

**JUDGMENT OF THE COURT**  
10 September 1996 <sup>\*</sup>

In Case C-277/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Arrondissementsrechtbank, Amsterdam, for a preliminary ruling in the proceedings pending before that court between

**Z. Taflan-Met,**

**S. Altun-Baser,**

**E. Andal-Bugdayci,**

and

**Bestuur van de Sociale Verzekeringsbank,**

and between

**O. Akol**

and

**Bestuur van de Nieuwe Algemene Bedrijfsvereniging,**

<sup>\*</sup> Language of the case: Dutch.

on the interpretation of Articles 12 and 13 of Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families (OJ 1983 C 110, p. 60),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, D. A. O. Edward (Rapporteur), J.-P. Puissochet and G. Hirsch (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn, C. Gulmann and J. L. Murray, Judges,

Advocate General: A. La Pergola,  
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Bestuur van de Sociale Verzekeringsbank, Amsterdam, by E. H. Pijnacker Hordijk, of the Amsterdam Bar,
- Bestuur van de Nieuwe Algemene Bedrijfsvereniging, by C. R. J. A. M. Brent, Head of the Administration and Legal Affairs Section of the association Gemeenschappelijk Administratiekantoor, acting as Agent,
- the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,
- the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and G. Thiele, Assessor in that Ministry, acting as Agents,

- the Greek Government, by A. Samoni-Radou, Assistant Special Legal Adviser in the Department for Community Legal Affairs of the Ministry of Foreign Affairs, and L. Pneumatikou, Specialized Academic Adviser in that Department, acting as Agents,
  
- the Spanish Government, by A. J. Navarro González, Director-General for Community Legal and Institutional Coordination, and R. Silva de Lapuerta, Abogado del Estado, of the State Legal Service, acting as Agents,
  
- the French Government, by E. Belliard, Deputy Director of the Legal Affairs Directorate of the Ministry of Foreign Affairs, and C. Chavance, Foreign Affairs Secretary in that Directorate, acting as Agents,
  
- the Commission of the European Communities, by P. J. Kuyper, Legal Adviser, and M. Patakia, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Altun-Baser, represented by T. A. M. Visser, of the Bar at The Hague; Bestuur van de Sociale Verzekeringsbank, Amsterdam, represented by E. H. Pijnacker Hordijk; Bestuur van de Nieuwe Algemene Bedrijfsvereniging, represented by F. W. M. Keunen, a lawyer in the association Gemeenschappelijk Administratiekantoor; the Netherlands Government, represented by M. A. Fierstra, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; the German Government, represented by E. Röder; the Greek Government, represented by A. Samoni-Radou and L. Pneumatikou; the Spanish Government, represented by R. Silva de Lapuerta; the French Government, represented by C. Chavance and J.-F. Dobelle, Deputy Director of the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent; the United

Kingdom Government, represented by E. Sharpston, Barrister, and the Commission, represented by P. J. Kuyper and M. Patakia, at the hearing on 13 February 1996,

after hearing the Opinion of the Advocate General at the sitting on 26 March 1996,

gives the following

### Judgment

- 1 By order of 23 August 1994, received at the Court on 12 October 1994, the Arrondissementsrechtbank (District Court), Amsterdam, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a number of questions on the interpretation of Articles 12 and 13 of Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families (OJ 1983 C 110, p. 60; hereinafter 'Decision No 3/80'). The Association Council was set up by the Agreement establishing an association between the European Economic Community and Turkey, which was signed at Ankara on 12 September 1963 by the Turkish Republic, on the one hand, and by the Member States of the EEC and the Community, on the other, 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; hereinafter 'the Agreement').
- 2 Those questions were raised in proceedings between, Mrs Taflan-Met, Mrs Altun-Baser and Mrs Andal-Bugdayci and Bestuur van de Sociale Verzekeringsbank, Amsterdam, and between Mr Akol and Bestuur van de Nieuwe Algemene Bedrijfsvereniging, relating to the refusal of the competent Netherlands institutions to pay them social security benefits.

- 3 Decision No 3/80 sets out to coordinate Member States' social security schemes with a view to enabling Turkish workers employed or formerly employed in the Community, members of their families and their survivors to qualify for benefits in the traditional branches of social security.
  
- 4 To that end, the provisions of Decision No 3/80 refer for the most part to particular provisions of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971(II), p. 461) and, less frequently, to Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 (OJ, English Special Edition 1972(I), p. 159).
  
- 5 Title III of Decision No 3/80 consists of coordinating provisions, based on Regulation No 1408/71, relating to sickness and maternity benefits, invalidity benefits, old-age benefits and death benefits (pensions), benefits in respect of accidents at work and occupational diseases, and death grants, together with family benefits and allowances.
  
- 6 In particular, Article 12, which constitutes Chapter 2, 'Invalidity', of Title III, provides as follows:

'The rights to benefits of a worker who has successively or alternately been subject to the legislation of two or more Member States shall be established in accordance with Article 37(1), first sentence, and (2), Articles 38 to 40, Article 41(1)(a), (b), (c) and (e) and (2), and Articles 42 and 43 of Regulation (EEC) No 1408/71.

However:

- (a) for the purpose of applying Article 39(4) of Regulation (EEC) No 1408/71, all the members of the family, including children, residing in the Community or in Turkey, shall be taken into account;
- (b) the reference in Article 40(1) of this Regulation to the provisions of Title III, Chapter 3, of Regulation (EEC) No 1408/71 shall be replaced by a reference to the provisions of Title III, Chapter 3 of this Decision.'

7 Article 13, which forms part of Chapter 3, 'Old age and death (pensions)', of Title III of Decision No 3/80, provides that:

'The rights to benefits of a worker who has been subject to the legislation of two or more Member States, or of his survivors, shall be established in accordance with Article 44(2), first sentence, Articles 45, 46(2), Articles 47, 48, 49 and 51 of Regulation (EEC) No 1408/71.

However:

- (a) Article 46(2) of Regulation (EEC) No 1408/71 shall apply even if the conditions for acquiring entitlement to benefits are satisfied without the need to have recourse to Article 45 of the said Regulation;
- (b) for the purposes of applying Article 47(3) of Regulation (EEC) No 1408/71, all the members of the family, including children, residing in the Community or in Turkey shall be taken into account;
- (c) for the purposes of applying Article 49(1)(a) and (2) and Article 51 of Regulation (EEC) No 1408/71, the reference to Article 46 shall be replaced by a reference to Article 46(2).'

- 8 Unlike the other two decisions adopted on the same date by the EEC-Turkey Association Council (Decision No 1/80 on the development of the Association and Decision No 2/80 determining the conditions for implementing the special aid to Turkey (not published)), Decision No 3/80 does not specify on what date it should enter into force.
- 9 It appears from the order for reference that the plaintiffs in the first three actions before the national court are Turkish nationals, residing in Turkey, who are widows of Turkish workers who were in gainful employment in various Member States, including the Netherlands. After their husbands' death, they applied for widows' pensions in the Member States where their husbands had worked. The competent Belgian and German institutions granted those applications. Their applications were however rejected by the Netherlands authorities on the ground that their husbands had died in Turkey, whereas, under the Netherlands legislation, the insured person or his successors are entitled to claim benefit only if the insured risk materializes at a time when the person concerned is covered by that legislation.
- 10 The plaintiff in the fourth action before the national court is a Turkish national, residing in Germany, who worked first in the Netherlands and subsequently in Germany, where he became incapable of work. He therefore applied for an invalidity pension both in Germany and in the Netherlands. Unlike the German institution, the competent Netherlands institution refused to grant the application on the ground that Mr Akol's incapacity for work had occurred at a time when he was no longer working in the Netherlands and, as a result, was not covered by the Netherlands legislation.
- 11 Taking the view that the plaintiffs in the main proceedings could qualify for the benefits sought in the Netherlands only under Decision No 3/80, in particular Articles 12 and 13 thereof, the Arrondissementsrechtbank, Amsterdam, decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:
- '1. Is Decision No 3/80 of the EEC-Turkey Association Council on the application of social security schemes of the Member States of the European Communities to Turkish workers and members of their families applicable in the

Community without an implementation procedure having taken place, as laid down in Article 2(1) of the Agreement on the necessary measures and procedures for the application of the Agreement creating an association between the European Economic Community and Turkey?

2. (a) If Decision No 3/80 is not (yet) applicable in the Community, can that decision nevertheless in certain circumstances have legal consequences, in so far as its provisions are capable of being applied directly?
  
- (b) If the first question is answered in the affirmative, are Articles 12 and 13 of Decision No 3/80 sufficiently clear and precise to be capable of being applied directly without the need for further implementing measures, as provided for in Article 32 of Decision No 3/80?
  
3. (a) If Article 13 of Decision No 3/80 can be applied in cases such as these, should the articles of Regulation (EEC) No 1408/71 referred to in Article 13 be applied as they were worded at the time when the Association Council adopted that decision on 19 September 1980, or should subsequent amendments to the relevant articles of Regulation No 1408/71 also be taken into account?
  
- (b) Is it also relevant in that regard whether the amendments made after 19 September 1980 have resulted in parts of the relevant provisions subsequently being set out in more detail in other articles of or in annexes to Regulation No 1408/71?



## First question

- 12 The first question, on the applicability of Decision No 3/80 in the Community, must be construed as seeking to establish whether, and if so at what date, that decision has entered into force.
- 13 Since Decision No 3/80 contains no provision on its entry into force, the question is whether such effect can result from the Agreement on which that decision is based.
- 14 The Agreement provides in Article 6, which forms part of Title I, 'Principles', that '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'.
- 15 Article 22(1), which comes under Title III on the general and final provisions of the Agreement, provides as follows:

'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. [...]

- 16 Lastly, under Article 23, which also forms part of Title III of the Agreement:

'The Council of Association shall consist of members of the Governments of the Member States and members of the Council and of the Commission of the Community on the one hand and of members of the Turkish Government on the other.

...

The Council of Association shall act unanimously.'

- 17 It follows from all those provisions that decisions of the EEC-Turkey Association Council are measures adopted by a body provided for by the Agreement and empowered by the Contracting Parties to adopt such measures.
- 18 In so far as they implement the objectives set by the Agreement, such decisions are directly connected with the Agreement and, as a result of the second sentence of Article 22(1) thereof, have the effect of binding the Contracting Parties.
- 19 By virtue of the Agreement, the Contracting Parties agreed to be bound by such decisions and if those parties were to withdraw from that commitment, that would constitute a breach of the Agreement itself.
- 20 Consequently, contrary to the contention of the defendants in the main proceedings and the Governments of the Member States which have submitted observations to the Court, the binding effect of decisions of the Association Council cannot depend on whether implementing measures have in fact been adopted by the Contracting Parties.
- 21 In those circumstances, in the absence of any provision on its entry into force, it follows from the binding character which the Agreement attaches to decisions of the EEC-Turkey Association Council that Decision No 3/80 entered into force on the date on which it was adopted, that is to say, 19 September 1980, and that, since then, the Contracting Parties have been bound by that decision.

- 22 The reply to be given to the national court's first question must therefore be that Decision No 3/80 entered into force on the date on which it was adopted, namely 19 September 1980, and has been binding on the Contracting Parties since then.

## Second question

- 23 By its second question, the national court essentially seeks to establish whether the provisions of Decision No 3/80, and more specifically Articles 12 and 13 thereof, have direct effect in the territory of the Member States and are therefore such as to entitle individuals to rely on them before the national courts.
- 24 In that regard, it should be recalled that the Court has consistently held (see, in particular, Case 12/86 *Demirel v Stadt Schwäbisch Gesund* [1987] ECR 3719, paragraph 14) that a provision of an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure.
- 25 In Case C-192/89 *Sevince v Staatssecretaris van Justitie* [1990] ECR I-3461, paragraphs 14 and 15, the Court held that the same criteria apply in determining whether the provisions of a decision of the EEC-Turkey Association Council can have direct effect.
- 26 As has been observed above, the purpose of Decision No 3/80 is to coordinate the Member States' social security schemes with a view to enabling Turkish workers employed or formerly employed in the Community, members of their families and their survivors to qualify for benefits in the traditional branches of social security.

27 Regulation No 1408/71, to which Decision No 3/80 refers, is also intended to coordinate, within the Community, the various laws of the Member States.

28 However, the practical application of Regulation No 1408/71 necessitated the adoption of implementing measures, set out in the voluminous Regulation No 574/72.

29 As already mentioned, Decision No 3/80 refers in terms to certain provisions of Regulation No 1408/71 and Regulation No 574/72, while taking account, for the purposes of the implementation of those provisions, of the specific situation of Turkish workers who are or have been subject to the legislation of one or more Member States and of members of their families residing in the territory of one of the Member States.

30 However, comparison of Regulations Nos 1408/71 and 574/72, on the one hand, and Decision No 3/80, on the other, shows, however, that the latter does not contain a large number of precise, detailed provisions, even though such were deemed indispensable for the purpose of implementing Regulation No 1408/71 within the Community.

31 Thus, Regulation No 1408/71, which the Council adopted on the basis of Article 51 of the Treaty, implements the fundamental principle enshrined in that provision, which consists in securing, for migrant workers and those entitled under them, aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the various laws of the Member States. Nevertheless, in order to give practical effect to the aggregation rules set out in Regulation No 1408/71, it was necessary to adopt Article 15 of Regulation No 574/72.

32 Similarly, whilst Decision No 3/80 does indeed refer to the provisions of Regulation No 1408/71 setting forth the principle of aggregation for the branches sickness and maternity, invalidity, old age, death grants and family benefits, supplementary implementing measures of the kind set out in Article 15 of Regulation No 574/72 must be adopted before that principle can be applied.

33 In those circumstances, it must be held that, by its nature, Decision No 3/80 is intended to be supplemented and implemented in the Community by a subsequent act of the Council.

34 Thus, on 8 February 1983 the Commission submitted a proposal for a Council Regulation implementing within the European Economic Community Decision No 3/80 (OJ 1983 C 110, p. 1).

35 That proposal for a regulation states that it is a measure intended to implement Decision No 3/80 in the Community. Article 1 provides that 'Decision No 3/80 of the EEC-Turkey Association Council ..., annexed to this Regulation, shall be applicable within the Community'. To that end, it embodies some 80 articles and seven annexes containing 'supplementary detailed rules for implementing Decision No 3/80', which lay down detailed rules with a view to the application of the provisions of the Decision in respect of each category of benefits coming within its scope. They also contain particulars relating, among other things, to prevention of overlapping benefits, determining the applicable legislation and aggregation of periods, together with financial and transitional provisions. Those provisions implementing Decision No 3/80 are based to a large degree on those contained in Regulation No 574/72. Thus, as far as the principle of aggregation is concerned, the content of Article 13 of the proposal for a regulation corresponds closely to that of Article 15 of Regulation No 574/72.

36 However, that proposal for a regulation has not yet been adopted by the Council.

37 It follows from all the foregoing considerations that, even though some of its provisions are clear and precise, Decision No 3/80 cannot be applied so long as supplementary implementing measures have not been adopted by the Council.

38 The reply to be given to the national court's second question must therefore be that, so long as the supplementary measures essential for implementing Decision No 3/80 have not been adopted by the Council, Articles 12 and 13 of that decision do not have direct effect in the territory of the Member States and are therefore not such as to entitle individuals to rely on them before the national courts.

### **Third question**

39 In view of the replies given to the first and second questions, there is no need to consider the third question.

### **Costs**

40 The costs incurred by the Netherlands, German, Greek, Spanish, French and United Kingdom Governments and by the Commission of the European Communities, 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,

in answer to the questions referred to it by the Arrondissementsrechtbank, Amsterdam, by order of 23 August 1994, hereby rules:

1. Decision No 3/80 of the Association Council of 19 September 1980 on the application of the social security schemes of the Member States of the European Communities to Turkish workers and members of their families entered into force on the date on which it was adopted, namely 19 September 1980, and has been binding on the Contracting Parties since then.
2. So long as the supplementary measures essential for implementing Decision No 3/80 have not been adopted by the Council, Articles 12 and 13 of that decision do not have direct effect in the territory of the Member States and are therefore not such as to entitle individuals to rely on them before the national courts.

Rodríguez Iglesias

Edward

Puissochet

Hirsch

Mancini

Moitinho de Almeida

Kapteyn

Gulmann

Murray

Delivered in open court in Luxembourg on 10 September 1996.

R. Grass

G. C. Rodríguez Iglesias

Registrar

President