Neutral Citation Number: [2014] EWCA Civ 1109

Case No: C4/2013/2144

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT
Mr Simon Picken QC
[2013] EWHC 2649 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 31/07/2014

Before :

LORD JUSTICE MAURICE KAY
(Vice President of the Court of Appeal, Civil Division)
LORD JUSTICE RICHARDS
and
LORD JUSTICE McCOMBE

- -

Between :

The Queen (on the application of Buer)	**Appellant**
- and -	
Secretary of State for the Home Department	**Respondent**

- -
- -

David Jones and **Declan O'Callaghan** (instructed by **Irving & Co**) for the **Appellant**
Ben Lask (instructed by **The Treasury Solicitor**) for the **Respondent**

Hearing date : 14 July 2014

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Approved Judgment

Lord Justice Richards :

1. This appeal concerns the scope and interpretation of the ñstandstillò clause in Article 13 of Decision No 1/80, adopted by the Association Council under the EEC-Turkey Association Agreement of 12 September 1963.

2. The appellant is a 34 year old Turkish national who has been lawfully present in the United Kingdom at all material times as an employed worker pursuant to the Association Agreement and Decision No 1/80. After four yearsô employment as a Turkish worker he applied for indefinite leave to remain (ñILRò). On 3 December 2011 the Secretary of State responded to the application by granting him three yearsô further leave to remain, with an entitlement to undertake any type of work for any employer. Asked why the appellant had not been granted ILR, the Secretary of State replied on 13 February 2012 that leave had been granted under Article 6(1) of Decision No 1/80 which contained no provision for settlement, and that an applicant who continued to meet the requirements of Article 6(1) would be granted three yearsô leave on each subsequent application.

3. The appellant sought permission to apply for judicial review of the refusal of ILR. Various grounds were advanced but the only one still live before us is the contention that he is entitled to ILR by virtue of the standstill clause in Article 13 of Decision No 1/80. Permission to apply was refused in the Administrative Court, first by Haddon-Cave J on the papers and then by Mr Simon Picken QC, siting as a deputy High Court Judge, on an oral renewal. Permission to appeal to this court against the deputy judgeôs decision on the Article 13 issue was granted by Gloster LJ.

4. Although the appeal relates strictly to whether the appellant has an arguable case for judicial review, we were invited by both counsel to approach the matter on a basis that would enable us to reach a substantive determination of the main legal issues between the parties. We were told that a number of cases in the Administrative Court have been stayed behind this one.

5. The deputy judge indicated that if he had taken a different view on the legal issues he would in any event have refused permission to apply for judicial review on the ground of delay. Mr Lask informed us at the outset of the hearing, however, that the Secretary of State no longer pursued the point on delay.

The Association Agreement and related instruments

6. The aim of the Association Agreement (which was published in English in OJ C113/1, 24 December 1973) is to promote the continuous and balanced strengthening of trade and economic relations between the contracting parties, including in the labour sector by progressively securing freedom of movement for workers (Article 12) and by abolishing restrictions on freedom of establishment (Article 13) and on freedom to provide services (Article 14), in order to improve the standard of living of the Turkish people and to facilitate the accession of Turkey to the European Community (as it then was) at a later date. To that end it provides for a preparatory stage, a transitional stage during which a customs union is progressively to be established and economic policies are to be aligned, and a final stage based on the customs union and entailing closer co-ordination of the economic policies of the contracting parties. It includes provision for the contracting parties to meet in a

Council of Association which is to act within the powers conferred upon it by the Agreement.

7. The Association Agreement was supplemented on 23 November 1970 by an Additional Protocol which forms an integral part of the Agreement. The Additional Protocol lays down in Article 1 the conditions, arrangements and timetables for implementing the transitional phase. Title II, entitled ñMovement of Persons and Servicesò, includes provisions dealing with ñWorkersò (Chapter I) and with ñRight of establishment, services and transportò (Chapter II). Article 41 of the Additional Protocol, which falls within Chapter II of Title II, contains the following standstill clause:

> ñ**Article 41**
>
> (1) The Contracting Parties shall refrain from introducing between themselves any new restrictions on the freedom of establishment and the freedom to provide services.ò

8. I should also mention Article 59 of the Additional Protocol, which provides that, in the fields covered by the Protocol, Turkey shall not receive more favourable treatment than that which Member States grant to one another pursuant to the EEC Treaty.

9. Decision No 1/80, adopted by the Association Council under the Agreement, came into force on 1 December 1980. Section 1 of Chapter II of the Decision, entitled ñQuestions relating to employment and the free movement of workersò, contains two provisions at the heart of the present case, namely Article 6(1) and Article 13.

10. Article 6(1) provides:

> ñ**Article 6**
>
> (1) 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 yearôs 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 the 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 paid employment of his choice, after four years of legal employment.ò

At the time of his application for ILR the appellant satisfied the third indent of Article 6(1), which was the basis on which the Secretary of State granted him three yearsô further leave to remain with an entitlement to undertake any type of work for any employer.

11. Article 13 is the directly relevant standstill clause. It provides:

> ñ**Article 13**
>
> The Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers and members of their families legally resident and employed in their respective territories.ò

It is common ground that the article confers directly effective rights.

Relevant Immigration Rules and policies

12. It is not necessary to go into the detail of the relevant Immigration Rules and policies at different times, but it will be helpful to give a brief explanation of the background to the legal issues we have to consider.

13. The Immigration Rules in 1980 contained a section on ñSettlementò which included, in paragraph 26, a provision that ñ[w]hen a person admitted in the first instance for a limited period has remained here for 4 years in approved employment or as a businessman or a self-employed person or a person of independent means, the time limit on his stay may be removedò. It is submitted on behalf of the appellant that if that provision were applied to him he would qualify for ILR.

14. The regime in fact applied to the appellant is set out in current Home Office guidance on ñECAA Turkish employed applicationsò. The material provision is that ñ[o]n completing four years legal employment (when the applicant has met the third indent of article 6(1) of decision 1/80) leave should not be granted for more than three years é ò. The Secretary of Stateôs decision in relation to the appellant was in accordance with the guidance.

15. I should also note, because it featured in the submissions on behalf of the appellant, that the Secretary of State operates a different regime in relation to self-employed Turkish nationals. Under that regime (contained in Immigration Directorate Instructions, Chapter 6, Section 6: ñBusiness applications under the Turkish-EC Association Agreement (ECAA)ò) an applicant may qualify for ILR if he has spent a continuous period of four years lawfully in the United Kingdom, of which the most recent period has been spent with leave as a Turkish ECAA businessperson, and certain other conditions are met.

The issues

16. The appellantôs case is that, in relation to a Turkish worker such as the appellant who satisfies the third indent of Article 6(1) of Decision No 1/80, Article 13 obliges the Secretary of State to assess entitlement to ILR by reference to the Immigration Rules as they existed when Decision No 1/80 came into force on 1 December 1980. It is

submitted that by applying the regime for Turkish workers described above instead of the 1980 rules on the grant of ILR, and/or by otherwise applying additional conditions on the grant of ILR, the Secretary of State has introduced ñnew restrictions on the conditions of access to employmentò, in breach of Article 13. The appellant points to the administrative and financial burdens associated with successive grants of three yearsô leave to remain, as compared with the position if ILR is granted. In addition to the need to make recurrent applications, it is necessary to register with the police, to obtain a biometric residence permit and to pay related fees; there are obligations to notify changes of circumstances; penalties may be imposed for non-compliance; and if leave is allowed to expire, the person concerned is deemed not to be in legal employment 28 days after the date of expiry of leave.

17. Mr Lask, for the Secretary of State, made clear that the Secretary of State does not accept that a person in the appellantôs position would have been granted ILR under the Immigration Rules as they stood in 1980 or that a direct comparison can properly be made between the 1980 rules on the grant of ILR and the regime currently operated in respect of Turkish workers. That point was not, however, argued before the deputy judge, being reserved for detailed grounds of defence if the case were permitted to proceed. It was not covered in the evidence or written submissions before us. Although Mr Lask began to develop it in his oral submissions, it rapidly became apparent that the point would have to be reserved for later argument should it be necessary.

18. The issues on which the argument has concentrated relate to the interpretation and scope of Article 13. They boil down to two questions: (1) does the prohibition in Article 13 on the introduction of new restrictions on ñthe conditions of access to employmentò extend to conditions on the right of settlement (or permanent residence)? (2) does Article 13 apply to workers, such as the appellant, who are already integrated into a host Member Stateôs workforce to the extent of enjoying rights under Article 6(1) of Decision No 1/80?

19. In refusing permission to apply for judicial review, the deputy judge answered each of those questions in the negative. The Secretary of State submits that he was right to do so and that a negative answer to either question is sufficient to dispose of the case. The appellant submits that the deputy judge was wrong on both questions.

20. Although both counsel put the main thrust of their submissions on the first question, I think it more convenient to start with the second question, which is more straightforward and the answer to which also casts light on the first question.

Does Article 13 apply to Turkish workers who enjoy rights under Article 6(1) of Decision No 1/80?

21. The case for the Secretary of State is that Article 13 simply has no application to the present situation: it does not apply to a person who is already sufficiently integrated into the workforce of the host Member State to enjoy rights under Article 6(1). It is submitted that the case-law of the Court of Justice is clear on the point.

22. This issue was first considered by the Court of Justice in Joined Cases C-317/01 and C-369/01, *Abatay and Others v Bundesanstalt für Arbeit* [2003] ECR I-12301 (ñ*Abatay*ò), at paragraphs 75-84. In that case the Court rejected an argument that

Article 13 applies *only* to Turkish nationals who are already lawfully employed and thereby have a right of residence in the host Member State. In so doing it stated *inter alia*, at paragraph 81, that ña Turkish national who is already lawfully employed in a Member State no longer needs the protection of a óstandstillô clause as regards access to employment, as such access has already been allowed and the person concerned subsequently enjoys, for the rest of his career in the host Member State, the rights which Article 6 of that decision expressly confers on himò. It went on to state in paragraph 84 that the standstill clause can only benefit a Turkish national if he is legally resident in the territory of the host Member State. The effect of the judgment appeared to be that Article 13 applies specifically to the period between the Turkish workerôs initial entry into the host Member State and the time when, by virtue of one yearôs continuous employment, he or she first acquires rights under Article 6(1). This was not, however, spelled out by the Court with total clarity. Our attention has also been drawn to the fact that the Advocate General in the same case had expressed the opinion that Article 13 applies also to workers enjoying rights under Article 6(1), serving a useful purpose by confirming their right not to be affected by new restrictions.

23. Whatever scope there might have been for further argument on the basis of the judgment in *Abatay* itself, the position was made clear in Case C-242/06, *Minister voor Vreemdelingenzaken en Integratie v Sahin* [2009] ECR I-8465 (ñ*Sahin*òò). Having referred to paragraphs 75-84 of *Abatay*, the Court stated at paragraph 51 of the judgment in *Sahin*, in reference to Article 6 and Article 13:

> ñ51. Those two provisions of Decision No 1/80 are aimed at different situations, since Article 6 governs the conditions in which actual employment permits the gradual integration of the person concerned in the host Member State, while Article 13 concerns the national measures relating to access to employment, while including within its scope family members whose admission into the territory of a Member State does not depend on actual employment. *The Court concluded, in Abatay and Others, that Article 13 is not intended to protect Turkish nationals 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 Decision No 1/80*ò (emphasis added).

24. The emphasised passage was repeated without qualification at paragraph 45 of the judgment in Case C-92/07, *Commission v Netherlands* [2010] ECR I-3683. Both *Sahin* and *Commission v Netherlands* were then cited in support of the same proposition at paragraph 45 of the judgment in Joined Cases C-300/09 and C-301/09, *Staatssecretaris van Justitie v Toprak* [2010] ECR I-12845 (ñ*Toprak*ò).

25. Accordingly, the appellantôs contention that as a person who enjoys rights under the third indent of Article 6(1) he can also rely on the standstill clause of Article 13 runs counter to the case-law of the Court of Justice. That case-law makes clear that the two articles do not overlap in scope but are directed at different situations.

26. Mr Jones, for the appellant, submits that the proposition that Article 13 does not apply to a person who enjoys rights under Article 6(1) cannot be derived from the wording of Article 13 itself. That is true but it does not assist the appellant in circumstances where the Court of Justice has considered the context and purpose of the provision, as well as its wording, in defining the scope of Article 13.

27. Mr Jones also submits that the only principle one can derive confidently from *Abatay* is that Article 13 does apply to the initial period before a Turkish national has acquired rights under Article 6; in none of the cases to date has the Court of Justice had to consider the potential application of the article beyond the point where Article 6 rights have been acquired; and if that situation arose for decision, an interpretation of Article 13 in accordance with its purpose of promoting free movement and integration of Turkish workers should lead to the conclusion that the article has a continued application after Article 6 rights have been acquired. Again, however, the context and purpose of the provision has been taken into account by the Court in defining the scope of Article 13 in the way it has done, and there is no reason to believe that the Court would engage in a fundamental redefinition of its scope if it were to consider the circumstances of the present case.

28. Mr Jones refers to the case-law, considered later in this judgment, in which it has been held that Article 13 of Decision No 1/80 and Article 41 of the Additional Protocol are to be interpreted in the same way. He submits that Article 41 has been held to be wide in scope and that to give Article 13 the limited scope for which the Secretary of State contends would be inconsistent with the wide interpretation of Article 41. In relation to Article 41 he relies, for example, on paragraph 69 of the judgment in Case C-37/98, *R v Secretary of State for the Home Department, ex parte Savas* [2000] ECR I-2946 (ñ*Savas*ò):

> ñ69. It should also be noted that the óstandstillô clause in Article 41(1) of the Additional Protocol precludes a Member State from adopting any new measure having the object or effect of making the establishment, and, as a corollary, the residence of a Turkish national in its territory subject to stricter conditions than those which applied at the time when the Additional Protocol entered into force with regard to the Member State concerned.ò

29. The difficulty about this line of argument, however, is that the Court had the equivalence between Article 41 and Article 13 well in mind in the cases post-dating *Savas* in which the scope of Article 13 was defined in the manner set out above. I do not think that a general submission as to the equivalence of the two articles can get round that point.

30. In conclusion on this issue, I am not persuaded by Mr Jonesôs attempts to circumvent the consistent case-law of the Court of Justice as to the scope of Article 13. The article is not intended to protect a Turkish worker who has acquired rights under Article 6(1). The rights of residence that such a worker enjoys are determined by Article 6(1), not by Article 13. Yet it is no part of the appellantôs case that Article 6(1) entitles him to have his application for leave to remain determined by reference to the 1980 rules concerning the grant of ILR.

31. As submitted by Mr Lask, that conclusion would be sufficient to dispose of this appeal. Having heard full argument on the interpretation of Article 13, however, and because it may be relevant for other cases which have been stood out pending judgment on the present appeal, I think it right to go on to consider the question whether, in those situations where the article does apply, it extends to the imposition of a standstill in respect of conditions governing the right of settlement.

Does Article 13 preserve rights of settlement as they existed in 1980?

32. The starting-point of Mr Jonesô submissions on this issue is that Article 13 is to be read purposively, in the light of the objectives of the Association Agreement and of Decision No 1/80, and consistently with Article 41 of the Additional Protocol. It is concerned with the attainment of free movement of Turkish workers and their integration into the territory of the host Member State. He says that when read in that light, Article 13 can be seen to extend to rights of settlement: a denial of settlement impacts on access to employment and on the achievement of the relevant objectives. The effect of the provision is to require Member States to assess whether Turkish nationals should have rights of residence, including permanent residence, by reference to conditions as they were when the standstill came into force.

33. The broad objectives pursued by Decision No 1/80 are not in dispute. In Case C-434/93, *Bozkurt v Staatssecretaris van Justitie* [1995] ECR I-1492 (ñ*Bozkurt*ò), the Court said that the aim of the Association Council in adopting the Decision was ñto go one stage further, guided by Articles 48, 49 and 50 of the [EEC] Treaty, towards securing freedom of movement for workersò (paragraph 19), and that in order to ensure compliance with that objective it was essential to transpose the principles enshrined in those articles to Turkish workers who enjoyed the rights conferred by the Decision. A similar point was made in Case C-340/97, *Nazli v Stadt Nürnberg* [2000] ECR I-973 at paragraph 55. Then in *Abatay* the Court stated that the Decision ñis essentially aimed at the progressive integration of Turkish workers into that territory [i.e. of the host Member State] through the pursuit of lawful employment which should be uninterrupted for one, three or four years, as the case may be é ò (paragraph 90).

34. Just as Decision No 1/80 promotes freedom of movement of workers, so the Additional Protocol promotes the freedom of establishment and the freedom to provide services. It is therefore unsurprising that the standstill clauses in Article 41 of the Additional Protocol and in Article 13 of Decision No 1/80 have been interpreted in the same way in the cases referred to below. (As Mr Jones pointed out, there is one difference between the two provisions, in that Article 13 applies by its terms only to those who are ñlegally residentò in the host Member State, whereas Article 41 contains no such qualification; but that difference is not material to the present case, where there is no dispute as to the lawfulness of the appellantôs residence in the United Kingdom.)

35. As previously noted (see paragraph 28 above), in *Savas* it was held that the standstill clause in Article 41 precludes a Member State from adopting any new measure having the object or effect of making the establishment ñand, as a corollary, the residenceò of a Turkish national in its territory subject to stricter conditions than those which applied at the time when the Additional Protocol entered into force with regard to the Member State concerned. That passage was picked up by the Court in *Abatay* when

holding that Article 13 is to be interpreted in the same way as Article 41. That Article 13, like Article 6(1), applies not only to conditions of access to employment but also, as a corollary, to residence has been confirmed in a number of subsequent cases.

36. *Sahin* (see paragraph 23 above) concerned a Turkish worker who had been legally resident in the Netherlands for several years but had not acquired rights under Article 6(1) of Decision No 1/80 because he had not been in continuous employment for more than a year. His complaint was that he had been required to pay an administrative charge of 169 Euros for renewal of his residence permit. The requirement to pay the charge was a provision introduced since the time when Article 13 came into force. As already explained, Article 13 was held to apply to Turkish nationals who were legally resident in the host Member State but ñwho do not yet qualify for the rights in relation to employment and, accordingly, residence under Article 6(1) of Decision No 1/80ò. The relevant issue thereafter was whether Article 13 precluded the introduction of the charge. The Courtôs reasoning proceeded on the basis that the standstill provision was capable in principle of applying to the introduction of a charge for a residence permit, but it brought in a separate strand in the case-law to the effect that ñthe adoption of new rules which apply in the same way both to Turkish nationals and to Community nationals is not inconsistent with any of the standstill clauses laid down in the fields covered by the EEC-Turkey Associationò (paragraph 67), since Turkish nationals would otherwise be put in a more favourable position than Community nationals, contrary to Article 59 of the Additional Protocol. The Court went on to say that Turkish nationals must not, however, be subjected to new obligations which are disproportionate as compared with those established for Community nationals. This led to the Courtôs ruling:

> ñArticle 13 of Decision No 1/80 é must be interpreted as precluding the introduction, from the entry into force of that decision in the Member State concerned, of national legislation, such as that in issue in the main proceedings, which makes the granting of a residence permit or an extension of the period of validity thereof 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.ò

37. In *Commission v Netherlands* (see paragraph 24 above) the Court followed *Sahin* in holding that ñthe standstill rules laid down in Article 41(1) of the Additional Protocol and in Article 13 of Decision No 1/80 are applicable, from the entry into force of those provisions, to all of the charges imposed on Turkish nationals for the issue of residence permits concerning a first admission to the territory of the Kingdom of the Netherlands or for the extension of such a permitò (paragraph 50). That has to be read, however, subject to the point made in paragraph 45 of the judgment, again by reference to *Sahin*, that Article 13 is not intended to apply to those who qualify for rights in relation to employment and residence under Article 6(1). The same proviso applies to the ruling at the end of the judgment, where the Court declared that by introducing and maintaining a system for the issue of residence permits providing for charges which were disproportionate in relation to those imposed on nationals of Member States for the issue of similar documents, and by applying that system to Turkish nationals who had a right of residence in the Netherlands on the basis of, *inter*

alia, Decision No 1/80, the Kingdom of the Netherlands had failed to fulfil its obligations under, *inter alia,* Article 13 of Decision No 1/80.

38. Similar reasoning is to be found in *Toprak* (see again paragraph 24 above), where the Court held that ñby adopting provisions which make the conditions applicable to Turkish workers for the acquisition of a residence permit more stringent than the conditions which were previously applicable to them, under provisions adopted since the entry into force of Decision No 1/80 within the territory concerned, a Member State introduces ónew restrictionsô within the meaning of Article 13 of that decisionò (paragraph 60); but here, too, as already discussed, it was held that Article 13 does not apply to Turkish workers who already qualify for rights in relation to employment and residence under Article 6(1).

39. The reason why Article 13 has been held to apply to residence even though it does not contain any express mention of residence is that residence is a corollary of employment: without a right of residence there can be no effective access to employment. This has been brought out clearly in relation to Article 6(1), which is likewise silent as to residence but has been held to imply a right of residence. Thus in Case C-237/91, *Kus v Landeshauptstadt Wiesbaden* [1992] I-6807, referring back to Case C-192/89, *Sevince v Staatssecretaris Van Justitie* [1990] ECR I-3461, the Court said this at paragraphs 29-30:

> ñIt also held, in that judgment, in the context of the third indent of Article 6(1) of Decision No 1/80 that even though that provision governs the situation of the Turkish worker only with respect to employment and not to the right of residence, those two aspects of the personal situation of a Turkish worker are closely linked and that, by granting to such a worker, after a specified period of legal employment in the Member State, access to any paid employment of his choice, the provision in question necessarily implies ï since otherwise the right granted by it to the Turkish worker would be deprived of any effect ï the existence, at least at that time, of a right of residence for the person concerned é .
>
> The same is also true as regards the first indent of Article 6(1) of Decision No 1/80, since without a right of residence the grant to the Turkish worker, after one yearôs legal employment, of the right to renewal of his permit to work for the same employer would likewise be deprived of effect.ò

40. The focus in that passage is on a right of residence in order to render effective the right of access to work, which is very different from a right to settlement or permanent residence. The same reasoning ought to apply to Article 13. In the case of Article 13, moreover, the point is underlined by the limited scope of the article, discussed above. If the article is not intended to protect those who are already integrated into the labour force of the host Member State but is intended to apply only to those who do not yet qualify for rights under Article 6(1), its concern must be with residence up to the point where rights are acquired under Article 6(1), not with longer-term residence or settlement.

41. The close relationship between residence and employment is further illustrated by *Bozkurt* (see paragraph 33 above). One of the questions in that case was whether Article 6(1) entitled the applicant to remain in the territory of the host Member State following an accident at work which rendered him permanently incapacitated for work. The Court of Justice answered that question in the negative, stating at paragraphs 39-40 of the judgment:

> ñIt follows 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.
>
> Consequently, in the absence of any specific provision conferring on Turkish workers a right to remain in the territory of a Member State after working there, a Turkish nationalôs right of residence, as implicitly but necessarily guaranteed by Article 6 of Decision No 1/80 as a corollary of legal employment, ceases to exist if the person concerned becomes totally and permanently incapacitated for work.ò

42. That may help to explain why the appellant has not sought to rely on Article 6(1) in support of a right of settlement which would entitle him to permanent residence in this country even if he retired or was permanently incapacitated for work. But if that is the position under Article 6(1), then *a fortiori* it must be the position under Article 13, again showing that the article is concerned with residence for the purpose of work and does not extend to settlement in the host Member State.

43. There is, moreover, nothing in the case-law of the Court of Justice to support the appellantôs case that Article 13 extends to settlement.

44. In the course of his submissions Mr Jones complained about an inconsistency between the Secretary of Stateôs approach towards self-employed Turkish nationals and the approach adopted towards Turkish workers as regards the grant of leave to remain. I have referred briefly at paragraphs 14-15 to the different regimes relating to the two categories. Mr Jones submitted that there is no rational basis for not extending to Turkish workers the same entitlement as is given to the self-employed. Whatever the reasons for the difference in treatment (the matter has not been fully explored in evidence), the point cannot in my view assist in the interpretation of Article 13, on which the challenge to the Secretary of Stateôs decision in this case depends. I therefore need say no more about it.

45. Nor do I need to address an argument by Mr Lask that the interpretation of Article 13 contended for by the appellant would result in Turkish workers receiving more favourable treatment than EU nationals, contrary to Article 59 of the Additional Protocol.

46. For the reasons given, I conclude that Article 13, on its proper interpretation, does not relate to settlement in the host Member State and does not therefore prohibit the introduction of new restrictions on the right of settlement. The appellantôs case under Article 13 fails on this issue too.

Conclusion

47. Having heard full argument on the issues considered in this judgment, I am satisfied that the appellantôs claim for judicial review would be bound to fail and that the deputy judge was therefore correct to refuse permission to apply for judicial review. I would dismiss the appeal.

Lord Justice McCombe :

48. I agree.

Lord Justice Maurice Kay, VP :

49. I also agree.