SOCIAL SECURITY FOR TURKISH CITIZENS IN THE EUROPEAN UNION

The Scope of Association Council Decision EEC-Turkey No. 3/80 from the German Perspective

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Abstract

Social Rights of Turks in Germany have been a political and legal issue since the beginning of the recruitment of Turkish workers by German companies in the years after 1960. The paper focuses on the changes of judicial conflicts in different areas. At the beginning, questions of social protection for the aged were very much at the fore, as is evident in the disputes about the German-Turkish Social Security Agreement of 1964 and its subsequent amendments (1969, 1974 and 1984) followed by the legal dispute at the Federal Constitutional Court about the refund of pension scheme contributions. With the growing number of Turkish citizens living in Germany there has been a shift in the nature of the disputes: from pension-related social security claims to social law claims in national benefit law, particularly in the

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field of family benefits. The main objective of these disputes was to achieve greatest possible equality of treatment in social security for Turkish citizens staying permanently in Germany. With reference to ACD 3/80, which is based on the EEC-Turkey Association Agreement of 1963, there have been a number of illuminating rulings of the European Court of Justice which are investigated in this paper.

I. Social Rights of Turks in Germany – a Historic Appraisal

Simultaneously with the employment of Turkish workers in Germany, questions concerning their social security in Germany became the centre of socio-political controversies. The transfer of pension claims to Turkey, the refund of contributions or financial assistance for guest-workers returning to Turkey, medical care or entitlement to various benefits such as child benefit, access to the education system or compensation for crime victims to Turks remaining in Germany are only some examples where fierce and controversial discussions arose about the grounds and scope of their legal social status. Conflicts rooted therein also reflect permanent difficulties between the receiving country with the –once so called - guest-workers, as the latter have turned into a large number of immigrants and by now form an inherent part of Germany's population.

From a legal point of view, a significant change in disputes and interests held by Turks in Germany can be observed analogous to their changed social situation. In the early years, when Turkish workers still envisaged an eventual return to Turkey, questions of social security in their old age were very much to the fore. This became obvious especially in the disputes about the German-Turkish Social Security Agreement signed in 1964[1] and its subsequent amendments (1969, 1974 and 1984). The latest amendment during a 1982 revision of the 1982 Foreign Pensions Act aimed to lighten restrictions on the transfer of pension claims abroad. In those times lawsuits filed by several Turkish citizens at the Federal Constitutional Court frequently related to the refund of their contributions to the German pension fund. After several constitutional complaints were brought before the Court, the Court had to examine whether the judgments of the Bayreuth Social Court, which had denied claims below the lawful percentage of 50% of the contributions, consisted a violation of certain constitutionally protected rights, in particular property rights. The Federal Constitutional Court, however, dismissed the constitutional complaints, thus ending a long-lasting dispute (without, however, being convincing in its reasons).[2] The refund of

pension payments was also closely linked with the entitlement to a "return bonus", introduced by the Federal government in 1983 under the "act to promote the willingness of foreigners to return to their home country", and with the payment of housing bonuses in advance according to the "act for resettlement aid in housing for foreigners returning to their home country", passed in 1986.[3]

With the growing number of Turkish citizens staying in Germany and/or being born there, however, a shift in the nature of the disputes took place: from pension-related social security claims to social law claims in national benefit law, particularly in the field of family benefits.[4] The main subject of these disputes was to achieve the greatest possible equality in social security treatment between Turkish citizens staying permanently in Germany and – if not German citizens - at least non-German European Union citizens living in Germany. It appears that the "fight for social law positions" in the sense of equal rights in the country of residence started with the demand that special educational allowances granted by some federal *Länder*, particularly by Baden-Wuerttemberg and Bavaria should be paid not only to European Union citizens, but also to Turkish citizens living in Germany.[5] The relevant legal dispute[6] ended with a judgment by the Federal Administrative Court on 18. December 1992,[7] in which the Court held that the exclusion of Turkish citizens from educational allowances, voluntarily paid by the *Land* of Baden-Wuerttemberg, constituted neither a violation of the principle of equal treatment laid down in the German *Basic Law* nor of the European Social Charter nor of EEC/Turkey association law. A constitutional complaint filed against this judgment on the grounds that it did not take into account the opinion of the European Court of Justice, was also dismissed. This was even more surprising as only a few days before the European Court of Justice had issued a judgment on association law between EEC and Turkey in the *Kus* case[8]. This was also the time when Association Council Decision EEC/Turkey No. 3/80 (ACD 3/80) was beginning to attract attention.

II. A brief history of Association Council Decision No. 3/80

The Association Council Decision (ACD) No.3/80 on the social rights of Turkish citizens was adopted on the basis of Art. 39 of the Additional Protocol (1970) to the Association Agreement EEC/Turkey on 19 September 1980 based on a proposal by the then Turkish foreign secretary Erkmen. It was the result of negotiations between the Community and Turkey and sought to improve the social conditions of Turkish workers and their families living in Community countries beyond the provisions already contained in ACD 1/80. The ultimate goal of associated relations between EEC und Turkey was to secure freedom of movement and against this background it was essential to map out starting points for equal treatment before the law of Turkish citizens and European Union citizens. The main approach was to strengthen the social security rights of Turkish citizens already living in the European Union and to approximate their status to that of Union citizens, which was to be realised by ACD 3/80.

Association Council Decision No. 3/80 on the application of the systems of social protection of the Member States of the European Communities to Turkish employees and their families[9] extends, subject to certain deviations, the rules laid down in Regulation 1408/71/EEC[10] to Turkish citizens migrating within the Community. The objective of ACD 3/80 is to coordinate the Member States' social security systems in such a way that Turkish citizens employed in the Community (including their family members and surviving dependants) are entitled to benefits in the traditional branches of social protection. The decision is the association-law counterpart to Regulation 1408/71/EEC in that it coordinates social claims by Turkish citizens migrating within the Community. A draft Regulation for the implementation of ACD 3/80[11], similar to its counterpart Regulation 574/72/EEC, was put forward by the European Commission, but was never adopted.

III. The Reception of ACD 3/80 in Germany

For a long time, the decision went unnoticed in Germany – as in other EU member states, too. The first time it was referred to it was in 1992, in the above-mentioned judgment of the Federal Administrative Court of 18 December1992, but in it the Court did not go into any details. In his judgment the Federal Administrative Court reversed the earlier judgment of

the Baden-Württemberg Higher Administrative Court and ultimately dismissed the claim of a Turkish citizen for educational allowances paid by the *Land* of Baden-Württemberg according to its budget regulations.

One reason for ACD 3/80 going unnoticed for such a long time may have been that it was very difficult to access. It was not published separately in the German language, i.e. in addition to its publication in the EC Official Journal[12], until the volume of documents relating to the Association Agreement EEC/Turkey[13], edited by the European Communities Council, was published by the Office for Official Publications of the European Communities.

Turkish citizens, too, although always searching for legal substantiation of their claim for equal social treatment, took a long time to notice ACD 3/80. It has to be pointed out, however, that they received absolutely no assistance from authorities, academia or even from their legal advisors. Besides, the delayed attention for ACD 3/80 may also be due to the fact that administration and judiciary had not yet been properly trained or sensitised to take notice of the legal problems posed by the social protection aspects of association law. In the end it was probably only through trans-European connections and the joint efforts of social insurance institutions, academicians and legal professionals that the essential legal questions could be brought before the competent courts and eventually before the Court of the European Communities. The European Court of Justice was at first hesitant to take up the question of Community law aspects of ACD 3/80, but then approached the issue with vigour.

IV. ECJ judgments referring to ACD 3/80

Between 1996 and the present, the ECJ has explicitly referred to ACD 3/80 in three separate instances. Essentially, the Court's rulings related to four issues: the validity of ACD and the direct effect of some of its clauses; the implications of the anti-discrimination rule of Art. 3 para 1 ACD 3/80 and the implications of the decision on national procedural provisions in social administration. Specifically, the following problems in social law were dealt with:

1. In the first case that came before the European Court of Justice the dispute was about the context between the conditions of validity and the

conditions of direct effect. Parallel to another request by a Dutch Court asking the ECJ for his preliminary ruling, the dispute in Germany focussed on whether the regulations of ACD 3/80 were directly applicable or not.[14]

The dispute in the *Taflan-Met* Case was about whether Turkish workers that were employed in Germany and the Netherlands were entitled to widow and disablement pensions. In its judgment of 10. September 1996[15], the ECJ declared ACD 3/80 to be legally binding, but not directly applicable in its entirety. In the specific situation of this case the analogous application of the existing coordination laws in Regulations (EEC) No. 1408/71 and No. 574/72[16] might be considered a logical consequence. The ECJ, however, took a different point of view. Contrary to the non-discrimination requirements of the primary-law source in the Association Agreements with Algeria and Morocco the Court held that the principle of equal treatment in Art. 3 ACD 3/80 was not directly applicable.

2. The significance of the association-law ban on discrimination as per Article 3 para 1 ACD 3/80 was at the centre of the second ECJ judgment referring to ACD 3/80: the Sürül case[17] dealt with the entitlement of Turkish citizens to child benefits, which is particularly of great importance for their social integration. The *Taflan-Met* case based on coordination laws and association laws was about the recognition of pension claims of Turkish migrant workers who had worked successively in a number of Member States. In this case, however, the plaintiff claimed to be discriminated solely on grounds of nationality, laid down in Art. 3 para 1 ACD 3/80. The ECJ came to the following conclusions:

   - Article 3 para 1 ACD 3/80 is directly applicable.

   - The status of employee is to be affirmed if the person in question is insured against any one risk under a general or special social security system, be it obligatory or voluntary.[18] To establish this is the duty of the national court.

- The payment of child benefits subject to a certain type of residence permit violates the non-discrimination clause in Art. 3 para 1 ACD 3/80.

- The significance of the court's decision is that the prohibition of discrimination does not require the exercise of the right of free movement. In other words, Turkish citizens shall be treated equally even their participation in a social security system is limited to the system of only one Member State.

The ECJ remanded the case to the social court of Aachen, which followed the ECJ judgment with regard to criteria of applicability and affirmed the Turkish woman's status of employee for those periods during which, as per § 56 Code of Social Law IV, contributions to the obligatory pension insurance were considered as paid for times of child-rearing and during which her husband was a member of a social insurance scheme for occupational accidents.[19] The three important aspects of the ECJ judgment were: a) direct applicability of the ban on discrimination, b) status of employee in the sense of insurance against a social security risk and c) to require non-citizens to present a residence document which does not have to be procured by national citizens, is a violation of the ban on discriminatory treatment. They have contributed significantly to clarifying the issue of equal treatment of Turkish citizens within the European Union.

Nevertheless, the implementation of the judgment into practical law has been accompanied by a number of problems and delays in Germany: The ECJ's Sürül judgment was implemented through circular order by the Federal Institution for Labour of 23.7.1999[20], but with the proviso that certain consequences would have to be drawn from the judgment which would first have to be coordinated with the Federal Ministry of Labour and Social Affairs, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, and the Federal Ministry of Finance. At the end of February, 2000, the results were presented. According to the new decree[21], claims for child benefit can only be made by such beneficiaries who initiated legal remedy procedures before 4.5.1999 – the date of the ECJ judgment. Furthermore, the statement that persons with toleration status, refugees and self-employed persons are not entitled to child benefit brings in another aspect, pointing to the

national law of social security agreements, for Turks to the German-Turkish social security agreement.

3. The third and most recent ECJ judgment on ACD 3/80 was issued on 14.3.2000 in joined cases C-102/98 (Kocak) and C-211/98 (Örs).[22] It was concerned with a procedural question: under which conditions are national authorities of the member states (here: Federal Miners' Insurance) obliged to change the date of birth – decisive for payment of old-age pension –on the strength of an amendment made to the Turkish register of civil status by order of a Turkish court (cf. § 33a Code of Social Law I). According to the ECJ judgment of 14. March 2000, Article 3 para 1 ACD 3/80 does not prevent a member state from reverting to its national social administration procedures where alterations to decisive data are concerned. Which means in this case that changes to the date of birth will only be considered if they were proven by an original document which was issued before the person concerned gave the first date to the authorities. This ECJ judgment indicates that according to association-law the prohibition of discrimination cannot be applied in cases where different standards exist in national laws concerning social administration procedures. This is something that has to be observed by Turkish and German authorities in the same way. Improving the Turks' position in procedural law could not be justified, considering that their substantive-law integration is already in effect. However, the ECJ did not convincingly explain why official authorities in the Member States are not obliged to take note of factual and legal developments and measures in Turkey.[23]

V. Disputes on Educational Allowances granted by the *Länder* Baden-Wuerttemberg and Bavaria

Recently a number of decisions by the Federal Administrative Court and the Federal Social Court have been adopted on the issue of educational allowances granted by the *Länder*. Contrary to its former judgment of 18. December, 1992[24] which was too early to draw on the ECJ judgment in the *Sürül* case of 4. May 1999, the Federal Administrative Court in its judgment of 6. December, 2001 declared the claim of a spouse educational allowances granted by one *Land* to be valid.[25] An analogous decision was also taken by the Federal Social Court with regard to the payment of educational allowances in Bavaria.[26] An important question in these legal disputes was

whether ACD 3/80 would also apply to refugees. In the meantime another judgment of high relevance for the same question was released by the ECJ. It concerned the applicability of the Coordination Regulation (Regulation1408/71/EEC) for refugees. In October 2001, in the case of *Khalil Et Al*[27], the ECJ held that refugees and stateless persons, and their family members who are citizens of a third country, are to be included within the scope of Regulation 1408/71/EEC as long as they live in the territory of one of the Member States. However, the Court also stated that there was no such right where an employee is a refugee or a stateless person and he and his family members have entered the member country directly from a third country rather than having migrated within the Community, unless there is no other means of contact with any other Member State.

Based on this most recent ECJ judgment in Case C-95/99 [28], both highest courts in Germany have acknowledged the entitlement to education allowances paid by the *Länder*. In a historical interpretation of ACD 3/80, particularly by considering the missing "refugee proviso", the Federal Administrative Court affirmed the applicability of Art. 3 of ACD 3/80, adding that the ECJ would have referred on this question if it had held a contrary opinion. Additionally the court asserted that the migration of Turkish citizens within the EU cannot be a condition for entitlement, so that it makes no difference whether the person concerned has entered Germany directly from the associated country or from another EU Member State.

This will not remain without consequence for the rulings of German fiscal courts dealing with child benefit claims of Turkish citizens with residence authority. Only recently the Fiscal Court of Lower Saxony held that there is no entitlement to child benefits in the form of tax relief if the applicant merely holds a residence permit. The Court justified its decision with the non-applicability of ACD 3/80 for asylum seekers.[29] There have been a number of similar fiscal court judgments in Bremen[30], Münster[31] and Rhineland-Palatinate.[32] At the Federal Fiscal Court there are several pending cases relating to this legal problem.[33] The court acknowledges that there may be constitutional reservations.[34] However, the consequences to be expected will be limited by the fact that family benefits by means of tax relieves, unlike social benefits which are paid with public authority budgets, are governed by Art. 24 para 1 b) Geneva Convention on Refugees, also Art. 24 para 1 a) and probably even Art. 29 Geneva Convention on Refugees. These regulations contain an unconditional prohibition of discrimination of

refugees with regard to wages, including family allowances as well as taxes, and are also applicable to child benefits in the form of tax relieves.

VI. Open Questions

With regard to family benefits for foreign citizens who hold neither a residence leave nor a residence entitlement, ECJ judgments are still awaiting implementation in the field of family burdens under tax law. Against the background of the latest Federal Social Court judgments, the Federal Department of Work has already issued a new circular order on 19. February 2001 concerning child benefits for Turkish employees. Foreign citizens without any residence permit or residence entitlement are to be included in the protective scope of ACD 3/80 as long as they are insured against any single risk under a general or specific social security system, be it obligatory or voluntary.[35] The administrative implementation of this court decision, however, is still pending, in spite of two Federal Social Court judgments of 12. April and 13. December 2000 concerning the German/Yugoslav and German/Turkish Agreements on Social Protection, specifically their equality of treatment clauses, and in spite of the ECJ judgment on the Sürül case.[36]

One further aspect could give rise to legal disputes in future: according to Art. 6 para 1 ACD 3/80, the legally acquired entitlement to cash benefits for invalidity, old age, surviving dependants, also pensions for work accidents and occupational diseases, must not be adversely affected if the beneficiary takes up residence abroad. This regulation ought to derogate the pension-law regulation in § 113 para 3 Code of Social Law VI in which the exportable share of pension payments was limited with 70%, and it was adopted in accordance with § 110 para 3 Code of Social Law VI, where it says that § 113 para 3 only applies unless there is no provision to the contrary in European or international law.[37] Art. 6 para 1 ACD 3/80 is an association-law regulation and as such must be regarded as – supranational – Community law.[38] Consequently it would derogate German law on foreign pensions, i. e. the residence clause of § 113 para 3 Code of Social Law VI, provided that Art. 6 is deemed to be directly effective, which has to be affirmed first. It will be necessary to consider certain modifications to the restrictions on the export of pension claims according to the German-Turkish Social Insurance Agreement.

Concluding Remarks

With view to the legal developments described above, we can conclude that the goal of ACD 3/80, i. e. the improvement of the social status of Turkish citizens, has been achieved in the meantime. Once Turkish citizens have attained an unlimited title of residence, be it on grounds of work or family ties in Germany, they are no longer denied the relevant social rights, specifically the long-disputed grant of family benefits. Above all, this achievement was accomplished through the perseverance of affected Turkish citizens (and their legal supporters), but also through the judgements of the European Court of Justice in favour of freedom of movement and association law.

Endnotes

[1] Effective since 1.11.1965, Federal Law Gazette II 1965, p.1169.

[2] German Constitutional Court (BverfG), Decision of 24.11.1986, 1 BvR 772/85 – Neue Juristische Wochenschrift (NJW) 1988, 250, and the reviewing article by *K.Sieveking*, Erstattung von Rentenversicherungsbeiträgen, NJW 1988, 246. In more detail *idem*, Die Erstattung von Rentenversicherungsbeiträgen an Ausländer. Ein Beitrag zum Eigentumsschutz sozialer Rechtspositionen, Baden – Baden 1988; *R. Schuler*, Binnenstaatliche und international – rechtliche Beitragserstattung, Die Angestelltenversicherung (D Ang Vers) 1989, 492 – 498. According to an information of 27.10.2000 by the competent Regional Insurance Institution Oberfranken and Mittelfranken, it is impossible to estimate the relevant amounts for contribution refunds to Turks, to be paid under the now valid § 210 Code of Social Law VI. In 1999, a total of 78.7 million DM were paid to Germans and Foreigners abroad, the largest part of which probably concerned Turkish citizens.

[3] *Cf. K. Sieveking*, Wirtschafts – und sozialrechtliche Wechselwirkungen bei der Rückkehr-Förderung, Zeitschrift für Ausländerrecht und Ausländerpolitik (ZAR) 1984, 12-15.

[4] Cf. *R. Gutmann*, Europarechtliche Diskriminierungen für türkische Arbeitnehmer, Arbeit und Recht (AuR) 2000, 81-86 (85 f.). The disputes in the field of political participation rights took a parallel development since the mid 1980s, reaching their preliminary end point with the negative decision by the Federal Constitutional Court on franchise for foreigners in local elections (BverfG, decision of 31.10.1990 – 2 BvF 2, 6/89 – BverfG 83, 37 = NJW 1991, 1962) and the adoption of Art. 19 EC (Art. 8 b para 1 EC Treaty, old version), together with the respective Directive 94/80/EC, giving EU citizens the right to vote in local elections in their country of residence.

[5] Cf.*K. Lörcher*, Zur Diskriminierung von Drittstaatsangehörigen bei Erziehungsgeldleistungen nach Landesrecht insbesondere in Baden – Württemberg und Bayern, in: K. Barwig et al., Sozialer Schutz von Ausländern in Deutschland, Baden – Baden 1997, 225 – 244 ; J.Kokott, Die Staatsangehörigkeit als Unterscheidungsmerkmal für soziale Rechte von Ausländern, in: *Hailbronner* (ed.), Die allgemeinen Regeln des völkerrechtlichen Fremdenrechts, 2000, 25 – 52 (48 f); see also *K. Sieveking*, Brandenburgisches Landeserziehungsgeld auch für Ausländer, ZAR 1995, 131-133.

[6] On the details of this dispute, see *Lörcher*, note 5, 230 f.; with reference to further legal disputes concerning the Bavarian educational allowance.

[7] BverwG, decision of 18.12.1992 – 7 C 12/92 - , Neue Zeitschrift für Verwaltungsrecht (NVwZ) 1993, 778.

[8] ECJ, decision of 16.12.1992 – Cs C-237/91 – ECR 1992, I-6781 = NVwZ 1993, 258 – EuZW 1993, 96 – InfAusIR 1993, 41 – AuAS 2/1993, 14 – EZAR 810 No. 7 = DVB1. 1993, 307 = EuroAS 1 / 1993 [Kus].

[9] OJ EC No. C 110/60 of 25.4.1983. ON the decision: *K. Sieveking*, Die Anwendung des Assoziationsratsbeschlusses Nr. 3/80 auf türkische Staatsangehörige in Deutschland, Neue Zeitschrift für Sozialrecht (NZS) 1994, 213 – 218; *A. Hänlein*, Die Anwendung der Systeme der Sozialen Sicherheit der EG – Mitgliedstaaten auf türkische Arbeitnehmer nach dem Beschluss Nr. 3/80 des Assoziationstrates EWG/Türkei, ZAR 1998, 21-27. The commentary on European Social Law, 2nd

edition published by Nomos in 2000, contains references to ACD 3/80 in the newly included annotations on association law respective, cf. *M. Fuchs/E. Höller*, Das Sozialrecht in den Assoziationsabkommen der EG mit Drittstaaten, in: M. Fuchs (ed.), Kommentar zum Europäischen Sozialrecht, 2nd edition 2000, 663-689, para 33-39.

[10] Cf.*B.Schulte / K. Barwig* (eds.), Freizugigkeit und Soziale Sicherheit, Baden-Baden 1999.

[11] OJEC No. C 110/1 of 25.4.1983.

[12] OJ EC No. C 110/60 of 25.4.1983

[13] Council of the European Communities (ed.), Association Agreement and protocols EEC - Turkey as well as other basic documents, Brussels 1992. The ACD 3/80 is printed there (p.349 ff.) together with an explanatory appendix:"Specific provisions on the implementation of the legal provisions of certain member states as laid down in Art. 25 para 3 of this decision" (p.372 ff.) and the „Declaration of the member states of the Communities, attached to Decision No. 3/80 of the Association Council" (p.379 f.).

[14] Affirming direct applicability provided that the conditions set by the ECJ are met: *Sieveking,* NZS 1994, note 9, 215 ff.; *R. Schuler*, Assozationsratsbeschlusses EWG/Türkei Nr. 3/80, Informationsdienst Europäisches Arbeits-und Sozialrecht (EuroAS) 1995, 167-170 (169); *M.Zuleeg*, Das Urteil Taflan-Met des Europäischen Gerichtshofs, ZAR 1997, 170-173 (171); *R.Gutmann*, Urteilsanmerkung, Zeitschrift für EuropäiscHES Wirtshaftsrecht (EuZW) 1997, 181; negating direct applicability: *J. Delbrück/C.Tietje*, Die Frage der unmittelbaren Anwendbarkeit des Assoziationsratsbeshlusses EWG/Türkei Nr. 3/80, ZAR 1995, 29-35 (32 ff.); *C. Schumacher*, Soziale Sicherheit für Drittstaatsangehöriege and Assoziierungs-/Europa-Abkommen, Deutsche Rentenversicherung (DRV) 1995, 681-691 (688 ff.); *G. Lang*, Das Gemeinschaftsrecht der Drittstaatsangehörigen, 1998, 248 ff.

[15] ECJ, decision of 10.9.1996, ECR I 1996, 4048, Case C-277/94 (Taflat-Met et al). Cf.*Zuleeg,* note 14; *K. Sieveking*, Was b ringt die Taflan-Entscheidung des EuGH für Türken in Europa? In: H.Gümrükcu-U.Neumann/W.-R.Felsch (eds.), ITES-Jahrbuch – 1997-1998, Hamburg 1997, 69-86; *K. Hailbronner*, Anmerkung zum

Urteil des Gerichtshofts vom 10.9.1996 in der Rechtssache C-277/94, Taflan-met und andere, Zeitschrift für Sozialhilfe, Sozialgesetzbuch und Europa (ZFSH/SGB) 1997, 170-193.

[16] Cf. *Zuleeg*, note 14, 173.

[17] ECJ, Decision of 4.5.99 – Cs C-262/96, ECR 1999, I 2685 – InfAusIR 1999, 324 (Sürül). Cf. *R.M. Hofmann*, SPAREN ABER RICHTIG! Über das europarechtliche Verbot diskriminierender Ausgabenkürzungsprogramme, Informationsbrief Ausländerrecht (InfAusIR) 1999, 381-385.

[18] Insofar with reference to ECJ, Decision of 12.5.1998 – Cs C- 85/96 (Sala), ECR I 1998, 2691 = InfAusIR 1998, 316 with comments *R. Gutmann.*

[19] Social Security Court Aachen, Decision of 23.3.200 – S 15 KG 5/99, InfAusIR 2000, 353.

[20] II b2 – 7504. 1, InfAusIR 1999, 488 f.

[21] Circular Order by the Federal Institution for Labour of 29.2.200 – II b2 – 7504.1 (74) – A- /9033/9046/9329/9340, InfAusIR 2000, 355.

[22] ECJ, ECR I 2000, 1287 – Case C-102/98 and C-211/98 (Kocak and Örs). The judgment has been commented on by *S. Peers*, Recent ECJ Judgements, in: ILPA European Update September 2000, 11.

[23] In this context, see the illuminating study by *A. Hänlein*, Die "Änderung" des Lebensalters nach türkischem Recht- Überlegungen zu rentenversicherungsrechtlichen Fernwirkungen eines schwierigen Modernisierungsprozesses, VSSR 1998, 147-161.

[24] Cf. BverwGE 91, 327, 333 f.

[25] Bundesverwaltungsgericht, judgment of 6.12.2001 – BverwG 3 C 27.01, not reported.

[26] Bundessozialgericht, judgment of 29.01.2002 – B 10 EG 2/01 R, not reported.

[27] Joined Casses C-95/99 to 98/99 and C-180/99 – Khalil, Chaaban and Osseili, not yet reported.

[28] See note 27.

[29] Decision of 9.5.2000 - 6 K 486/97, Deutsche Steuerrechtsentscheidungen (DstRE) 2000, 1191.

[30] Final decision of 22.1.1998, Entscheidungen der Finanzgerichte (EFG) 1998,1069.

[31] Final decision of 28.4.1998, EFG 1998, 1208.

[32] Decision, not yet final, of 8.9.1998, EFG 1998,1598.

[33] Cf. Federal Taxation Gazette, supplement 3/2000 of 23.10.2000, 118 f.

[34] Federal Fiscal Court, decision of 13.9.2000 – VI B 134/00, Deutsches Steuerrecht (DStR) 2000, 2039.

[35] Circular order of 19.2.2001 concerning child benefit according to Income Tax Act and Child Benefits Act taken together with European or international legal provisions; Entitlement of foreign citizens without residence leave or residence entitlement, here: Implementation of recent decisions of the Federal Social Court and the European Court of Justice, Reference: II b2 – 7601 (3) – A-/7504/9020/9320/2112.

[36] The circular order of 19.2.2001, note 32, reads: " With regard to the effects of the ECJ decison of 4 May 1999 on the applicability of § 62 para 2 Income Tax Act, § 1 para 3 Child Benefits Act, the coordination process between the competent Federal Ministries has not yet been completed. In those cases where Turkish citizens are not already exempted from the additional residence permit requirements through the German-Turkish Agreement on Social Protection, decisions on child benefit applications are to be deferred pending further instructions."

[37] Cf., rightly, *Fuchs/Höller*, note 9, para.39.

[38] Since ECJ decisions of 30.4.1974 – Cs. 181/73, ECR 1974, 449 (Haegemann) and of 30.9.1987 – Cs. 12/86, ECR 1987, 3719 – NJW 1988, 1442, - NVwZ 1988, 235 – InfAusIR 1987, 305 – EZAR 811 No. 8 (Demirel), Community association law has been regarded as an integral part of Community Law.