JUDGMENT OF THE COURT

14 March 2000 *

In Joined Cases C-102/98 and C-211/98,

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

Ibrahim Kocak

and

Landesversicherungsanstalt Oberfranken und Mittelfranken (C-102/98)

and between

Ramazan Örs

and

Bundesknappschaft (C-211/98)

* Language of the case: German.

on the interpretation of Article 9 of the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12 September 1963 and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1977 L 361, p. 29), of Article 37 of the Additional Protocol signed in 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 1977 L 361, p. 61), of Article 10(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association (not published), and of Article 3(1) of Decision No 3/80 of the Association Council of the same date 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, L. Sevón, R. Schintgen (Rapporteur) (Presidents of Chambers), P.J.G. Kapteyn, C. Gulmann, J.-P. Puissochet, G. Hirsch, H. Ragnemalm, M. Wathelet and V. Skouris, Judges,

Advocate General: D. Ruíz-Jarabo Colomer,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

in Case C-102/98,

— the German Government, by E. Röder, Ministerialrat at the Federal Ministry of the Economy, and C.-D. Quassowski, Regierungsdirektor in the Federal Ministry of Finance, acting as Agents,

— the Commission of the European Communities, by P.J. Kuijper, Legal Adviser, acting as Agent, assisted by I. Brinker and R. Karpenstein, of the Brussels Bar,

in Case C-211/98,

— Ramazan Örs, by H.-H. Volkenborn, Rechtsanwalt, Herten,

— the German Government, by E. Röder and C.-D. Quassowski,

— 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 P.J. Kuijper, assisted by R. Karpenstein,

having regard to the Report for the Hearing,

after hearing the oral observations of Landesversicherungsanstalt Oberfranken und Mittelfranken, represented by N. Mayer, Director, and W.D. Walloth, Ministerialrat in the Federal Ministry of Labour, acting as Agents, Mr Örs, represented by H.-H. Volkenborn, the German Government, represented by

C.-D. Quassowski, and the Commission, represented by P.J. Kuijper, assisted by R. Karpenstein, at the hearing on 7 September 1999,

after hearing the Opinion of the Advocate General at the sitting on 7 October 1999,

gives the following

Judgment

1 By two orders of 17 February and 31 March 1998 received at the Registry of the Court on 9 April 1998 (C-102/98) and 8 June 1998 (C-211/98), the Bundessozialgericht (Federal Social Court) referred to the Court for preliminary rulings under Article 177 of the EC Treaty (now Article 234 EC) a number of questions on the interpretation of Article 9 of the Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12 September 1963 and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1977 L 361, p. 29, hereinafter 'the Association Agreement'), of Article 37 of the Additional Protocol signed on 23 November 1970 at Brussels and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1977 L 361, p. 61, hereinafter 'the Additional Protocol'), of Article 10(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association (not published), and of Article 3(1) of Decision No 3/80 of the Association Council of the same date 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).

2 Those questions were raised in two actions brought respectively by Ibrahim Kocac, a Turkish national, against the Landesversicherungsanstalt (Regional Insurance Office) Oberfranken und Mittelfranken (hereinafter 'the LVA') (C-102/98) and by Ramazan Örs, a Turkish national, against the Bundesknappschaft (Federal Insurance Fund for Miners) (C-211/98) against the refusal of those two bodies to take account, for the award of retirement pensions to Mr Kocak and Mr Örs, of the changes, pronounced by a Turkish court, to the dates of birth which they had declared when they became members of the German social security scheme.

The EEC-Turkey Association

3 Pursuant to Article 2(1) of the Association Agreement, the aim of that Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties. 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), a transitional stage in which a customs union will be progressively established and economic policies will be aligned (Article 4) and a final stage based on the customs union, entailing closer coordination of economic policies (Article 5).

4 Article 6 of the Association Agreement provides:

'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 on it by this Agreement'.

5 Article 9 of the Association Agreement provides:

'The Contracting Parties recognise that within the scope of this Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the Treaty establishing the Community.'

6 Article 12 of the Association Agreement provides:

'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.'

7 Article 1 of the Additional Protocol which, by virtue of Article 62 thereof, forms an integral part of the Association Agreement lays down the conditions, arrangements and timetables for implementing the transitional stage referred to in Article 4 of the Association Agreement.

8 According to Article 37 of the Additional Protocol:

'As regards conditions of work and remuneration, the rules which each Member State applies to workers of Turkish nationality employed in the Community shall not discriminate on grounds of nationality between such workers and workers who are nationals of other Member States of the Community'.

9 Article 39(1) of the Additional Protocol provides:

'Before the end of the first year after the entry into force of this Protocol the Council of Association shall adopt social security measures for workers of Turkish nationality moving within the Community and for their families residing in the Community.'

10 According to the third recital in its preamble, Decision No 1/80 is intended to improve, in the social field, the treatment accorded to workers and members of their families as compared with the rules then in force and to implement the provisions relating to social security and those relating to the exchange of young workers.

11 Article 10(1) of Decision No 1/80, contained in Section 1 — 'Questions relating to employment and the free movement of workers' — of Chapter II, which is entitled 'Social Provisions', provides:

'The Member States of the Community shall as regards remuneration and other conditions of work grant Turkish workers duly registered as belonging to their labour forces treatment involving no discrimination on the basis of nationality between them and Community workers.'

12 The purpose of Decision No 3/80, adopted on the basis of Article 39 of the Additional Protocol, is to coordinate the social security systems of the Member States so as to enable Turkish workers working or having worked in one or more Member States of the Community, members of those workers' families and

survivors of such workers to enjoy benefits in the traditional branches of social security.

13 Pursuant to Article 2 of Decision No 3/80, entitled 'Persons covered':

'This decision shall apply:

— to workers who are, or have been, subject to the legislation of one or more Member States and who are Turkish nationals,

...'.

14 Article 3(1) of Decision No 3/80, entitled 'Equality of treatment', provides:

'Subject to the special provisions of this Decision, persons resident in the territory of one of the Member States to whom this Decision applies shall be subject to the

same obligations and enjoy the same benefits under the legislation of any Member State as the nationals of that State.'

15 Article 4(1) of Decision No 3/80, entitled 'Matters covered', provides:

'This Decision shall apply to all legislation concerning the following branches of social security:

...

(c) old-age benefits;

...'.

The national legislation

16 In Germany, every insured male who reaches the age of 65 and has been insured for at least 60 months is entitled to a retirement pension.

17 Every person who is insured for pension purposes must have a social security number, which incorporates his date of birth. That number is allocated to him by the competent retirement fund on the basis of the data forwarded by the first employer of the person concerned in the declaration which the latter is required to submit to the sickness insurance authorities.

18 Under Article 1(5) of the Verordnung über die Vergabe und Zusammensetzung der Versicherungsnummer (Regulation on the Assignment and Composition of Insurance Numbers, BGBl.I, 1987, p. 2532) of 7 December 1987:

'A social security number shall be allocated only once and shall not be rectified. If the date of birth or the serial number of the social security number is incorrect, the insured shall be given a new social security number; the incorrect number must no longer be used and must be marked as being unusable ...'.

19 Article 33a of Book I of the Sozialgesetzbuch (Code of Social Law) (hereinafter 'the SGB'), which entered into force on 1 January 1998 following the enactment on 16 December 1997 of the first Law amending Book III of the SGB and other Laws (BGBl.I, 1997, p. 2970), provides:

'(1) If rights or obligations are dependent on whether a specific age-limit is reached or not exceeded, the applicable date of birth is the date which results from the first declaration made by the person entitled to those rights or subject to those obligations, or by the members of his family, to a social security institution or, in so far as information within the context of the third or sixth chapter of the Fourth Book is concerned, to his employer.

(2) An applicable date of birth under paragraph 1 may be departed from only if the competent benefit institution determines:

(a) that a clerical error has been made; or

(b) that a different date of birth results from a document whose original was issued before the date on which the declaration under paragraph 1 was made.

(3) Paragraphs 1 and 2 shall apply *mutatis mutandis* to dates of birth which are a component of an insurance number or other reference mark used in the social benefit fields of this Code.'

20 It is apparent from the explanatory memorandum to the draft law, as submitted by the national court, that the aim of that provision was to obviate improper claims for social security benefits, in the form of premature applications for the payment of such benefits, in cases where *inter alia* dates of birth had been changed. The laws of various other countries allowed a date of birth to be changed by judicial decision. Such changes might lead, under German social law, to advantages not available under the laws of those other countries since most of the latter refused to recognise, for social security purposes, changes made to dates of birth. Such situations called for an additional and particularly detailed administrative check to be made. By simplifying such checks, the new rules were intended to ensure that such changes were no longer, in principle, taken into account under German social law. However, there was no need for a specific transitional provision to be adopted.

The main proceedings

Case C-102/98

21 From April 1962 to December 1966, Mr Kocak worked in Germany in the mining industry and was therefore subject to compulsory affiliation to the social security scheme. Since May 1970 Mr Kocak has lived permanently in that Member State; until he took early retirement on 1 October 1986, he was employed as a production worker. Since 1 October 1991, the date on which his early retirement payments ceased, he has received social assistance.

22 Mr Kocak's date of birth, as incorporated in the social security numbers assigned to him in 1970 and 1980, is 20 October 1933. Following a judgment of 3 December 1985 given by the Turkish civil court in Düzce, Mr Kocak's year of birth in the Turkish register of civil status was amended and entered as 1926. Consequently, by decision of 14 August 1986, the Landesversicherungsanstalt Schleswig-Holstein assigned to him a new insurance number reflecting his date of birth as thus rectified.

23 In August 1991 Mr Kocak applied to the LVA for the award of a retirement pension on the ground that he had reached the age of 65. By decision of 17 February 1992 the LVA determined that the judgment rectifying the Turkish register of civil status could not be recognised as regards Mr Kocak's date of birth and that only the date of 20 October 1933 was relevant for German pension insurance purposes. Consequently, it assigned a new insurance number to Mr Kocak, taking 1933 as his year of birth. By decision of 1 December 1993 the LVA rejected Mr Kocak's application for a retirement pension on the ground that he was born in 1933 and would not therefore reach the age of 65 until October 1998.

24 By decision of 19 January 1994 the LVA also rejected the objections lodged by Mr Kocak against the two abovementioned decisions, on the ground in particular that it had not been proved that he had been born not in 1933, the year which he had indicated when he joined the German retirement scheme, but in 1926; neither the judgment of the Turkish civil court nor the witness evidence produced by Mr Kocak was capable of proving that point; the judgment was based only on a medical certificate and the witness evidence was not corroborated by any document.

25 The Landessozialgericht Schleswig-Holstein set aside the judgment delivered at first instance by the Sozialgericht (Social Court) Itzenhoe, which had upheld the application brought before it by Mr Kocak, and he therefore appealed on a point of law to the Bundessozialgericht. Entertaining doubts as to whether Article 33a of Book I of the SGB was compatible with the principles of non-discrimination and equal treatment applicable to the EEC-Turkey Association, the Thirteenth Chamber of the Bundessozialgericht stayed proceedings pending a preliminary ruling from the Court of Justice on the following question:

'Is the law relating to the association between the European Economic Community and Turkey (in particular Article 9 of the Agreement establishing an Association between the European Economic Community and Turkey of 12 September 1963, Article 37 of the Additional Protocol to that agreement of 23 November 1970, Article 10 of Decision No 1/80 of the Council of Association of 19 September 1980 and Article 3(1) of Decision No 3/80 of the Council of Association of 19 September 1980) to be interpreted as not permitting the legislature of a Member State to adopt rules under which the applicable date of birth for use in the insurance number allocated to an insured person and for the grant of old-age pension is in principle, in the case of Turkish migrant workers also — without regard to particular characteristics of the Turkish register of civil status — the date of birth which results from the first declaration made by the insured person to the social security institution of the Member State in question or to the employer in that State (in so far as he is under a duty to notify the social security institution)?'

Case C-211/98

26 Mr Örs has lived in Germany since 1972 and is affiliated to the Bundesknappschaft pension scheme. When he became a member, Mr Örs declared that he had been born on 1 May 1950 and accordingly the Bundesknappschaft assigned to him a social security number incorporating that date of birth.

27 Following a judgment of the Regional Court in Balikesir of 9 November 1992, Mr Örs's date of birth was rectified in the Turkish register of civil status to 1 May 1946. The judgment was based on sworn evidence produced by the applicant and on an examination of skin tissue from Mr Örs's right arm.

28 By decision of 14 June 1993 the Bundesknappschaft rejected Mr Örs's application for his date of birth and his social security number to be amended on the basis of that judgment, and, by decision of 14 September 1993, dismissed his objection to the earlier decision.

29 The actions which Mr Örs brought against those adverse decisions before the Sozialgericht Gelsenkirchen and, on appeal, before the Landessozialgericht (Higher Social Court) Nordrhein-Westfalen were dismissed, whereupon he appealed on a point of law to the Bundessozialgericht. In his appeal he contended, first, that the social security number serves not only to identify a person but is also of decisive importance regarding the length of that person's working life and, therefore, his rights as regards old-age benefits and, second, that the judgment of the Turkish court, having become *res judicata*, was binding on the Bundesknappschaft. He also stated that the latter, as a sickness fund, had registered him on the basis of his amended date of birth.

30 After observing, in particular, that the case before it was different from that which gave rise to the judgment of the Court of Justice in Case C-336/94 *Dafeki* v

Landesversicherungsanstalt Württemberg [1997] ECR I-6761 because, first, Mr Örs was not a Community national but a Turkish migrant worker and, second, Article 33a of Book I of the SGB excluded subsequent rectification of any date of birth for social-law purposes, the Eighth Chamber of the Bundessozialgericht stayed proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'1. Is there, on the basis of the law relating to the Association between the European Economic Community and Turkey, a prohibition of discrimination in the field of social security which is directly applicable to a Turkish worker in the Federal Republic of Germany?

2. If Question 1 is answered in the affirmative, is that prohibition to be interpreted as precluding a national provision under which the applicable date of birth for statutory pension insurance benefits and for the insurance number assigned in that regard is the date which was officially recorded when the Turkish worker was first registered with a national social benefit institution?'

31 By order of the President of the Court of 2 December 1998 the two cases were joined for the purposes of the oral procedure and the judgment.

The questions referred to the Court

32 By its questions, which it is appropriate to consider together, the national court seeks essentially to ascertain whether the principle of non-discrimination on grounds of nationality laid down in certain of the abovementioned provisions of the rules on the EEC-Turkey Association must be interpreted as precluding a

Member State from applying to Turkish workers rules which, for the purposes of awarding a retirement pension and determining the social security number allocated for that purpose, take as the conclusive date of birth the one given in the first declaration made by the person concerned to a social security authority in that Member State and allow another date of birth to be taken into account only if a document is produced of which the original was issued before that declaration was made.

33 First, it is important to note that Turkish nationals who, like Mr Kocak and Mr Örs, are or have been subject to the legislation of one of the Member States rank among the persons covered by Decision No 3/80, as defined in Article 2 thereof.

34 Furthermore, legislation of a Member State which, like that at issue in the main proceedings, fixes the date of birth to be used in determining the inception of, in particular, entitlement to a retirement pension constitutes legislation concerning one of the branches of social security expressly mentioned in Article 4(1)(c) of Decision No 3/80 and therefore falls within the matters covered by that decision.

35 Second, it must be borne in mind that, in its judgment in Case C-262/96 *Sürül* v *Bundesanstalt für Arbeit* [1999] ECR I-2685, paragraph 74, the Court held that Article 3(1) of Decision No 3/80 establishes, in the area in which that decision applies, a precise and unconditional principle such as is capable of being applied by a national court and, therefore, of governing the legal situation of individuals. The direct effect which must therefore be accorded to that provision means that the persons to whom it applies are entitled to rely on it before the courts of the Member States.

36 Under that provision, Turkish nationals who reside in the territory of one of the Member States and to whom Decision No 3/80 applies are to enjoy in the

Member State in which they reside the same social security benefits under the legislation of that Member State as the nationals of that State. The said provision therefore constitutes the implementation and the concrete expression, in the particular field of social security, of the general principle of non-discrimination on grounds of nationality laid down in Article 9 of the Association Agreement (*Sürül*, cited above, paragraph 64).

37 In those circumstances, it is unnecessary to consider whether the latter provision, to which the national court expressly refers, is also applicable to persons who, like Mr Kocak and Mr Örs, are already entitled to rely on the principle of non-discrimination on grounds of nationality specifically laid down in relation to social security in Article 3(1) of Decision No 3/80.

38 The same applies to the provisions of Article 37 of the Additional Protocol and to Article 10(1) of Decision No 1/80, which affirm the application to Turkish nationals of the general principle of non-discrimination on grounds of nationality with regard to pay and other working conditions.

39 As regards the scope of the principle of non-discrimination on grounds of nationality embodied in Article 3(1) of Decision No 3/80, it must be borne in mind that, according to settled case-law, the rule of equal treatment prohibits not only overt discrimination based on nationality but also all covert forms of discrimination which, by applying other distinguishing criteria, achieve in practice the same result (Case C-190/98 *Volker Graf* v *Filzmoser Maschinenbau* [2000] ECR I-493, paragraph 14).

40 It must be pointed out, first, that legislation such as that at issue in the main proceedings applies irrespective of the nationality of the workers concerned.

41 Second, that legislation accords to the documents to be produced in order to set aside the date of birth indicated in the first declaration made to a social security authority the same probative value regardless of their provenance or origin. It draws no distinction based either on the State in which any such document was drawn up or on the type of document produced and, as the German Government has stated without being contradicted, it attributes probative value not only to documents recording civil status but also to other documents, such as those issued in connection with education or military service, which allow inferences to be drawn regarding the date of birth of the person concerned.

42 Such legislation thus clearly differs from the provisions at issue in *Dafeki*, cited above, which accorded to documents and certificates of civil status emanating from the competent authorities of other States a lower probative value than that accorded to documents and certificates drawn up by the German authorities (see paragraphs 5 and 12 of that judgment).

43 In addition, it is clear from the Bundessozialgericht's orders for reference that, under Turkish law too, the relevant date of birth for social security purposes remains in principle the one indicated when the person concerned first became affiliated to the scheme and a subsequent rectification of that date has no effect for such purposes.

44 Accordingly, it must be concluded that, by requiring, as a precondition for a date of birth other than that indicated in the first declaration made to a social security authority to be taken into account, the production of a document the original of which was issued before the date of that declaration, legislation such as that at issue in the main proceedings does not place Turkish nationals in a different legal situation from that of nationals of the Member State in which they reside.

45 The national court does not exclude the possibility that such legislation might nevertheless entail indirect discrimination against Turkish workers by taking insufficient account of differences, in law and in fact, regarding records of civil status as between the Turkish Republic and the Federal Republic of Germany. Whilst, according to that court, the first declarations made by German nationals to a social security authority are based in general on sound and reliable entries, those made by Turkish workers born in their country of origin often have an appreciably less certain basis and therefore more often need later rectification.

46 In that regard, the national court observes, in its order for reference in Case C-102/98, that under Article 16 of the Personenstandsgesetz (Law on Civil Status, hereinafter 'the PStG') the birth of a child must be notified within a week to the registrar of civil status for the area in which it is born. In principle that obligation attaches to the legitimate father but it may also attach to other persons. Under Article 68 of the PStG any person who fails to fulfil his obligation to make such a declaration or does not do so within the prescribed period is guilty of an offence for which a fine may be imposed.

47 Under Article 20 of the PStG, the registrar of civil status must check the particulars given by the declarant if he doubts their accuracy. Once the date of birth has been entered in the register of civil status it can be rectified only pursuant to a court order (Article 47 of the PStG, read in conjunction with Articles 46 to 46b). For that purpose, the court is required to determine the facts exhaustively on its own initiative and in so doing to use all appropriate sources of information. It may order an entry to be rectified only if convinced that it is incorrect.

48 According to the national court, the situation is appreciably different in Turkey. It considers that although, under Article 39 of the Turkish civil code, a birth must be declared within one month to the authority responsible for keeping the register of civil status, that obligation is not, apparently, always complied with within the prescribed period and in a reliable manner, particularly in rural areas. It also

observes that although, under Article 38 of the Turkish civil code and Article 11 of the Turkish Law on civil status, rectifications to the register of civil status may be made on the basis of a court decision, the standard of verification frequently applied by the Turkish courts in that regard is described as extremely generous by the special administrative departments of the social security authorities. Moreover, on many occasions, the German courts have criticised the fact that no detailed investigation has been carried out in Turkey on the initiative of the authorities there.

49 The Commission submits that, in view of the abovementioned legal and factual differences, a refusal in principle to take account, for pension insurance purposes, of a date of birth other than that indicated in the first declaration made to a social security authority, when the new birth date does not appear in a document whose original was issued before the date of that declaration, constitutes a form of indirect discrimination against Turkish migrant workers, and that it remains to be determined whether such discrimination is justified by objective considerations independent of the nationality of the workers concerned, and whether it is proportionate to the legitimate aim pursued by the national law (see, in that regard, Case C-237/94 *O'Flynn* v *Adjudication Officer* [1996] ECR I-2617, paragraph 19).

50 In that connection, it must be noted that the particular difficulties to which the legislation at issue is liable to give rise for Turkish migrant workers derive from the Turkish legislation on the keeping of the registers of civil status and the particular conditions under which it is applied in practice.

51 It is not permissible, on the basis of the principle of non-discrimination on grounds of nationality embodied in Article 3(1) of Decision No 3/80, to require a Member State which lays down rules regarding the determination of dates of birth for the purpose of establishing a social security number and of awarding a retirement pension to take account of particular circumstances which derive from the Turkish legislation on civil status and of the detailed arrangements for its application in practice.

52 Since legislation of the kind at issue in the main proceedings does not therefore involve any difference of treatment such as to constitute indirect discrimination on grounds of nationality, it is unnecessary to consider whether it is justified by objective considerations and whether it is proportionate to the legitimate aims pursued by national law (see, in that connection, Case C-15/96 *Kougebetopolou* v *Freie und Hansestadt Hamburg* [1998] ECR I-47, paragraph 21, and Case C-350/96 *Clean Car Autoservice* v *Landeshauptmann von Wien* [1998] ECR I-2521, paragraphs 30 and 31).

53 For the same reason, it is likewise unnecessary to consider, in particular, whether, as contended by the Commission, having regard to the doubts expressed by the national court in its order for reference in Case C-102/98, the legislation is disproportionate to the aims pursued in that, in the absence of any transitional provision, it also applies to Turkish workers whose first declarations to a social security authority were made under earlier legislation at a time when they had no reason to expect that, on applying for a pension, they might be unable to rely on their true date of birth — a date other than that initially declared — unless that date appeared in a document whose original was issued before the date of the first declaration.

54 As to whether persons such as Mr Kocak and Mr Örs may derive rights regarding the award of their retirement pensions from the fact that, before the entry into force of the legislation at issue in the main proceedings, they had been assigned a new social security number or had applied under earlier legislation for a change to their social security number, that is a matter of national law.

55 Accordingly, the answer to the questions submitted must be that Article 3(1) of Decision No 3/80 must be interpreted as not precluding a Member State from applying to Turkish workers legislation which, for the purposes of awarding a retirement pension and determining the social security number allocated for that purpose, takes as the conclusive date of birth the one given in the first declaration made by the person concerned to a social security authority in that Member State

and allows another date of birth to be taken into account only if a document is produced the original of which was issued before that declaration was made.

Costs

56 The costs incurred by the German and French Governments and 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,

in answer to the questions referred to it by the Bundessozialgericht by orders of 17 February 1998 and 31 March 1998, hereby rules:

Article 3(1) of Decision No 3/80 of the Association Council of 19 September 1998 on the application of the social security schemes of the Member States of

the European Communities to Turkish workers and members of their families must be interpreted as not precluding a Member State from applying to Turkish workers legislation which, for the purposes of awarding a retirement pension and determining the social security number allocated for that purpose, takes as the conclusive date of birth the one given in the first declaration made by the person concerned to a social security authority in that Member State and allows another date of birth to be taken into account only if a document is produced the original of which was issued before that declaration was made.

Rodríguez Iglesias Edward Sevón

Schintgen Kapteyn

Gulmann Puissochet Hirsch

Ragnemalm Wathelet Skouris

Delivered in open court in Luxembourg on 14 March 2000.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President