

JUDGMENT OF THE COURT (Sixth Chamber)
16 March 2000 *

In Case C-329/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Bundesverwaltungsgericht, Germany, for a preliminary ruling in the proceedings pending before that court between

Sezgin Ergat

and

Stadt Ulm

on the interpretation of the first paragraph of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey,

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting as President of the Sixth Chamber, P.J.G. Kapteyn and G. Hirsch, Judges,

Advocate General: J. Mischo,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

- the German Government, by E. Röder, Ministerialrat at the Federal Ministry of Economic Affairs, acting as Agent,
- the French Government, by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Directorate, Ministry of Foreign Affairs, and A. de Bourgoing, Chargé de Mission in the same directorate, acting as Agents, and
- the Commission of the European Communities, by J. Sack, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the German Government, represented by W.-D. Plessing, Ministerialrat in the Federal Finance Ministry, acting as Agent, of the French Government, represented by A. de Bourgoing, and of the Commission, represented by J. Sack, at the hearing on 22 April 1999,

after hearing the Opinion of the Advocate General at the sitting on 3 June 1999,

gives the following

Judgment

- 1 By order of 15 July 1997, received at the Court on 22 September 1997, the Bundesverwaltungsgericht (Federal Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of the first paragraph of Article 7 of Decision No 1/80 of the Association Council, of 19 September 1980, on the development of the Association (hereinafter 'Decision No 1/80'). The Association Council was established by the Agreement creating an Association between the European Economic Community and Turkey, signed on 12 September 1963 in Ankara by the Republic of Turkey and the Member States of the EEC and the Community, 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).
- 2 That question was raised in proceedings brought by Mr Ergat, a Turkish national born in 1967, against the Stadt Ulm concerning its refusal to extend his German residence permit.

Decision No 1/80

3 Articles 6, 7 and 14 of Decision No 1/80 are contained in Chapter II 'Social provisions', Section 1 concerning 'Questions relating to employment and the free movement of workers', of the Decision.

4 Article 6(1) of Decision No 1/80 provides as follows:

'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 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.'

5 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’.

6 Article 14(1) provides:

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

The main proceedings

- 7 The documents on the court file in the main proceedings show that Mr Ergat was authorised to enter Germany in October 1975 to join his parents who were both in paid employment there.
- 8 Since 1983 Mr Ergat has held a fixed-term work permit in that Member State and has been employed, with interruptions, by various employers. On 19 December 1989 he obtained a work permit with no time-limit.
- 9 Under the national legislation applicable at the time of his entry into Germany, Mr Ergat was not required to hold a residence permit.
- 10 In 1983 he was issued, at his request, with a residence permit valid for one year. That permit was extended four times, first for a period of one year and subsequently for two years each time.
- 11 It is common ground that the competent authorities granted the last three extensions despite the fact that Mr Ergat submitted his application after the expiry of his residence permit and that the period of delay increased over the years to nine, then to 15 and finally to 20 days.
- 12 The plaintiff's last residence permit expired on 28 June 1991.

- 13 Mr Ergat requested a further extension of his residence permit using a form which, although signed on 10 June 1991, did not reach the aliens department until 24 July 1991, in other words 26 days after expiry of his last residence permit.
- 14 By decision of 22 January 1992 that authority rejected the application as too late and, taking the view that Mr Ergat's continued residence was no longer lawful following expiry of his residence permit, demanded his departure and threatened to deport him.
- 15 The administrative appeal which the plaintiff made against that decision was dismissed on 4 May 1992.
- 16 Mr Ergat, who had returned to Turkey in August 1992 and not come back to Germany until Autumn 1993, where he was again in employment from June 1994, brought a court action against the decisions of 22 January and 4 May 1992.
- 17 That action was successful at first instance but dismissed on appeal.
- 18 Considering that he was entitled to the extension of his residence permit under the first paragraph of Article 7 of Decision No 1/80, Mr Ergat then brought an appeal on a point of law ('Revision') before the Bundesverwaltungsgericht.
- 19 That court held that Mr Ergat had no right to extend his residence permit under German law. However it raised the question whether the plaintiff might be able to derive a right of residence from the first paragraph of Article 7 of Decision No 1/80.

- 20 In that regard, however, it was not clear to the national court that the concept of legal residence referred to in that provision means that the member of a Turkish worker's family must still hold a valid residence permit in the host Member State at the material time for assessment of the application for extension of that permit, if, a few weeks earlier, he still held a valid residence permit and before its expiry was entitled to avail himself of the rights conferred by the first paragraph of Article 7 of Decision No 1/80.

The question referred for a preliminary ruling

- 21 Taking the view that, in the circumstances, the determination of the dispute turned on the interpretation of that provision of Decision No 1/80, the Bundesverwaltungsgericht decided to stay proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Does a Turkish national who, as a member of the family of a Turkish worker duly registered as belonging to the labour force, has entered the country without being required under the national law on foreigners in force at the date of entry to hold a residence permit, and has subsequently been in possession of residence permits, with interruptions, but who has applied for extension of his last residence permit 26 days after its expiry, satisfy the conditions, set out in the first paragraph of Article 7 of Decision No 1/80 of the EEC-Turkey Association Council on the development of the Association, that he has been "legally resident" there "for at least three years" (first indent) or "for at least five years" (second indent), if the national authorities have refused to extend the residence permit?'

- 22 First of all it should be observed that this question concerns the position of a Turkish national who, as the child of a Turkish couple, both migrant workers belonging to the legal labour force of a Member State, was authorised to join

them on that State's territory for the purpose of re-uniting the family and seeks the extension of his residence permit under the first paragraph of Article 7 of Decision No 1/80.

- 23 The national court held that Mr Ergat, although legally employed for certain periods in the Member State in question, cannot rely on Article 6 of Decision No 1/80, which grants a Turkish migrant worker progressively more extensive employment rights, according to the length and conditions of paid employment in the host Member State. Mr Ergat, according to the national court, does not fulfil the conditions laid down by that provision because, on the date of his application to extend his residence permit which had expired in June 1991, he had not been legally employed by the same employer for at least a year without interruption.
- 24 Furthermore, it is common ground that Mr Ergat has committed several offences in Germany, for which he has been sentenced to fines under criminal law.
- 25 In that connection the Bundesverwaltungsgericht took the view, however, that the refusal to extend Mr Ergat's residence permit could not be justified in the light of Article 14(1) of Decision No 1/80. Just as in the case of nationals of Member States, the concept of public policy within the meaning of that provision could only be relied on if the presence of the person concerned in the host Member State represented a genuine and sufficiently serious threat to the fundamental interests of society. In the case in the main proceedings the national court noted that the offences committed by Mr Ergat were not particularly serious and, moreover, in most cases, were punished by small fines.
- 26 As regards the first paragraph of Article 7 of Decision No 1/80, which is the subject of the question referred for a preliminary ruling, the German Govern-

ment, at the hearing, first disputed whether a Turkish national in Mr Ergat's position had the status of a member of a Turkish worker's family, on the ground that, on the date when he made his application to extend his residence permit, he was an adult living independently in Germany

- 27 On that point, it is sufficient to point out that, in the case in the main proceedings, it is common ground that Mr Ergat was authorised, at the age of eight, to join his parents in Germany who were in paid legal employment there at the time, so that he must be considered to be a member of a Turkish worker's family within the meaning of the aforesaid provision. That being so, the national court was right to start from the premiss that Mr Ergat had the status of member of the family of a Turkish worker belonging to the legal labour force of the host Member State.
- 28 It must be observed, moreover, that when his last residence permit expired, in June 1991, Mr Ergat, who had enjoyed a right of residence in Germany for the purpose of re-uniting his family pursuant to the first paragraph of Article 7 of Decision No 1/80, had been legally resident in that Member State for more than 15 years and was in a stable and secure legal situation there.
- 29 The fact that between 1985 and 1989 Mr Ergat had applied three times for extension of his temporary residence permit after it had expired, so that he was not in possession of a valid residence permit for brief periods, is, in any event, irrelevant in that connection, since the competent authorities of the host Member State did not claim that he was not legally resident within national territory on that ground, but on the contrary issued a new residence permit to him (see, to this effect, Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 54, and Case C-98/96 *Ertanir* [1997] ECR I-5179, paragraph 69).

- 30 As Mr Ergat has thus been legally resident in Germany for more than five consecutive years, he falls within the scope of the second indent of the first paragraph of Article 7 of Decision No 1/80 according to which he enjoys free access to any paid employment of his choice in the host Member State.
- 31 He has, moreover, made use of that right in that since 1983, with interruptions, he has been in various kinds of paid employment covered by a work permit. Since 1989, Mr Ergat has held a work permit with no limitation as to time and subject to no condition of any kind whatever.
- 32 The competent German authorities none the less consider that they were entitled to refuse to extend Mr Ergat's last temporary residence permit on the ground that he was no longer legally resident in the host Member State within the meaning of the second indent of the first paragraph of Decision No 1/80, since he had applied for the extension of that permit 26 days after it expired.
- 33 In those circumstances, the question referred for a preliminary ruling must be understood as asking essentially whether a Turkish national, who was authorised to enter a Member State for the purpose of re-uniting the family of a Turkish worker belonging to the legal labour force of that State, has been legally resident there for more than five years and has been in legal employment of various kinds, with interruptions, loses the benefit of the rights conferred on him by the second indent of the first paragraph of Article 7 of Decision No 1/80 and, in particular, the right to extend his residence permit in the host Member State, where his residence permit had expired before the date on which he lodged an application to extend it which was refused by the competent national authorities.
- 34 For the purpose of answering that question, it must first be noted that, according to the case-law of the Court, the first paragraph of Article 7 of Decision No 1/80

has direct effect in the Member States, so that Turkish nationals fulfilling the conditions which it lays down may directly rely on the rights conferred on them by that provision; in particular, they have the right, under the first indent of that provision, to respond, subject to priority being granted to workers of the Member States, to any offer of employment after being legally resident there for at least three years, and, under the second indent, freely to take up paid employment of their choice in the Member State in whose territory they have been legally resident for at least five years (*Kadiman*, cited above, paragraphs 27 and 28).

35 Moreover, the Court has also held that the first paragraph of Article 7 provides that the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State are entitled to take up employment in that country after being legally resident there for a specified period, without thereby affecting the power of the Member State concerned to authorise any such persons to join the Turkish worker legally employed there and to regulate their stay until they become entitled to respond to any offer of employment (*Kadiman*, cited above, paragraphs 32 and 51).

36 The Court has concluded from this that the first paragraph of Article 7 of Decision No 1/80 requires that the unity of the family, in pursuit of which the person concerned entered the territory of the host Member State, should be evidenced for a specified period by actual cohabitation in a household with the worker and that this must be so until he or she becomes entitled to enter the labour market in that State (*Kadiman*, cited above, paragraphs 33, 37 and 40).

37 Consequently, the Court has construed Decision No 1/80 as meaning that it does not in principle prevent the authorities of a Member State from making the extension of the residence permit of a family member authorised to join a Turkish worker in that Member State subject to the condition that the person concerned actually lives with that worker for the period of three years prescribed by the first indent of the first paragraph of Article 7 of that decision (*Kadiman*, cited above, paragraphs 41 and 44).

- 38 However, it follows logically from the judgment in *Kadiman*, cited above, that Member States are no longer entitled to attach conditions to the residence of a member of a Turkish worker's family after that period of three years.
- 39 This must *a fortiori* be the case for a migrant Turk who, like Mr Ergat, fulfils the conditions laid down in the second indent of the first paragraph of Article 7 of Decision No 1/80.
- 40 Thus, at the very least from the time when a Turkish national covered by the first paragraph of Article 7 enjoys, after five years' legal residence for the purpose of re-uniting a worker's family, the right of free access to employment in the host Member State under the second indent of that provision, not only does the direct effect of that provision mean that the person concerned derives an individual employment right directly from Decision No 1/80 but also the effectiveness of that right necessarily implies a concomitant right of residence which is also founded on Community law and is independent of the continuing existence of the conditions for access to those rights (see, by analogy, as regards the third indent of paragraph 1 of Article 6 of Decision No 1/80, Case C-192/89 *Sevince* [1990] ECR I-3461, paragraphs 29 and 31, and Case C-171/95 *Tetik* [1997] ECR I-329, paragraphs 26, 30 and 31; as regards the second paragraph of Article 7 of that decision, Case C-355/93 *Eroglou* [1994] ECR I-5113, paragraph 20, and Case C-210/97 *Akman* [1998] ECR I-7519, paragraph 24).
- 41 The unconditional right to take up any employment freely chosen by the person concerned, untrammelled, moreover, by any priority for workers of Member States, provided for by the second indent of the first paragraph of Article 7 of Decision No 1/80 would be rendered wholly meaningless if the competent national authorities were able to impose conditions or restrictions of any sort on the application of the specific rights which were conferred on migrant workers by that decision (see *inter alia*, by analogy, Case C-36/96 *Günaydin* [1997] ECR I-5143, paragraphs 37 to 39 and 50).

- 42 Whilst, under Community law as it now stands, the Member States have retained the power to regulate both the entry into their territory of a member of the family of a Turkish worker and the conditions of his residence during the initial three-year period before he has the right to respond to any offer of employment, it is, on the other hand, no longer open to them to adopt measures relating to residence which are such as to impede the exercise of the rights expressly conferred by Decision 1/80 on a person who satisfies the conditions it lays down and who is therefore already legally integrated into the host Member State, given that the right of residence is essential to access to and the pursuit of any paid employment (see *inter alia* *Eroglou*, cited above, paragraph 20).
- 43 Thus, since the objective of Decision No 1/80, which is to improve, in the social field, the treatment accorded to workers and members of their families with a view to achieving gradually freedom of movement for workers (see, most recently, Case C-1/97 *Birden* [1998] ECR I-7747, paragraph 52), would not be attained if restrictions imposed by a Member State, particularly as regards residence, could have the effect of depriving the person concerned of the benefit of the rights which the second indent of the first paragraph of Article 7 of that decision confers on him unconditionally, precisely at the time when, by virtue of access to employment of his choosing, he has the prospect of becoming permanently integrated in his host Member State.
- 44 That interpretation is, moreover, confirmed by the judgment in *Akman*, cited above. In that judgment, which concerns the second paragraph of Article 7 of Decision No 1/80, regulating the right of access to employment of children of Turkish workers in the Member State where they have completed a course of vocational training, the Court ruled that once a child has completed his education and acquired the right, conferred directly by that decision, of access to the employment market of the host Member State and, as a result, the right to obtain a residence permit there for that purpose, it is not necessary for the parent of that child still to have the status of worker, or to continue to reside in that State, provided that, in the past, that parent was legally employed there for at least three years.
- 45 There are, admittedly, limits to that right of residence, which is the corollary of the right to have access to the employment market and take up employment.

- 46 First, Article 14(1) of Decision No 1/80 itself provides Member States with the possibility of placing restrictions on the presence of a migrant Turk in the host Member State in individual and appropriately justified cases, where, through his own conduct, he constitutes a genuine and serious threat to public policy, public security or public health.
- 47 However, the national court held in the main proceedings that this provision does not preclude the extension of Mr Ergat's residence permit.
- 48 Second, a family member, duly authorised to join a Turkish worker in a Member State, who leaves the territory of the host State for a significant length of time without legitimate reason (see, in that connection, *Kadiman*, cited above, paragraph 48), as a rule loses the legal status he acquired under the first paragraph of Article 7.
- 49 It follows, first, that the authorities of the Member State concerned are entitled to require that, should the person concerned subsequently wish to settle in that State again, 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 work, on the basis of Article 6 of Decision No 1/80.
- 50 Second, in the event of a dispute it is generally for the family member who wishes to invoke the employment rights conferred on him by the first paragraph of Article 7 and who does not have a valid residence permit to prove by any means that he remained on the territory of the host Member State or that he only left it for legitimate reasons.

- 51 As regards, in this case, Mr Ergat's return to Turkey for about a year from August 1992, it must, however, be observed that, apart from the fact that this circumstance, which came about after the date of the application for extension of the residence permit, is not, in any event, such as to justify the rejection of that application and that it is therefore not necessary to raise the question whether he went of his own accord or in consequence of the threat of deportation with which he was faced, it is common ground that the competent German authorities did not make his readmission to Germany conditional upon the issue of a fresh authorisation to enter, with the result that he was able to take up a new job on the basis of the work permit of unlimited duration which he obtained in 1989.
- 52 As regards, more particularly, a situation such as that in point in the main proceedings, in which the host Member State has refused to extend the temporary residence permit of a Turkish national on the ground that for a certain length of time he no longer held a valid residence permit, it is true that Member States have the right to require that foreigners on their territory both hold a valid residence permit and, where that permit is only granted for a fixed period, make their application for its extension in good time.
- 53 Essentially, those obligations which are thus incumbent on foreigners satisfy requirements of administration.
- 54 Community law has not excluded the power of Member States to adopt measures enabling the national authorities to have an exact knowledge of population movements affecting their territory (see, by analogy, Case 118/75 *Watson and Belmann* [1976] ECR 1185, paragraph 17).
- 55 Moreover, Member States as a rule retain the power to impose penalties for breach of such obligations.

- 56 In that connection, it follows from settled case-law on the subject of failure to comply with the formalities required to establish the right of residence of an individual enjoying the protection of Community law that, whilst Member States are entitled to make failure to comply with such provisions subject to penalties comparable to those attaching to minor offences committed by their own nationals, they are not entitled to impose a disproportionate penalty that would create an obstacle to that right of residence (see, by analogy, Case 157/79 *Regina v Pieck* [1980] ECR 2171, paragraph 19, and Case C-265/88 *Messner* [1989] ECR 4209, paragraph 14).
- 57 That applies in particular to a sentence of imprisonment and, *a fortiori*, to deportation, which negates the very right of residence conferred and guaranteed by Decision No 1/80 (see, by analogy, *Watson and Belman*, paragraph 20, *Pieck*, paragraph 19, and *Messner*, paragraph 14, cited above).
- 58 As is clear from paragraphs 40 to 43 of this judgment, the Member States do not, however, have the power to restrict the right directly conferred on a Turkish national by Community law to have free access to all employment and, concomitantly, to reside in the host Member State for that purpose, by refusing to extend his residence permit on the ground that he made his application late.
- 59 As regards the facts in the case in the main proceedings, it should be borne in mind, first, that it is not disputed that Mr Ergat meets all the conditions for enjoyment of the rights granted by the second indent of the first paragraph of Article 7 of Decision No 1/80.
- 60 It should next be observed that he was in a stable and secure position on the date of expiry of his last residence permit and that he would have obtained an extension without any difficulty if he had submitted his application in time.

- 61 Finally, it must be added that, in any event, the issue of a residence permit does not constitute the basis of the right of residence which is conferred directly by Decision No 1/80, and that is so irrespective of whether the authorities of the host Member State have issued that particular document, which is merely evidence of the existence of that right.
- 62 It is settled case-law that, for purposes of recognition of a right of residence, a residence permit can only have declaratory and probative value (see, to that effect, Case C-434/93 *Bozkurt* [1995] ECR I-1475, paragraphs 29 and 30, and *Günaydin*, paragraph 49, *Ertanir*, paragraph 55, and *Birden*, paragraph 65, cited above).
- 63 That being so, a document of that nature cannot be deemed equivalent, for foreigners deriving rights from Decision No 1/80, to an authorisation of residence implying a discretion on the part of the national authorities such as is provided for foreigners in general (see, by analogy, Case 8/77 *Sagulo* [1979] ECR 1495, paragraph 8).
- 64 The fact that Mr Ergat's successive residence permits were granted only for fixed periods is therefore irrelevant.
- 65 Consequently, the period of time during which Mr Ergat's residence permit was no longer valid cannot in any event be considered by the authorities of the host Member State to be a period of illegal residence such as to deprive him of the right of residence conferred directly by Decision No 1/80 in order to enable him to continue to exercise his right of free access to all paid employment of his

choosing, pursuant to the second indent of the first paragraph of Article 7 of that decision.

- 66 As the French Government argued at the hearing, any other interpretation would, moreover, be contradicted by the fact that Mr Ergat has held a work permit of unlimited duration since 1989.
- 67 In view of all the foregoing considerations, the answer to the question referred for a preliminary ruling must be that a Turkish national, who has been authorised to enter a Member State for the purpose of re-uniting the family of a Turkish worker belonging to the legal labour force of that State, has been legally resident there for more than five years and has been in legal employment of various kinds, with interruptions, does not lose the benefit of the rights conferred on him by the second indent of the first paragraph of Article 7 of Decision No 1/80 and, in particular, the right to extend his residence permit in the host Member State, even where his residence permit had expired before the date on which he lodged an application to extend it which was refused by the competent national authorities.

Costs

- 68 The costs incurred by the French and German Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Bundesverwaltungsgericht by order of 15 July 1997, hereby rules:

A Turkish national, who was authorised to enter a Member State for the purpose of re-uniting the family of a Turkish worker belonging to the legal labour force of that State, has been legally resident there for more than five years and has been in legal employment of various kinds, with interruptions, does not lose the benefit of the rights conferred on him by 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 established by the Association Agreement between the EEC and Turkey, and, in particular, the right to extend his residence permit in the host Member State, where his residence permit had expired before the date on which he lodged an application to extend it which was refused by the competent national authorities.

Schintgen

Kapteyn

Hirsch

Delivered in open court in Luxembourg on 16 March 2000.

R. Grass

J.C. Moitinho de Almeida

Registrar

President of the Sixth Chamber