OPINION OF ADVOCATE GENERAL ELMER

delivered on 6 March 1997 *

Introduction

1. In the present case the Bundesverwaltungsgericht (Federal Administrative Court) has requested the Court to give a preliminary ruling on whether, pursuant to the first indent of Article 6(1) of Decision No 1/80 of the EEC-Turkey Association Council (hereinafter 'Decision No 1/80'), a Turkish worker is entitled to have his residence permit in a Member State renewed where he has been employed, admittedly without interruption, but with different employers during the first year of employment and now wishes to continue working for his last employer.

Applicable rules of Community law

2. The Association Agreement between the European Economic Community and Turkey [1] is intended, in the words of Article 2(1), 'to promote the continuous and balanced strengthening of trade and economic relations between the Parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people'.

Under Article 12 of the Agreement, the Contracting Parties agree 'to be guided by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them'.

3. Under Article 36 of an Additional Protocol to the Association Agreement, dated 23 November 1970, [2] the Association Council was to determine the detailed rules necessary for the progressive implementation of freedom of movement for workers between Member States of the Community and Turkey, in accordance with the principles set out in Article 12 of the Association Agreement.

4. Pursuant to those provisions, the Association Council adopted Decision No 1/80 of

* Original language: Danish.

1 — Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 and concluded on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (*Collection of the Agreements concluded by the European Communities*, Volume 3, p. 541).

2 — OJ 1973 C 113, p. 1.

19 September 1980, which entered into force on 1 July 1980. [3] Article 6(1) of the Decision is worded as follows:

'1. ... 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, [4] 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.'

3 — The Decision has not been published.

4 — It does not follow from the Danish version that the employment in question must be for the same occupation. That point is apparent, however, from the other language versions, for example the German version: 'den gleichen Beruf', the English version: 'for the same occupation' and the French version: 'dans la même profession'.

Facts of the main proceedings

5. Mr Süleyman Eker, a Turkish national born in 1966, first entered Germany illegally on 1 December 1988 and was for that reason permanently expelled on 13 February 1989.

6. Mr Eker married a German national in Turkey on 17 January 1991 and entered Germany again on 6 April 1991 with an entry permit.

Following application on 8 April 1991 he obtained, on 24 July 1991, a residence permit valid until 24 July 1992. Mr Eker had already obtained, on 17 April 1991, a work permit for all types of employment, of indefinite duration and with no geographical restrictions.

7. On 15 June 1991 Mr Eker commenced work at the Hotel Flora at Schluchsee, where he was employed until 30 September 1991. On 1 October 1991 he began working at a health and rehabilitation centre, the St. Georg Kur-und Rehabilitationskliniken at Höchenschwand.

8. On 24 July 1991, after being married for some six months and approximately three months after entering Germany, Mr Eker separated from his German wife. On 10 April 1992 he confirmed to the German authorities responsible for aliens that he was separated and stated that divorce proceedings had started. On 22 July 1992 Mr Eker applied for an extension of his residence permit. Pursuant to that application, the authorities responsible for aliens issued a certificate entitling Mr Eker to remain in Germany until 11 August 1992, but at the same time they informed him that they proposed to reject his application for a residence permit. By decision of 12 August 1992 the authorities responsible for aliens refused to extend Mr Eker's residence permit and ordered him to leave German territory within a specified period, failing which he would be expelled. Mr Eker lodged an unsuccessful administrative appeal against that decision.

9. Mr Eker then appealed to the Verwaltungsgericht (Administrative Court), which, by judgment of 14 July 1994, upheld his appeal and ordered the Baden-Württemberg aliens authorities to extend his residence permit. Upon appeal by the Land Baden-Württemberg, the Verwaltungsgerichtshof (Higher Administrative Court) Baden-Württemberg, by judgment of 30 November 1994, set aside the judgment at first instance and ruled in favour of the Land Baden-Württemberg on the ground that the national legislation on the right of residence did not entitle Mr Eker to have his residence permit extended and that he was also unable to rely on Article 6(1) of Decision No 1/80 for the purpose of being granted a work permit and a residence permit, since that provision presupposed employment for one year with the same employer.

10. By leave of the Verwaltungsgerichtshof Baden-Württemberg, Mr Eker appealed on a point of law to the Bundesverwaltungsgericht and sought to have the judgment at first instance restored. He claimed in this regard that he was entitled to a work permit, and consequently to a residence permit, pursuant to Article 6(1) of Decision No 1/80, since that provision simply provided that the renewal of the work permit be sought with a view to working for the last employer.

The question referred to the Court

11. By order of 29 September 1995 the Bundesverwaltungsgericht stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Does a Turkish worker fulfil the requirements of the first indent of Article 6(1) of Decision No 1/80 of the EEC/Turkey Association Council even if during the first year of employment he has, with the permission of the national authorities, worked without interruption but for different employers and

wishes to continue employment with his last employer?'

Analysis

12. In submitting that question, the national court is in substance seeking to ascertain whether the first indent of Article 6(1) of Decision No 1/80 authorizes a Turkish worker to change employer during the first year of employment.

13. Mr Süleyman Eker claims that the first indent of Article 6(1) of Decision No 1/80 does not require the Turkish worker to have been employed by the same employer throughout the first year of legal employment in a Member State, since that provision must be interpreted as meaning that the only condition required for the purpose of renewing a work permit granted to a Turkish worker is that the person concerned must wish to continue working for his last employer.

14. The Vertreter des öffentlichen Interesses bei den Gerichten der allgemeinen Verwaltungsgerichtsbarkeit in Baden-Württemberg (Representative of the Public Interest before the general administrative courts of Baden-Württemberg), the German, Greek, French and Austrian Governments, the Commission and the Landratsamt (District Authority) Waldshut, however, take the view that the first indent of Article 6(1) of Decision No 1/80, regard being had to the case-law of the Court and the construction of Article 6, must be interpreted as meaning that a Turkish worker who changes employer during the first year's legal employment in a Member State cannot be regarded at the end of that year as fulfilling the conditions governing extension of his work permit.

15. The first indent of Article 6(1) has direct effect. [5] Having regard to its wording, that provision is concerned only with the right of employment, but the Court has consistently held that this right of employment also necessarily entails a right of residence. [6]

16. The Court has held, most recently in its judgment of 5 October 1994 in *Eroglu* (hereinafter 'the *Eroglu* judgment'), [7] that:

'Decision No 1/80 does not encroach upon the power of the Member States to regulate both the entry into their territory of Turkish nationals and the conditions of their first employment ...'.

5 — See Case C-192/89 *Sevince* v *Staatssecretaris van Justitie* [1990] ECR I-3461.

6 — See footnote 5.

7 — Case C-355/93 *Eroglu* v *Land Baden-Württemberg* [1994] ECR I-5113.

Accordingly, the first indent of Article 6(1) does not provide any right of entry into the territory of or residence in a Member State for Turkish workers; such a right is subordinated to the national law of the Member States.

17. None the less, under the first indent of Article 6(1) of Decision No 1/80 a Turkish worker '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 ...'. The wording of that provision is not entirely clear. [8]

On the one hand, it is possible — as Mr Süleyman Eker contends — to see in that provision simply a requirement that the work permit is to be renewed for the purpose of continued employment with the employer by whom the person concerned is employed when he applies for renewal of his permit. However, the use of the expression '*same* employer', with no indication as to whether this refers, where appropriate, to the original employer or the last employer or, where appropriate, to any other employer by whom the worker has been engaged for a shorter or longer term, argues against such a reading. If that had been the Association Council's intention it could, for instance, have used the words '... entitled ... to the renewal of his permit to work for the last employer ...' to show that the provision was intended solely to contain an obligation in that sense, rather than requiring employment with a single employer during the first year of employment.

18. It seems more logical, therefore, to read that provision as including a requirement that the Turkish worker has, throughout the first year of legal employment, been employed by one and the same employer *and* that he must be in a position to continue to be employed by that employer.

19. In support of this interpretation, it may also be pointed out that Article 6(1) of Decision No 1/80 is set out as a series of progressive stages: after one year's employment a Turkish worker acquires the right to continue working for the same employer; after three years' employment he acquires the right to pursue the same occupation, but with an employer of his choice; and after a further year's employment he acquires the right of free access to any paid employment of his choice in the Member State of employment. The purpose of that progressive arrangement is to allow a Turkish worker to acquire more rights the longer he is employed in a Member State and, accordingly, the greater his degree of integration in that Member State.

8 — The wording of this provision in, for example, the English, French and German versions corresponds to that of the Danish version.

20. In the first stage, the Turkish worker has no right to seek employment in the Member State concerned. However, he is entitled to continue his current employment if his employer offers to continue the employment relationship. In the second stage, he acquires the right to seek employment, but only for the same occupation. Finally, in the third stage, the Turkish worker acquires the right freely to seek any paid employment in the Member State. Therefore, if the Turkish worker were allowed to change employer during the first year of legal employment in a Member State this progression in Article 6(1) of Decision No 1/80 would be rendered meaningless, since the Turkish worker would effectively be entitled, during the first year of employment, to seek work and change employer, a right which, pursuant to the second indent of Article 6(1), he was intended to acquire only after three years of employment.

21. Moreover, the first indent of Article 6(1) does not require that renewal of the Turkish worker's work permit be for the purpose of employment in the same occupation. That requirement follows, however, from the second indent of Article 6(1). If a Turkish worker were permitted, under the first indent of Article 6(1), to change employer during the first year's legal employment, he would also be able to change occupation and therefore, even before the expiry of the first year of employment, be able to enjoy a right which, under the third indent of Article 6(1), he was intended to acquire only after four years of employment, namely the right to engage in any paid employment, irrespective of the occupation. The only logical explanation for the absence, in the first indent of Article 6(1), of a requirement that the Turkish worker continue to follow the same occupation must therefore be that that provision imposes an obligation of one year's employment with the same employer, which renders superfluous any separate requirement of employment in the same occupation.

22. It therefore follows from the construction of Article 6(1) of Decision No 1/80 that it is necessary, according to the first indent of Article 6(1), to consider it as a requirement that the Turkish worker be employed by one and the same employer throughout the first year of legal employment.

23. That result appears to be consistent with the Court's case-law on Article 6 of Decision No 1/80. Admittedly, the Court has not thus far had the opportunity to rule directly on the question whether it is necessary, under the first indent of Article 6(1), for the Turkish worker to have been employed by the same employer throughout the first year of legal employment. It has ruled, however, in connection with other questions raised in respect of Article 6 of Decision No 1/80, [9] that:

'The first indent of Article 6(1) of Decision No 1/80 must be interpreted as meaning that

9 — Case C-237/91 *Kus* v *Landeshauptstadt Wiesbaden* [1992] ECR I-6781.

a Turkish national who obtained a permit to reside on the territory of a Member State ... and has worked there for more than one year with the same employer under a valid work permit is entitled under that provision to renewal of his work permit ...'.

24. Moreover, the Court stated in the *Eroglu* judgment, in regard to Article 6(1), that:

'... After one year of legal employment, a Turkish worker is entitled to the renewal of his permit to work for the same employer (first indent) ...

The aim of the first indent of Article 6(1) of Decision No 1/80 is to ensure solely continuity of employment with the same employer and is, accordingly, applicable only where a Turkish worker requests an extension of his work permit in order to continue working for the same employer after the initial period of one year's legal employment.

Extending the application of that provision to a Turkish worker who, after one year's legal employment, changed employers and is seeking an extension of his work permit in order to work for the first employer again would allow that worker to change employers under that provision before the expiry of the three years prescribed in the second indent and would also deprive workers of the Member States of the priority conferred on them pursuant to that indent when a Turkish worker changes employers.'

25. In those judgments, therefore, the Court, for the purpose of determining whether in those specific cases the conditions set out in the first indent of Article 6(1) of Decision No 1/80 had been met, used a form of words indicating its view that that provision includes a requirement that the Turkish worker be employed by the same employer throughout the first year of legal employment. Similarly, it is clear from the *Eroglu* judgment that the Court is of the opinion that the right to change employers is acquired only once the conditions referred to in the second indent of Article 6(1) have been met.

26. I accordingly take the view that the answer to the question referred to the Court must be that the first indent of Article 6(1) of Decision No 1/80 is to be interpreted as meaning that a Turkish worker acquires the right to continue in employment with an employer only after one year's uninterrupted legal employment with the same employer.

Conclusion

27. For the foregoing reasons, I propose that the Court should answer the question raised as follows:

The first indent of Article 6(1) of Decision No 1/80 of the Association Council of 19 September 1980, established pursuant to the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 and concluded on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, must be interpreted as meaning that a Turkish worker acquires a right to continue in employment with an employer only after one year's uninterrupted legal employment with the same employer.