

Ayşegül YEŞİLDAĞLAR

Ayşegül (Alp) Yeşildağlar, having graduated from Ankara Girls' High School has had her BA degrees in the fields of English Philology and Business Administration. She holds MA degrees in English Language Teaching and European Social Security Law. She started her career as a teacher at university followed by executive posts in private sector. She started working for the Ministry of Labour and Social Security in 1988 and was posted to the Office of Labour and Social Security within the Consulates/Embassies of Turkey in Stockholm, Rotterdam and Brussels as an Attache for Labour and Social Security. During her post in Brussels and at the Ministry in Ankara, she has intensified her expertise in EU Social Policy Law, the social dimension of Turkey-EU Association Agreement and the judgments of the European Court of Justice on Turkish citizens. She was appointed as the Head of European Coordination Department of the Ministry in 2003, where she was involved in the negotiations between Turkey and EU with respect to

“the Association Agreement between Turkey and Europe ”

the social policy chapter as well as the implementation of EU projects. She held this post until 2005 when she was posted to London as the Attache for Labour and Social Affairs within the Turkish Consulate. In this post she has been rendering services and counselling Turkish citizens in the field of labour and social security as well as Turkey-EU Association and the Judgments of the European Court of Justice on Turkish citizens. She has published articles in various journals and attended/hosted seminars at home and abroad on EU social policy and the social dimension of the Association Law. She is one of the co-writers of the book on "European Social Security Systems" by Danie Peters, University of Leuven, Belgium. She is married with 2 children.



Could you inform us about Turkey-EU Association Law and its significance for Turkish citizens?

Turkish citizens residing in EU countries have a privileged status compared to other third country nationals due to the Association Agreement between Turkey and Europe, namely Ankara Agreement (1963) laying the principles of the Association, Additional Protocol (1973) providing a calendar for the fulfillment of the principles laid in the Agreement and the Association Council Decisions, namely, 1/80 on the employment of Turkish citizens in member countries and 3/80 on the coordination of social security of Turkish citizens in free movement.

The rights stemming from Turkey-EU Association Law have been further strengthened by the judgements of the

European Court of Justice on Turkish citizens (around 40 judgements so far) since 1986, when the Court, by means of its Demirel Judgment declared the Association Law to be an integral part of the Community Law paving the way for the Turkish cases. By means of ECJ judgments, some important social provisions of the Association Law have been interpreted as having direct effect (binding on national legislation) in member states. Thus Turkey, enjoys the unique status of being the only country, which can have the cases of its nationals to the European Court of Justice though it is not yet a member state.

Protection and improvement of rights based on Turkey-EU Association Agreement is a legal battle free from the policies related to the membership of Turkey and therefore is of significant importance.





What kind of right do Turkish citizens have within the framework of the Association Law and the ECJ judgments?

The legal status of Turkish citizens having legally entered the Member States progressively improves as their period of employment increases. After a year's legal employment they can extend their work permit with the same employer, after 3 years' legal employment they can change their employer in the same sector and after 4 years' legal employment, they can take up employment with any employer in any sector. Extension of work permit necessitates parallel extension of residence work permits as well. Family members of Turkish citizens in member states can also take up employment after 3 years of cohabitation. Children of Turkish citizen are entitled to the same educational opportunities in the Member States as the nationals of the state where they are residing. Rights provided under the Association Law can be restricted only on grounds for public health, public security and public order. Turkish citizens are entitled to the same social security rights as the nationals of the country where they reside. No new restrictions can be introduced to the right for settlement (establishing a business) in a Member State after the Additional Protocol went into force in that state.

Could you give some information about the cases referred to the Court from UK and other Member States and the judgments on these cases?

With respect to the cases referred to the Court from the Member States in Continental Europe, the Court has mostly been requested to give an opinion on the provisions of the Association Council Decisions on employment and social security rights of Turkish employees embedded in 1/80 or 3/80, whereas the cases referred from the UK have so far been on the right of settlement (to work as self employed) based on the Additional Protocol.

I would like to elaborate on the 2 cases referred to the Court from the UK on the right of setting up a business and providing services within the framework of the right of settlement in Article 41 of the Additional Protocol. By means of Abdülnasır Savaş case, the Court made it clear that no new restrictions could be introduced, as from the entry into force of that protocol in the Member State concerned, on the right of settlement of Turkish nationals (standstill clause). The UK Government implemented the Savaş judgment by introducing a new visa category, known as Ankara Visa, for our nationals. In the process of the implementation of this visa category, Turkish nationals have at times experienced severe problems due to extremely long waiting periods amounting to 1-2 years before their visa applications were concluded, when their passports were withheld by the Home Office. I am pleased to say that the contacts and the permanent dialogue of the Turkish Consulate in London with the Home Office from 2005 onwards resulted in an opening in the deadlock regarding the applications in process. However, the implementation is still closely observed and in case there are persistent complaints, they are brought to the attention of relevant authorities.

The refusal by the Home Office of the applications for Ankara Visa of two Turkish citizens having entered the UK as asylum seekers on grounds that they had entered the UK illegally without valid visas led to the referral of a second case (Tüm/Darı) from the UK to the Court, which was this time requested to give an opinion whether the standstill clause in the Additional Protocol also related to the rules of the first admission into that state. In its judgment, the Court confirmed the relation of the standstill clause to the rules on the first entry into the territory of the relevant Member State. This meant that the entry of Tüm and Darı was legal under the UK immigration rules in force in 1973, the date of the entry into force of the Additional Protocol, and that the Member States were not to impose any conditions which were more restrictive as from the entry force of the Additional Protocol as long as the entry rules of Turkish nationals into their territory were concerned. This judgment, in our opinion, not only makes it possible for asylum seekers to make an application for Ankara visa on condition that they meet the criteria for establishing a business in the UK, but also paves the way to applications from Turkey. The rules relating to the first admission do not seem to be relevant after Tüm/Darı judgment. The UK so far has implemented the judgment by issuing an initial 6 month "leave to remain" for some Turkish applicants who were all asylum seekers and by accepting a few applications submitted to the British Consulate in Turkey. However, the UK authorities claim to have taken the applications from Turkey "exceptionally" so the implementation is not fully clear yet and the Turkish authorities are trying for improvements in the implementation.

As a result, I would like to stress that we have already had important gains based on Ankara Association Agreement, which we should improve further. There is need for coordinated work by all relevant actors. We should make a detailed analysis of the violations of the national legislations of the Member States against our Association Law, increase awareness at all levels with respect to the rights of Turkish citizens stemming from Turkey-EU Association and establish powerful networks among officials, lawyers, NGOs for a successful legal battle which is yet to continue as long as we have the Association Agreement between Turkey and EU.