that date. Similarly, if one of other 19 members did not apply that restriction before the date it became a member of the EU, it cannot apply later. However, freedom for visa issue under the umbrella of freedom to receive services for Turkish citizens had not brought to the agenda until the ECJ judgment in the Leyla Ecem Demirkan v Federal Republic of Germany, Case C-221/11 (2013). The reason of this and its process will be mentioned below.

[81] German Aliens Act of 1965 will be mentioned as a sample bilateral agreement between Germany and Turkey below.

[82] Ibid. See also, "*Freedom of movement between the Council of Europe member states – Follow-up to the 112th Ministerial Session*", from: https://wcd.coe.int/ViewDoc.jsp?id=50359&Site=COE (accessed date: 29.11.2013).

[83] See, "*Freedom of movement between the Council of Europe member states – Follow-up to the 112th Ministerial Session*", n. 82.

[84] Ibid.

[85] The Schengen area represents a territory where the free movement of persons is guaranteed. The Schengen Agreement was signed in the Schengen city of Luxembourg in 1985. For further information, ibid.; see also, Aksoy M.U. (2007): "*Avrupa Hukuk Acisindan Turk Vatandaslarina Uygulanan Vize Alma Mecburiyetinin Degerlendirilmesi Raporu*", IKV Publications, Dusseldorf, p. 3, from: http://www.ikv.org.tr/pdfs/murataksoy-15kasim07.pdf (accessed date: 29.11.2013). Author of this Article is an attorney at the Istanbul and Dusseldorf Bars, a member of the Conseil des Barreaux de l'Union Europeenne and a lecturer at the Yeditepe University, Faculty of Law in Istanbul, Turkey.

became meaningless for Turkish citizens.[86] The reason of this is that pursuant to this Treaty the previous legal regulations of each EU-MSs were replaced by a regulation applying to all EU-MSs and then, the following Regulation 539/2001/EC stated to oblige Turkish citizens to get visas and this regulation does not provide an exception for Turkish citizens in the context of the standstill clauses.[87] "*Turkish nationals require a visa travel to the EU and they encounter cumbersome procedures and grave problems in order to obtain Schengen visas. Its strongly believed that vis-à-vis a country which has an association agreement dating back to 1963, which has been part of the Customs Union since 1995 and has been negotiating since 2005, there is discrimination and unjust treatment with respect to the visa issue. Since the Ankara Agreement envisages certain obligations for both the European Community and the member states, the EU Commission should also act in accordance with its responsibilities through introducing a comprehensive and just solution to this long-lasting problem. As guardian of the EU Treaties should closely monitor and oversee the correct implementation of the EU acquis major responsibility falls on the European Commission. Considering the two requirements namely; Article 308 EC and Article 10 EC, it's obviously the commission's task to identify and bring to an end an infringement. Actually its not just Commission who has obligations although it has the primary obligation, member states are not free of obligation*".[88]

When looking at the conditions after 1980s and the reason of the mentioned suspension, it can be said that the 1980s were difficult because of not only Turkey's overall relations with EEC/EC/EU but also migration issues arising from the introduction of visa applications by the EEC MSs for Turkish nationals.[89] "*It is no secret that immigration policies of many EU member states have become stricter in the early 1980s and that visa requirements were introduced where they did not exist previously*".[90] As stated above, the AA guarantees that Turkish citizens should be treated as equal to other EEC/EC/EU-MSs citizens (only) with respect to the rights contained in the AA and incorporated norms and; it guarantees that, no more restrictions can be forced on the rights of Turkish citizens enjoyed at the time the AP came into force. However; first, Germany introduced a visa requirement for all Turkish nationals in 1980 after annulment of the German-Turkish Visa Agreement of 1953[91] and,

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[86] Ibid.
[87] For further information, please look at: Gutmann R. (Dr.), (2003), op. cit., p. 4.
[88] Sariibrahimoglu Y.S. (2011), op. cit., p. 98.
[89] For further information, please look at: Bal I. (Ed.), (2004), op. cit., p. 188.
[90] Sariibrahimoglu Y.S. (2011), op. cit., p. 100.
[91] Circular Letter of the German Federal Ministry of the Interior which annuled the visa requirements for Turks (Rundschreiben des Bundesministers des Inneren zur Aufhebung des Sichtvermerkzwangs gegenüber der Türkei), GMbl.1953, 576; for further information, please look at: Aksoy M.U. (2007), op. cit., p. 3.

other EU-MSs followed that country.[92] "*Germany saw a sharp rise in unemployment, and other EU countries followed suit. 'Since then, the EU has ignored valid agreements,' says Rolf Gutmann, an attorney in Stuttgart*".[93] In pursuit of the prohibition of recruitment of migrant workers from non-EU-MSs in Germany in 1973 and starting to implement visa procedures for Turkish nationals, the Turkish-German political tension emerging from the free movement for persons became one of the main issues affecting the relations between Turkey and the EU.[94] Honestly, Germany as one of the EEC/EC/EU-MSs was supporting Turkey's application towards full membership of the EEC from EEC's establishment in 1959 to the time the issue of the free movement of Turkish workers in the EC came to the agenda of the EEC/EC/EU.[95] It as having the largest Turkish immigrated population in its territory realized that the free movement of Turkish workers conflict its national interest and therefore, it acted in a negative manner towards Turkish application with the aim of hindering the implementation of the free movement of workers; what is more, it as being conscious of the provisions of the AA and the AP started to try to bring other issues such as Turkey's political and economic situations; notably, issues emerging from the military intervention in 1980 to the agenda and leave aside the realization of the free movement.[96] Furthermore, according to Foreign Minister of Federal Republic of Germany at that time, Mr. Dietrich Genscher, visa requirements for Turks while entering Germany was not enough; thus, he contributed the visa requirements for Turks for entering their territories to be implemented by other Community members through persuading them to do this (although there was no right of uncontrolled passing at the borders among Community members).[97] After that, while Germany was bringing the mentioned issues to the agenda, the Community as a whole criticized the remedy deficiencies concerning democracy and human rights in Turkey.[98] After that, France and Benelux countries followed Germany's strategy and introduced visa requirements for Turkish citizens in the same year (1980);

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[92] Bal. (Ed.), (2004), op. cit., p. 194.
[93] See: "*A Crime Against Humanity*", 7 November 2012, from: http://www.spiegel.de/international/europe/travel-visa-for-turks-considered-by-european-court-of-human-justice-a-865644.html (accessed date: 12.12.2013)
[94] Davutoglu A., (2009): "*STRATEJIK DERINLIK: Turkiye' nin Uluslararasi Konumu*", (39th Ed.), Stratejic Researchs, Kure Publications, Istanbul, p. 510.
[95] Ibid.
[96] Ibid. "*The jurisdiction to article 41 of the additional protocol was not instituted only now, it already exists for a long time*", "*The resistance of German Administrative Courts, lasting for many years, against practising the law of the association, also contained a saying 'no' to practising the standstill clauses...for example VGH Hessen, 23.09.1993 - 12 TH 776/93 -, Infornationsbrief AuslR 1993, 71...*"; see also, Gutmann R. (Dr.), (2003), op. cit., p. 2; see also, Gumrukcu H. & Aksoy B., (2009), "*Vizesiz Avrupa'ya Giden Yol: Inisler, Cikislar, Vurdumduymazliklar ve bir Hak Arama Kavgasinin Anatomisi*", (1st Ed.), Vizesiz Avrupa Arastirma Grubu, Vizesiz Avrupa Dernegi, Vizesiz Avrupa Dizisi-3, Akdeniz University, Faculty of Economics and Administrative Sciences, Antalya, p. 93.
[97] Aksoy M.U. (2007), op. cit., p. 3.
[98] Cayhan E. "*Turkiye'de Siyasal Partiler ve Avrupa Birligi*", Dedeoglu B. (Ed.), (2003): "*Dunden Bugune Avrupa Birligi*", (1st Ed.), Boyut Publishing, Istanbul, p. 479.

Denmark in 1981; the (UK) and Ireland in 1989; Italy 1990; Portugal and Spain 1991 have applied visas for Turkish citizens.[99] Greece has applied it before it joined the EC in 1981, namely as from 1965.[100] Meanwhile, the EU-Turkey Association Council should have taken a decision for the final stage in order to realize the freedom of movement for Turkish workers in the territories of the nowadays EU-MSs; however, that decision could not be taken because of the breakdown in relations and the political situation in Turkey.[101] Although the supranational bodies of the EU (EC at that time)[102] such as the Commission, the European Parliament (EP) and the ECJ were more sympathetic and positive in their attitudes towards the problems of Turkey, the EU-MSs and the Council have constantly refused the implementation of the AA proposals in favour of Turkish migration by these bodies and so they adopted a more negative stance.[103] Furthermore, the negotiations concerning the freedom of movement for Turkish workers in the EU (EEC) took place between Germany and Turkey rather than Turkey and the EU (EEC) between the years 1980 and 1986 [even though Turkey tried to use the bodies of EU (EEC at that time), Germany insisted on bilateral talks], and this situation was not in harmony with the AA.[104] All in all, "intergovernmental mechanism of EU"[105] adversely affected the direction of the issues about the different aspects of Turkish migration and then; it can be said that, that is why, the role and importance of the ECJ increased and interpretations concerning the implementation of the AA, the AP, and the relevant ACDs have been made by the ECJ through the cases of Demirel, Sevince, Kus, Eroglu and others.[106]

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[99] Bal. (Ed.), (2004), op. cit., p. 194.
[100] Ibid., p. 188.
[101] Ibid., p. 188.
[102] The EU-MSs have agreed to transfer some of their powers to the EU bodies in specified policy areas, as a result of their EU membership. By this way, the EU bodies can make supranational binding decisions in their legislative and executive procedures, the budgetary procedures, the appointment procedures and the quasiconstitutional procedures. That supranational cooperation makes the EU unique in international politics. For further information, please look at: "*Supranational Decision-Making Procedures*", Wilhelm Lehmann 12/2011, Fact Sheets on the European Union - 2013, from: http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.4.1.pdf (accessed date: 19.05.2013); see also, "*What is the difference between intergovernmental and supranational cooperation?*", from: http://www.eu-oplysningen.dk/euo_en/spsv/all/11/ (accessed date: 19.05.2013).
[103] Bal. (Ed.), (2004), op. cit., p. 188.
[104] Ibid, p. 194.
[105] The intergovernmental cooperation is the traditional form of international cooperation between counties. It means that the cooperation between governments of the EU-MSs is on the basis of maintaining state sovereignty. This is in contrast to supranational cooperation. Intergovernmental EU cooperation is used in political areas where it might be difficult for countries to enter into a form of cooperation as close as supranational cooperation. For further information, please look at: "*What is the difference between intergovernmental and supranational cooperation?*", n. 102; see also, "*Intergovernmental method*", from: http://en.euabc.com/word/575 (accessed date: 19.05.2013).
[106] Bal I. (Ed.), (2004), op. cit., p. 194.

On the other side of the coin, concerning the above-mentioned political situations in Turkey, Mr. Egemen Bagis, the former Minister of the Turkish Republic Ministry for EU Affairs and Chief Negotiator, stated that the politicians, who were in power in Turkey before military intervention, were afraid of possible political pressure on themselves by military regime, being arrested by military regime and related with a crime, were trying to escape from Turkey to Europe; that is why, the military regime encouraged the European states to introduce visas for Turkish citizens with the aim of preventing their escapes.[107]

### 1.2 Function of the ECJ for the EU National Courts

Before examining the mentioned freedoms and standstill clauses below, one point should also be stated here. That is the function of the ECJ for the EU member national courts. At first, it must be born in mind that the ECJ is one of the legal institutions of the EU and according to Art. 260 of the TFEU, all judgments of the ECJ are binding for all other institutions of the EU and the EU-MSs.[108]

On the other side, it should be mentioned the existence of two fundamental principles of EU Law. They are direct effect and precedence/supremacy of EU Law. "*The principle of direct effect (or immediate applicability) enables individuals to immediately invoke a European provision before a national or European court. This principle only relates to certain European acts*".[109] That is to say, an individual can invoke EU Law against another

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[107] For further information, please look at: "*Turkey ready to readmit migrants if EU lifts visas*", Sundays Zaman Newspaper, 25 June 2012, from: http://www.todayszaman.com/news-284631-turkey-ready-to-readmit-migrants-if-eu-lifts-visas.html (accessed date: 27.02.2013); see also, "*Vizenin hukuki temeli yok*", Hurriyet Newspaper, 7 October 2011, from: http://www.hurriyet.de/haberler/gundem/1019157/vize-dosyasidorduncu-bolum (accessed date: 27.11.2013); see also, "*Bagis: Vize sorunun sebebi 80 darbesi*", Ntvmsnbc Newsportal, from: http://www.ntvmsnbc.com/id/25414992/ (accessed date: 27.11.2013); see also, Aksoy M.U. (2007), op. cit., p. 3.

[108] Groenendijk K. & Luiten M. (2011): "*AB'DE TURK VATANDASLARININ HAKLARI: Turk Vatandaslarinin Avrupa Toplulugu (AET) ile Turkiye Arasindaki Ortakliga Dayalı Haklari*", Iktisadi Kalkinma Vakfi Publishing, No. 251, Istanbul, p. 11. The Art. 260 of the TFEU states that: "*(1). If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court. (2). If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it. This procedure shall be without prejudice to Article 259. (3). When the Commission brings a case before the Court pursuant to Article 258 on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment*". For the TFEU, see n. 26.

[109] For further information, please look at: "*The direct effect of European law*", from:

citizen (horizontally) and also invoke EU Law against the state or emanation of the state (vertically).[110] The case law of the ECJ affects EU-MSs, institutions and individuals in disputes concerning EU Law.[111] There is one limit for individuals who try to invoke the four freedoms of the EU (which mentioned in the introduction part of this thesis), it is the existence of any abuse of rights; in this context, EU Law empowers the EU-MSs to take necessary measures in order to prevent individuals from illegally or fraudulently taking advantages of legal regulations of EU Law.[112]

On the other side, precedence/supremacy of EU Law, which applies to all European acts with a binding force, means that the European Law is superior to the national laws of Member States; thus, EU-MSs can not apply a national rule which contradicts to European Law[113] and, if a national rule is contrary to a European provision, EU-MSs' authorities must apply the European provision. Like the direct effect principle, that principle is not inscribed in the EU Treaties, but has been enshrined by the ECJ.[114] In respect of the scope of that principle, it

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http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14547_en.htm (accessed date: 02.03.2013). This term was firstly used by the ECJ in its judgment in the Case the NV Algemene Transport-en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration Case 26/62 (1963) ECR-1 by stating that: "*According to this spirit, the general scheme and the wording of the EEC Treaty, 'Article 12' must be interpreted as producing direct effects and creating individual rights which national courts must protect*". For this case, please look at:
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61962J0026 (accessed date: 02.03.2013).

[110] For further information, please look at: "*EC Law - directly applicable and the doctrine of direct effect*", from: http://sixthformlaw.info/01_modules/mod2/2_3_2_eu_sources/08_doctrine_of_direct_effect.htm (accessed date: 02.12.2013).

[111] For further information, please look at: "*Court of Justice of the European Union*", from: http://www.civitas.org.uk/eufacts/FSINST/IN5.php (accessed date: 02.12.2013).

[112] Gocmen I., (2011), op. cit., p. 83; see also, The Queen, Veli Tum and Mehmet Dari v Secretary of State for the Home Department Case C-16/05 (2007) ECR I-7415, paras. 65-8, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62005CJ0016:EN:HTML (accessed date: 01.02.2013).

[113] For further information, please look at: "*Precedence of European law*", from: http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/l14548_en.htm (accessed date: 20.05.2013).

[114] Under the Art. 267 of the TFEU, the ECJ is the supreme court for the interpretation of the EU law and it bases its rulings on EU norms. The Articles 251-281 of the TFEU are dedicated to the ECJ. Some Articles such as the Art. 258 TFEU (226 TEC), Art. 259 (227 TEC), Art. 260 (228 TEC) and Art. 267 (234 TEC) state the competence of the ECJ. These Articles mainly state the jurisdictions of the ECJ, obligations and opinions on compatibility of national laws of MSs and EU law in case of a conflict between them. The ECJ has contributed to develop the principle of supremacy of EU law through taking several decisions and basing on EU norms for many years. For instance, in 1963, "*The first cautious statement of the principle of supremacy of EC law came in the case of Van Gend en Loos (Case 26/62)*" (Steiner J., Woods L., Twigg-Flesner C., "EU Law" (9th Ed.), Oxford University Press, New York, 2006, p. 71). The ECJ declared para. 3 in the Van Gend en Loss Case 26-62 ECR 0001, para. 3 that: "*The European Economic Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only the member states but also their nationals.*", from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962J0026:EN:NOT accessed date: 29.01.2014. According to this statement of the ECJ, the EC/EU law is sui generis and constituted a new legal order. And also, the EU had greater effects on the national laws of the MSs and so the MSs had "limited their sovereign rights". The ECJ amended and developed its statement in its judgment of the Costa v ENEL Case 6-64, ECR I-585 on

applies to all European acts including the ECJ's case law with a binding force (whether emanating from primary or secondary legislation) to all national acts regardless of their nature (acts, regulations, decisions, ordinances, circulars, etc) and regardless of whether they are issued by the executive or legislative powers of an EU-MS.[115]

As mentioned in the previous paragraph, the judiciary is also subject to the precedence principle of EU Law; that is why, each EU-MS national courts should respect ECJ case-law and these national courts should not apply provisions of their Constitutions which contradict with the EU Law.[116] The reason of this is that the EU Law is supreme over national law and the ECJ enforcing EU Law is the highest court in the EU (outranking EU-MSs' national supreme courts) in areas covered by EU Law; therefore, the ECJ, as a follower/a guardian in implementing of the EU Law, has performed a very significant function through condemning EU-MSs to pay, which states do not adapt EU law into their domestic law or not fully reflect it or not adapt it in time.[117]

On the other hand, each national courts of the EU-MSs is responsible for ensuring the EU Law while applying in its territory properly; however, it might occur that different courts in different EU-MSs can interpret EU law in different ways.[118] With the aim of preventing this different interpretations of the EU-MSs, there is a procedure titled "preliminary ruling" which refers to an advice of the ECJ; namely, the national courts of the each EU-MSs may (and sometimes must) ask the ECJ for its advice in case each of them is in doubt about the

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15th July 1964 by stating in para. 3 that there is "a transfer of powers from the States to the Community". "*This time the principle of supremacy was clearly affirmed by the Court*" (Steiner J., et al, 2006, p. 71). And the ECJ also stated in the same case that: "*The precedence of Community law is confirmed by Article 189, whereby a regulation 'shall be binding' and 'directly applicable in all member states'*" (Art. 189 TEEC/Art. 249 TEC/Art. 288 TFEU). For the TFEU, see n. 26 and for the mentioned Case look at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61964J0006:EN:NOT (accessed date: 21.12.2013). Some of the sample cases to Van Gend en Loss and Costa v E.N.E.L cases are Internationale Handelsgesellschaft mbH Case (Case 11/70, ECR I-01125) in 1970, ERTA Case (Case 22/70, ECR I-0263) in 1971, Simmenthal Case (Case 106/77, ECR I-00629) in 1978, Erich Ciola v Land Vorarlberg Case (Case C- 224/97, ECR I-2530) in 1999. Moreover, a declaration called the "Declaration 17" to the attachments of the Lisbon Treaty with a reference to the ECJ states that: "*The Conference recalls that, in accordance with well settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law*", Declaration 17 Annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, Official Journal of the European Union, 30 March 2010, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0335:0360:EN:PDF (accessed date: 31.01.2014).

[115] For further information, please look at: "*Precedence of European law*", see n. 113.

[116] Ibid.

[117] For further information, please look at: "*Court of Justice of the European Union*", see n. 111; see also, Bozkurt E., Ozcan M., Koktas A. (2008): "*Avrupa Birliği Hukuku*", (4th Ed.), Asil Yayin Publishing, Ankara, p. 131.

[118] For further information, please look at: "*Court of Justice of the European Union*", from: http://europa.eu/about-eu/institutions-bodies/court-justice/ (accessed date: 21.05.2013).

interpretation or validity of the EU Law.[119] In order to be able to give a preliminary ruling laid down in Art. 267 of the TFEU[120] the AA must be classified as a legal act of one of the institutions of the EU; in this context, Art. 218(6) of the TFEU states that the European Council, on proposal, adopts a decision concluding an international agreement and, Art. 288 of the same Treaty classifies decisions as one of the legal acts. [121] Therefore, the ECJ as one of the institutions of the EU interprets an international agreement of the EU within the meaning of the Art. 267 of the TFEU.[122] One point should be kept in mind that "*The relationship between national courts and the ECJ is reference-based. It is not an appeal system. No individual has a right of appeal to the ECJ. It is for the national court to make the decision to refer. The ECJ will rule on the issues referred to it, and the case will then be sent back to the national courts, which will apply the Union law to the case at hand*".[123] "*In this procedure a citizen addresses a national court which, in case of lower courts, may, and in case of courts against whose decision there is no appeal, must refer a question of interpretation of EU Law to the ECJ where the answer to such question is necessary for the decision to be taken by the national court*".[124] Besides as mentioned above the ECJ stated in its Demirel judgment (Case 12/86) that the AA and the AP are acts of one of the institutions of the EU and form an integral part of the EU's legal system. Thus, "*This made it possible for individuals to approach a court of any Member State and to request that this court submit a question to the ECJ under article 267 TFEU for a preliminary review. Lower courts of the Member States may, courts against whose judgment there is no further legal remedy, have to submit such a question to the ECJ if the judgment by the national court depends on a specific interpretation of EU Law*".[125] Under these circumstances, situations (concerning the application to below-mentioned relevant standstill clauses) of each EU-MSs should be separately assessed because

[119] Ibid., see also, Gumrukcu H. (2002), op. cit., pages.79-80-81.
[120] Art. 267 of the TFEU, which refers to the Art. 234 of the TEC and to the Art. 177 of the TEEC states that: "*The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of the Treaties; (b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union; Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon. Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court. If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay*". For the TFEU, please look at n. 26.
[121] Voegeli W. "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 150. For the Articles 218(6) and 288 of the TFEU, please see n. 26.
[122] Ibid.
[123] Craig P. & De Burca G., (2011), op. cit., p. 442.
[124] Voegeli W., "*The Role of the European Court of Justice in Developing the Special and Historically Unique Character of the EU Law*", in Gumrukcu H. & Karabacak Y. (Eds.) (2011), op. cit., p. 40.
[125] Ibid.

the entry into effect date of the AP should be taken into account.[126] In the fields of the rights of Turkish citizens for preliminary ruling, if necessary, the ECJ "*first dealt with the question of whether there is a restriction and then whether it was a new restriction*".[127] And as mentioned above, its date, which is 1 January 1973, should be taken into account for the original six MSs (Germany, Belgium, France, Italy, Luxembourg and Netherlands) and the states of first enlargement (the United Kingdom, Denmark and Ireland) which have already been members of the Community at the time the AP came into force.[128] The effective date for other subsequent EC/EU member states is the date when they became a member (for instance, 1986 for Spain, 2007 for Romania), because after accession, the EU legal acts along with the ECJ case law are going to be formally binding for the new members.[129]

[126] For further information, please look at: Sariibrahimoglu Y.S. (2011), op. cit., pages. 102-3; see also, Pinar H. (2008): "*EU Countries and Visa Exemption for Turkish Nationals*", Ankara Bar Review 2008/1, p. 89, from: http://www.ankarabarosu.org.tr/siteler/AnkaraBarReview/tekmakale/2008-1/11.pdf (accessed date: 20.12.2013); see also, "*AB'ye vizesiz giris yolu acildi mi?*", from: http://www.zaman.com.tr/gundem_abye-vizesiz-giris-yolu-acildi-mi_821577.html) (accessed date: 20.05.2013).
[127] Gocmen I., (2011), op. cit., p. 103.
[128] Ibid., p. 94.
[129] Ibid., p. 94.

# CHAPTER 2
# FREEDOM OF MOVEMENT FOR WORKERS AND FREEDOM OF ESTABLISHMENT UNDER THE AA, AP AND THE ACDs

It is now convenient to move on to discover the effects of the articles concerning the above-mentioned freedoms. In the first place, it will be analyzed the rights given by the AA to Turkish nationals legally employed in MSs in this section but it should be primarily stated what the term "worker" means. According to the EU Law, the term "worker" means an individual who undertakes genuine and effective work for which he/she is paid under the direction of an employer.[130] Also, the freedom of movement for workers gives every citizens the right to move freely to another MS to work and inhabit in that EU-MS for work and, protects them from any discrimination in respect of employment, remuneration and other working conditions in comparison to their colleagues who are nationals of that MS.[131] Besides, freedom of movement for workers should be separated from the freedom to provide services because the latter includes the workers having the right of undertakings to perform services in another EU-MS and may temporarily sent ('posted') by their own bosses to perform the necessary work there.[132]

On the other hand, once Turkish people have been admitted to the labour force, the provisions of the AA confer significant rights, despite the fact that the EU-MSs retain control of the entry into their labour force of Turkish citizens. Concerning the freedom of movement for Turkish workers, Art. 12 of the AA and the Art. 36 of the AP have principal importance. The former states that: "*The Contracting Parties agree to be guided by Articles 48*[133]*, 49*[134]

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[130] For further information, please look at: "*COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Reaffirming the free movement of workers: rights and major developments (COM/2010/0373 final)"*, from:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52010DC0373:en:NOT
(accessed date: 06.03.2013).

[131] Ibid.

[132] Ibid.

[133] Art. 45 TFEU/Art. 39 TEC (Art. 48 TEEC) states that: "*1. Freedom of movement for workers shall be secured within the Union. 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment. 3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: (a) to accept offers of employment actually made; (b) to move freely within the territory of Member States for this purpose; (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission. 4. The provisions of this Article shall not apply to employment in the public service*". For the TFEU Treaty, n. 26. The

*and 50*[135] *the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them*".[136] This Article envisages eventual free movement of persons between the EU and Turkey, guided by the principles laid down in Articles 45-7 of the TFEU.[137] "*This obejctive has influenced the Court's interpretation of the Agreement and the secondary legislation, particularly Decision 1/80 of the Association Council on the development of the Association*".[138]

The Art. 36 of the AP states that: "*Freedom of movement for workers between Member States of the Community and Turkey shall be secured by progressive stages in accordance with the principles set out in Article 12 of the Agreement of Association between the end of the twelfth and the twenty-second year after the entry into force of that Agreement. The Council of Association shall decide on the rules necessary to that end*".[139]

The Art. 12 of the AA is the foundation stone for the free movement of workers in order to promote economic relations between Turkey and the EU and the eventual accession of Turkey to the EU. This Article gives Turkish nationals the right to move freely within the EU for work purposes and protects the social rights of those Turkish workers and their family members;[140] by doing so, the principle of the free movement of workers may contribute to the

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principle of the free movement of workers is enshrined in this Article of the TFEU and has been developed through secondary law [Regulation (EEC) No 1612/68(1), Directive 2004/38/EC(2) and, Directive2005/36/EC(3)] and the case-law of the ECJ. For further information, please look at: "*COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Reaffirming the free movement of workers: rights and major developments (COM/2010/0373 final)*", see n. 130.

[134] Art. 46 TFEU/Art. 40 TEC (Art. 49 TEEC) states that: "*The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 45, in particular: (a) by ensuring close cooperation between national employment services; (b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers; (c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned; (d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries*". For the TFEU Treaty, n. 26.

[135] Art. 47 TFEU/Art. 41 TEC (Art. 50 TEEC) states that: "*Member States shall, within the framework of a joint programme, encourage the exchange of young workers*". For the TFEU Treaty, n. 26.

[136] See "*Ankara Agreement*", n. 30.

[137] Barnard C., (2010): "*The Substantive Law of the EU: The Four Freedoms*", (3rd Edition), Oxford University Press, New York, p. 548.

[138] Ibid.

[139] For the AP, see n. 36.

[140] See 1/80 ACD, below.

achievement of the single market and enhance the social, economic and cultural inclusion of Turkish migrant workers within the host EU-MSs.[141] In addition to the Art. 12 of the AA, the free movement of workers was to be achieved between 30 November 1974 and 30 November 1986 thanks to the Art. 36 of the AP; namely, the mentioned Protocol has secured the free movement of workers within the period between the end of the twelfth and the end of the twenty-second year after the entry into force of the AA, namely, until 1 December 1986[142]. In this regard, the AP sets a deadline to achieve the goal of free movement of workers. Concerning above mentioned provisions, the ECJ has ruled in its judgment in Case 12/86 (Demirel, 1987) that: "*Provision in an Agreement concluded by the Community with Non-Member Countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the Agreement itself, the Provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure*"[143], "*Consequently, ... Article 12 of the Agreement and Article 36 of the Protocol, read in conjunction with Article 7 of the Agreement*[144]*, do not constitute rules of Community law which are directly applicable in the internal legal order of the Member States*".[145] The claim of a Turkish citizen in the judgment of the ECJ in Demirel Case (Case 12/86) was ignored in this case on the ground that the Art. 12 of the AA and the Art. 36 of the AP, which that citizen invoked, were not sufficiently precise, unconditional to be capable of conferring rights upon individuals and so governing directly the movement of workers[146] in consequence of the general nature of above-mentioned two provisions deprive them of direct

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[141] For further information, please look at: "*COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Reaffirming the free movement of workers: rights and major developments (COM/2010/0373 final)*", see n. 130. Additionally, according to Art. 2(2) and Art. 2(3) of the 2004/38/EC Directive (which takes precedence over national law and is binding on national authorities), "*2(2) the "family member" means: (a) the spouse; (b) the partner with whom the Union citizen has contracted a registered partnership, on the basis of the legislation of a Member State, if the legislation of the host Member State treats registered partnerships as equivalent to marriage and in accordance with the conditions laid down in the relevant legislation of the host Member State; (c) the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner as defined in point (b); (d) the dependent direct relatives in the ascending line and those of the spouse or partner as defined in point (b); 2(3) "host Member State" means the Member State to which a Union citizen moves in order to exercise his/her right of free movement and residence*", for further information, please look at: "*Directive 2004/38/EC*", from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0038R(01):en:HTML (accessed date: 03.05.2013); "*What is EU Law*?", from : http://ec.europa.eu/eu_law/introduction/treaty_en.htm (accessed date: 03.05.2013).

[142] For further information, please look at: "*COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Reaffirming the free movement of workers: rights and major* developments (COM/2010/0373 final)", see n. 130.

[143] Demirel Case 12/86 (1987), para. 14, see n. 38.

[144] Article 7 of the AA will be mentioned below.

[145] Demirel Case 12/86 (1987), para. 25, see n. 38.

[146] Demirel Case 12/86 (1987), para. 23, see n. 38.

effect and the expiry of the period provided for in the AP (1 December 1986).[147] However, the ECJ declared in this case that the AA and the AP are parts of the body of the EU Law; and therefore, the mentioned judgment in this case began to set the foundation for all claims based on these norms and, the special character of the AA has been continued to develop by the case law of the ECJ.[148] The ECJ has decided that these provisions set out only a goal to be achieved and thus do not confer 'directly applicable' rights on workers which can be enforced in the national courts of the EU-MSs.

On the other side, the Association Council Decisions (ACD) 2/76, 1/80, 3/80 are also about freedom of movement for Turkish workers and their family members. While Decision 3/80 of the Association Council concerns Turkish workers' social security "*modelled from the regulation that applied to the nationals of the EEC with some differences*"[149] and it introduced social security measures for Turkish workers in the EU; the Decision 2/76 of the Association Council (which was taken on 20 December 1976) regulating the first stage of the realization of free movement of Turkish workers provides for the progressive establishment of the free movement of workers within ten years (pursuant to Art. 36 of the AP, from 1 December 1976 until 1 December 1986).[150] In this regard, the Art. 7 of the 2/76 of the ACD states that: "*The Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers legally resident and employed in their territory*".[151] Additionally, the Art. 7 of the same ACD states that: "*This Decision shall not affect any rights or obligations arising from national laws or bilateral agreements existing between Turkey and the Member States of the Community where these provide for more favourable treatment for their nationals*".[152] Although, the Decision 2/76 of the Association Council including a standstill relating workers and employment only refers to the improvements of working conditions of Turkish immigrant workers already legally inhabited in the EEC MSs, it did not include family members.[153] After the Association Council took a decision on 19 September 1980, the Turkish immigrant workers and their family members began to be covered by the EEC-Turkey 1/80 ACD and they have a special protection against

[147] For further information, please look at: Rogers N. et al. (2012), "*Free Movement of Persons in the Enlarged European Union*", (2nd Ed.), Sweet & Maxwell, London, p. 337.
[148] For further information, please look at: Voegeli W. "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit., pages 149-150.
[149] Bal I. (Ed.) (2004), op. cit., p. 188.
[150] Ibid.
[151] For the ACDs, please look at:"*Turkey–European Union Assosiation Council Decisions (1964-2000)*", (2nd Ed.), Publication No: DPT: 2596, ISBN 975-19-2783-8, ISBN 975-19-2785-4, Ankara 2001, available from: http://www.ab.gov.tr/files/AB_Iliskileri/okk_tur.pdf (accessed date: 03.05.2013).
[152] Ibid.
[153] Ibid.; see also, Gutmann R. (Dr.), (2003), op. cit., p. 6.

expulsion.[154] The Art. 13 of the 1/80 ACD which will be mentioned below replaces the Art. 7 of the 2/76 ACD. Unfortunately, the Decisions 2/76 and 1/80 are short of full free movement rights, political problems and opposition to the free movement of Turkish workers within the present EU[155] and also, the Association Council could not adopt any further measures for the free movement of workers. For instance, the freedom of movement for Turkish workers and their family members were granted only if they inhabited in the EU countries and depended on the time they had worked there.[156] However, the ECJ has continued to develop the right of free movement of Turkish workers by delivering several judgments on these provisions and achieved some minor improvements (some of them will be mentioned below).[157] Also, it should be stated here that the "*For the European Court of Justice the whole purpose of such a standstill clause is avoiding labour market disturbances caused by sudden and extensive movements of workers*",[158] while implementing the standstill clauses as it should be; additionally, it should be also stated that the involvement to labour market or working in a regular job are not obligatory conditions to enjoy rights arising from the relevant standstill provisions for a work/worker.[159] If it had been already made such a condition, there would have not been any influence of standstill provisions.[160]

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[154] See Tobler C. (2010), op. cit., p. 2; see also, Groenendijk K. & Luiten M. (2011), op. cit., p. 9.

[155] Political problems, opposition to the free movement of Turkish workers within the present EU, the military coup of 1980 in Turkey and also the protection against expulsion were mentioned above.

[156] See Bal I. (Ed.) (2004), op. cit., p. 188.

[157] The cases, which are about only some of cases concerning the freedom of movement for workers are as follows: C-192/89 Sevince (1990) ECR I-3461; C-237/91 Kazim Kus (1992) ECR I-6781; C-355/93 Eroglu (1994) ECR I-5113; C-434/93 Bozkurt (1995) ECR I-1475; C-171/95 Recep Tetik (1997) ECR I-329; C-351/95 Kadiman (1997) ECR I-2133; C-386/95 Eker (1997) ECR I-2697; C-285/95 Suat Kol (1997) ECR I-3095; C-36/96 Günaydın (1997) ECR I-5143; C-98/96 Kasim Ertanir (1997) ECR I-5179; C-210/97 Akman (1998) ECR I-7519; C-1/97 Mehmet Birden (1998) ECR I-7747; C-340/97 Omer Nazli et al. (2000) ECR I-957; C-329/97 Sezgin Ergat (2000) ECR I-1487; C-65/98 Safet Eyup (2000) ECR I-4747; C-188/00 Bulent Kurz (2002) ECR I-10691; C-171/01 Waehlergruppe 'Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG' (2003) ECR I-1487; Joined Cases C-317/01 and C-369/01 Eran Abatay et al. and Nadi Sahin (2003) ECR I-12301; C-275/02 Engin Ayaz (2004) ECR I-8765; C-467/02 Inan Cetinkaya (2004) ECR I-10895; C-136/03 Dorr and Unal (2005) ECR I-4759; C-373/03 Aydinli (2005) ECR I-6181; C-374/03 Gurol (2005) ECR I-6199; C-383/03 Dogan (2005) ECR I-6237; C-230/03 Sedef (2006) ECR I-157; C-502/04 Torun (2006) ECR I-1563; C-4/05 Guzeli (2006) ECR I-10279; C-325/05 Derin (2007) ECR I-6495; C-349/06 Polat (2007) ECR I-8167; C-294/06 Payir and others (2008) ECR I-203; C-152/08 Kahveci (2008) ECR I-6291; C-453/07 Er (2008) ECR I-7299; C-337/07 Altun (2008) ECR I-10323; C-242/06 Sahin (2009) ECR I-8465; C-462/08 Bekleyen (2010) ECR I-0563; C-14/09 (2010) ECR I-931; and C-92/07 Commission v Netherlands (2010) ECR I-3683; C-484/07 Pehlivan (2011) ECR I-5203; C-303/08 Bozkurt (2010) ECR I-13445; C-371/08 Nural Ornek/Ziebel (2011) ECR I-0000; C-420/08 Erdil (2012); C-300/09 and C-301/09 Toprak and Oguz (2010) ECR I-12845; C-436/09 Belkiran (2010); C-7/10 and 9/10 Kahveci and Inan (2012) (not yet published); and C-187/10 Unal (2011) (not yet published). In addition to these, there are also numerous cases including judgments about the freedom of establishment and freedom to provide and receive services and also, there are some relevant national cases. Because of the limited area of this thesis, it is impossible to mentioned all relevant cases along with their judgments that are relevant to all mentioned freedoms. However, some key cases including their judgments will be mentioned in this thesis. For further information, please look at: Peers S. (2011), op. cit., p. 419; see also, "*Search for a Case",* from: http://curia.europa.eu/jcms/jcms/j_6/ (accessed date: 20.05.2013).

[158] Gutmann R. (Dr.), (2003), op. cit., p. 1.

[159] For further information, please look at: Schroder B. & Hohmann D., (2011), "*AB ile Türkiye arasındaki ortaklık hukukundaki "standstill" hükmünün uygulama alanları ve etkileri*", Germany, Bundestag, Scientific

First of all, it should be mentioned the all relevant ACDs with the aim of understanding the standstill clauses in regards of the freedom of movement for Turkish workers well. Concerning Turkish workers and their family member the key provisions in the Association Council Decision 1/80 are Art. 6(1), Art. 6(2), Art. 7, Art. 9, Art. 10, Art. 13 and Art. 14(1). In this regard, Art. 6(1) states that: "*Subject to Article 7 on free access to employment for members of his family, 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; - shall be entitled in that Member State, after three years of legal employment and subject to priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation; - shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment*".[161] That is to say, a Turkish worker will have a work permit after one year's legal employment if he or she works for the same employer and if a job is available. He or she will be free to respond to another job offer after three years' legal employment and subject to priority to be given to the European workers; however, this new job must be in the same occupation. Finally, after four years' legal employment, he or she will be free to work for any paid employment. To conclude, a Turkish citizen must be a worker in a legal employment and duly registered as belonging to the labour force of a host EU-MS and, fulfill the necessary time period in order to be able to invoke the Art. 6(1) of the 1/80 ACD. Additionally; according to the above-mentioned Article, each EU-MSs can control the entry into its territory of Turkish nationals and conditions of initial employment and also apply whatever conditions of the entry to the territory and the first access to employment how they wish.[162] Concerning the Art. 6(1) of the 1/80 ACD, the ECJ also stated in its judgment in Case C-192/89 Sevince that this Article has a direct effect: "*Article 2(1)(b ) of Decision No 2/76 and/or Article 6(1 ) of Decision No 1/80 and Article 7 of Decision No 2/76 and/or Article 13 of Decision No 1/80 have direct effect in the Member States of the European Community*".[163] This ruling states that

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Research Centrer, WD 3 – 3000 - 188/11, p. 6, from: https://www.google.com.tr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC4QFjAA&url=http%3A%2F%2Fwww.migrationsrecht.net%2Fdoc_download%2F1582-ab-ile-tuerkiye-arasndaki-ortaklk-hukukundaki-standstill-huekmuenuen-uygulama-alanlar-ve-etkileri.html&ei=TwuEUbTeForatAal2YHgDQ&usg=AFQjCNH-x7YkYRUrNAqm8Ig6gUhqjNyeCA&sig2=x5hYDmlSoK32SKHidw6nIQ&bvm=bv.45960087,d.ZWU (accessed date: 01.12.2012).

[160] For further information, ibid.

[161] For the ACDs, please look at n. 151.

[162] For further information, please look at: Rogers N. et al. (2012), op. cit., p. 28.

[163] Sevince Case C-192/89 (1990), para. 26, see n. 38.

the 2/76 and 1/80 ACDs, especially their Articles 2 and 7 and Articles 6 and 13 respectively, are directly effective compared to the above mentioned Articles 12 of the AA and the 36 of the AP. Furthermore, the ECJ stated in the same judgment (Case C-192/89 Sevince) that: individuals could rely on these measures although the Decisions had not been published and contained clauses stating that the MSs had to implement these provisions in their national legislation.[164] Besides, the ECJ also stated in its judgment in the Kurz Case (C-188/00) that "*...Article 6(1) of Decision No 1/80 has direct effect in the Member States and that Turkish nationals who satisfy its conditions may therefore rely directly on the rights which the three indents of that provision confer on them progressively, according to the duration of their employment in the host Member State*".[165] Concerning the Art. 6(1) of the 1/80 ACD, the ECJ stated in its judgment in the Kus Case (C-237/91) that: "*...a Turkish worker who fulfils the requirements of the first or third indent of Article 6(1) of Decision No 1/80 may rely directly on those provisions in order to obtain the renewal not only of his work permit but also of his residence permit*".[166] That is to say, the renewal of work permission become meaningless unless there is residence permission for a foreign worker. Because he or she must reside when he or she starts to work in a host EU-MS. In this regard, one point should also be clarified here that: if the EU-MSs' regulations on residency law are made more strict than the one on 1 December 1976, entering the labour market is interrupted in consequence of the mentioned regulations taken by the EU-MSs. In this way, it can be also clearly stated that all regulations which make more difficult to give residence permission or extend the duration of it are included in the scope of standstill clauses.

On the other hand, the Art. 6(2) of the 1/80 ACD states that: "*Annual holidays and absences for reasons of maternity or an accident at work or short periods of sickness shall be treated as periods of legal employment. Periods of involuntary unemployment duly certified by the relevant authorities and long absences on account of sickness shall not be treated as periods of legal employment, but shall not affect rights acquired as the result of the preceding*

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[164] Sevince Case C-192/89 (1990), para. 22-24, see n. 38. Additionally, please look at: Lenski E., (2006), "*Turkey and Northern Cyprus – The European Union and its Neighbours*", Walter Hallstein-Institut für Europäisches Verfassungsrecht, WHI – Paper 4/06, p. 292-3-4, from: http://www.whi-berlin.eu/documents/whi-paper0406.pdf (accesed dated: 30.04.2013).

[165] Kurz v Land Baden-Württemberg Case C-188/00 (2002) ECR I-0691, para. 26, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62000CJ0188:EN:HTML (accessed date: 28.04.2013); see also, Mehmet Birden v Stadtgemeinde Bremen Case C-1/97 (1998) ECR I-07747, para. 19, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61997J0001:EN:HTML (accessed date: 28.04.2013).

[166] Kazim Kus v Landeshauptstadt Wiesbaden Case C-237/91, ECR I-906781 (16 December 1992) para. 36, from:
http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61991CJ0237 (accessed date: 07.05.2013).

*period of employment*".[167] This means that annual holidays, maternity absences, work accidents, and short sicknesses count as 'legal employment'; additionally, involuntary unemployment duly certified and long absences because of illness do not affect rights already acquired. Concerning the Art. 6 of the 1/80 ACD, the ECJ clarified one point in its judgment in Bozkurt Case (Case C-434/93) by stating that: "...*Article 6 of Decision No 1/80 covers the situation of Turkish workers who are working or are temporarily incapacitated for work. It does not, on the other hand, cover the situation of a Turkish worker who has definitively ceased to belong to the labour force of a Member State because he has, for example, reached retirement age or, as in the present case, become totally and permanently incapacitated for work*".[168] That means the standstill clause does not protect retired persons.[169]

Regarding family members of Turkish workers, the Art. 7 of the 1/80 ACD states that: "*The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorized to join him: - shall be entitled-subject to the priority to be given to workers of Member States of the Community-to respond to any offer of employment after they have been legally resident for at least three years in that Member States: - shall enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years. Children of Turkish workers who have completed a course of vocational training in the host country may respond to any offer of employment there, irrespective of the length of time they have been resident in that Member State, provided one of their parents has been legally employed in the Member State concerned for at least three years*".[170] This Article says that the family members of Turkish workers will have a right to respond to offers of employment after three years legal residence, subject to priority for EU workers. And then they will have free access to any paid employment if they reside legally for five years. Concerning children of them it says that after completing a vocational course in the host EU-MS, these children will have a right to respond to any offer of employment if one of their parents has been legally employed in the mentioned host EU-MS for at least three years. Additionally, it does not matter how long those children have been a permanent resident in this EU-MS. In this context, Art. 9 of the Association Council Decision 1/80 states that: "*Turkish children residing legally in a Member State of the*

[167] For the ACDs, n. 151, p. 158.
[168] Ahmet Bozkurt v Staatssecretaris van Justitie, Case C-434/93, I-01475 (6 June 1995), para. 39, from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61993J0434 (accessed date: 24.05.2013).
[169] For further information, please look at: Gutmann R. (Dr.), (2003), op. cit., p. 7.
[170] For the ACDs, n. 151, pages 158-9.

*Community with their parents who are or have been legally employed in that Member State, shall be admitted to courses of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of nationals of that Member State. They may in that Member State be eligible to benefit from the advantages provided for under the national legislation in this area*".[171] That is to say, Turkish children residing with their parents who have been legally employed in a host EU-MS have equal treatment in access to education there compared to these EU-MS's nationals; additionally, they may benefit from the relevant advantages.

On the other hand, the Art. 10(1) and Art. 10(2) of the 1/80 ACD state that: "*(1) The Member States of the Community shall as regards remuneration and other conditions of work grant Turkish workers duly registered as belonging to their labour forces treatment involving no discrimination on the basis of nationality between them and Community workers. (2) Subject to the application of Articles 6 and 7, the Turkish workers referred to in paragraph 1 and members of their families shall be entitled, on the same footing as Community workers, to assistance from the employment services in their search for employment*".[172] This Article briefly provides for a right to equal treatment in working conditions without any discrimination. Once Turkish workers are duly registered as belonging to the labour market of one of the host EU-MSs, they enjoy equal treatment with EU workers in respect of remuneration and other work conditions under this Art. 10 of the ACDs.[173] The ECJ stated in its judgment in the Waehlergruppe/Birlikte Case (Case C-171/01) that: "*Article 10(1) prohibits Member States, in clear, precise and unconditional terms, from discriminating, on the basis of nationality, against Turkish migrant workers duly registered as belonging to their labour force as regards remuneration and other conditions of work*".[174] That is to say, "*the phrase 'other conditions of work' to include the right for Turkish workers to stand as candidates in elections to bodies representing the legal interests of workers. Therefore, Austrian rules restricting eligibility for election to a body such as a chamber of workers to Austrians only breached Article 10*".[175] Subsequently, the Art. 13 of the 1/80 ACD also states that: "*The Member States f the Community and Turkey may not introduce new restrictions on*

[171] For the ACDs, n. 151, p. 159.
[172] Ibid., p. 159.
[173] Barnard C., (2010), op. cit., p. 552.
[174] Waehlergruppe Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG Case C-171/01 (2003) ECR I-4301, para. 57, from: http://curia.europa.eu/juris/showPdf.jsf;jsessionid=9ea7d0f130d50fded10afa5e4fa4b652e75b81d3b77c.e34KaxiLc3eQc40LaxqMbN4OaxaSe0?text=&docid=48256&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=799935 (accessed date: 19.12.2013).
[175] Barnard C., (2010), op. cit., p. 552.

*the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories*".[176] This Article, as mentioned below, is the key standstill clause for the freedom of movement for Turkish nationals.

Lastly, the Art. 14(1) of the 1/80 ACD states that: "*The provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health*".[177] That is to say, the provisions of this Decision are subject to limitations justified on general interests such as grounds of public policy, public security or public health. In this regard, the ECJ is ready to hear justifications based on official authority and public interest.[178]

The Art. 13 of 1/80 provides for a standstill clause on any new restrictions on access to employment for Turkish workers and their family members who both reside legally in host EU-MSs. As stated above, family members of Turkish workers started to enjoy conditions of access to employment on the date of entry into force of Decision 1/80 (1 December 1980). The ECJ states in Sevince Case C-192/89 (above) that the Art.13 of Decision 1/80 has direct effect and contains a standstill clause by saying that: "*...Article 7 of Decision No 2/76 and Article 13 of Decision No 1/80 contain an unequivocal 'standstill' clause regarding the introduction of new restrictions on access to the employment of workers legally resident and employed in the territory of the contracting States*".[179] Additionally, it should be noted here that the Art. 7 of the 2/76 ACD and Art. 13 of the 1/80 ACD contain the same provision, the only difference between them is that the latter includes family members of Turkish workers. Although the Art. 11 of the 2/76 ACD states that: "*...The provisions of this Decision shall continue to apply until the beginning from the subsequent stage*",[180] Turkish workers have had the right to enjoy freedom of movement for workers provision before the implementation of the 1/80 ACD. When considering the above-mentioned Article, the 2/76 ACD should not be taken into consideration because of the existence of the 1/80 ACD as a subsequent stage. In this regard, the ECJ stated its judgment in the Bozkurt Case (C-434/93) as follows: "*It should first be noted that Decision No 2/76 is presented, in Article 1 thereof, as constituting a first stage in securing freedom of movement for workers between the Community and Turkey which was to last for four years as from 1 December 1976. Section 1 of Chapter II, headed "Social Provisions", of Decision No 1/80, which includes Article 6, constitutes a further stage in securing freedom of movement for workers and has applied, pursuant to Article 16, since 1*

[176] For the ACDs, n. 151, p. 160.
[177] For the 1/80 ACD, n. 151.
[178] For further information, please look at: Gocmen I., (2011), op. cit., p. 101.
[179] Sevince Case C-192/89 (1990), para. 18, n. 38.
[180] For the ACDs, n. 151.

*December 1980. As from that date, Article 6 of Decision No 1/80 has replaced the corresponding, less favourable, provisions of Decision No 2/76. That being so, for the purposes of giving a helpful answer to the questions submitted to the Court, and having regard to the times at which the facts summarized above occurred, it is solely to Article 6 of Decision No 1/80 that reference should be made*".[181] However, even if the 2/76 ACD is not directly taken into consideration, it is indirectly implemented. The reason of this is that: if the 2/76 ACD was not even indirectly implemented, the aim of standstill clause laid under the 1/80 ACD would be meaningless and, the valid beginning date for securing freedom of movement for workers would be the 1st of December 1980; namely, the beginning of the 1/80 ACD. That is to say, the securing freedom of movement would start from 1 December 1980, not 1 December 1976, and this is less favourable for Turkish workers and incompatible with the nature of the relevant standstill provisions. That is why, "*the standstill clause...decision 2/76 has to be used further on*"[182] and the question "whether the entrance to an EU-MS territory and the residence there was legal or illegal" is answered by taking into consideration the provisions which was valid in 1 December 1976 or the provisions which enacted after that date but being favourable for Turkish workers. Additionally, the Art. 13 of the 1/80 ACD does not protect the rights of post-workers who are sent by their employers to the host EU-MSs and work there in a temporary manner.[183] "*The clause serves only for the protection of workers with a perspective of integration into the national labour market...Workers of forwarding agencies who are not residents of the member state and return to their families in Turkey after their tour are not favoured by article 13 of decision 1/80*".[184]

On the other hand, the ECJ also noted in its judgment in Case C-242/06 (Sahin) that: "*...as regards the meaning of 'legally' in Article 13 of Decision No 1/80, according to the case-law, this means that the Turkish worker or member of his family must have complied with the rules of the host Member State as to entry, residence, where appropriate, employment, with the result that he is lawfully present in the territory of that State...*".[185] Previously, a similar judgment was also ruled by the ECJ in the Savas Case (Case C-37/98) as follows: "*...a Turkish national's first admission to the territory of a Member State is governed exclusively by that State's own domestic law, and the person concerned may claim certain rights under Community law in relation to holding employment or exercising self-employed activity, and, correlatively, in relation to residence, only in so far as his position in the Member State*

[181] Bozkurt Case C-434/93 (1995), para. 14, n. 168.
[182] Gutmann R. (Dr.), (2003), op. cit., p. 6.
[183] Ibid, pages 5-6.
[184] Ibid., p. 6.
[185] T. Sahin Case C-242/06 (2009), para. 53, n. 76.

*concerned is regular*".[186] Therefore, an illegal resident or employment relationship cannot provide legal benefits.[187] Additionally, "*in the doctrine, there are authors who depend on this distinction between Turkish nationals who are in a regular position and others who are not*".[188] Furthermore, concerning the Art. 13 of the 1/80 ACD, the ECJ also stated in its judgment in the joint Toprak and Oguz Cases (C-300/09 and C-301/09) that: "*...The Court has previously held that the standstill rule in Article 13 of Decision No 1/80 is not intended to protect Turkish nationals who are already integrated into a Member State's labour force, but is intended to apply precisely to Turkish nationals who do not yet qualify for the rights in relation to employment and, accordingly, residence under Article 6(1) of that decision*".[189] That is to say, the standstill rule in Art. 13 of the 1/80 ACD does not only cover the Turkish citizens who have already integrated into a Member States' labour force but also cover the remained Turkish citizens who have not entered the Member States' labour force.[190] In addition to that, the ECJ ruled in the same case that: "*Having regard to the convergence in the interpretation of both Article 41 of the Additional Protocol and Article 13 of Decision No 1/80 as regards the objective pursued, it must be held that the scope of the standstill obligation in Article 13 extends by analogy to any new obstacle to the exercise of free movement by workers which makes more stringent the conditions which exist at a given time*".[191]

Any aggravations and/or new obstructions on regulations for the work permission are also included in the influence area of the standstill clause of the Art. 13 of the 1/80 ACD.[192] Therefore, any regulations which are obstructed later than the implementation of the above-mentioned standstill clause should not be implemented for a job exempt from the work permit requirement at the time the above-mentioned clause came into force.[193] That is to say, if it is currently necessary to get work permission for a job which was exempt from the work permit

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[186] The Queen v Secretary of State for the Home Department, ex parte Abdulnasir Savas, Case C-37/98 (2000), ECR I-02927, para. 65, from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61998J0037&lg=en (accessed date: 07.05.2013).

[187] For further information, please look at: Gutmann R. (Dr.), (2003), op. cit., p. 6.

[188] Gocmen I. (2011), op. cit., p. 92; see also, Rogers N & Scannel R. (2005), op. cit., p. 377; see also, Candan T. (2008), "*ATAD' in Son Kararlari Isiginda Ortaklik Iliskisinde Yerlesme Hakki ve Serbest Dolasim"*, in Akcay B., Baykal S., Kahraman S., (Eds.), op. cit., p. 353.

[189] Joined cases Staatssecretaris van Justitie C-300/09 v F. Toprak and I. Oguz C-301/09 (2010) ECR I-12845, para. 45, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0300:EN:NOT (accessed date: 03.05.2013). See also joined Cases Abatay/Sahin C-317/01 and C-369/01 (2003), para. 83, n. 76 and; Commission v Netherlands Case C-92/07 (2010), para. 45, n. 55.

[190] For further information, please look at: Gutmann R. (Dr.), (2003), op. cit., p. 7.

[191] See joined Cases Toprak & Oguz C-300/09 and C-301/09 (2010), para. 54, n. 189.

[192] For further information, please look at: Schröder B. & Höhmann D. (2011), op. cit., p. 12.

[193] Ibid.

requirement according to the regulations in the days of old, this necessity will be incompatible with the standstill regulations as it introduces a new restriction for Turkish citizens in the way of entering labour market in the territories of the EU-MSs. Unfortunately, there are same aggravations and/or new obstructions and/or restrictions on some influence areas of the relevant standstill clauses and these are currently implemented by some EU-MSs.[194]

One other subject is that the EU-Turkey Association Law does not result in the right to family reunification for Turkish citizens; especially, the mentioned Association Law does not create an absolute and directly right for Turkish citizens to be able to gather their family members to themselves.[195] Therefore, the regulations concerning the first entering to the territory of the EU-MSs are determined in the eye of national laws of each EU-MSs.[196] Nevertheless, the influence area of the Art. 13 of the 1/80 ACD should not be interpreted only for the family reunification of Turkish citizens who have already resided in the territories of EU-MSs. In this context, the ECJ stated in its judgment in the Toprak Case C-300/09 that: "*(40). In that connection, it is true that that regime does not directly refer to foreign workers but concerns foreign nationals married to persons entitled to a right of permanent residence in the Netherlands. (41). However, such a regime may affect foreign workers, in particular Turkish workers, by setting the conditions for the grant of independent residence permits, not connected to residence with a spouse*".[197] In this regard, when family reunification taking place for the first time, any new restrictions on family members of Turkish workers may also affect these Turkish workers themselves in an indirectly manner.[198] Because those restrictions affect not only these family members abroad, but also these Turkish workers who already reside in one of the EU-MSs. This effect can be about freedom of movement for those Turkish workers in a negative manner. Furthermore, the ECJ guaranteed the rights of family members of Turkish workers by stating in its judgment in the Kadiman Case C-351/95 (1997) that: "*(33). With regard...to the residence of a family member,...a Member State which has authorized a person to enter its territory in order to join a Turkish worker cannot then withhold from that person the right to reside there in order to enable the family to be together...in conformity with the spirit and purpose of the first paragraph of Article 7 of Decision No 1/80. (34)...the purpose of that provision is to favour employment and residence of Turkish workers duly registered as belonging to the labour force of a Member State by*

[194] Ibid. Same samples of aggravations and/or new obstructions and/or restrictions will be mentioned below.
[195] Ibid.; see also, Gocmen I. (2011), op. cit., p. 92; see also, Rogers N & Scannel R. (2005), op. cit., p. 372.
[196] Ibid.
[197] See Toprak & Oguz joined Cases C-300/09 and C-301/09 (2010), paras. 40-41, n. 189.
[198] For further information, please look at: Schröder B. & Höhmann D. (2011), op. cit., p. 12.

*ensuring that their family links are maintained there*".[199] Concerning the family reunification issue, it can be mentioned one act of the German legislation as being a restrictive sample and so incompatible with the relevant standstill clause (Art. 13 of the 1/80 ACD). With the aim of protecting marriage and family, it might be said that the Art. 6 Basic Law for the Federal Republic of Germany infers that authorized family members of foreigners may be allowed residence in Germany; in this regard, their entry to and residence (only spouses and children) in the territory of Germany is regulated by §§ 27-36 Residence Act.[200] Since September 2007, foreign spouses of third country (namely foreign spouses of Turkish citizens in the EU-MSS in this thesis) must demonstrate basic language ability prior to entry and provide proof of Basic German language ability at a German embassy or consulate prior to entry in order to be able to get a visa and then receive a residence permission from Germany.[201] According to the Federal Government and the German Bundestag, this helps to facilitate the integration of spouses in Germany and prevent forced marriage.[202] However, this amendment is incompatible with standstill clause in case mentioned spouses are Turkish citizens who would like to reside in Germany legally.[203] Prof. Dr. Hagen Lichtenberg also pointed out one of the German regulations. He criticized one of the practices of the Baden-Württemberg dated 1982 to grant family reunification only after three years of marriage (namely a three year waiting period for reunited married persons before a partner gets a residence status of her/his own), which was directed against Turkish families and aimed to slow down the Turkish immigration to Germany and were legitimized as a way of migration control, this time for subsequent immigration of family members had been only one year; additionally, this restrictive practice was incompatible with the Art. 7 of the AA that is directly applicable in domestic law of the Community members; thus the mentioned waiting period of three years marriage could not apply to Turkish citizens.[204]

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[199] Selma Kadiman v Freistaat Bayern Case C-351/95 (1997) ECR I-02133, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61995J0351:EN:HTML (accessed date: 15.05.2013).

[200] For further information, please look at: "*The Annual Policy Report 2011 by the German National Contact Point for the European Migration Network (EMN)*", Federal Office for Migration and Refugees, p. 32, from: https://www.google.com.tr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC0QFjAA&url=http%3A%2F%2Femn.intrasoft-intl.com%2FDownloads%2Fdownload.do%3Bjsessionid%3DA29E830DFA1A4A392A4D474F990E7C73%3FfileID%3D3381&ei=hlyaUayTN8XItAbTtYCgAg&usg=AFQjCNHN1_7ZLKe2B6mKWb0SSKoDtJb1dA&sig2=uWRRsR8Se-W54QnAse-ALA&bvm=bv.46751780,d.Yms (accessed date: 20.05.2013). Concerning Art. 6 of the Basic Law, notably its first paragraph states that: "*Marriage and the family shall enjoy the special protection of the state*", for the mentioned Basic Law look at: http://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html#p0034 (accessed date: 31.01.2014).

[201] Ibid.

[202] Ibid.

[203] For further information, please look at: Schröder B. & Höhmann D.,(2011), op. cit., p. 15.

[204] Lichtenberg H. (1986-1987), "*AET ile Turkiye Arasindaki Ortaklik Hukukunun Serbest Dolasima Ait Hukumlerinin, Alman Yabancilar Hukukuna Gore Eslerin Getirilmesi Uygulamasi Uzerine Olan Etkileri*", Istanbul University, Faculty of Law Journal LII, 1-4, p. 694, from:

One another point is about restrictions on minimum duration of marriages of Turkish workers and other regulations. It may be better to give an example in order to mention this issue well. For instance; according to The Bill of the Federal Government of Germany to Combat Forced Marriage and Improve Protection of Victims of Forced Marriage and Amend Other Residence and Asylum Regulations which amended in 2011, minimum duration of marriages has been increased from two years to three years in Germany since July 2011 before getting a right of residence independent of the marriage (§ 31(1)1 AufenthG).[205] That means, if any couple want to get divorced, they may get a right of residence independent of the marriage on condition that they were married for minimum three years. In this regard, it can be said that the mentioned amendment has changed the situation, it is less favourable for Turkish citizen and so incompatible with the standstill clause. An almost same amendment came to the agenda in the Netherlands. The issue was again the minimum duration of marriage in the Toprak and Oguz Case (Joined cases C-300/09 and C-301/09). The Netherlands Government hold the opion that if the family reunification disappeared before the expiry of three years, that puts an end to any right of residence and that regime was not about workers and Art. 13 of the 1/80 ACD and was therefore not applicable. However, the ECJ ruled by stating in its judgment that: "*...concerning a national provision on the acquisition of a residence permit by Turkish workers, Article 13 of Decision No 1/80 must be interpreted as meaning that a tightening of a provision introduced after 1 December 1980, which provided for a relaxation of the provision applicable on 1 December 1980, constitutes a 'new restriction' within the meaning of that article, even where that tightening does not make the conditions governing the acquisition of that permit more stringent than those which resulted from the provision in force on 1 December 1980, this being a matter for the national court to*

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http://www.journals.istanbul.edu.tr/tr/index.php/hukukmecmua/article/download/3857/3452 (accessed date: 20.12.2013); see also, Thraenhardt D., "*Immigration and Integration in European Federal Countries: A Comparative Evaluation*", in Thraenhardt D. (Eds.) (2013): "*Immigration and Federalism in Europe Federal, State and Local Regulatory Competencies in Austria, Belgium, Germany, Italy, Russia, Spain and Switzerland*", Institut für Migrationsforschung und Interkulturelle Studien (IMIS) Universität Osnabrück, STEINBACHER DRUCK GmbH, ISBN 978-3-9803401-3-7, ISSN 0949-4723, Osnabrück, p.16, from: http://www.imis.uni-osnabrueck.de/pdffiles/imis43.pdf (accessed date: 20.12.2013); see also Heckmann F. (2013): "*Country Case Study on the Impacts of Restrictions and Entitlements on the Integration of Family Migrants: Qualitative Findings - Germany*", The Impact of Restrictions and Entitlements on the Integration of Family Migrants ((IMPACIM), European Forum for Migration Studies (efms) and Institute at the University of Bamberg, p. 5, from:http://www.compas.ox.ac.uk/fileadmin/files/Publications/Research_projects/Welfare/IMPACIM/IMPACIM_Qual_Report_Germany_Oct_13.pdf (accessed date: 20.12.2013).

[205] See, "*The Bill of the Federal Government of Germany: Bill to Combat Forced Marriage and Improve Protection of Victims of Forced Marriage and Amend Other Residence and Asylum Regulations*", (13 January 2011), German Bundestag, 17th legislative period, Drucksache 17/4401, p. 5, from: http://dip21.bundestag.de/dip21/btd/17/044/1704401.pdf (accessed date: 20.05.2013); see also, "*the Annual Policy Report 2011 by the German National Contact Point for the European Migration Network (EMN)*", Federal Office for Migration and Refugees, p. 33, n. 200.

*determine*".[206] That is to say, the ECJ ruled on changes to the conditions for a residence permission to Turkish workers in the light of the standstill clauses in Art. 41(1) of the AP and the Art. 13 of the 1/80 ACD.

Concerning the termination of residence permission, the ECJ stated in its judgment in the Nazli Case (C-340/97) that "*(49)...a Turkish national who has been in legal employment in a Member State for an uninterrupted period of more than four years but is subsequently detained pending trial for more than a year in connection with an offence for which he is ultimately sentenced to a term of imprisonment suspended in full has not ceased, because he was not in employment while detained pending trial, to be duly registered as belonging to the labour force of the host Member State if he finds a job again within a reasonable period after his release, and may claim there an extension of his residence permit for the purposes of continuing to exercise his right of free access to any paid employment of his choice under the third indent of Article 6(1) of Decision No 1/80*".[207] Additionally, the ECJ ruled in the same Case for the Art. 14(1) of the 1/80 ACD (above) that: "*...Article 14(1) of Decision No 1/80 is to be interpreted as precluding the expulsion of a Turkish national who enjoys a right granted directly by that decision when it is ordered, following a criminal conviction, as a deterrent to other aliens without the personal conduct of the person concerned giving reason to consider that he will commit other serious offences prejudicial to the requirements of public policy in the host Member State*".[208] The conclusion is that the above-mentioned standstill clause also covers and affects the national measures which terminate the right of residence through expulsion. That is why, the national court's decision to expel Mr. Nazli on the basis of the Art. 47(2)(2) of the dated 1990 Auslaendergesetz (German Law on Aliens), is less favourable for Turkish citizens compared to the Art. 10 of the German Aliens Law 1965 and so incompatible with the standstill clause (1/80 ACD).[209] According to the German Aliens Law 1965, a foreigner, who applied for the extension of his/her residence permission too late, did not have to leave the EU country.[210] In this regard, the procedural regulations are subjects to the standstill clauses.[211]

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[206] Joined Cases Toprak and Oguz C-300/09 and C-301/09 (2010), paras 39 and 62, n. 189.
[207] Omer Nazli, Caglar Nazli and Melike Nazli v Stadt Nürnberg Case C-340/97 (2000) ECR I-0957, para. 49, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61997J0340:EN:HTML (accessed date: 20.05.2013).
[208] Ibid., para. 64.
[209] Ibid., para. 16; see also, Schröder B. & Höhmann D. (2011), op. cit., p. 17.
[210] For further information, pelase look at: Gutmann R. (Dr.), (2003), op. cit., p. 6.
[211] Ibid., p. 6.

As it is understood from above-mentioned statements that nothing in the AA itself or the ACDs confers rights of free movement on workers who are not already part of the labour force. However, the 1/80 ACD has been designed to promote the gradual integration of Turkish nationals in the host MS with the aim of achieving progressive stages of freedom of movement for workers.[212] And the AA together with the AP and the Association Council Decisions set up a legal framework for a close and long-standing relationship between two sides.

When it is mentioned the free movement for self-employed workers, it should be primarily stated what a self-employed person means. According to the Communication from the Commission to the Council, the EP, the European Economic and Social Committee (EESC) and the Committee of the Regions (CoR) (COM/2010/0373 final), a self-employed persons performs a task under his/her own responsibility and so he/she can be liable for damage arising from the economic risk of the business, for instance his/her profit is dependent on expenses incurred on staff and equipment in connection with his/her activity.[213] The same rule is also valid in this situation. This rule is that the Turkish worker or member of his family must have complied with the rules of the host MS as to entry, residence, and thus an illegal resident cannot provide legal benefits.

Concerning the freedom of movement for self-employed workers, the ECJ has ruled some judgments in the Savas Case (C-37/98) that: "*The purpose of that Agreement is to establish an association designed to promote the development of trade and economic relations between the contracting parties, including, in the area of self-employment, the progressive abolition of restrictions on freedom of establishment, so as to improve the living conditions of the Turkish people and facilitate the accession of the Republic of Turkey to the Community at a later date*";[214] "*…Article 41(1) of the Additional Protocol is not in itself capable of conferring upon a Turkish national a right of establishment and, as a corollary, a right of residence in the Member State in whose territory he has remained and carried on business activities as a self-*

[212] See, Umit Bekleyen v Land Berlin Case (C-462/08) (2010), para. 24, from: http://curia.europa.eu/juris/document/document.jsf?text=&docid=74655&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=534018 (accessed date: 28.04.2013); see also; Ibrahim Altun v Stadt Boeblingen Case C-337/07 (2008) ECR I-0000, para. 29, from: http://eur-lex.europa.eu/Notice.do?mode=dbl&lang=en&ihmlang=en&lng1=en,en&lng2=bg,cs,da,de,el,en,es,et,fi,fr,hu,it,lt,lv,mt,nl,pl,pt,ro,sk,sl,sv,&val=506957:cs (accessed 28.04.2013).

[213] For further information, please look at: "*COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, Reaffirming the free movement of workers: rights and major developments (COM/2010/0373 final)*", n. 130.

[214] Abdulnasir Savas Case C-37/98 (2000), para. 52, n. 186.

*employed person in breach of the domestic immigration law. - However, Article 41(1) of the Additional Protocol prohibits the introduction of new national restrictions on the freedom of establishment and right of residence of Turkish nationals as from the date on which that protocol entered into force in the host Member State. It is for the national court to interpret domestic law for the purposes of determining whether the rules applied to the applicant in the main proceedings are less favourable than those which were applicable at the time when the Additional Protocol entered into force...*".[215] That is to say, the AA aims to develop trade and economic relations between the signatories including the area of self-employment and, progressively abolish any restriction on freedom of establishment. In this regard, the Art. 41(1) of the AP prohibits any introduction of new national restrictions from the date on which the AP came into force. However, restriction rule arising from standstill clause such as Art. 41(1) of the AP is not a new issue. Long before the Savas judgment of the ECJ, there was a case briefly called "Peskeloglu"[216]. In this Case, the ECJ "*excluded the possibility for a MS to make 'more stringent the conditions for the entitlement of spouses and members of the family alone to tkae up employment,..*"[217] by stating that "*The answer to the question submitted should therefore be that Article 45 (1) of the Act of Accession must be interpreted as not permitting national provisions concerning the first grant of a work permit to a Greek national to be made more restrictive after the entry into force of the Act of Accession*".[218] That is to say, Art. 45(1) of the Act of Accession must be interpreted as not giving permission national provisions concerning a work permit to a Greek national to be made more restrictive after this Act came into force.[219] This judgment including the standstill provision ruled by the ECJ for the first time came to the agenda as a subject matter laid down in Acf of Accession (i.e, Atina Agreement)[220] which is similar to the AA.[221] Furthermore, unlike Greece, the realization of the existence and the results of the standstill clause for Turkey took more than 15 years until the Savas Case in which the ECJ firstly examined the scope of Art. 41(1) of the AP and its interpretation and stated its decision in 2000.[222]

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[215] Ibid., para. 71.
[216] Peskeloglou Anastasia v Bundesanstalt für Arbeit Case 77/82, (1983) ECR I-1085, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61982CJ0077:EN:PDF (accessed date: 10.12.2013).
[217] Horspool M. & Humphreys M. (2006): "*European Union Law*", (4th Ed.), Core Text Series, Oxford University Press, New York, p. 422.
[218] Peskeloglou Case 77/82, (1983), para. 15, n. 216.
[219] For further information, please look at: "*The Concept of Freedom Of Establishment in Relation with Turkey and European Economic Community*", written by (Attorney) Gokhan Cindemir G., from: http://www.cindemir.av.tr/turkish-lawyer-ankara-agreement.html (accessed date: 14.12.2013).
[220] Atina Agreement was briefly mentioned above, please see n. 17.
[221] See, "*The Concept of Freedom Of Establishment in Relation with Turkey and European Economic Community*", n. 219.
[222] Ibid., see also: Aksoy M.U. (2007), op. cit., p. 9.; Gutmann R. (Dr.), "*Doner ve Gumruk Birligi*", in Gumrukcu H. & Voegeli W., (Eds.) (2012), op. cit., p. 169. The cases including judgments about standstill clause for Turkish nationals are in turn as follows: * The Queen v Secretary of State for the Home Department,

The other point is that the standstill clause has little importance on the freedom of establishment of Turkish citizens if taking into consideration the rules of Germany as a sample case in this regard.[223] Because the freedom of establishment concerning individuals, requires that person to be self-employed and in this context,[224] there has not been implemented any obstructive restrictions concerning this freedom in Germany since the AP entered into force in 1973.[225] At that time there was also visa requirement for Turkish citizens who aimed to work as self-employed in the territories of the EU-MSs and; there was also residence permit requirement at the time the AP came into force; however, aggravations which starting to implement after 1973 and concerning the getting residence permit are incompatible with the mentioned standstill clause.[226]

Concerning the payment of any administrative charge of application for residence permit or the extension of the period of validity of it, the ECJ stated in its judgment in the Sahin Case C-242/06 (2009) that: "(*69)...Turkish workers and members of their families cannot validly rely on one of the standstill clauses laid down in the context of the EEC-Turkey Association, such as Article 13 of Decision No 1/80, in order to insist that the host Member State exempt them from payment of any administrative charge as a prerequisite to consideration of an application for the grant of a residence permit or the extension of the period of validity of such a permit, even though, at the date when that decision entered into force in that Member State, the State concerned had not imposed on them any obligation of that kind. Any other interpretation would be inconsistent with Article 59 of the Additional Protocol, which prohibits Member States from according to Turkish nationals treatment which is more favourable than that accorded to Community nationals who are in a comparable situation*".[227] In this context; according to Art. 59 of the AP, it is forbidden to treat Turkish nationals more favourable than EU-MS nationals. Therefore, if a Turkish worker or one of his/her family members applies for being exempt from making payment of any administrative charge for granting residence permit or extending its period of validity, that application may be considered to be incompatible with the Art. 59 of the AP. Because this Article says that: "*In*

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ex parte Abdulnasir Savas, Case C-37/98, (2000) ECR I-02927. * Eran Abatay et al. and Nadi Sahin Joined Cases C-317/01 and C-369/01 (2003) ECR I-12301. * The Queen, Veli Tum and Mehmet Dari v Secretary of State for the Home Department Case C-16/05 (2007) ECR I-7415 * Mehmet Soysal and Ibrahim Savatli v Bundesrepublik Deutschland, C-228/06, (2009) ECR 1031 * Minister voor Vreemdelingenzaken en Integratie v T. Sahin C-242/06 (2009) ECR I-8465 * Joined cases C-300/09 and C-301/09 Staatssecretaris van Justitie v F. Toprak and I. Oguz, (2010), ECR I-12845 * (And Finally) Leyla Ecem Demirkan v Federal Republic of Germany, Case C-221/11 (2013) (not yet published).

[223] For further information, please look at: Schröder B. & Höhmann D. (2011), op. cit., p. 10.

[224] Gocmen I. (2011), op. cit., p. 89.

[225] Ibid.

[226] Ibid.

[227] T. Sahin Case C-242/06 (2009), para. 69, n. 76.

*the fields covered by this Protocol Turkey shall not receive more favourable treatment than that which Member States grant to one another pursuant to the Treaty establishing the Community*".[228] Even if there was no any payment requirements for residence permit or extending its period of validity before the AP, such applications would be invalid. Perceptibly, the ECJ stated in its judgment in the Sahin Case C-242/06 that: "*(74)...national legislation...constitutes a restriction prohibited by Article 13 of Decision No 1/80 to the extent that, before an application for the grant of a residence permit or extension thereof can be considered, the legislation requires payment, by Turkish nationals to whom Article 13 applies, of administrative charges of an amount which is disproportionate as compared with that demanded in similar circumstances from Community nationals. (75)...Article 13 of Decision No 1/80 must be interpreted as precluding the introduction, from the entry into force of that decision in the Member State concerned, of national legislation...which makes the granting of a residence permit or an extension of the period of validity of such a permit conditional on payment of administrative charges, where the amount of those charges payable by Turkish nationals is disproportionate as compared with the amount required from Community nationals*".[229] Therefore, the ECJ states that such regulations about payment, which are disproportionate as compared with comparable domestic cases, are incompatible with the Art.13 of the 1/80 ACD. The ECJ ruled the similar judgment in its Commission of the European Communities v. Kingdom of the Netherlands Case (Case C-92/07) by stating that: "*...the contested charges are contrary to the non-discrimination rules set out in Article 9 of the Association Agreement and Article 10(1) of Decision No 1/80. In that regard...by applying to Turkish nationals charges of a disproportionate amount for obtaining a residence permit or the extension of one in comparison with the charges applied to citizens of the Union for similar documents, the Kingdom of the Netherlands, by so doing, imposed charges of a discriminatory nature. To the extent to which those charges are applied to Turkish workers or members of their family, they introduce a discriminatory condition of work contrary to Article 10 of Decision No 1/80. In so far as those charges are applied to Turkish nationals wishing to avail themselves of freedom of establishment or freedom to provide services pursuant to the Association Agreement, or to members of their family, they are contrary to the general rule of non-discrimination laid down in Article 9 of the Association Agreement*".[230] Concerning both the 2/60 ACD and the 1/80 ACD, Prof. Dr. Harun Gumrukcu from Akdeniz University, Antalya has made pertinent comments in his book titled "*Turkiye ve Avrupa Birligi: İliskinin Unutulan Yonleri, Dunu ve Bugunu*" as follows: When these ACDs are

[228] For the AP, n. 36.
[229] T. Sahin Case C-242/06 (2009), paras. 74-5, n. 76.
[230] Commission/Netherlands Case C-92/07 (2010), para. 75, n. 55.

analyzed in depth, it can be said that the Contracting parties are obliged to fight against discrimination, racism and Turcophobia/Anti-Turkism in the territories of the EU and thus it has been aimed to create the social and judicial conditions in order to be able to shape the future together.[231] All in all, it can be said that the "*The Standstill Clause refers to not only any change of the legal conditions to the negative under which a visa or residence permit is issued. It refers to other additional burdens, too*".[232]

[231] Gumrukcu H. (2002), op. cit., pages 193-4.
[232] Voegeli W., "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 153.

# CHAPTER 3
# FREEDOM OF ESTABLISHMENT AND TO PROVIDE AND RECEIVE SERVICES UNDER THE AA, AP AND THE ACDs

The freedom of establishment and freedom to provide services are two of the four freedoms of single market (free movement of goods, services, people and capital) and these two freedoms cannot be clearly separated from each other in all situations and are usually seen as one because individuals or companies seek establishment in EU-MSs with the aim of providing services there; that is to say; the freedom of establishment enables individuals as self-employed persons or companies to take up and pursue economic activities and to set up and manage undertakings, for a permanent activity in a stable and continuous way in one or more EU-MSs under the same conditions laid down by the establishment law of the MS for its own nationals.[233] And the other one (freedom to provide services) enables individuals or companies to provide services in one MS to offer services on a temporary basis in another MS, without having to be established.[234] The EU-MSs must modify their national laws which restrict freedom of establishment, or the freedom to provide services; additionally, they can just maintain such restrictions in specific situations where these are justified on grounds of public policy, public security or public health.[235]

Concerning the freedom of establishment and freedom to provide services for Turkish nationals in the host EU-MSs, the Articles 9, 13 and 14 of AA and Articles 41(1) and 41(2) of the AP are important provisions. Article 9 of the AA was mentioned above. It, together with "*Articles 13 and 14 of the AA and/or Article 41(1) of the AP, prohibits discrimination on grounds of nationality regarding the freedoms of establishment and to provide services, as long as the position of a Turkish national in a Member State is regular*".[236] In this regard, before giving sample cases, it should be stated the other four Articles. The Art. 13 of the AA states that: "*The Contracting Parties agree to be guided by Articles 52*[237] *to 56*[238] *and Article*

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[233] For further information, please look at: "*General principles: Freedom to provide services / Freedom of establishment*", from: http://ec.europa.eu/internal_market/services/principles_en.htm (accessed 28.04.2013); see also, "*Freedom to provide services in the EU",* from: http://www.europedia.moussis.eu/books/Book_2/3/6/06/?all=1 (accessed 28.04.2013); see also, "*Chapter 3) Right of Establishment and Freedom to Provide Service*", from: http://www.abgs.gov.tr/index.php?p=68&l=2 (accessed 28.04.2013).

[234] Ibid.

[235] İbid.

[236] Gocmen I. (2011), op. cit., p. 95.

[237] Art.49 TFEU/Art.43 TEC (Art.52 TEEC) states that: "*Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member*

*58*[239] *of the Treaty establishing the Community for the purpose of abolishing restrictions on freedom of establishment between them*".[240] As it can be remembered, while the Art. 12 of the AA refers to the provisions of the EEC/EC/TFEU Treaties for freedom of movement for workers, the Art. 13 concerns freedom of establishment and refers to the relevant provisions of the EEC/EC/TFEU Treaties for the same freedom. Art. 14 of the AA, which will be seen below, concerns freedom to provide services and also refers to the relevant provisions of the EEC/EC/TFEU Treaties for freedom of to provide services for self-employed people. *"Articles 13 and 14 of the Ankara Agreement provide the foundation stone for freedom of establishment and the freedom to provide services, in much the same way as that foundation stone for the freedom of movement of workers is laid down by Article 12 of the Agreement*".[241] In this regard, the Art. 14 of the AA states that: "*The Contracting Parties agree to be guided by Articles 55*[242]*, 56*[243] *and 58*[244] *to 65*[245] *of the Treaty establishing the Community for the*

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*State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State. Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital*". For the TFEU Treaty, n. 26.

[238] Art.52 TFEU/Art.46 TEC (Art.56 TEEC) state that: "*1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health. 2. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the coordination of the abovementioned provisions".* For the TFEU Treaty, n. 26.

[239] Art.54 TFEU/Art.48 TEC (Art.58 TEEC) states that: "*Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States. 'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making*". For the TFEU Treaty, n. 26.

[240] For the AA, n. 30.

[241] Rogers N. (2012), op. cit., p. 29.

[242] Art.51 TFEU/Art.45 TEC (Art.55 TEEC) states that: "*The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may rule that the provisions of this Chapter shall not apply to certain activities."*; for the TFEU Treaty, n. 26.

[243] Art.52 TFEU/Art.46 TEC (Art.56 TEEC) states that: "*1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health. 2. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the coordination of the abovementioned provisions.*"; for the TFEU Treaty, n. 26.

[244] Art.55 TFEU/Art.294 TEC (Art.58 TEEC) states that: "*Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 54, without prejudice to the application of the other provisions of the Treaties*". For the TFEU Treaty, n. 26.

[245] Art.56 TFEU/Art.49 TEC (Art.59 TEEC) states that: "*Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and*

*purpose of abolishing restrictions on freedom to provide services between them*".[246] Articles 13 and 14 of the AA are implemented as being guidelines for the freedom of establishment and freedom to provide (and receive) services; furthermore, the AP provides for a 'stand-still clause' concerning the mentioned freedoms.[247] In this regard, the Articles 41(1) and 41(2) of the AP develop the provisions of Articles 13 and 14 of the AA. As mentioned above, the Art. 41(1) of the AP provides that:

> "*The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services*".[248]

This Article is a standstill clause and states that the signatories refrains from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services. It apparently rules that the AC may take decisions in order to implement the basic freedoms further; however, may not take decisions with the aim of restricting the mentioned freedoms.[249] That is why, the legal status of Turkish citizens against any decisions to the detriment of them is very strong.[250] Additionally, The ECJ declares in its judgment in Abatay & Sahin Case (C-369/01) for the Article 41(1) that: it "*appears to be the necessary corollary to (Articles 13 and 14) and constitutes the indispensable means of achieving the*

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*who are established within the Union*"; Art.57 TFEU/Art.50 TEC (Art.60 TEEC) states that: "*Services shall be considered to be 'services' within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons. 'Services' shall in particular include: (a) activities of an industrial character; (b) activities of a commercial character; (c) activities of craftsmen; (d) activities of the professions. Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals*"; Art.58 TFEU/Art.51 TEC (Art.61 TEEC) states that: "*1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport. 2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital*"; Art.59 TFEU/Art.52 TEC (Art.62 TEEC) states that: "*1. In order to achieve the liberalisation of a specific service, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall issue directives. 2. As regards the directives referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods*"; Art.60 TFEU/Art.53 TEC (Art.63 TEEC) states that: "*The Member States shall endeavour to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 59(1), if their general economic situation and the situation of the economic sector concerned so permit. To this end, the Commission shall make recommendations to the Member States concerned*"; Art.61 TFEU/Art.54 TEC (Art.64 TEEC) states that: "*As long a restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 56*". For the TFEU Treaty, n. 26.

[246] For the AA, n. 30.

[247] For further information, please look at: Lenski E., (2006), op. cit., p. 294.

[248] For the AP, n. 36.

[249] Voegeli W. "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 153; see also, Pinar H. (2008), op. cit., p. 88.

[250] Ibid.

*gradual abolition of national obstacles to the freedom of establishment and…to provide services*".[251]

On the other hand, the Art. 41(2) of the AP also provides that "*The Council of Association shall, in accordance with the principles set out Articles 13 and 14 of the Agreement of Association, 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. The Council of Association shall, when determining such timetable and rules for the various classes of activity, take into account corresponding measures already adopted by the Community in these fields and also the special economic and social circumstances of Turkey. Priority shall be given to activities making a particular contribution to the development of production and trade*"[252]. This Article "*charges the Association Council with the duty of setting the timetable and rules for the progressive abolition of restrictions on these freedoms between the parties. However, there has not yet been any Association Council Decision ("ACD") on this point*".[253] The non-existence of at least one ACD concerning Articles 13 and 14 of the AA is unfortunately a big deficiency for Turkish nationals.

While examining the Art. 41(1) of the AP, it will be beneficial to clarify the statement "new restriction". With the aim of explaining it, the Author Ilke Gocmen[254] shows a good figure in his article titled "*The freedom of establishment and to provide services: A comparison of the Freedoms in European Union Law and Turkey-EU Association Law*"[255] as follows:

[251] Joined Cases C-317/01 and C-369/01 Abatay/Sahin (2003), para. 68, n. 76.
[252] For the AP, n. 36.
[253] Gocmen I. (2011), op. cit., p. 84. Additionally, "*According to Staples, therefore, the freedom of establishment and to provide services in the AA has remained a paper right as far as Turkish nationals are concerned*". For further information, see Staples H., (1999): "*The Legal Status of Third Country Nationals Resident in the European Union*", Kluwer Law International, the Hague, pages 256-9.
[254] Mr. Ilke Gocmen is an Assistant Professor Doctor at the Ankara University School of Law of the University of Ankara.
[255] Gocmen I. (2011), op. cit., pages 67-109.

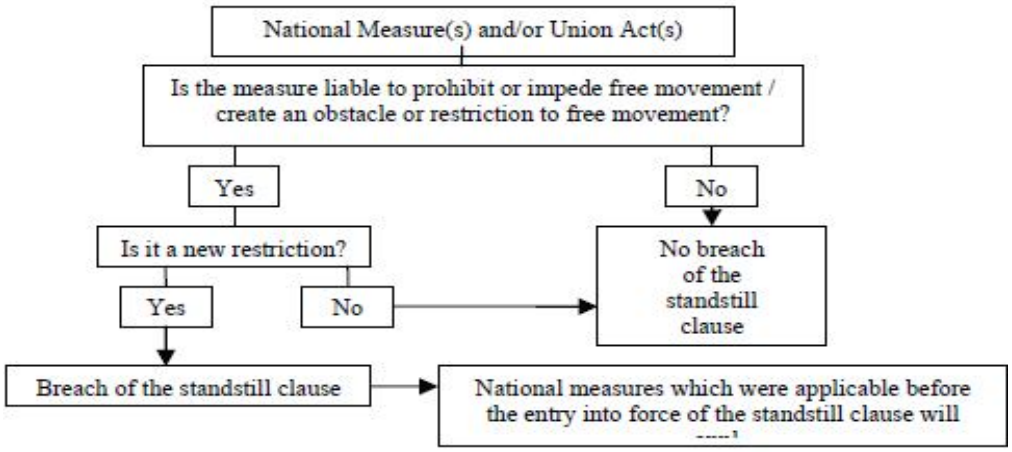


**Figure 3.1 New Restrictions Approach to the Standstill Clauses in Association Law (Based on the Cases Decided by the ECJ until now)**

**Source:** Gocmen I. (2011), op. cit., p. 100.

"*In this regard, the ECJ, in the first place, assesses the measure in question in the light of whether its object or effect is liable to prohibit or impede free movement or create an obstacle or restriction to free movement*".[256] As seen as on the figure, if the answer to the first question is negative, that means there is no any breach of Art. 41(1) of the AP.[257] Nevertheless, unless the answer to the first question is negative, the ECJ began to examine whether the national measure constitutes a new restriction and, in principle, leaves the solution of this issue to the national courts.[258] If that measure does not include a new restriction, there will be no breach of the Art. 41(1) of the AP; however, if that measure includes it, there will be a breach of the mentioned Article, namely standstill clause.[259] In this case, with the comment of the Author,

[256] Ibid., pages 99-100. For the relevant sentence, the Author also pointed out some ECJ judgments: Abatay/Sahin Joined Cases C-317/01 and C-369/01 (2003), paras 110-111, 113-115, n. 76; Tum/Dari Case C-16/05 (2007), para. 47, n. 111; Soysal/Savatli Case C-228/06, (2009), paras. 55-57, n. 22; Reinhard Gebhard v Consiglio dell' Ordine degli Avvocati e Procuratori di Milano Case C-55/94, ECR I-4165, para. 37, from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61994J0055&lg=en (accessed date: 23.12.2013); Manfred Saeger v Dennemeyer & Co. Ltd. Case C-76/90, ECR I-4221, para. 12, from:http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&numdoc=61990J0076&lg=en (accessed date: 23.12.2013); T. Sahin Case C-242/06 (2009), para. 63, n. 76. And also, he pointed out Commission/Netherlands Case C-92/07 (2010), para. 62, n. 55, which states "*the adoption of measures which apply in the same way to both Turkish nationals and citizens of the Union is not inconsistent with the standstill rules*."

[257] The Author also pointed out some ECJ judgments in the same article; Savas Case C-37/98 (2000), para. 69, n. 186; Tum/Dari Case C-16/05 (2007), para. 47, n. 112.

[258] The Author also pointed out these as follows: Savas Case C-37/98 (2000), para. 48, n. 186; Abatay/Sahin Joined Cases C-317/01 and C-369/01 (2003), para. 116, n. 76; T. Sahin Case C-242/06 (2009), para. 66, n. 76.

[259] Gocmen I. (2011), op. cit., p. 100.

"*the national measures which were applicable before the entry into force of the standstill clause will become applicable*".[260]

As mentioned above, the ECJ takes the relevant justifications into account where it finds a measure to be a 'restriction' to free movements and hear these justifications based on official authorities, public policy, public security and public health.[261] Therefore, if a restrictive national measure can be justified, this will mean that there is no any breach of the Art. 41(1) of the AP; and unless a restrictive national measure can be justified, the ECJ began to determine whether that national measure includes a new restriction.[262]

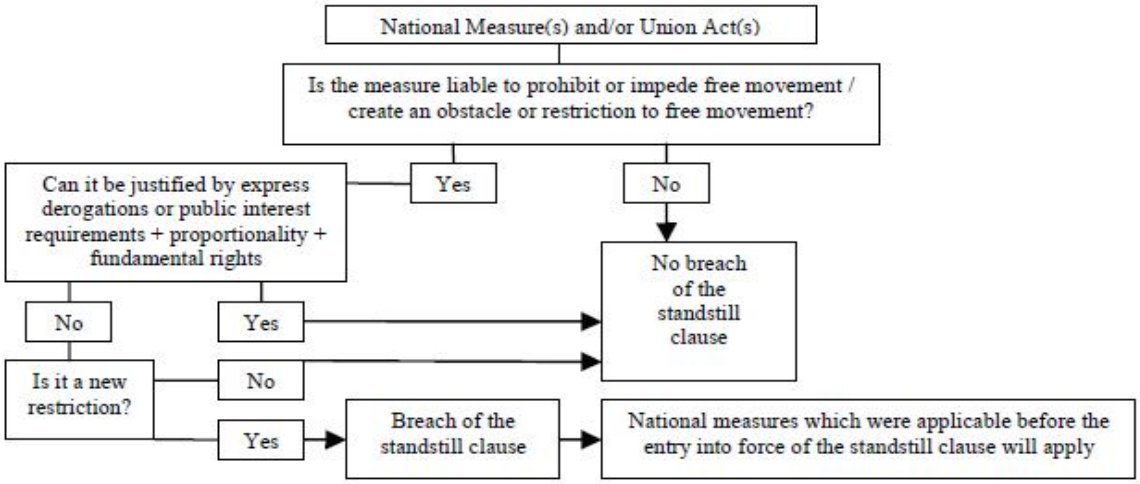


**Figure 3.2 New Restrictions Approach to the Standstill Clauses in Association Law**
**Source:** Gocmen I. (2011), op. cit., p. 101.

When reviewing the Art. 41(1) of the AP, the ECJ stated in its judgment in the Savas Case (Case C-37/98) that: "*...the Court qualified Article 41(1) of the Additional Protocol as 'an unequivocal standstill clause' which was, according to the Court, clearly, precisely and unconditionally*[263] *formulated and thus capable of having direct effect*".[264] The ECJ extended

[260] Ibid. The Author pointed out the relevant ECJ judgments and another source: Tum/Dari Case C-16/05 (2007), para. 55, n. 112; Gumrukcu H. (2008): "*A(E)T/AB Turkiye Ortaklik Hukuku'nun Turkiye'ye Yansimalari ve Hizmet Sektoru*", (1st Ed.), Vizesiz-Avrupa Dizisi-2, Akdeniz University**,** Faculty of Economics and Administrative Sciences and TUGIAD, Antalya, p. 44.
[261] Gocmen I. (2011), op. cit., p. 101.
[262] Ibid., p. 101.
[263] Oppositely, Prof. Dr. Kai von Hailbronner who is one of the most famous and actually most succesfull scients of Germany, claims that the Art.41(1) of the AP is conditional, by the reason of its second paragraph where it empowers the Association Council to take the necessary measures. According to him, it should be asked whether the introduction of a visa requirement causes in a negative result for all Turkish nationals or only for those who aims to provide services. He stated that a general visa requirement would be neutral. For further information, please look at: Gumrukcu H. & Aksoy B. (2009), op. cit., p. 22; see also, Gocmen I. (2011), op. cit., pages 71-2. For the Mr.Hailbronner's opinions, please look at: Hailbronner K. (2004): "*Die Stillhalteklauseln des*

its interpretation of the standstill clause concerning both freedom of establishment and freedom to provide services in its judgment in the Abatay Case (Case C-317/01) compared to its interpretation in the Savas Case (Case C-37/98) by stating that: "*Article 41(1) of the Additional Protocol thus appears to be necessary corollary to Articles 13 and 14 of the Association Agreement, and constitutes the indispensable means of achieving the gradual abolition of national obstacles to the freedom of establishment and the freedom to provide services*".[265] In the same Case, the ECJ also ruled that: "*Moreover, they pursue the same objective, which is to create conditions conducive to the gradual establishment of freedom of movement for workers, of the right of establishment and of freedom to provide services by prohibiting national authorities from creating new obstacles to those freedoms so as not to make the gradual achievement of those freedoms more difficult between the Member States and the Republic of Turkey*".[266] The ECJ pointed out in this Case that the purpose of the standstill clause is to create conditions for the gradual establishment of the mentioned freedoms through prohibiting any restrictions on the mentioned freedoms implemented by the national authorities of the EU-MSs.

The ECJ ruled in the Sahin Case C-242/06 that: "*...Article 41(1) of the Additional Protocol prohibits the introduction, as from the date of entry into force of the legal act of which that provision forms part in the host Member State, of any new restrictions on the exercise of freedom of establishment or freedom to provide services, including those relating to the substantive and/or procedural conditions governing the first admission to the territory of that Member State of Turkish nationals intending to make use of those economic freedoms*".[267] Additionally, the ECJ also stated in the same Case that: "(*64). The Court has therefore more specifically held that Article 41(1) of the Additional Protocol prohibits the introduction, as from the date of entry into force of the legal act of which that provision forms part in the host Member State, of any new restrictions on the exercise of freedom of establishment or freedom to provide services, including those relating to the substantive and/or procedural conditions governing the first admission to the territory of that Member State of Turkish nationals*

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*Assoziationsrechts EWG/Türkei*", ZAR 2/2004, pages 46-54, from: http://migration.uni-konstanz.de/ueber-uns/ueber-uns/hailbronner/publikationen/ (accessed date: 19.12.2013).

[264] Savas Case C-37/98 (2000), paras 46-54 and 71, n. 186.

[265] Eren Abatay Case C-317/01 (2003), para 68, n. 76. For further information, please look at: Niamh Nic S. & Laurence W. G. (Eds.) (2012), "*From Single Market to Economic Union: Essays in Memory of John A. Usher*", Oxford University Press, the UK, p. 325.

[266] Eren Abatay Case C-317/01 (2003), para 72, n. 76.

[267] Sahin Case C-369/01 (2003), para. 63, n. 76. See also, Tum/Dari Case C-16/05 (2007), para. 69, n. 112 and; Soysal/Savatli Case C-228/06, paras. 47 and 49, n. 22.

*intending to make use of those economic freedoms (see Case C-16/05 Tum and Dari [2007] ECR I-7415, paragraph 69, and Soysal and Savatli , paragraphs 47 and 49).*
*(65). Since the Court has already ruled that the standstill clause in Article 13 of Decision No 1/80 is of the same kind as that contained in Article 41(1) of the Additional Protocol and that the objective pursued by those two clauses is identical (see Case C-37/98 Savas [2000] ECR I-2927, paragraph 50, and Abatay and Others , paragraphs 70 to 74), the interpretation set out in the preceding paragraph must be equally valid as regards the standstill obligation which is the basis of Article 13 in relation to freedom of movement for workers*".[268] Therefore, the ECJ extended its judgment about the influence area of the standstill clause of the Art. 41(1) of the AP through stating the previous paragraph in the mentioned Case. After that, any new restrictions on the exercise of freedom of establishment or freedom to provide services including those about the substantive and/or procedural conditions governing the first admission to the territory of EU-MSs started to be covered by the standstill clause. And thus, it can be said that any restrictive regulations related to first admissions to the territories of EU-MSs and governing by these mentioned members are incompatible with the EU-Turkey association law.[269] "*In the proceedings Tum and Dari the British government argued, the extension of the standstill clause would withdraw the competence for immigration policy from the member states. The Court of Justice did not share this opinion. The standstill clause is a procedural regulation which determines the domestic regulations to be used for judging the situation of a Turkish national. Therefore the competence of the member states for immigration questions is not hurt by the standstill clause*".[270]

Another point of the freedom of establishment is that the ECJ stated in its judgment in the Tum & Dari Case C-16/05 (2007) that: "*As regards the meaning of the 'standstill' clause set out in Article 41(1) of the Additional Protocol, it is also apparent from the case-law that neither that clause nor the provision containing it are, in themselves, capable of conferring upon a Turkish national a right of establishment or, as a corollary, a right of residence derived directly from Community provisions (see Savas, paragraphs 64 to 71, third indent, and Abatay and Others, paragraph 62). The same finding also applies as regards the first entry of a Turkish national into the territory of a Member State*".[271] That is to say, the existence of a standstill clause alone does not provide the right of establishment or right to

[268] Sahin Case C-369/01 (2003), para. 64 and 65, n. 76.
[269] Schröder B. & Höhmann D. (2011), op. cit., pages 9 and 10.
[270] Gutmann R. (Dr.), (2003), op. cit., p. 2.
[271] Tum/Dari Case C-16/05 (2007), para. 52, n. 112.

residence in the territories of the EU-MSs[272] or to enter to the same territories freely. "*However, the regulation keeps a member state from aggravating the domestic regulation for Turkish nationals compared to the situation when the clause came into force*".[273] What is more, the ECJ also ruled in the same Case that: "*...Article 41(1) of the Additional Protocol is to be interpreted as prohibiting the introduction, as from the entry into force of that protocol with regard to the Member State concerned, of any new restrictions on the exercise of freedom of establishment, including those relating to the substantive and/or procedural conditions governing the first admission to the territory of that State, of Turkish nationals intending to establish themselves in business there on their own account*".[274] That is to say, the influence area of the Art. 41 of the AP also covers the conditions about entering to the territories of any EU-MSs and the conditions whether residences legal or illegal.[275] That means all regulations regarding visa requirement (such as getting residence permission or restrictions about objections or appealing to any court for the stay of execution) are also covered by the influence area of the Art. 41 of the AP.[276] Furthermore, the regulations under the umbrella of the Art. 41(1) of the AP refer to Turkish citizens who are self-employed workers and who provide or receive services in depth.[277] "*This judgment created a sensation although it was actually nothing new*".[278]

On the other hand, the ECJ ruled in its judgment in Soysal Case (C-228/06) that "*...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*".[279] The most important point which the ECJ stated in its judgment in the Soysal Case (C-228/06) that the EU-MSs cannot amend their national regulations regarding to passport and visa rules for Turkish citizens in violation of the AA and the AP (so, to the detriment of Turkish citizens). The another important point is that; the Schengen cooperation, which implemented in accordance with the Amsterdam Treaty and came into effect in 1 May 1999 after the entry

[272] Gutmann R. (Dr.), (2003), op. cit., p. 2.
[273] Ibid., p. 2.
[274] Tum/Dari Case C-16/05 (2007), para. 69, n. 112.
[275] Schröder B. & Höhmann D. (2011), op. cit., p. 10.
[276] Ibid., p. 10.
[277] Ibid., p. 7.
[278] Gutmann R. (Dr.), (2003), op. cit., p. 1.
[279] Soysal/Savatli Case C-228/06 (2009), para. 62, n. 22.

into force of both the AA and the AP, cannot take precedence over the AA and the AP.[280] This means that: the EU-MSs, which had not required a visa when the AP came into force, should not require a visa (as a freedom to receive services) for Turkish citizens who go to the EU-MSs with the aim of providing services or setting up a business there.[281] However, as mentioned above, the relevant date of EU-MSs is very important in order to be able to claim standstill clauses for Turkish citizens; this date is the effective date of the AP for countries which have been already become a member of the EU in 1973 and is the date of the membership for countries which have been subsequently joined to the EU. For instance, according to the Art. 5 of the German Aliens Act of 1965 (Ausländergesetz 1965, DVAuslG) as being one of the bilateral agreements between Turkey and Germany (as a member of the EU), Turkish citizens were exempt from the need to obtain both a visa and a residence permission so long as they did not stay for longer than three months and did not wish to take up employment within Germany, either self-employed or as an employee.[282] In this regard, the current version of German Aliens Act[283] contains restrictions and conditions on Turkish

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[280] For further information, please look at: "*Hukukun Ustunlugu ve AB' nin Vize Uygulamalari*", n. 77; see also, "*Hukuk ve vize hakkı*", Milliyet Newspaper published on 14.11.2012, from: http://wap.milliyet.com.tr/Columnists/ColumnistArticle.aspx?ID=1626803 (accessed date: 21.05.2013).

[281] Ibid.

[282] For further information, please look at: Groenendijk K. & Guild E. (2010): "*Visa Policy of Member States and the EU towards Turkish Nationals After Soysal*", Centre for Migration Law, Radboud University Nijmegen, Economic Development Foundation Publications, No: 232, p. 25, from: http://cmr.jur.ru.nl/cmr/docs/Soysal.Report.pdf (accessed date: 23.05.2013); see also, Hailbronner K., (2008): "*Asyl- und Ausländerrecht*", (2nd Ed.), Studienreihe Rechtswissenschaften, Kohlhammer GmbH Stuttgart, p. 902; see also, "*Effects of the Soysal decision by the ECJ on the visa process for Turkish citizens in Germany*", written by Dr. Klaus Dienelt, from: http://www.migrationsrecht.net/european-immigration-migration-law/effects-of-the-soysal-decision-by-the-ecj-on-the-visa-process-for-turkish-citizens-in-germany.html (accessed date: 18.12.2013); see also, Voegeli W. "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p.154; see also, "*Visumfreiheit für Türken Visa-Urteil des Verwaltungsgerichts München*", from: http://www.migazin.de/2011/04/11/visa-urteil-visum-urteil-turken-turkisch-vg-munchen/ (accessed date: 18.12.2013).

[283] The current version of German Aliens Act titled "Immigration Act" came into effect on 1 January 2005. Some amendments to the Act entered into force on 28 August 2007. "*The visa requirement for Turkish nationals, which has been declared unlawful by the ECJ, presently arises out of section 4, para 1 and section 6 of the Residence Act (Aufenthaltsgesetz) of 30 July 200423, which came into force on 1 January 2005. However, this law is just an implementation of the EC-Regulation No. 539/2001, according to which Turkey was entered into the list of third countries, whose nationals are required to obtain a visa in order to cross the external borders of the European Union*". Please see: Voegeli W. "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 157; see also, Voegeli W. "*(Non)Implementation of ECJ Decisions on Visa-Free Access to the Member States of the EU and the Rule of Law*", in Gumrukcu H. & Karabacak Y. (Eds.) (2011), op. cit., p. 78; see also, "*Immigration Act*", from: http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/Zuwanderungsrecht_node.html (accessed date: 18.12.2013); see also, "*Aliens Act (Germany)*", from: http://www.economypoint.org/a/aliens-act-germany.html (accessed date: 18.12.2013). "*States that are subject for visa restrictions are those that produce refugees and migrants. As a consequence, in March 2001, a common list of states was put forward, a regulation which required the citizens of these states to have a valid visa to enter into the EU territory*". For further information, please look at: Ozcan M., "*Turkey's Possible Influences on the Internal Security of the European Union: The Issue of Illegal Migration*", in Laciner S. & Ozcan M. & Bal I., (2005), "*EUROPEAN UNION WITH TURKEY: The Possible Impact of Turkey's Membership on the European Union*", ISRO Publication, Ankara, pages 108-9.

nationals wishing to enter to Germany[284] compared with previous Act of 1965 and so in light of the relevant decisions taken by the ECJ, German Aliens Act of 1965 should be implemented to Turkish nationals by excluding current restrictions.[285] Additionally, it must be pointed out that "*The Soysal ruling attracted attention throughout Europe, and in a 2011 report, the research service for the German parliament, the Bundestag, concluded that the visa requirement for Turks was illegal. But an amendment bill submitted by the Green Party failed in the Bundestag after being voted down by Merkel's center-right coalition of conservative Christian Democrats and the pro-business Free Democratic Party (FDP). It argued, like the governments of other EU countries and the European Commission, that the Soysal ruling applied only to a small group of "active" service providers like truck drivers and mechanics*"; at least, Turkish citizens as service providers could have an opportunity to compete in such a market thanks to the above- mentioned ECJ judgment in Soysal Case since service sector has an economic value.[286]

All in all, the ECJ has ruled that the provisions concerning workers, self-employed persons, establishment and services; namely, Articles 12, 13 and 14 of the AA are not directly effective but provide guidance as to the general aims of both Turkey and EU-MSs and interpretation of various concepts such as services, establishment etc.; however, standstill clauses such as Art. 41 of the AP are directly effective and prohibit the introduction of new national restrictions on the relevant freedoms stated in the provisions of the AA and of the AP.[287] The Art. 41 of the AP containing a standstill clause prohibits the introduction of new national restrictions on the right of establishment and the freedom to provide services from the date on which the AP entered into force in the host EU-MS. In this regard, the ECJ stated its judgment in Case C-37/98 Savas, (2000) that the Art.13 of the AA and the Art. 41(2) of the AP do not constitute rules of EU Law that are directly applicable in the national legal order of

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[284] For the table of countries whose citizens require/do not require visas to enter Germany, please look at: "*Einresise und Aufenthalt*", from: http://www.auswaertiges-amt.de/EN/EinreiseUndAufenthalt/StaatenlisteVisumpflicht_node.html (accessed date: 23.05.2013).

[285] For further information, please look at: Groenendijk K. & Guild E. (2010), op. cit., p. 25; see also, Hailbronner K. (2008), op. cit., p. 902; see also, "*Effects of the Soysal decision by the ECJ on the visa process for Turkish citizens in Germany*", n. 282; see also, "*Visumfreiheit für Türken Visa-Urteil des Verwaltungsgerichts München*", n. 282. Because of the ECJ judgment in Demirkan Case (Case C-221/11) on 24 September 2013, it can be said that German Aliens Act of 1965 must be implemented to Turkish nationals by excluding current restrictions only where the freedom to receive service is concerned. The Demirkan Case (Case C-221/11) will be mentioned below.

[286] See, "*A Crime Against Humanity*", n. 93; see also, Pinar H. (2009): "*Hizmetlerin Serbest Dolasimi Kapsaminda Turk Vatandaslari icin Vizesiz Avrupa*", Gazi University, Faculty of Law Journal, Vol. 8, No. 1-2, Ankara, p. 83, from: http://webftp.gazi.edu.tr/hukuk/dergi/13_5.pdf (accessed date: 20.12.2013).

[287] For further information, please look at: Peers S. (2011), op. cit., p. 418; see also, Rogers N. (2000), op. cit., p. 29.

MSs; however, the Art. 41(1) of the AP that has direct effect in the MSs prohibits new national restrictions on the freedom of establishment and right of residence of Turkish nationals as from the date on which the AP came into force in the host MS despite the fact that the mentioned Article of the AP is not in itself capable of conferring upon a Turkish national a right of establishment and, as a corollary, a right of residence in the Member State in whose territory he/she has remained and carried on business activities as a self-employed person in breach of the domestic immigration law.[288]

On the other hand, according to the ECJ rulings and the EU legislation, the freedom to provide services also includes the freedom to receive services. For instance, concerning the freedom to receive services, according to the Art. 1 of the Directive 64/221 EEC in 1964 (below) as one of the European legal acts (and which is based on Art. 52(2) of the TFEU[289] Treaty and which governs the coordination of special provisions for the entry and residence of foreigners, where these are justifiable on the grounds of public order, security and health), the passive freedom to receive services are included in the freedom to provide services.[290] The mentioned Directive states as follows: "*(1)The provisions of this Directive shall apply to any national of a Member State who resides in or travels to another Member State of the Community, either in order to pursue an activity as an employed or self-employed person, or as a recipient of services. (2). These provisions shall apply also to the spouse and to members of the family...provisions of the regulations and directives adopted in this field in pursuance of the Treaty*"[291]. In this context, pursuant to Art. 1 para. 2 of the Directive 64/221/EEC (above), close relatives of the passive service recipient also benefit from the mentioned Directive; furthermore, there is another next legal act; i.e, the Directive 73/148/EEC of 21.05.1973 that is based on the abolition of travel and residency restrictions for citizens of MSs within the EU to the area of the subsidiary branch and the exchange of services.[292]

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[288] For further information, look at: Savas Case C-37/98 (2000), para.71, n. 186.

[289] The Art. 52(2) TFEUstates that: "*...The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the coordination of the abovementioned provisions.*"; for this Article of the TFEU Treaty, please look at: n. 26.

[290] For further information, please look at: "*ABAD'taki Demirkiran davasi tartisiliyor*", 11 May 2013, from: http://www.abhaber.com/manset-haber/manset-haber/abad-taki-demirkiran-davasi-tartisiliyor-049839 (accessed date: 13.12.2013); see also, "*Effects of Soysal decision (European Court of Justice) / Visa process Turkish citizens Germany*", n. 75; see also, Dienelt K., (2009), "*Auswirkungen der Soysal-Entscheidung des Europäischen Gerichtshofs auf das Visumverfahren Türkischer Staatsangehöriger*", ZAR, 182 (188), from: http://www.migrationsrecht.net/beitraege-zum-auslaenderrecht/soysal-visum-tuerkische-staatsangehoerige/alle-seiten.html (accessed date: 23.12.2013).

[291] For the Directive 64/221 EEC, please look at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31964L0221:EN:HTML (accessed date: 14.12.2013).

[292] For further information, please look at: "*Effects of Soysal decision (European Court of Justice) / Visa process Turkish citizens Germany*", n. 75.

According to the preamble to that Directive, "*the freedom to provide service entail that persons providing and receiving services should have the right of residence for the time during which the services are being provided*".[293] Thanks to the mentioned Directive, the passive freedom of services is one more time clearly recognized and, more importantly, enshrined in residency law.[294] These same statements were also simply repeated[295] by the ECJ judgment Luisi and Carbone from the year 1984 as follows: "*It follows 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*".[296] Concerning this judgment, it is said that "*German law at that time obviously did not stipulate that receiving services needed to be the prime objective of a person wanting to stay in Germany for up to three months. Hence, everyone comes under this rule since every traveler needs to make use of some transport services when entering the country*".[297] Under favour of this judgment, the above mentioned rule, which says that 'the freedom to provide services also includes the freedom to receive services', has also consistently held by the ECJ [and, there was no any contrary judgment in the ECJ cases[298] until the Demirkan Case C-221/11 (mentioned below)]. Additionally, the ECJ firstly and clearly brought the freedom of a tourist to receive services under the basic freedom to provide services in its judgment Luisi and Carbone Case (Joined Cases 286/82 and 26/83).[299] That is to say, tourists began to be subject to the passive freedom to provide service; i.e. freedom to receive service; likewise,

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[293] For the Directive 73/148/EEC, please look at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1973:172:0014:0016:EN:PDF (accessed date: 14.12.2013).

[294] For further information, please look at: *Effects of Soysal decision (European Court of Justice) / Visa process Turkish citizens Germany*", n. 75.

[295] The similar statement concerning freedom to provide and receive services were also simply repeated by the Administrative Court Munich, Sentence of the 23rd Chamber on 9 February 2011. This case and other cases regarding the rights of Turkish citizens arising from the existence of the mentioned standstill clauses will be mentioned below.

[296] Graziana Luisi and Giuseppe Carbone v Ministero del Tesoro Joined Cases 286/82 and 26/83 (1984) ECR I-0377, para. 16, from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61982J0286 (accessed date: 18.05.2013); see also, Ian William Cowan v Tresor Public Case 186/87 (1989), ECR I-0195, para. 15, from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61987J0186 (accessed date: 23.12.2013); Donatella Calfa Case C-348/96 (1999) ECR I-0011, para. 16, from: http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=en&numdoc=61996J0348 (accessed date: 23.12.2013).

[297] Voegeli W. "*Visa-Free Access to the Member States of the EU: The State of Play*", in Gumrukcu H. & Voegeli W., (2012), op. cit, p. 155.

[298] Ibid., p. 159.

[299] Ibid., p. 155.

scientists on Foreigners Law, Mr. Volker Westphal and Mr. Edgar Stoppe have also an opinion that there should be no visa requirement for Turkish citizens because there was no any visa for Turkish citizens, who wanted to receive services, at the time of the AP entered into force; according to them, a current application, which did not exist before, is contrary to law.[300]

On the other hand, concerning the freedom to receive services, the EU-MSs, which had not required a visa at the time of entry into force of the AP, should not constitute a 'new restriction' within the meaning of Art. 41(1) and thus, should not require a visa (as a freedom to receive services) for Turkish citizens within the meaning of Art. 41(1). Because new visa policies to enter to the territory of the EU-MSs are incompatible with Art. 41(1).[301] In this regard, there is the Demirkan Case (C-221/11) which was recently closed. This case referred as the Case C-221/11 Leyla Ecem Demirkan v Federal Republic of Germany is about the interpretation of Art. 41(1) of the AP, Financial Protocol (FP) and the concept of possible inclusion of the 'passive' freedom to provide services. However, this Case will be mentioned after examining the relevant judgments of the EU national courts to the visa issue. It will be more beneficial to examine all judgments including the national ones before the Demirkan Case because the Demirkan Case is a final point for Turkish people to be able to juridically arrived in the context of their legal rights arising from Association Law.

### 3.1 Case Law of the EU National Courts

Some judgments were recently passed in the nationals courts of the EU-MSs recently. There are also some cases concern about visa free travel for Turks in Germany and other EU-MSs. And there are different interpretations made by German national courts from each other and, some steps are taken. For instance, after Soysal judgment, the Federal Republic of Germany separated the concept of service in two; as active service on one side and passive service on the other side; therefore, according to this point of view, the right of visa-free travel belongs to only Turkish citizens who provide service (not those who receive service).[302] Ministry of Interior of the Federal Republic of Germany "*accepted that certain groups of*

[300] For further information, please look at: Gutmann R. (Dr.), (2003), p. 5.
[301] For further information about visa policies of EU-MSs, please look at: Niamh Nic S. & Laurence W. G. (Eds.) (2012), op. cit., p. 326; see also, "*AB' nin Turkiye'ye Uyguladigi Vize Rejimi Degisebilir mi?*", written by Aslihan P. Turan, 19 October 2010, from: http://www.bilgesam.org/tr/index.php?option=com_content&view=article&id=833:tuerkiyeye-uygulanan-vize-rejimi-deiebilir-mi-&catid=70:ab-analizler&Itemid=134 (accessed date: 20.12.2013).
[302] For further information, please look at., "*Turkler icin Vizesiz Dolasim: Detaylar ve Guncel Durumu*", written by: Mr. Reiner Mockelmann, 26 January 2012, from: http://www.xn--deutsch-trkische-gesellschaft-tbd.de/index.php?article_id=39&clang=1 (accessed date: 15.12.2013).

*people were allowed to enter the country without a visa due to the standstill effects for short-term stays. These were artists, sportsmen, scientists and assemblers. There is a continuous fight for visa exemption for businessmen. They were allowed to enter without a visa until 1980 for a term not exceeding three months (and the next three months after a break in stay, but no more than six months within a period of one year)*".[303] In this regard, "*Turkish architects, builders, lawyers, computer scientists, commercial agents, scientists and lecturers, artists, fitters and instructors installing or repairing machinery or informing of the use thereof, professional athletes and trainers, truck drivers etc. established in Turkey are considered as providing services. They must prove their status with written statements at the borders*".[304] And Turkish citizens, who provide service, are able to stay without visa for 2 months in Germany, and 3 months in the Netherlands and Denmark.[305] These steps are not enough when considering above-mentioned rights of Turkish people. However, thanks to the case law of the ECJ, some decisions of the national courts of the EU-MSs are infavour of Turkish nationals. Some of mentioned decisions are as follows:

**Decision of the Germany's Administrative Munich Court in 2011**

As mentioned above, according to the EU legal acts, the freedom to provide services also includes the freedom to receive services. And some of the German courts have already ruled accordingly. One of the decisions infavour of Turkish nationals was taken by a national court in Munich. A businesswoman, whose name is Ms. Candan Erdogan, was travelling from Los Angeles to Istanbul via Munich in 2009, missed her connecting flight and was rebooked on another flight for next morning.[306] With the aim of overnighting in a hotel outside of airport, she wanted to leave the airport; however, German authorities did not allow her to leave.[307] In February 2011, the Germany's Munich Administrative Court[308] ruled that Ms. Erdogan "...*is 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*

[303] Ibid.; see also, Gutmann R. (Dr.), "*Doner ve Gumruk Birligi*", in Gumrukcu H. & Voegeli W., (Eds.) (2012), op. cit., p. 214.
[304] "*EU Commission announces visa lift to Turkish citizens providing service*", "Haberturk" Newspaper, 24 December 2012, from: https://www.haberturk.com/general/haber/806013-eu-commission-announces-visa-lift-to-turkish-citizens-providing-service (accessed date: 16.12.2013).
[305] Ibid.
[306] For further information, please look at: "*Migration in Deutschland, Visumfreiheit für Türken, Visa-Urteil des Verwaltungsgerichts München*" (Migration in Germany, Visa Exemption for Turks,Administrative Court of Munich's Decisions about Visa), Migazin, 9 February 2011, from: http://www.migazin.de/2011/04/11/visa-urteil-visum-urteil-turken-turkisch-vg-munchen/#identifier_0_30393) (accessed date: 10.12.2013).
[307] Ibid. See also, "*AB'nin Turkiye'ye karsi vize politikasini degistirme vakti geldi*", 14 March 2012, from: http://www.euractiv.com.tr/3/interview/abnin-turkiyeye-karsi-vize-politikasini-degistirme-vakti-geldi-024642 (accessed date: 09.12.2013).
[308] Administrative Munich Court (Bayerisches Verwaltungsgericht Munchen), 23rd Chamber, 9 February 2011, M 23 K 10.1983.

*visa*".[309] That is to say, Turkish nationals are exempt from visa requirements during their travels for tourism purposes to the EU-MSs[310] and, they can enter Germany without being subjected to visa requirements and could stay in the country up to three months without obtaining a residence permit.[311] Additionally, "*Turkey's Economic Development Foundation, a non-governmental organization which is pressing hard for visa liberation, welcomed the German court ruling Friday. In a written statement, foundation President Haluk Kabaalioglu said the implementation of the decision by political authorities of the EU member states without delay was very important, while calling on Turkey to harmonize its visa policy with the EU*".[312]

**Decisions of the District Court Haarlem and the Council of State in Netherlands (Dutch Raad van State) on 14 February 2011**

On 14 February 2011, a national court in Haarlem[313] stated that a Turkish businessman, who was arrested in 2009 while trying to enter to the Netherlands without a visa after returning a short stay in Turkey, should not have been restricted.[314] According to that national court, Turkish nationals who as being service providers or self-employers/entrepreneurs would like to work in the Netherlands do not need to have a visa since the AP states that the Turkish nationals' rights to free movement within the EU should not be restricted.[315] Accordingly, there was no any visa requirement (up to three months) on 1 January 1973 (the effective date of the AP, as mentioned above) and the current visa application came into effect with the Foreigners Law dated 1982.[316] The verdict of the national court in Netherlands was also appealled by the Council of State of the Netherlands[317] on 14 March 2011 and, that Council stated that the interpretation of the mentioned national court in Haarlem is a legal

[309] Administrative Munich Court, Sentence of the 23rd Chamber on 9 February 2011, Az. M 23 K 10.1983, paragraph 1, in "*Migration in Deutschland, Visumfreiheit für Türken, Visa-Urteil des Verwaltungsgerichts München*", n. 306.
[310] For further information, please look at: "*Germany looks cautiously to visa ruling*", 11 February 2011, from: http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=germany-looks-cautiously-to-visa-ruling-2011-02-11 (accessed date: 4.12.2013).
[311] Ibid. See also, Cengiz F. & Hoffmann L. (Eds) (2014): "*Turkey and the European Union: Facing new challenges and opportunities*", Routledge, New York, p. 130.
[312] Ibid., p. 130.
[313] District Court Haarlem, 14 February 2011, Case No. 10/6045.
[314] For further information, please look at: "*Uncertainty over Turkish visa requirements*", 17 February 2011, from: http://www.dutchnews.nl/news/archives/2011/02/uncertainty_over_turkish_visa.php (accessed date: 10.12.2013).
[315] Ibid. See also, Cengiz F. & Hoffmann L. (Eds) (2014), op. cit., p. 130.
[316] For further information, please look at: "*Hukukun Ustunlugu ve AB' nin Vize Uygulamalari*", n. 77.
[317] Dutch Raad van State is the highest administrative court of the Netherlands, 14 March 2012, Case 201220110280 3/1N3, for the mentioned court decision, please look at: http://www.gif.org.tr/Documents/AB/14%2003%202012%20-%20Cahit%20Y%C4%B1lmaz%20%20Case%20(translation).pdf (accessed date: 23.12.2013).

verdict;[318] additionally, the Netherlands can not impose a visa on Turkish nationals for a maximum three-month stay.[319] Additionally, the Council also stated that the Art. 9 of the AA, which restricts all kind of discrimination on the basis of national origin, should be interpreted in conjunction with the standstill clause laid down in the Art. 41(1) of the AP.[320] "*This ruling constitutes a legal 'revolution' within the Association because for the first time a national court ruled that Turkish businessmen and service providers should be exempt of visa-requirements due to the fact that visas can not be imposed on EU businessmen and service providers based upon the non-discrimination clause of article 9 of the Ankara Agreement*".[321] In conclusion, according to the Council of State, the visa requirement for Turkish nationals who want to set up business should be accepted as being incompatible with the Art. 9 of the AA.[322] Although both verdicts are infavour of Turkish nationals, these people are still not exempt from visa for entering to the territories of the Netherlands, the authorities of the Netherlands have disregarded the above-mentioned two verdicts.[323] These verdicts are personal and about Ms. Erdogan; however, they include legal elements which refer to the EU-MSs and the ECJ.[324]

**Decision of the Hannover Court (Amtsgericht Hannover) in 2011**

A Turkish tourist was arrested and imprisoned on the ground of illegal immigration, while entering to Germany from Poland without a visa in November 2010; and then, a national court in Hannover ruled that the mentioned tourist did not violate any law and he could not be sentenced.[325]

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[318] For further information, please look at: "*Hukukun Ustunlugu ve AB' nin Vize Uygulamalari*", n. 77.
[319] For further information, please look at: "*Turkey Calls on the EU Member States and European Commission to Take Action for Visa Free Travel of Turkish Citizens*", 29 March 2012, from: http://www.abgs.gov.tr/index.php?p=47470&l=2 (accessed date: 23.12.2013).
[320] For further information, please look at: "*Türkiye, AB Üyesi Devletlere ve Avrupa Komisyonu'na Türk Vatandaşlarının Vizesiz Seyahat Edebilmeleri için Harekete Geçme Çağrısında Bulunuyor*", from: http://www.konyaab.gov.tr/default_B0.aspx?id=62 (accessed date: 08.12.2013).
[321] Durmus A. "*Integration requirements in EU migration law and the EEC-Turkey Association*", in Gumrukcu H. & Voegeli W.n (Eds), (2012), op. cit., p. 246.
[322] Ibid., p. 246.
[323] Ibid., p. 246.
[324] Ibid., p. 246.
[325] Hannover Court (Amtsgericht Hannover), 7 January 2011, No. 286 Ds 7911 Js 100048/10 (123/10). For further information, please see: "*AB'nin Turkiye'ye karsi vize politikasini degistirme vakti geldi*", n. 307.

**Decision of the Traunstein Court in 2011**

A pregnant Turkish woman was arrested in Bad Raichenhall in February 2011 after going to Germany from Austria; and, a national court in Traunstein ruled that she could not be arrested and even stay in Germany as a tourist up to three months.[326]

**Decision of the Administrative Chamm Court (Amtsgericht Chamm)**

A Turkish tourist was arrested by German police at the border of Germany-Czech Republic in August 2009. That man, who tried to enter Germany with the aim of buying car and had no a visa, was immediately released by a national court in Chamm[327] on account of the fact that "*he as a Turkish citizen can enjoy the right of travelling without visa arising from standstill clause*".[328]

**Decision of the Administrative Erding Court (Amtsgericht Erding)**

A national court in Erding[329] declared its judgment about a Turkish businessman, who paid a 300 Euro fine in 2008 after overstaying his visa by eight days, by stating that according to the standstill clause a Turk had the right to visa-free travel as a passive reicipient of services. This Ruling and the above-mentioned Chamm Court ruling are on the same ground; additionally, both national court went further than the ECJ's ruling in its Sosyal Case judgment through accepting Turkish nationals' right to visa-free stays in Germany as service recipients up to three months.[330]

**Decisions of the Rotterdam and Roermond Courts**

Two national courts in Rotterdam and Roermond[331] stated that the Association Law between Turkey and the EU prohibits the imposing of the integration requirements (based upon the Integration Act of November 30, 2006 on Turkish nationals and their family members) on October 2010 and rejected all the arguments of the Dutch Government;

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[326] Traunstein Court (Landgericht Traunstein), 2011, for further information, ibid.; see also, "*Lg Traunstein, Polizei & Co: Visumfreie Einreise für türkische Touristen nur mit Anwalt*", 8 March 2011, from: http://www.migazin.de/2011/03/08/visumfreie-einreise-fur-turkische-touristen-nur-mit-anwalt/ (accessed date: 23.12.2013).

[327] Cham Court (Amtsgericht Chamm), 20 July 2009, 8 XIV 0013/09.

[328] For further information, please see: "*AB'nin Turkiye'ye karsi vize politikasini degistirme vakti geldi*", n. 307.

[329] Erding Court (Amtsgericht Erding), 29 April 2009, 5 Cs 35 Js 28732/08.

[330] For further information, please look at: Cengiz F. & Hoffmann L. (Eds) (2014), op. cit., p. 130; see also; "*Visa Exemption for Turkish Tourists Visiting Germany*", Press Release Munich, 8 June 2009, from: http://www.sanas-legal.de/news_detail.php?id=26&lang=en (accessed date: 14.12.2013).

[331] Rechtbank Rotterdam Rulings, 12 August 2010, LJN: BN3934, 08/49340; and, Rechtbank Roermond Rulings, 15 October 2010, LJN: BO1206, AWB 10 / 332 en 10 / 333. For further information, please look at: Durmus A. "*Integration requirements in EU migration law and the EEC-Turkey Association*", in Gumrukcu H. & Voegeli W. (Eds), (2012), op. cit., p. 244.

however, that Government did not accept these rulings and appealed to the highest Dutch Court, the so-called 'Centrale Raad van Beroep (CRvB)'.[332] On the 16th August 2011, the CRvB put an end this long process through preserving and restoring the rights of Turkish nationals deriving from the AA and the 1/80 ACD, that Court stated that the annulment of resident and/or work permission, the non-extension of them, the requirement of the integration exams in order to obtain long-stay permissions and impose financial fines and penalties were forbidden new measures in the sense of Art. 13 of the 1/80 ACD and the Art. 41(1) of the AP.[333] What is more, the CRvB also stated that EU-MSs are prohibited to change and alter the system of integration as envisaged and incorporated in the 1/80 ACD.[334] Additionally, the Court rejected the arguments of the Dutch Government that Turkish workers and nationals cannot enjoy the same protection of the non-discrimination clauses of Art. 10 of the 1/80 ACD and Art. 9 of the AA[335] because Turkish nationals do not enjoy (yet) the freedom of movement and employment in the EU as EU-nationals do; additionally, it confirmed the application and protection of aforementioned non-discrimination clauses and ruled that there is an "acte éclairé" existed in this case and there was no need to refer the case to the ECJ.[336]

All in all, some EU-MSs have recently begun to give judgments recognizing the rights of above-mentioned freedoms and the visa free travel for Turkish nationals who are tourists on the ground of the case law of the ECJ. Especially, some of German national courts have stated that they as being providers or recipients of services have a right of visa free travel to Germany. According to these court including other above-mentioned national court of the EU-MSs, which gave the same judgments, Turkish nationals should be able to enter Germany and to other relevant EU-MSs without a visa.

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[332] Ibid., p. 244.
[333] Ibid., p. 231; Centrale Raad van Beroep Rulings, 16 August 2011, LJN: BR4959, 10/5248 INBURG + 10/5249 INBURG + 10/6123 INBURG + 10/6124 INBURG, point 7.1.8 of the Ruling, from: http://zoeken.rechtspraak.nl/resultpage.aspx?snelzoeken=true&searchtype=ljn&ljn=BR4959 (accessed date: 14.12.2013).
[334] Centrale Raad van Beroep Rulings, 16 August 2011, LJN: BR4959, 10/5248 INBURG + 10/5249 INBURG + 10/6123 INBURG + 10/6124 INBURG, point 7.1.5 of the Ruling.
[335] Ibid., point 7.2 of the above-mentioned Ruling.
[336] For further information, please look at: Durmus A. "*Integration requirements in EU migration law and the EEC-Turkey Association*", in Gumrukcu H. & Voegeli W. (Eds), (2012), op. cit., pages 244-5.

### 3.2 Demirkan Case

This Case is about a right of a Turkish national to go to another MS in order to visit a member of his family there and possibly to receive services. It is beneficial to examine this Case in depth because as mentioned above this Case is a final juridicial point for Turkish people for their rights laid down in the Articles of the Turkey-EU Association Law legal acts.

The Demirkan Case started in 2007 when German authorities refused Leyla Ecem Demirkan, who was a 14-year-old Turkish citizen at that date and wanted to go to Germany for visiting her hospitalized stepfather.[337] Firstly, her stepfather took the case to the Berlin Administrative Court Germany; and later, before the Administrative Appeals Tribunal of Berlin-Brandenburg, then, the judges on the Appeals Court decided to bring the case before the ECJ,[338] which has previously ruled six visa cases in favour of Turkish citizens (this Case was taken up by the ECJ for a preliminary ruling in 2012).[339]

In spite of the above-mentioned clarity concerning the right to receive service for Turkish citizens, the ECJ declared the Advocate General's Opinion regarding Demirkan Case (C-221/11) on the 11th April 2013 by stating two options for a conclusion on the mentioned case as follows: "...*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 does not include the passive freedom to provide services*".[340] "*In the alternative, if the Court takes the view that the concept of freedom to provide services within the meaning of Article 41(1) of the Additional Protocol includes the passive freedom to provide services: The protection afforded by the passive freedom to provide services under the law of the Association Agreement, specifically pursuant to Article 41(1) of the Additional Protocol, does not extend to Turkish nationals who wish to enter a Member State for the purposes of visiting relatives for a stay of up to three months and who rely on the mere possibility of receiving services in that State*".[341] Mr. Villalon briefly states that with the aim of receiving services, the Turkish nationals do not

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[337] See, "*EU court rules against visa-free travel for Turks*", "Todays Zaman" Newspaper, 24 September 2013, from: http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=327227 (accessed date: 05.12.2013).

[338] For further information, please look at: "*European Travel: Visa Requirement for Turks Could Soon Be Dropped*", written by Maximilian Popp, 7 November 2012, from: http://www.spiegel.de/international/europe/travel-visa-for-turks-considered-by-european-court-of-human-justice-a-865644.html (accessed date: 06.12.2013).

[339] See, "*EU court rules against visa-free travel for Turks*", n. 337.

[340] Opinion of Advocate General Mr.Cruz Villalon delivered on 11 April 2013 for Leyla Ecem Demirkan v Federal Republic of Germany Case C-221/11, para. 80, from: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62011CC0221:EN:HTML (accessed date: 01.05.2013).

[341] Ibid., para. 81.

have a right to enter to the territories of the EU-MSs without a visa. He also stated that the 'freedom to provide services' in Art. 56 of the TFEU includes the passive freedom to provide services and the ECJ judgment in Luisi and Carbone Case[342] ruled that the passive freedom to provide services was the 'necessary corollary' of the freedom for service providers to provide services; however, these do not automatically imply that Art. 41(1) of the AP also includes the passive freedom to provide services.[343] This point is only a sample of wrong interpretations of the Advocate General (AG). The similar interpratations were also made in the judgment of the ECJ during the mentioned Case. Besides, the 27 EU-MSs (at that time, the number of the EU-MSs was 27, it is now 23 incluing Croatia since 1 July 2013)[344] presented their opinions in liaison with eachother at the first hearing of the ECJ on 6 November 2012 and, declared that the visa requirements for Turks should continue.[345] This situation might have probably resulted from a political pressure on the ECJ.[346] Since the EU-MSs began to lose cases concerning the rights of Turkish national arising from the Association Law; therefore, they might have begun to apply a political pressure on the ECJ; for instance, "*...some law professors and national courts were used as an instrument of foreign policy and they were forced to it to a certain extent. These scientists and judges felt fear that sooner or later they would be called to account for their articles or court decisions by state authorities, because they dissented from the opinion of the authorities. This fear was not unfounded. Indeed, German judge Prof. Dr. Manfred Zuleeg fulfilling the requirements of being a scientist and a lawyer became a target of attacks after the decision on Kazım Kus in 1992 in the ECJ and his justiceship in the ECJ was not extended*".[347] However, it is difficult to justify the above-mentioned prediction because of non-existence of an evidence. When looking at the statements of the ECJ in the mentioned Case, which were declared on 24 September 2013, it was stated that according to the observations of the Governments of the EU-MSs, the Council of the EU and the ECJ, freedom of provision of services was originally conceived as freedom to supply services;[348] additionally, there is no any provision, which indicates that the signatories to the AA and the AP envisaged, when signing those documents,

[342] Luisi Carbone Joined Cases 286/82 and 26/83 (1984), n. 296.
[343] Opinion of Advocate General Mr. Cruz Villalon for Demirkan Case C-221/11, para. 62, n. 340.
[344] For further information, please look at: "*Croatia*", n. 79; see also, "*From 6 to 28 members*", n. 79.
[345] Further information, please look at: "*Hukukun Ustunlugu ve AB' nin Vize Uygulamalari*", n. 77.
[346] Ibid.
[347] Gumrukcu H.: "*Vizesiz Avrupa ile Ilgili Kararlar ve Hukuki İnkarciligin Dogurdugu Demirkan Davasi*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 20; see also, Gumrukcu H., "*EEC/EU-Turkey Partnership Relations as the International Cooperation Community and Legal (Un)Reliability?*", p. 7, from: http://www.ytb.gov.tr/Files/Document/Gumrukcu-ENG.pdf (accessed date: 23.12.2013); see also, Gumrukcu H., "*Turkey on the Way to Europe:-Standstill Clause and Visa-Free* Travel", in Gumrukcu H. & Voegeli W., (2012), op. cit., pages 98-9.
[348] Leyla Ecem Demirkan v Bundesrepublik Deutschland Case C-221/11, (24 September 2013), para. 59, from:http://curia.europa.eu/juris/document/document.jsf?text=&docid=142081&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=338551 (accessed date: 06.12.2013).

freedom of provision of services as including passive freedom of provision of services.[349] Furthermore, the ECJ noted that "*...because of differences of both purpose and context between the Treaties on the one hand, and the Association Agreement and its Additional Protocol on the other, the Court's interpretation of Article 59 of the EEC Treaty in Luisi and Carbone cannot be extended to the 'standstill' clause in Article 41(1) of the Additional Protocol*".[350] The ECJ restated in its judgment in this Case that the Art. 41(1) is a standstill clause[351] and has direct effect; that is why, Turkish citizens can apply before the courts or tribunals of the EU-MSs.[352] It also stated that although the principles of the provisions of the Treaty concerning freedom to provide services must be extended to Turkish nationals in order to eliminate restrictions on the mentioned freedom between signatories, the interpretation of the provisions of EU Law, including Treaty provisions, concerning the internal market cannot be automatically applied to the interpretation of an agreement signed with a third country (if there is no any special provision to that effect in the agreement).[353] Additionally, it noted that the use of the verb 'to be guided by' in the Art. 14 of the AA is not enough to oblige the signatories to apply the relevant provisions of the Treaty and;[354] there are differences between the AA and the AP on the one hand, and the Treaty on the other hand, especially the objective of the Art. 41(1) of the AP and the context of this provision are fundamentally different from the one of Art. 56 of the TFEU, notably in so far as concerns the applicability of these provisions to recipients of services.[355] What is more, the ECJ stated that the EEC-Turkey Association pursues a solely economic purpose, the AA and the AP are intended to promote the economic development of Turkey, the AC has not adopted any substantive measure to liberalize the services.[356] The ECJ also pointed out by stating another similar interpretation to the opinions of the Advocate General[357] that the practice of the both signatory parties to the AA provides certain indications to the contrary; in this context, numerous EU-MSs introduced a visa requirement for Turkish tourists after the effective date of the AP, and did not consider this to be precluded by the Art. 41(1) of the AP and vice versa; Turkey did likewise relating to Belgium and the Netherlands.

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[349] Ibid., para. 60.
[350] Ibid., para. 62.
[351] Ibid., para. 37; see also, Savas Case C-37/98 (2000), para. 46, n. 186.
[352] Demirkan Case C-221/11 (24 September 2013), para. 38; see also, Savas Case C-37/98 (2000), para. 54, n. 186; Abatay/Sahin Joined Cases C-317/01 and C-369/01 (2003), paras. 58 and 59, n. 76; Tum/Dari Case C-16/05 (2007), para. 46, n. 112; and Soysal/Savatli Case C-228/06 (2009), para. 45, n. 22.
[353] Demirkan Case C-221/11 (24 September 2013), paras. 43-4, n. 348.
[354] Ibid., para. 45.
[355] Ibid., para. 49.
[356] Ibid., paras. 50 and 46; see also, Savas Case C-37/98 (2000), para. 53, n. 186.
[357] Opinion of Advocate General Mr.Cruz Villalon for Demirkan Case C-221/11, para. 71, n. 340.

To conclude, the ECJ stated on its ruling on 24 September 2013 through declaring that requiring Turkish citizens to have a visa for entering to the territories of the EU-MSs has a legal basis; additionally, the Court also clarified that "*the notion of 'freedom to provide services' in Article 41(1) of the Additional Protocol must be interpreted as not encompassing freedom for Turkish nationals who are the recipients of services to visit a Member State in order to obtain services*".[358] That is to say, the ECJ simply rules that a visit one of the EU-MSs' territories needs a visa, freedom to provide services does not include to receive services there.

On the other side of the coin, Mr. Rolf Gutmann, who was Ms. Demirkan's attorney, argued that the Art. 41(1) of the AP did not allow acquired rights to be stripped and drew attention to the fact that Turkish nationals traveled to some of the European countries without a visa until 1971; however, the ECJ dismissed Ms.Demirkan's complaint, stated that she should not benefit from a visa exemption and stated its decision against visa-free travel for Turkish people in this Case.[359] In this context, a meeting was held by Prof. Dr. Wolfgang Voegeli from University of Hamburg; Prof. Dr. Harun Gumrukcu, Prof. Dr. Safak Aksoy, Prof. Dr. Muharrem Kilic from Akdeniz University; Ass. Prof. Dr. Hamdi Pinar from Ankara and Attorney Memet Kilic from Berlin on the 7th May 2013 in Antalya.[360] Their comments were about the opinion of the AG; however, as mentioned above, some of the AG's opinions are similar to the judgment of the ECJ in the mentioned Case. That is why, it is beneficial to mention some of these academicians' and attorney's comments here. They stated that: "*...Association Law does not only have an economic character. With every accession of a new member during the time of development of the EEC to the EU Turkey has accepted in a series of protocols these new members as contract parties. She thereby incidentally has accepted the new character of the EU and has widened her intention of accession to include the political dimension of the EU. Vice versa the EU thereby accepted the character of the association with Turkey... The fact that Turkey demanded visas from Belgian and Netherlands citizens after 1980 cannot be qualified as an interpretation of the scope of the freedom to provide services. On the contrary, Turkey thereby itself violated Article 41 para. 1 Additional Protocol, albeit as a reaction to a similar violation by Belgium and the Netherlands. An interpretation of a law cannot be based on a violation of a law... The cause of Turkey would*

[358] Demirkan Case C-221/11 (24 September 2013), para. 63, n. 348.
[359] See, "*No Free movement for Turks*", "Le Temps" Newspaper, 25 September 2013, from: http://www.presseurop.eu/en/content/news-brief/4175261-no-free-movement-turks (accessed dated: 05.12.2013).
[360] For the mentioned comments, please look at: "*Comment on the Opinion of the Advocate General in Case C-221/11 Leyla Ecem Demirkan vs. Federal Republic of Germany*", in Gumrukcu H. & Ilbuga T. (Eds.) (2013), op. cit., pages 9 and 10.

*be well served, if it were to take back the obligation for citizens of Belgium and the Netherlands to obtain a visa and thereby end its own violation of the Additional Protocol*".[361] Additionally, Prof. Dr. Kees Groenendijk had stated about the Opinion of the AG that: "*Accepting that Turkish recipients of services are covered by Article 14 of the Association Agreement with Turkey and Article 41 of the Additional Protocol does not imply, as repeatedly suggested in the Opinion, that Turkish citizens will get full free movement rights or become quasi Union citizens*".[362] Unfortunately, the ECJ noted the statement to the Opinion of the AG by declaring that: "*...under Euroepan 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...*".[363] Although all above-mentioned interpretations, explanations including the comments from the meeting in Antalya are very clear; unfortunately, the verdict of the ECJ is -as mentioned above - a final judgment and there is no any higher court for appealling. Mr. Ludwig Weh had stated on his article referring the statements of the ECJ (until Tum and Dari Case in 2007) that: "*These statements appear epoch-making in the light of widespread xenophobic tendencies of the law makers of the member states of the European Union*".[364] However, the final verdict of the ECJ suprised.

Prime Minister of Republic of Turkey, Mr. Recep Tayyip Erdogan, finds the verdict of the ECJ "*incomprehensible, and even discriminatory, that the EU should grant visa exemptions to South Americans, while Turks, who are economically and geographically closer, are denied free movement*".[365] Commissioner for Enlargement of the EU, Mr. Stefan Fule pledged to open negotiations on visas in June 2013 and one of the EC spokesmen confirmed on the 24th September that informal talks are ongoing.[366] Additionally, the former Minister of the Turkish Republic Ministry for EU Affairs and Chief Negotiator, Mr. Egemen Bagis criticized the verdict of the ECJ; additionally, he described that verdict was unfair and stated that "*It looks as if political considerations more than legal ones were influential in the verdict. EU*

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[361] Ibid., pages 9 and 10, points 3, 5 and 8.
[362] Mr. Kees GROENENDIJK is a Professor of Sociology of Law at the Radboud University Nijmegen, research fellow of its Centre for Migration Law, and chairman of the Standing Committee of Experts on international immigration, refugee and criminal law (Meijers Committee). He is a member of the Odysseus Network of Experts on European Migration and Asylum Law and the EU Network Free Movement of Workers. For further information and its notes; please look at: Groenendjik K., "*Notes on the Opinion of AG Cruz Villalón of 14 April 2013 in the case Demirkan C-221/11*", in Gumrukcu H. & Ilbuga T. (Eds.) (2013), op. cit., p. 23.
[363] Demirkan Case C-221/11 (24 September 2013), para. 56, n. 348.
[364] For the mentioned comments, please look at: Weh L.: "*Tum and Dari - the standstill clause as European dynamite*", in Gumrukcu H. & Ilbuga T. (Eds.) (2013), op. cit., p. 34.
[365] Please look at: "*No Free movement for Turks*", n. 359.
[366] Ibid.

*legislation has been made the victim of prejudices and political calculations*".[367] Mr. Bagis also stated that this decision is highly unfortunate with respect to the principle of the rule of law, one of the fundamental values of the EU, it is in contradiction with the idea of eliminating borders which is also one of the fundamental values of the EU and, is also in contradiction with the EU Law and the Turkey-EU Association Law, additionally, he also stated that the provisions of the AA, which was drafted parallel to the EEC and aim to provide a full EU membership of Turkey, are quite clear and it is not is impossible to interpret the concept of freedom to provide services in the Turkey-EU Association Law differently from the same concept in EU Law; law cannot be interpreted from the perspective of somebody's own 'interests'.[368]Additionally, he noted that "*This decision is also in contradiction with the visa liberalization process which we are currently carrying out with the EU. We have noted that the Member States, which reached a consensus to initiate the visa liberalization process and invited Turkey to conclude the Readmission Agreement accordingly, have participated as interveners in the case. This makes us question the sincerity of the Member States regarding the visa liberalization process. It should be understood that Turkey will take into account the positions of these Member States in the readmission agreement/visa liberalization process currently ongoing with the Commission*".[369] As another sample, Istanbul-based Economic Development Foundation (IKV) stated in a press release that the verdict of the ECJ greatly frustrated.[370] Mr. Ayhan Kaya, who is the Director of the European Institute at Istanbul Bilgi University, stated that "*The verdict will play into the hands of those who are against Turkey's membership in the EU*".[371] Head of Bahcesehir University's European Union Affairs program, Mr. Cengiz Aktar, is not as pessimistic about the possible effects of the ECJ's verdict and said that "*Support for EU membership in Turkey can't be lower than at present*".[372] "*The authors of a June 2011 study by the scientific research service of the German Bundestag concluded that recent court decisions 'have finally clarified that Turkish nationals may enter federal territory without a visa and reside there without a residence permit as long as they do not take up employment (passive freedom of services). Especially tourists are expected to benefit from this situation'. The case of Leyla Demirkan, which is now dealt with by the European*

[367] Ibid.
[368] For further information, please look at: "*Egemen Bagis evaluates Demirkan Visa Case*", 25 September 2013, from: http://egemenbagis.com/en/8078 (accessed date: 14.12.2013).
[369] Ibid.
[370] Ibid.
[371] Ibid.
[372] Ibid.

*Court of Justice, is likely to make the same point even more clearly when it issues its ruling*".[373]

All in all, hundreds of thousands of Turkish people will continue to queue in front of the consulates of the EU-MSs, spend money and time in order to be able to have a change to travel to the territories of the EU-MSs. Sometimes these people receive only a single entry visa for only a few days, sometimes they do not even. Before the ECJ, there is no more legal possibility to claim that Turkish nationals are able to enter to some of the EU-MSs' territories without visa. The ECJ stated its judgment and there is no any higher international court for appelling. Currently, Turkish people and the supporters of their claim about their rights arising from standstill clauses such as visa-free travel are waiting for the results of political steps; i.e. the Positive Agenda and the Readmission Agreement. It is hoped that their results will not be unfair.

[373] See, "*Being fair to Turkey is in the EU's interest*", 12 March 2012, by Gerald Knaus and Alexandra Stiglmayer, from: http://euobserver.com/opinion/115560 (accessed date: 04.12.2013).

# CHAPTER 4
# POSITIVE AGENDA, READMISSION AGREEMENT AND VISA LIBERALIZATION

The EC proposed to develop a 'Positive Agenda' between Turkey and the EU in its Enlargement Strategy for 2011-2012 published on the 12th October 2011.[374] Then, the Positive Agenda meeting was held with the participation of Mr. Stefan Füle, Member of the EC for Enlargement and European Neighbourhood Policy and; Mr. Egemen, previous Minister of the Turkish Republic Ministry for EU Affairs and Chief Negotiator on the 17th May 2012 in the Ministry for EU Affairs in Ankara.[375] "*This proposal was considered favorably on the condition that it serves as an instrument in support of and complementary to the negotiation process with the EU*".[376] Additionally, Commissioner Mr. Füle and former Minister Mr. Bagis ensured that the mentioned Agenda is by no means not an alternative to Turkey's EU membership, it aims to complement accession negotiations, encourage and strenghten the reform progress in Turkey.[377] Additionally, Commissioner Mr. Füle stated that "*The positive agenda is a bridge but not above or around the accession negotiations. It is a brigde leading towards them*," at the opening event for the launch of the Agenda in Ankara.[378] The Positive Agenda aims to give an fresh dynamics to the Turkey-EU relations and Turkey's accession progress to the EU because the Turkey-EU relations are undergoing a period of stagnation and in this context, this Agenda can contribute to the Turkey's EU accession process notably through enhancing cooperation and promoting reforms in Turkey in a broad range of areas of common interest (where such progress is both needed and feasible) as the main points of the mentioned Agenda such as "intensified dialogue and cooperation on political reforms", "visa", "mobility and migration", "energy", "fight against terrorism", "further participation of Turkey in Community programmes", "town twinning", "trade and the Customs Union" and "supporting efforts to align with the acquis, including on chapters where accession

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[374] For further information, please look at: "*Turkey-EU Relations*", n. 30.
[375] Ibid. See also, "*Positive Agenda: Turkey-Euroepan Union Relations*", November 2012, from: http://www.ikv.org.tr/icerik_en.asp?konu=positiveagenda&baslik=Positive%20Agenda (accessed date: 18.12.2013); see also, "*Positive Agenda a Bridge Towards Acession Negotiations with Turkey*", written by: Stefan Füle, 26 June 2012, from: http://ec.europa.eu/commission_2010-2014/fule/headlines/news/2012/05/20120518_en.htm (accessed date: 18.12.2013).
[376] See, "*Turkey-EU Relations*", n. 30.
[377] See, "*Positive Agenda: Turkey-Euroepan Union Relations*", n. 375; see also, "*Positive agenda a Bridge Towards Acession Negotiations with Turkey*", n. 375.
[378] See, "*Positive agenda a Bridge Towards Acession Negotiations with Turkey*", n. 375.

negotiations cannot be opened for the time being".[379] The EU has lost the public support in Turkey and also in the EU and the mentioned Positive Agenda is a reflection of inability of the EU over the last years.[380] In the framework of Agenda, Turkey and the EU have agreed to establish working groups under 8 chapters; these are as follows; 3-Right of Establishment and Freedom to Provide Services, 6-Company Law, 10-Information Society and Media, 18-Statistics, 23-Judiciary and Fundamental Rights, 24-Justice, Freedom and Security, 28-Consumer and Health Protection and, 32-Financial Control).[381] This Agenda aims to promote dialogue on how the Turkish Republic can make progress in the above-mentioned chapters regardless of their status as blocked by some EU-MSs. According to the EC's 2012 Progress Report on Turkey, "*Eight working groups aimed at encouraging alignment with the acquis were set up and six of them had their first meeting*".[382] What is more, the mentioned Report underlines the successfull launch of the mentioned Agenda in order to support and complement the accession negotiations, through enhanced cooperation in a number of above-mentioned areas; in this regard, as Prof. Dr. Harun Gumrukcu stated that the removing of the visa regime should not be the only goal, there are other significant questions in EU-Turkey relations concerning full equality, prevention of discrimination and (notably) partnership and he stated that, the situation of the great expectatioans of Turkey from the EU and regardlessness of the EU have left its mark on EU-Turkey relations and has set the agenda.[383] Such a step and/or a breakthrough is a powerful signal to Turkish authorities and nationals that the EU politicans are trying to keep the EU-Turkey relations going. Furthermore, the Positive Agenda progress including the Readmission Agreement (mentioned below) will show the Turkish nationals the intention and the sincerety of the EU authorities.

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[379] Ibid. See also, "*Turkey-EU Relations*", n. 30; "*Positive Agenda: Turkey-Euroepan Union Relations*", n. 375; see also, "*Positive EU-Turkey agenda launched in Ankara*", 17 May 2012, Brussels, from: http://europa.eu/rapid/press-release_MEMO-12-359_en.htm (accessed date: 18.12.2013); see also, "*AB ile Pozitif Gündem*", 13 May 2012, from: http://www.dw.de/ab-ile-pozitif-g%C3%BCndem/a-15947211 (accessed date: 18.12.2013); see also, "*Stefan Füle European Commissioner for Enlargement and European Neighbourhood EU-Turkey relations TUSKON dinner with Turkey's Deputy Prime Minister Ali Babacan*", Brussels, 15 May 2012, European Commission - SPEECH/12/360, from: http://europa.eu/rapid/press-release_SPEECH-12-360_en.htm?locale=en (accessed date: 19.12.2013); see also, "*Positive agenda launced between Turkey and EU*", 18 May 2012, from: http://www.dunya.com/positive-agenda-launched-between-turkey-and-eu-154709h.htm (accessed date: 19.12.2013).

[380] For further information, please look at: "*Stefan Füle European Commissioner for Enlargement and European Neighbourhood EU-Turkey relations TUSKON dinner with Turkey's Deputy Prime Minister Ali Babacan*", n. 379; see also, "*Positive agenda launced between Turkey and EU*", n. 379.

[381] See, "*Positive Agenda: Turkey-Euroepan Union Relations*", n. 375; see also, "*Turkey-EU Relations*", n. 30.

[382] See, "*The EC's 2012 Progress Report on Turkey*", p. 4, from: http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/tr_rapport_2012_en.pdf (accessed date: 19.12.2013).

[383] For further information, see: "*Key findings of the 2012 progress report on Turkey*", 10 October 2012, Brussels, from: http://europa.eu/rapid/press-release_MEMO-12-771_en.htm (accessed date: 19.12.2013); see also, Gumrukcu H.: "*The Deadlock Solution and Results*", in Gumrukcu H. & Voegeli W., (2012), op. cit., p. 267; see also, Gumrukcu H., "*Uluslararasi İsbirligi Kurumu olarak A(E)T/AB Turkiye Ortaklik İliskisi ve Hukuki Guvence(siz)lik mi?* ", in Gumrukcu H. & Karabacak Y. (Eds.) (2011), op. cit., p. 25.

### 4.1 Readmission Agreement and Visa Liberalization

One of the top issues of the Political Agenda of the EU is the removal of illegal staying of the third country nations in the territories of the EU-MSs; in this regard, the conclusion of readmission agreements, which impose reciprocal obligations on the signatories to readmit their nationals (and sometimes including persons who are not nationals of the signatories but who transited through the territory of one of the parties to the other and also stateless persons), and set out technical and operational criteria for this process, is a good way to tackle this problem.[384] "*Since 2001, the Council has justified Community competence in matters of readmission agreements as a more cost-effective, extremely useful and efficient instrument in the EU's fight against illegal immigration..Along these lines, the Council reiterated in 2004 its determination to make further use of this tool [readmission agreements] and to intensify all efforts to pursue such agreements*".[385] These agreements including with visa facilitation agreements make possible for the EU to negotiate the returns of nationals and/or non-nationals of one of the signatories and/or stateless persons to a country of transit in exchange eased travel and short-stay residence for particular categories of nationals of that country.[386] The EU started to be granted competence to enter into readmission agreements with third countries after the entry into force of the Treaty of Lisbon pursuant to the Art. 79(3) of the TFEU;[387] in this context, some of readmission agreements between the EU and third countries, which had come into force, are as follows (based on their effective date): Hong Kong, Macao in 2004; Sri Lanka in 2005; Albania in 2006; Russia in 2007; Ukraine, Serbia, Montenegro, bosnia, Macedonia, Moldova in 2008; Pakistan in 2010 and; Georgia in 2011.[388] One of the problem for the EU to encourage third states to launch readmission agreements has been the deficiency of incentive for these states to do so, the question of 'what is in it for us' is

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[384] Roig A. & Huddleston T. (2007): "*EC Readmission Agreements: A Re-evaluation of the Political Impasse*", European Journal of Migration and Law 9, (DOI: 10.1163/138836407X190433), Martinus Nijhoff Publishers, Koninklijke Brill NV, Leiden, the Netherlands, pages 363-4, from: http://mawgeng.unblog.fr/files/2007/11/roighuddleston1.pdf (accessed date: 18.12.2013); see also, "*Eighth report of session 2012-13: documents considered by the Committee on 11 July 2012, including the following recommendations for debate, Renewable energy, EU Readmission Agreement with Turkey, Financial services: residential mortgages, Financial management, report, together with formal minutes*", Great Britain: Parliament: House of Commons: European Scrutiny Committee, The Stationery Office, 19 Tem 2012, the UK., pages 10-11, from: http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/86-viii/86viii.pdf (accessed date: 23.12.2013).

[385] Roig A. & Huddleston T. (2007), op. cit., pages 363 and 387.

[386] Ibid., p. 376.

[387] Art.79(3) of the TFEU states that: "*The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States*". For the TFEU, please see n. 26.

[388] Peers S., Guild E., Arcarazo D. A., Groenendjik K. (2012): "*EU Immigration and Asylum Law (Text and Commentary)*, (2nd Ed.), Vol. 2, EU Immigration Law, Martinus Nijhoff Publishers, Leiden, the Netherlands, p. 553.

a central issue.[389] That is why, the EU started to offer to some states (but not all) the negotiation of a visa facilitation agreement (which is more popular with the public of third states because the EU offers simpler procedures for their nationals to get short stay visas to enter the territories of the EU-MSs Member States (up to three months out of six) as tourists, as well as for other reasons) in order to be able to convince these states to accept a readmission agreement.[390]

Turkey has often criticized the EU for its reluctance to a visa liberalization for Turkish nationals and has complained many countries have visa liberalization or at least have more lenient visa requirements for travels to the EU-MSs although these countries are not full or even candidate members.[391] As stated above, Turkey has been rejected from this privilege by the EU-MSs for a long time; furthermore, the EU has numerous preconditions for Turkey, including the introduction of biometric passports in line with the EU standards and the signing of a readmission agreement, which obliges Turkey as a major transit route for illegal immigrants to tackle the immigrant flow.[392] In this regard, the negotiations on a readmission agreement between the EU and Turkey took place in 2011; however, Turkey firstly wanted to see progress on a visa liberalization before signing the mentioned Agreement.[393] The decision to sign the Readmission Agreement and launch the Visa Liberalization Dialogue on the 16th December 2013 was announced in Brussels on the 4th December 2013 after the meeting of Foreign Minister Cecilia Malstöm and Stefan Füle, European Commissioners for Home Affairs and Enlargement.[394] Mr. Davutoglu stated that the visa exemption for Turkish nationals will be introduced in mostly three and a half years after the completion of necessary procedures; however, it might be completed much before than this and then, Mr. Fule thanked Mr. Davutoglu and the Turkish Government for their contribution to the process and stated that the Readmission Agreement was part of the Positive Agenda.[395] Turkey agreed to accept to sign the mentioned Agreement after long negotiations; however, it has the right to suspend it in the case of EU's non-compliance with the visa liberalization process; additionally, Turkey will unilaterally declare that its signature does not mean that Turkey recognizes the

[389] Ibid., pages 553-4.
[390] Ibid., p. 554.
[391] For further information, please look at: "*Germany looks cautiously to visa ruling*", n. 310.
[392] Ibid.
[393] For further information, please look at: "*Turkler icin Vizesiz Dolasim: Detaylar ve Guncel Durumu*", n. 302.
[394] For further information, please look at: "*Turkey and EU agree to sign historic visa deal*", 4 December 2013, from:http://www.hurriyetdailynews.com/turkey-and-eu-agree-to-sign-historic-visa-deal.aspx?PageID=238&NID=59042&NewsCatID=351 (accessed date: 19.12.2013).
[395] Ibid.

Republic of Cyprus.[396] All in all, Turkey and the EU have launched a dialogue to liberalize visa and signed the Readmission Agreement in Ankara on the 16th December 2013.[397] The first meeting of the mentioned dialogue was held by Minister of Foreign Affairs Mr. Ahmet Davutoglu, former Minister for EU Affairs Mr. Egemen Bagis, former Minister of Interior Mr. Muammer Guler, EU Commissioner for Home Affairs Ms. Cecilia Malmstrom and, the Ambassadors of all of the EU-MSs represented in Turkey.[398] Minister of Foreign Affairs Mr. Ahmet Davutoglu stated that Turkey is historically and geographically a part of Europe, they have reached a historical point, and stated his wishes for this process to be beneficial to both Turkey and the EU and an opportunity for the integration of the peoples.[399] Foreign Minister Mr. Ahmet Davutoglu stated that "*We have three phases ahead of us. The first one is the psychological revolution stage that will be starting as of today. Perceptions will change, and a new era will begin in communication between the Turkish and European public with the visa liberalization. During the second phase, cooperation between the institutions will accelerate and our capacity will increase in the coming 3 to 3,5 years. But the most important point is, in the long run, Turkish and European public will start interacting intensively*".[400] Prime Minister of Turkish Republic, Mr. Recep Tayyip Erdogan, stated that the process concerning the implementation of the mentioned Agreement will be executed decisively with the aim of providing visa liberalization for Turkish citizens as soon as possible.[401] EU Commissioner for Home Affairs Ms. Cecilia Malmstrom noted that an important step for the EU-Turkey cooperation has been taken and stated that "*We have started two initiatives in parallel which will boost the relations between Turkey and the European Union and bring benefits for their citizens. I hope that the readmission agreement will now be ratified by the two sides without delay, and that the visa liberalisation dialogue will soon allow to register substantial progress*".[402] Lifting of the visa restrictions will occur within 3.5 years; however, Mr. Erdogan stated that he hoped it could be done much sooner.[403] Besides "*...the signature of a readmission agreement which envisages to return all illegal Turkish migrants residing in*

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[396] Ibid.
[397] For further information, please look at: "*Turkey and the Eıropean Union have launched on visa liberalisation and signed the Readmission Agreement*", from: http://www.mfa.gov.tr/turkey-and-the-european-union-have-launched-a-dialogue-on-visa-liberalisation-and-signed-the-readmission-agreement.en.mfa (accessed date: 05.10.2013); see also, "*Cecilia Malmström signs the Readmission Agreement and launches the Visa Liberalisation Dialogue with Turkey*", European Commission Press Release - IP/13/1259, 16 December 2013, from: http://europa.eu/rapid/press-release_IP-13-1259_en.htm (accessed date: 19.12.2013).
[398] Ibid.
[399] Ibid.
[400] Ibid.
[401] Ibid.
[402] Ibid.
[403] For further information, please look at: "*Turkey, EU display mutual willingness for revival of ties*", 16 December 2013, from: http://www.hurriyetdailynews.com/turkey-and-eu-ink-readmission-agreement-and-visa-liberalization-protocol.aspx?pageID=238&nID=59635&NewsCatID=351 (accessed date: 18.12.2013).

*the EU and all those irregular migrants who have transited through Turkey is likely to bring a significant financial and administrative burden onto Turkey*".[404] However, taken steps for the Visa Liberalization between the EU and Turkey seems to be a clear commitment of the EU to move forward on an issue which is highly important for Turkey. In addition to this, Turkey unilaterally added some annotations concerning its concerns on the process when signing the mentioned Agreement.[405] One of them is that Turkish visa regime with the third countries will not change since Turkey has signed several bilateral agreements for visa exemptions with nations, including Russia and some Arab and African countries, that will remain in force until Turkey join the EU; second annotations is that a financial burden of readmission will be on Turkey's shoulders, but the country will establish shelters and facilities for migrants sent back by European countries with the funds provided by the EU, the EU agreed to make financial assitance to Turkey for this burden, "*Within the framework of the support provided through the Instrument of Pre-Accession Assistance (IPA), the Commission will support the legal reforms and the development of administrative capacities which will be deemed useful to enable the Turkish authorities to better address the requirements set out in the Roadmap*"[406]; third, Turkey "*would keep its geographical reservation on the Refugee Convention. Although the EU has long pressed Turkey to change who it views as a refugee, Ankara said it would only examine the clause when it is granted full membership in the bloc*".[407] In this regard, Ms. Malstrom stated that: "*We have full respect for concerns and we assure that within the framework of dialogue, we will take account of those concerns*".[408]

The main objective of the EU-Turkey Readmission Agreement is to reciprocally establish procedures for the rapid and orderly readmission of the persons having entered or are resided in the territory of the other side in an irregular manner.[409] The mentioned Agreement impose to readmit the nationals of the EU-MSs and Turkey, and readmit any other persons including the third country nationals and stateless persons, who entered into, or stayed on, the territory of either sides directly arriving from the territory of the other side.[410] This Agreement will come into force "*on the first day of the second month following the date on which the EU and Turkey will notify each other that their respective ratification procedures have been*

[404] Sariibrahimoglu Y.S. (2011), op. cit., p. 99.
[405] See, "*Turkey, EU display mutual willingness for revival of ties*", n. 403.
[406] See: "*Cecilia Malmström signs the Readmission Agreement and launches the Visa Liberalisation Dialogue with Turkey*", n. 397.
[407] See, "*Turkey, EU display mutual willingness for revival of ties*", n. 403; see also, "*Turkey and EU agree to sign historic visa deal*", n. 394.
[408] Ibid.
[409] See, "*Cecilia Malmström signs the Readmission Agreement and launches the Visa Liberalisation Dialogue with Turkey*", n. 397.
[410] Ibid.

*completed*".[411] The provisions concerning the readmission of any other third country nationals will come into force three years later.[412] The Agreement will now be sent to the Council of the EU, the EP, and the Turkish Grand National Assembly (TGNA, TBMM in Turkish) for ratification.[413]

The aim of the EU-Turkey Visa Liberalization Dialogue is to make progress towards the lifting the visa obligation on the Turkish citizens travelling to the EU-MSs for a short visit.[414] The Dialogue will consist of a screening of the Turkish legislation and administrative practices, which will be carried out by the EC on the basis of a 'Roadmap towards the visa-free regime with Turkey'; this roadmap includes the requirements which should be fulfilled by Turkey and after this fulfillment the EC will present a proposal to the Council of the EU and the EP to amend the EC Regulation 539/2001 through changing Turkey's status from the negative list to the positive one [as mentioned above, this Regulation lists the third countries whose nationals are exempt from (positive list) or non-exempt from (negative list) visa obligation]; and then, the EC's proposal will be voted by qualified majority by the Council of the EU and the EP.[415] In this regard, Turkey has to implement the Readmission Agreement in a full and effective manner, manage the borders and the visa policy for preventing irregular migration, have secure travel documents, form migration and asylum systems in line with international standards, have functioning structures for combating organized crime through emphasizing migrants' smuggling and trafficking, implement adequate forms of police and judicial cooperation with the EU-MSs and the international community and, respect the fundamental rights of citizens and foreigners with a specific attention to persons belonging to minorities and vulnerable categories.[416] The mentioned Roadmap does not set a specific timetable; therefore, the speed of the visa liberalisation process will essentially depend on the progress which will be made by Turkey in addressing the requirements set out in the Roadmap.[417]

[411] Ibid.
[412] Ibid.
[413] Ibid.
[414] Ibid.
[415] Ibid.
[416] Ibid.
[417] Ibid.

# CONCLUSION

Association agreements and its additions with third countries such as the ones with Turkey are primary legal sources of the EU legislation and so they are directly applicable; additionally, standstill clauses laid down in these sources protect previously given and acquired rights of citizens of both contracting parties. Turkey is bound to the EU-MSs through the AA (signed in 1963), including the AP (signed in 1970 and elaborated the AA and determined conditions of its implementation). The AA and its AP have been extended with the lots of the ACDs and all of them have formed the Association Law between two parties; additionally, this Law is characterized by supranationalism and therefore, it has been interpreted by only the ECJ since December 2009 in line with the ECJ's judgment in the Soysal Case. Obviously, until the relevant judgments of the ECJ, Turkey was not conscious of the juridical qualifications of the AA, the AP and ACDs for a long time. It did not recognise its citizens' acquired rights in certain areas arising from Association Law between itself and the EU before the Hageman Case (Case 181/73) in 1974, even before the Peskeloglu Case (case 77/82) in 1983. Thanks to the Greece and a Greek national Anastasia Peskeloglu having acquired rights arising from (above-mentioned) Atina Agreement (which is an association agreement like the AA), Turkey become aware of its rights and began to follow them before the ECJ. Otherwise, visa-free travel process could probably be more difficult than the one today. That is why, as stated above, all Turkish authorities and nationals should be more aware of their acquired rights laid down in Association Law.

In recent years by virtue of its decisions, the ECJ has performed a very significant function in implementing of the EU Law through condemning the EU-MSs to pay, which states do not adapt EU Law into their domestic law or not fully reflect it or not adapt it in time. Since -as mentioned above- any such changes to the negative for Turkish nationals have been forbidden because of the effective date of the AP (1 January 1973). In spite of this clearity, the final ECJ judgment in the Demirkan Case stated that the only freedom to provide active services can be included for Turkish nationals (all subjects of the ECJ's judgments in the Savas, Abatay/Sahin, Tum/Dari and Soysal/Savatli Cases were about the right of the freedom to provide services). The mentioned Court might have hided behind the EU-MSs in this Case. At this time, it could not declare once more how it had previously declared that any changes to the national law of the EU-MSs, which are to the detriment of Turkish nationals and violate the principle of supremacy of the EU Law. Because - as mentioned above - the EU-MSs

began to lose cases concerning the rights of Turkish national arising from the Association Law; therefore, they might have begun to apply political pressure on the ECJ. The author of this thesis also thinks that there was a political pressure on the ECJ; however, it is difficult to justify this prediction because of non-existence of an evidence. And it judicially is difficult to explain this judgment, political speculations might be analyzed. In this regard, it can only be said that the ECJ's verdicts should not be designed in line with the security interests of the EU-MSs. Since it was seen that the reluctance of the EU-MSs' Governments to remove visa obstacles for Turkish people during Demirkan Case at the same time keeping an eye on the readmission agreement expected to be concluded with Turkey (at that time, it was in near future). The EU-MSs were most probably thinking that Turkish nationals' fair for visa liberalization should not be determined in the ECJ, should be determined after Turkey signed the above-mentioned Readmission Agreement and imposed to readmit their nationals (including persons who are not national of Turkey but who transited through Turkey and also stateless persons) and so help the EU to tackle its migration problem. Furthermore, as stated above, when the EU-MSs began to lose cases concerning the rights of Turkish national arising from the Association Law, they might have probably began to apply political pressure on the ECJ. Therefore, it is hoped that the implementation of the provisions of Association Law should not depend on changing political situation and conditions and the ECJ's decisions should not be partially or completely ignored by the EU-MSs; in this regard, the Ministry of Foreign Affairs and Ministry for EU Affairs of Turkey Republic have vital workloads and they, including all Turkish authorities and nationals should always be followers of their own rights.

When considering the current process for visa liberalization, it should be restate that Turkey is the only EU candidate country whose citizens are not exempt from a visa-free travel to the territories of the EU. Even Moldova and Ukraine participated in an EU visa liberalisation process, the other eastern neighbours follow them and there are discussions about visa-free travel for Russians. Until now, the EU had not treated fairly when the issue became the status of Turkey. In this regard, Turkey's cooperation is vital for securing the EU's external borders by reason of the fact that Turkey is the main transit country for illegal migrants to the EU; additionally, the mentioed Visa Liberalization Dialogue can contribute to the EU's image as a rule of law promoter on the Turkish peoples' eyes despite of the failure of the Demirkan Case after numerous ECJ decisions that have announced the visa obligations for Turkish citizens illegal.

On the other side, it can be easily said that, in the case of Turkey, the EC and the Council of the EU have also failed in their duties laid down in the AA and the AP; what is more, they have imposed regulations, which are inconsistent with these legal acts, to Turkish nationals. The free movement of Turkish people might have probably conflicted with the EU-MSs' national interests and therefore, they might have acted in a negative manner towards the implementation of some principles of the EU Law and the Association Law. Thus, the relations between both sides might be burdened by the clash over the question how the association freedom of movement shall be implemented. In this regard, the EU-MSs and the EC seem very reluctant and partly unwilling to fulfill their obligations.

On the other side of the coin, at least, within the ECJ decisions concerning the freedom to provide services in line with EU-Turkey Association Law point of view, Turkish and German literature, and also some EU-MSs' national courts including some German nationals courts, the right of the freedom to provide services have been accepted for allowing Turkish nationals to travel to Europe without a visa. And this is a good step. Since services are significant for the market and, Turkish citizens as being service providers could have an opportunity to compete in such a market thanks to these above- mentioned ECJ judgments.

The EU-MSs's citizens could travel to Turkey without a visa; however, the same situation has not necessarily been in question for Turkish travellers but today Turkish people will have the same right after the fulfillment of the EU's conditions laid down in the Readmission Agreement and the future Roadmap for the Visa Libaralization. Besides it might be said that a regular and general visa liberalization process to enter the EU-MSs can be a better alternative than the process after implementing visa-free travel by some the EU-MSs by virtue of the verdicts of their national Courts and/or of the ECJ; additionally, it should be reminded again and should not lose the sight of the big picture that the consequences of the above-mentioned relevant articles in Association Law are limited compared to the ones in EU Law. Namely, rights of the above-mentioned relevant articles in Association Law have been granted only by some EU-MSs. However, the situation of disregarding of the acquired rights of Turkish people arising from the Associaiton Law and, convincing them to sign a readmission agreement as a condition for a visa liberalization is not so fair. If the ECJ would state its judgment in favour of Turkish tourists, there could have been (maybe) no any readmission agreement or no above-mentioned obligations and conditions by the EU. There is something to do as of today, the AC should meet to take new ACDs not about the visa but also about other acquired rights of Turkish nationals arising from EU-Turkey Association Law and its

standstill clauses (some of which mentioned above). The current process; i.e., the Readmission Agreement and the Visa Liberalization process are totally an exercise in intergovernmental co-operation. And it might be done more through taking new ACDs which can show us the supranational tendencies in the EU and the EU's respect to rule of law. Additionally, the removing of the visa regime should not be the only goal, there are other significant questions in the EU-Turkey relations concerning full equality, prevention of discrimination and partnership.

In conclusion, the mentioned visa liberalization process will most probably create a win-win situation. The relations between the EU and Turkey will improve. This improvement will also occur in the area of human rights in Turkey thanks to the reforms of the Roadmap process and in the area of tourism in which Turkey can play a significant role to increase economy in the EU-MSs. Finally, visa free travels will be certainly an opportunity for Turkish students, young researchers, academicians and businessmen. Although Turkey's EU membership seems unforeseeable in the near future, the current steps are promising. Now, all our hopes as Turkish national are to be able to have our all acquired rights arising from Association Law and to fulfill the EU's conditions and in parallel to be lifted the visa requirements for Turkish people. Currently, the obligation to get a visa for Turks still continues and it is not exactly known until when it continue will. As stated above, the situation of the great expectatioans of Turkey from the EU and regardlessness of the EU have left its mark on the EU-Turkey relations and has set the agenda. It is also hoped that this situation changes and the EU-Turkey relations becomes an association relationship instead of relationship based on national-interest. In this regard, taken steps for the Visa Liberalization and Positive Agenda between the EU and Turkey seem to be a clear commitment of the EU to move forward on above-mentioned issues which are highly significant for Turkey.

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I declare that this thesis and work presented in it are my own and have been generated by me as the result of my own original research.

None of the parts of this thesis has previously been submitted for a degree or any other qualification at this university or any other institution.

The written document matches completely to the CD version.

Where I have quoted from the work of others, the source is always given within the reference part of my Thesis.

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