

JUDGMENT OF THE COURT (First Chamber)

18 July 2007^{*}

In Case C-325/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Darmstadt (Germany), made by decisions of 17 August 2005 and of 21 September 2005, received at the Court on 26 August 2005 and 29 September 2005 respectively, in the proceedings

Ismail Derin

v

Landkreis Darmstadt-Dieburg,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, R. Schintgen (Rapporteur), A. Tizzano, M. Ilešić and E. Levits, Judges,

^{*} Language of the case: German.

Advocate General: Y. Bot,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the written procedure and further to the hearing on 16 November 2006,

after considering the observations submitted on behalf of:

- the German Government, by M. Lumma and C. Schulze-Bahr, acting as Agents,
- the Italian Government, by I.M. Braguglia, acting as Agent, and W. Ferrante, avvocato dello Stato,
- the United Kingdom Government, by S. Nwaokolo, acting as Agent, and T. Ward, Barrister,
- the Commission of the European Communities, by G. Rozet and I. Kaufmann-Bühler, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 January 2007,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Article 59 of the Additional Protocol signed at Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 17; ‘the Additional Protocol’) and of Articles 6, 7 and 14 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association (‘Decision No 1/80’). The Association Council was set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey, of the one part, and by the Member States of the EEC and the Community, of the other part, and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1; ‘the Association Agreement’).
- 2 The reference was made in proceedings between Mr Derin, a Turkish national, and the administrative district Darmstadt-Dieburg, regarding a procedure for expulsion from German territory.

Legal framework

EEC-Turkey Association

- 3 In accordance with Article 2(1) of the Association Agreement, the aim of the agreement is to promote the continuous and balanced strengthening of trade and

economic relations between the Contracting Parties, including in the labour sector, inter alia by progressively securing freedom of movement for workers (Article 12 of the agreement), in order to improve the standard of living of the Turkish people and to facilitate the accession of the Republic of Turkey to the Community at a later date (fourth recital in the preamble and Article 28 of the agreement).

- 4 To that end, the Association Agreement provides for a preparatory stage enabling the Republic of Turkey to strengthen its economy with aid from the Community (Article 3 of the agreement), a transitional stage, during which a customs union is to be progressively established and economic policies are to be aligned more closely (Article 4 of the agreement) and a final stage which is to be based on the customs union and is to entail closer coordination of the economic policies of the Contracting Parties (Article 5 of the agreement).
- 5 Article 6 of the Association Agreement is worded as follows:

‘To ensure the implementation and the progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred upon it by this Agreement.’

- 6 Article 12 of the Association Agreement, which appears in Chapter 3 (‘Other economic provisions’) of Title II (‘Implementation of the transitional stage’), provides:

‘The Contracting Parties agree to be guided by Articles [39 EC], [40 EC] and [41 EC] for the purpose of progressively securing freedom of movement for workers between them.’

7 Under Article 22(1) of the Association Agreement:

‘In order to attain the objectives of this Agreement the Council of Association shall have the power to take decisions in the cases provided for therein. Each of the Parties shall take the measures necessary to implement the decisions taken. ...’

8 The Additional Protocol — which, in accordance with Article 62 thereof, forms an integral part of the Association Agreement — lays down, as is stated in Article 1, the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of the Association Agreement.

9 The Additional Protocol contains a Title II (‘Movement of persons and services’), Chapter I of which relates to ‘Workers’.

10 Article 36 of the Additional Protocol, which is part of Chapter I, provides that freedom of movement for workers between Member States of the Community and Turkey is to be secured by progressive stages in accordance with the principles set out in Article 12 of the Association Agreement between the end of the 12th and the 22nd year after the entry into force of that Agreement and that the Association Council is to decide on the rules necessary to that end.

11 Article 59 of the Additional Protocol, which appears in Title IV (‘General and final provisions’), is worded as follows:

‘In 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.’

12 Decision No 1/80 seeks, according to the third recital of its preamble, to improve, in the social field, the treatment accorded workers and members of their families in relation to the arrangements laid down by Decision No 2/76 which had been adopted by the Association Council on 20 December 1976.

13 Articles 6, 7 and 14 of Decision No 1/80 appear in Section 1 ('Questions relating to employment and the free movement of workers') of Chapter II ('Social provisions') of the decision.

14 According to Article 6(1) of Decision No 1/80:

'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 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 any paid employment of his choice, after four years of legal employment.'

15 Article 7 of Decision No 1/80 provides:

‘The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorised 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 State;
- 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.’

16 Article 14(1) of Decision No 1/80 provides:

‘The provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health.’

Other provisions of Community law

- 17 Article 10(1) and (2) of Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475), as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1) ('Regulation No 1612/68'), states as follows:

'1. The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

- (a) his spouse and their descendants who are under the age of 21 years or are dependants;
- (b) dependent relatives in the ascending line of the worker and his spouse.

2. Member States shall facilitate the admission of any member of the family not coming within the provisions of paragraph 1 if dependent on the worker referred to above or living under his roof in the country whence he comes.'

- 18 Under Article 11 of Regulation No 1612/68:

'Where a national of a Member State is pursuing an activity as an employed or self-employed person in the territory of another Member State, his spouse and those of the children who are under the age of 21 years or dependent on him shall have the right to take up any activity as an employed person throughout the territory of that same State, even if they are not nationals of any Member State.'

The main proceedings and the questions referred for a preliminary ruling

- 19 It is apparent from the order for reference that Mr Derin, born on 30 September 1973, was authorised to join his parents on the territory of the Federal Republic of Germany on 1 July 1982 in order to live with them as a family.
- 20 Mr Derin's father and mother have been legally employed in Germany for six and twenty-four years respectively.
- 21 After arriving in Germany, Mr Derin attended primary school, from August 1982 until July 1988, and, from August 1988 to July 1990, a vocational school. He completed his schooling in the course of 1991 by passing the Lower Secondary Examination ('mittlere Reife').
- 22 Following completion of his education, Mr Derin was legally employed successively by several employers, but the period of employment with the same employer was always less than one year.
- 23 From 1992 to 1996, Mr Derin was legally self-employed.
- 24 On 3 September 2001, he began retraining as a professional driver, but this was interrupted when he was sent to prison. He was nevertheless employed once more with effect from 17 January 2005.

- 25 Mr Derin has held a German residence permit of unlimited duration since 10 December 1990.
- 26 In autumn 1994, Mr Derin left the family home and set up house on his own. His wife, a Turkish national, was authorised to join him in Germany on 24 February 2002.
- 27 Since August 1994, Mr Derin has been sentenced on several occasions to fines for various offences and, by judgment of 13 December 2002, he was sentenced to a term of imprisonment of more than two-and-a-half years for smuggling foreign nationals into Germany.
- 28 On 24 November 2003, a decision was taken to expel him from German territory for an unlimited period. On leaving prison, he was to have been escorted directly to the frontier.
- 29 The competent national authority is of the view that Mr Derin satisfies the conditions for expulsion in principle under Article 47(2)(1) of the Law on Foreign Nationals (Ausländergesetz; 'the AuslG'), according to which a foreign national is, in general, to be expelled if he has been given an unsuspended sentence of imprisonment for committing one or more intentional crimes by a judgment which has become final. Given however that Mr Derin holds a residence permit of unlimited duration in Germany and that he entered that Member State when he was a minor, that authority considers that he has enhanced protection from expulsion

under Article 48(1)(2) of the AuslG and can therefore be expelled only on serious grounds of public security or public policy. According to the authority, it was bound in this case to take the decision concerning expulsion in exercise of its discretion, in accordance with the second sentence of Article 47(3) of the AuslG.

30 In that regard, the competent national authority found that, although Mr Derin had resided in Germany since childhood, he had nevertheless not succeeded in integrating in German society. He had first been convicted of a criminal offence in 1994 and had re-offended continually thereafter. He had no appreciation of doing wrong, since his behaviour had not changed as a result of the punishments imposed on him. There was therefore no reason to think that his first prison sentence would bring about an improvement in that behaviour either. The expulsion of Mr Derin might also exercise a deterrent effect on other foreign nationals who would realise the serious consequences of smuggling foreigners into a Member State. It was indeed important to take strict measures against smugglers given the problem represented by the presence in Germany of a significant number of foreign nationals living there illegally. Furthermore, Mr Derin did not enjoy any rights under Article 6(1) or Article 7 of Decision No 1/80 since, first, he had never been employed by the same employer for more than a year without interruption and, second, he was no longer living under the same roof as his parents and was no longer dependent on them.

31 Since the objection lodged by Mr Derin against the decision to expel him had been rejected on 15 September 2004, he brought an action on 5 October 2004 before the Verwaltungsgericht Darmstadt (Administrative Court, Darmstadt), arguing that he belonged to the category of persons protected by Article 7 of Decision No 1/80. He therefore also came within the scope of Article 14, which makes expulsion subject to the existence of a specific risk of new and serious prejudice to the requirements of public policy, a condition not fulfilled in this case.

- 32 The defendant in the main proceedings, on the other hand, maintains that Article 7 of Decision No 1/80 protects only the children of Turkish workers who are under the age of 21 years and are dependent on their parents.
- 33 The referring court considers that Mr Derin does satisfy the conditions for acquisition of the rights provided for in the second indent of the first paragraph of Article 7(1) of Decision No 1/80, owing to the fact that he was legally resident for more than five years under the roof of his parents, who are Turkish workers residing in the host Member State.
- 34 That court however is unsure as to the conditions under which a Turkish national in a situation such as that of Mr Derin may lose the rights which he has acquired under the second indent of the first paragraph of Article 7 of Decision No 1/80.
- 35 First of all, the referring court makes reference to the judgment in Case C-373/03 *Aydinli* [2005] ECR I-6181 and states that the Court limited to only two the grounds on which the rights conferred by the said provision can be lost, that is, first, the fact that the presence of the Turkish migrant in the host Member State constitutes, on account of his own conduct, a genuine and serious threat to public policy, public security or public health, in accordance with Article 14(1) of Decision No 1/80, and second, the fact that the person concerned has left the territory of that Member State for a significant length of time without legitimate reason.
- 36 Mr Derin's situation in this case does not, according to the referring court, correspond to either of those grounds for the loss of rights conferred by the second indent of the first paragraph of Article 7 of Decision No 1/80.

37 The referring court is nevertheless of the view that it is important, in accordance with Article 59 of the Additional Protocol, to establish whether such a limitation of the grounds for the loss of rights acquired under the second indent of the first paragraph of Article 7(1) of Decision No 1/80 is liable to favour Turkish nationals compared to members of the family of a worker who is a national of a Member State, who, under Article 10 of Regulation No 1612/68, have the right to install themselves with that worker, provided that they are under the age of 21 years or are his dependants. In this case, if there are no other possibilities to limit his rights under Decision No 1/80, Mr Derin, who has not lived under his parents' roof since autumn 1994, is over 30 and is no longer dependent on his family, will find himself in a more favourable position than the descendant of a Community migrant worker.

38 Second, on the assumption that Mr Derin has in fact lost the rights which he derives from the second indent of the first paragraph of Article 7(1) of Decision No 1/80, because he is over 21, no longer lives with his parents and is no longer maintained by them, the referring court is uncertain whether he might not rely on another provision of that decision, in order to protect himself against a measure ordering expulsion taken under Article 14(1) of the decision, and it asks in particular to what extent Mr Derin's position can be assimilated to that of persons who have acquired rights under Article 6(1) of the decision.

39 In those circumstances the Verwaltungsgericht Darmstadt decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:

'(1) Is it compatible with Article 59 of the Additional Protocol ... for a Turkish national who, as a child, joined his parents who were employed as workers in the Federal Republic of Germany, and lived with them as a family, not to lose his right of residence derived from the right under the second indent of the first paragraph of Article 7 of Decision No 1/80 ... to free access to any paid

employment — apart from in cases under Article 14 of Decision No 1/80 or where he leaves the host Member State without legitimate reason for a significant period of time — also where he has attained the age of 21 and no longer lives with or is maintained by his parents?

- (2) Notwithstanding the loss of his legal status under the second indent of the first paragraph of Article 7 of Decision No 1/80, does that Turkish national enjoy special protection against expulsion under Article 14 of Decision No 1/80 where, after having ceased to live with his parents as a family, he was employed from time to time but has not acquired in his own right the legal status conferred by Article 6(1) of Decision No 1/80 by virtue of being a worker and for a number of years has worked exclusively on a self-employed basis?

First question

40 It should be noted at the outset that the first question refers to the situation of a Turkish national who fulfils the conditions necessary to benefit from the right of free access to any paid employment of his choice and from the corollary right of residence which are conferred by the second indent of the first paragraph of Article 7 of Decision No 1/80.

41 While it is accepted that the applicant in the main proceedings has in fact acquired such rights pursuant to that provision of Decision No 1/80, the Italian and United Kingdom Governments have nevertheless questioned whether Mr Derin's situation is not in fact covered by the second paragraph of Article 7 of that decision.

- 42 In the light of the facts of the main proceedings, as described in the order for reference, it is in fact probable that Mr Derin, who, as a child of a Turkish father and mother who have lawfully worked in the host Member State for between 6 and 24 years respectively, completed a course of vocational training in that Member State, can rely on the rights of access to employment and of residence there pursuant to the second paragraph of Article 7 of Decision No 1/80, which constitutes a more favourable provision than the first paragraph of that article (see Case C-210/97 *Akman* [1998] ECR I-7519, paragraphs 35 and 38, and Case C-502/04 *Torun* [2006] ECR I-1563, paragraphs 22 to 24).
- 43 It is nonetheless a matter exclusively for the referring court to establish the underlying facts of the case before it and to assess which of the two provisions mentioned in the preceding paragraph is applicable in the main proceedings.
- 44 It must be added that the question referred seeks essentially to ascertain the grounds on which a Turkish national such as Mr Derin may lose the rights conferred on him in the host Member State by the second indent of the first paragraph of Article 7 of Decision No 1/80 in respect of free access to any paid employment of his choice and, concomitantly, residence.
- 45 As correctly pointed out by the Advocate General in points 35 and 78 of his Opinion, rights acquired under Article 7 of that decision are lost under identical conditions, irrespective of whether the factual situation which gave rise to the dispute falls under the first or the second paragraph of that article (see, to this effect, *Torun*, paragraphs 21 to 25).

- 46 In those circumstances, the fact that a Turkish national such as the applicant in the main proceedings falls within the scope of the first, or the second, paragraph of Article 7 of Decision No 1/80 is irrelevant for the purposes of responding to the first question submitted by the referring court.
- 47 To give a useful answer to that question, it should be stated at the outset that there is no dispute that, first, like Article 6(1) and the second paragraph of Article 7 of Decision No 1/80, the first paragraph of Article 7 has direct effect in the Member States, with the result that Turkish nationals fulfilling the conditions which it lays down may directly rely on the rights it confers on them (see, *inter alia*, *Torun*, paragraph 19) and that, second, the rights granted by the first paragraph of Article 7 to the child of a Turkish worker with regard to employment in the Member State concerned necessarily imply the existence of a concomitant right of residence for that child, without which the right of access to the employment market and actually to take up paid employment would be rendered totally ineffective (see, *inter alia*, Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraph 31).
- 48 The first paragraph of Article 7 of Decision No 1/80 applies to the situation of a Turkish national who, as a member of the family of a Turkish worker who is or was duly registered as belonging to the labour force of the host Member State, has either been authorised to join that worker there to reunite the family or was born and has always resided in that State (see, *inter alia*, *Aydinli*, paragraph 22).
- 49 It should be noted, first, that the Court has previously held that the applicability of that provision to such situations is independent of the fact that, at the material time, the person concerned is an adult no longer living with his family, but living independently of the worker in the relevant Member State (see, in particular, *Aydinli*, paragraph 22, and, by analogy, *Torun*, paragraphs 27 and 28).

- 50 Such a Turkish national cannot, therefore, lose a right acquired on the basis of the first paragraph of Article 7 of Decision No 1/80 as a result of circumstances arising of the kind referred to in the preceding paragraph. The right of access enjoyed by members of a Turkish worker's family, after a certain period, to employment in the host Member State is in fact specifically intended to consolidate their position in that State by offering them the chance to become independent (see *Aydinli*, paragraph 23).
- 51 Furthermore, although the first indent of the first paragraph of Article 7 of Decision No 1/80 requires, as a rule, that the member of the family of a Turkish worker must actually reside with that worker for the three years during which he fails himself to satisfy the conditions for access to the labour market in the host Member State (see Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 33, 37, 40, 41 and 44; Case C-329/97 *Ergat* [2000] ECR I-1487, paragraphs 36 and 37; Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraphs 28 and 29; and *Cetinkaya*, paragraph 30), the fact remains that Member States are no longer entitled to attach conditions to the residence of a member of a Turkish worker's family after that three-year period; this must *a fortiori* be the case for a Turkish migrant who fulfils the conditions laid down in the second indent of the first paragraph of Article 7 (see *Ergat*, paragraphs 37 to 39; *Cetinkaya*, paragraph 30; and *Aydinli*, paragraph 24).
- 52 As noted by the Advocate General in points 30 and 31 and in points 120 to 123 of his Opinion, the Court has specifically held, as regards the members of a Turkish worker's family who are covered by the first paragraph of Article 7 of Decision No 1/80 and, like Mr Derin, enjoy the right, after five years of legal residence, to free access to employment in the host Member State in accordance with the second indent of that provision, not only that the direct effect of that provision means that the persons concerned derive an individual employment right directly from Decision No 1/80, but also that to be effective that right necessarily implies a concomitant right of residence which does not depend on the continuing existence of the conditions for access to those rights (see, *inter alia*, *Ergat*, paragraph 40; *Cetinkaya*, paragraph 31; and *Aydinli*, paragraph 25).

53 Accordingly, the fact that the condition of eligibility for the right in question, in this case residence with the Turkish worker for a certain period, ceases to obtain after the family member of the worker has acquired the relevant right cannot affect the enjoyment of that right (see *Aydinli*, paragraph 26). A different interpretation of the first paragraph of Article 7 of Decision No 1/80 would not be consistent with the aim and broad logic of Decision No 1/80, which is intended to promote the gradual integration in the host Member State of Turkish nationals who satisfy the conditions laid down in one of the provisions of that decision and thus enjoy the rights conferred on them by the decision (see, in particular, Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 79).

54 Secondly, as is evident from the settled case-law of the Court, there can be only two kinds of restrictions on the rights conferred by the first paragraph of Article 7 of Decision No 1/80 on members of a Turkish worker's family who fulfil the conditions laid down in that paragraph, namely, either that based on the presence of the Turkish migrant in the host Member State where he constitutes, on account of his own conduct, a genuine and serious threat to public policy, public security or public health, in accordance with Article 14(1) of that decision, or that relating to the fact that the person concerned has left the territory of that State for a significant length of time without legitimate reason (see *Ergat*, paragraphs 45, 46 and 48; *Cetinkaya*, paragraphs 36 and 38; *Aydinli*, paragraph 27; and *Torun*, paragraph 21).

55 Given that Decision No 1/80 draws a clear distinction between the situation of Turkish workers who have been legally employed in the host Member State for a specified period (Article 6 of the decision) and that of members of the families of such workers legally resident in the territory of the host Member State (Article 7 of the decision) and that, within the scheme of the decision, Article 7 constitutes a *lex specialis* in relation to the rights laid down in the three indents of Article 6(1), which are gradually extended according to the period of legal paid employment (see Joined Cases C-317/01 and C-369/01 *Abatay and Others* [2003] ECR I-12301, paragraph 78;

Aydinli, paragraph 19; and *Torun*, paragraph 17), the rights conferred by Article 7 of Decision No 1/80 cannot be limited in the same situations as those granted by Article 6 of the decision (see *Aydinli*, paragraph 31, and *Torun*, paragraph 26).

56 In particular, a Turkish national accorded rights under Article 7 cannot be deprived of them either because he was unemployed on account of being sentenced to a term of imprisonment, even one of several years' duration which was not suspended, or because he never acquired rights relating to employment and residence pursuant to Article 6(1) (see, to that effect, *Aydinli*, paragraph 28, and *Torun*, paragraph 26). In contrast to Turkish workers to whom Article 6(1) applies, the status of members of their family referred to in Article 7 of that decision does not depend on paid employment.

57 It must therefore be concluded from the foregoing that it follows from both the scheme and the objective of Decision No 1/80 that a Turkish national in a situation such as that of the applicant in the main proceedings, who enjoys the right of free access to any paid employment of his choice in accordance with the second indent of the first paragraph of Article 7 of that decision, loses the right of residence which is a corollary of that right of free access only in two situations, that is to say, in the circumstances provided for in Article 14(1) of that decision or if he leaves the territory of the host Member State for a significant length of time without legitimate reason. Such a Turkish national does not, on the other hand, lose that right of residence on account of a prolonged absence from the labour market owing to imprisonment, even if of several years' duration and not suspended, or owing to the fact that, on the date of the decision to expel him, he was over 21, no longer resident with the Turkish worker from whom he derived his right of residence and no longer dependent on him, but lived independently of that worker (see *Aydinli*, paragraph 32, and, by analogy, *Torun*, paragraph 29).

- 58 The referring court nevertheless raises the question whether the interpretation set out in the preceding paragraph is consistent with Article 59 of the Additional Protocol.
- 59 Not convinced that the grounds for loss of the rights conferred by Article 7 of Decision No 1/80 resulting from such an interpretation are exhaustive, the referring court suggests that, apart from the conditions, laid down by the case-law mentioned in paragraph 57 of this judgment, for preserving the rights acquired, the child of a Turkish worker should also comply with the criteria provided for under secondary Community law and, in particular, Articles 10(1) and 11 of Regulation No 1612/68 which apply only to children who are under the age of 21 years or who are dependants of the worker.
- 60 As a result, the second indent of the first paragraph of Article 7 of Decision No 1/80 must, according to the referring court, be interpreted to the effect that a Turkish national who has been authorised to enter, before reaching the age of 21, the territory of the host Member State in order to live as a family with his parents who are employed in that State loses the right of employment and the corollary right of residence in that State when he reaches the age of 21 or when he is no longer dependent on his family.
- 61 A different interpretation of that provision would, in its view, have the consequence that a family member of a Turkish worker duly registered as belonging to the labour force of a Member State would find himself in a more favourable position than a descendant of a migrant Community worker.
- 62 In that regard, it must be stated first that, in accordance with Article 10(1) of Regulation No 1612/68, children who are under the age of 21 years or are dependants of a worker who is a national of one Member State and is employed in the territory of another Member State enjoy the unconditional right to install themselves with that migrant Community worker.

- 63 By contrast, the first paragraph of Article 7 of Decision No 1/80 provides expressly that the family member's right to join the migrant Turkish worker is subject to the authorisation to that effect granted in accordance with the conditions laid down by the legislation of the host Member State (see Case C-275/02 *Ayaz* [2004] ECR I-8765, paragraphs 34 and 35).
- 64 In the context, therefore, of the EEC-Turkey Association — save in the specific case where the Turkish national was born and has always resided in the host Member State — the members of the family of the migrant Turkish worker do not have a right to join him to live as a family; their ability to join him depends rather on a decision of the national authorities taken solely on the basis of the law of the Member State concerned, subject to the requirement of observance of fundamental rights as laid down, in particular, by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (see, by analogy, Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 72).
- 65 Second, pursuant to Article 11 of Regulation No 1612/68, the children who have the right to install themselves with the worker who is a national of one Member State and is employed in the territory of another Member State enjoy, by virtue of that fact alone, the right to take up any activity as an employed person in the host Member State, whereas the right of the children of a migrant Turkish worker to be employed is specifically regulated by the first paragraph of Article 7 of Decision No 1/80, a provision which lays down conditions which vary according to the length of legal residence with the migrant worker from whom they derive rights. Thus, during the first three years of residence, no right of that kind is accorded to Turkish nationals, whereas, after three years of legal residence with their family, they have the right to respond to an offer of employment, subject to the priority to be given to workers from the Member States. It is only after five years of legal residence that they enjoy free access to any paid employment of their choice.
- 66 Finally, the Court has repeatedly held that, unlike workers from the Member States, Turkish nationals are not entitled to freedom of movement within the Community

but can rely only on certain rights in the territory of the host Member State alone (see, in that regard, in particular, Case C-171/95 *Tetik* [1997] ECR I-329, paragraph 29; Case C-37/98 *Savas* [2000] ECR I-2927, paragraph 59; and *Wählergruppe Gemeinsam*, paragraph 89).

- ⁶⁷ Moreover, the case-law of the Court relating to the conditions under which rights derived from Article 7 of Decision No 1/80 can be restricted lays down, in addition to the exception based on public policy, public security and public health, which is applicable in the same way to Turkish nationals and to Community nationals (see, *inter alia*, Case C-340/97 *Nazli* [2000] ECR I-957, paragraphs 55, 56 and 63), a second ground of loss of those rights which is applicable only to Turkish migrants, namely if they leave the territory of the host Member State for a significant length of time without legitimate reason (see paragraphs 54 and 57 of this judgment). In such a case, the authorities of the Member State concerned are entitled to require that, should the person concerned subsequently wish to resettle in that State, he must make a fresh application either for authorisation to join the Turkish worker if he is still dependent on that worker, or to be admitted with a view to being employed there on the basis of Article 6 of that decision (see *Ergat*, paragraph 49).
- ⁶⁸ Accordingly, the situation of a child of a migrant Turkish worker cannot usefully be compared to that of a descendant of a national of a Member State, having regard to the significant differences between their respective legal situations. The more favourable situation enjoyed by Member State nationals results, moreover, from the very wording of the applicable legislation.
- ⁶⁹ As a consequence, contrary to the interpretation advocated by the referring court, it cannot reasonably be maintained that, because of the limitation, as resulting from the Court's case law, of the grounds for loss of his right of residence (see paragraphs 54 and 57 of this judgment), a member of the family of a migrant Turkish worker

who has been authorised to join that worker in a Member State would find himself in a more favourable situation than a member of the family of a national of a Member State, so that the rule laid down in Article 59 of the Additional Protocol would be infringed.

70 Furthermore, the interpretation suggested by the referring court does not take into account the different formulations of Article 7 of Decision No 1/80 and Article 10 of Regulation No 1612/68.

71 Additionally, such an interpretation would inevitably render the legal status of the children of migrant Turkish workers more precarious the further they integrated in the host Member State, whereas Article 7 of Decision No 1/80 pursues on the contrary the objective of a progressive consolidation of the situation of the family members of those workers in the Member State concerned, by permitting them, after a certain period of time, to live independently there.

72 As is evident from the grounds of the order for reference, the interpretation favoured by the referring court, which is set out in paragraph 60 of this judgment, is moreover substantially based on the reasoning contained in point 52 of the Opinion of Advocate General Geelhoed in *Ayaz*, whereas reasoning of that kind was not taken up in the grounds of the judgment in that case.

73 Since the referring court expressly reformulated its first question following delivery of the judgment in *Aydinli*, in order to prompt the Court to re-examine whether that judgment was well-founded, it should again be pointed out that, first, the interpretation of the second indent of the first paragraph of Article 7 of Decision

No 1/80 given in that judgment only confirms the interpretation already given to that provision in the Court's previous case-law (*Ergat* and *Cetinkaya*). Second, the same interpretation was extended by the Court, on identical grounds, to the second paragraph of Article 7 of that decision (*Torun*). Furthermore, no factor has been adduced of such a kind as significantly to distinguish the factual or legal situation in the main proceedings from those in the cases of *Ergat*, *Cetinkaya*, *Aydinli* and *Torun*, with the result that there is no sound reason in this case for the Court to reconsider its case-law on that point.

74 Finally, with regard to a situation such as that in the main proceedings, in which a decision has been taken by the competent authorities of the host Member State to expel a Turkish national after his conviction there for several offences under national legislation, it must be pointed out that it is Article 14(1) of Decision 1/80 which establishes the relevant legal framework authorising the Member States to take the necessary measures. Those authorities are, however, obliged to assess the personal conduct of the offender and whether it constitutes a present, genuine and sufficiently serious threat to public policy and security, and in addition they must observe the principle of proportionality (see, to that effect, *Nazli*, paragraphs 57 to 61, and, by analogy, Case C-100/01 *Oteiza Olazabal* [2002] ECR I-10981, paragraphs 39, 43 and 44). In particular, a measure ordering expulsion based on Article 14(1) of that decision may be taken only if the personal conduct of the person concerned indicates a specific risk of new and serious prejudice to the requirements of public policy. Consequently, such a measure cannot be ordered automatically following a criminal conviction and with the aim of general deterrence (see Case C-383/03 *Dogan* [2005] ECR I-6237, paragraph 24).

75 In the light of all of the foregoing, the answer to the first question must be that a Turkish national, who was authorised while he was a child to enter the territory of a Member State in order to join his family and who has acquired the right of free access to any paid employment of his choice under the second indent of the first

paragraph of Article 7 of Decision No 1/80, loses the right of residence in the host Member State which is a corollary of that right of free access only in two situations, that is:

- in the circumstances provided for in Article 14(1) of that decision, or

- if he leaves the territory of the Member State concerned for a significant length of time without legitimate reason,

even though he is over 21 years of age, is no longer dependent on his parents, but lives independently in the Member State concerned, and was not available to join the labour force for several years because he was during that period serving an unsuspended sentence of imprisonment. Such an interpretation is not inconsistent with the requirements of Article 59 of the Additional Protocol.

Second question

- ⁷⁶ In view of the answer given to the first question asked by the referring court, it is unnecessary to answer the second question.

Costs

- 77 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

A Turkish national, who was authorised while he was a child to enter the territory of a Member State in order to join his family and who has acquired the right of free access to any paid employment of his choice under the second indent of the first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Association Agreement between the European Economic Community and Turkey, loses the right of residence in the host Member State which is a corollary of that right of free access only in two situations, that is:

- in the circumstances provided for in Article 14(1) of that decision, or**

- if he leaves the territory of the Member State concerned for a significant length of time without legitimate reason,**

even though he is over 21 years of age, is no longer dependent on his parents, but lives independently in the Member State concerned, and was not available

to join the labour force for several years because he was during that period serving an unsuspended sentence of imprisonment. Such an interpretation is not inconsistent with the requirements of Article 59 of the Additional Protocol signed at Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972.

[Signatures]