

OPINION OF ADVOCATE GENERAL
JACOBS

delivered on 12 December 2002 ¹

1. Decision No 1/80² of the Association Council set up by the EEC-Turkey Agreement³ prohibits discrimination on the basis of nationality, as regards remuneration and other conditions of work, against Turkish workers in the Member States. The Austrian Verfassungsgerichtshof (Constitutional Court) wishes to know whether that provision precludes national legislation under which Turkish workers cannot be elected to the general assembly of a chamber of workers and, if so, whether it has direct effect.

Legal background

The EEC-Turkey Agreement and Decision No 1/80

2. The aims of the Agreement are essentially to establish closer bonds and to

¹ Original language: English

² — Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association (not officially published).

³ — Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963, approved by Council Decision 64/732/EEC of 23 December 1963, OJ 1977 L 361, p. 29.

increase trade between Turkey and the Community, to develop the Turkish economy and to improve the level of employment and the living conditions of the Turkish people, with a view to Turkey's accession to the Community at a later date. It provides for a preparatory stage, a transitional stage - which is the current stage - and a final stage.⁴

3. Under Article 9, the Contracting Parties recognise that within the scope of the Agreement any discrimination on grounds of nationality is to be prohibited in accordance with the principle laid down in what is now, after amendment, Article 12 EC.

4. Articles 12 to 14 of the Agreement provide for the progressive establishment of freedom of movement for workers, freedom of establishment and freedom to provide services. Under Article 12, the Contracting Parties agree to be guided by

⁴ — See the preamble and Article 2.

what are now, after amendment, Articles 39 to 41 EC for the purpose of progressively securing freedom of movement for workers between them.

5. An additional protocol to the Agreement⁵ lays down conditions, arrangements and timetables for implementing the transitional stage. Articles 36 to 40 thereof cover freedom of movement for workers. Under Article 36 'Freedom of movement for workers between Member States of the Community and Turkey shall be secured by progressive stages in accordance with the principles set out in Article 12 of the Agreement of Association.... The Council of Association shall decide on the rules necessary to that end.'

6. Article 37 of the Protocol provides: '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.'

⁵ — Signed in Brussels on 23 November 1970, confirmed by Council Regulation (EEC) No 2760/72, OJ 1977 L 361 p. 60. In accordance with Article 62, it forms an integral part of the Agreement.

7. Article 6 of the Agreement sets up a Council of Association (or 'Association Council'), to ensure the implementation and progressive development of the Association. Under Article 22(1), the Association Council has the power to take decisions as provided for in the Agreement, and the Contracting Parties must take the measures necessary to implement those decisions. In accordance with Article 23, it comprises members of the Governments of the Member States, of the Council, of the Commission and of the Turkish Government.

8. On 19 September 1980, the Association Council adopted Decision No 1/80, Article 10(1) of which 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.'

*Treaty provisions and Regulation
No 1612/68*

9. As mentioned above, the EEC-Turkey Agreement makes reference to a number of Treaty provisions, in the light of which it must be interpreted.

10. Article 12 EC provides: ‘Within the scope of application of this Treaty... any discrimination on grounds of nationality shall be prohibited.’ Article 39 secures freedom of movement for workers within the Community, and paragraph 2 thereof provides that such freedom of movement is to entail ‘the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment’.⁶ However, under paragraph 4, the provisions of the article do not apply to ‘employment in the public service’. Under Article 40, the Council is to issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 39.

become unemployed, reinstatement or re-employment;’ and under Article 8(1)⁸ such a worker ‘shall enjoy equality of treatment as regards membership of trade unions and the exercise of rights attaching thereto, including the right to vote and to be eligible for the administration or management posts of a trade union; he may be excluded from taking part in the management of bodies governed by public law and from holding an office governed by public law. Furthermore, he shall have the right of eligibility for workers’ representative bodies in the undertaking...’

11. One such measure is Council Regulation No 1612/68.⁷ Article 7(1) provides: ‘A worker who is a national of a Member State may not, in the territory of another Member State, be treated differently from national workers by reason of his nationality in respect of any conditions of employment and work, in particular as regards remuneration, dismissal, and should he

The ASTI cases

12. In 1991, the Court gave judgment in *ASTI*.⁹ The dispute in the national proceedings concerned the obligation to pay contributions to the *Chambre des Employés Privés*, an occupational guild in Luxembourg, on behalf of employees who were Community but not Luxembourg nationals and who, under the rules applicable in Luxembourg, were compulsorily affiliated to the guild but, by reason of their nationality, not entitled to vote in elections of its members.

6 — Article 28(2) of the Agreement on the European Economic Area (OJ 1994 L 1, p. 3, ‘the EEA Agreement’) contains an identical provision as regards discrimination between workers of EC Member States and other EEA States.

7 — Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475).

8 — As amended by Council Regulation (EEC) No 312/76 of 9 February 1976 amending the provisions relating to the trade union rights of workers contained in Regulation No 1612/68, OJ 1976 L 39, p. 2.

9 — Case C-213/90 [1991] ECR I-3507.

13. The Court examined the question above all in the light of Article 8(1) of Regulation No 1612/68 which, it considered, 'extends beyond the bounds of trade-union organisations in the strict sense and includes, in particular, the participation of workers in bodies which, while not being, in law, trade-union organisations, perform similar functions as regards the defence and representation of workers' interests'¹⁰ and 'precludes national legislation refusing foreign workers the right to vote in elections of members of an occupational guild to which they are compulsorily affiliated, to which they must pay contributions, which is responsible for defending the interests of affiliated workers and which performs a consultative function in the legislative field'.¹¹

15. Subsequently, in *Commission v Luxembourg*,¹³ the Court confirmed that ruling and further held that 'by maintaining in force legislation which denies workers who are nationals of other Member States and are employed in the Grand Duchy of Luxembourg the right to vote and to stand as candidates for membership in elections organised by Luxembourg occupational guilds', Luxembourg had failed to fulfil its obligations under what is now Article 39(2) EC and under Article 8(1) of Regulation No 1612/68.

Austrian legislation in issue

14. In reaching that decision, it dismissed an argument raised by the Luxembourg Government that such an occupational guild falls within the derogation contained in Article 8(1), as a body governed by public law which, through its consultative role, is associated with the exercise of powers conferred by public law. The Court pointed out that the exclusion (which corresponds to the derogation contained in Article 39(4) EC) merely permits workers from other Member States to be debarred in some circumstances from certain activities which involve participation in the exercise of powers conferred by public law.¹²

16. In Austria, bodies known as Kammern für Arbeiter und Angestellte (chambers of workers and employees, hereinafter 'chambers of workers') in each *Land*, which together form the Bundeskammer für Arbeiter und Angestellte (Federal Chamber of Workers and Employees, 'the Bundesarbeitskammer'), represent and promote workers' social, economic, occupational and cultural interests. Under the Arbeiterkammergesetz (Law on Chambers of Workers, 'the AKG') 1992, they are corporations governed by public law.

10 — Paragraph 16 of the judgment.

11 — Paragraph 21 and operative part.

12 — Paragraphs 18 and 19 of the judgment, citing Case 149/79 *Commission v Belgium* [1980] ECR 3881, paragraph 15.

13 — Case C-118/92 [1994] ECR I-1891.

17. According to the order for reference, their most important tasks include:

— representing the interests of workers, including unemployed and retired workers, in particular sending representatives to various bodies and organisations,

— monitoring conditions of work,

— cooperating with voluntary occupational associations entitled to enter into collective agreements and with bodies representing interests within undertakings

and

— advising members on matters of employment and social law and in particular providing legal representation.

18. Within their area of competence, chambers of workers may also, subject to

the binding instructions of State bodies, exercise functions of State administration conferred on them by law but, according to the order for reference, no significant powers have been conferred in that way.

19. All workers are in principle members of the chambers of workers and must pay contributions thereto.

20. The institutions of a chamber of workers include a general assembly ('*Vollversammlung*'), delegates to which are elected for five years by the workers entitled to vote. All workers who belong to the chamber on the relevant date are entitled to vote, regardless of nationality.

21. In order to be elected, however, Paragraph 21 of the AKG lays down certain conditions including a requirement that candidates must be qualified (in all respects except that of age) for election to the Austrian Parliament. That excludes in particular all persons who do not possess Austrian nationality.

Proceedings

22. Elections to the general assembly of the chamber of workers for Vorarlberg were held in 1999.

23. A group seeking election under the name 'Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG' ('Gemeinsam') put forward a list of 26 candidates including five Turkish nationals entitled to benefit fully from the rights conferred by the EEC-Turkey Agreement. The electoral commission however deleted the five Turkish nationals from the list because they did not have Austrian nationality.

24. Gemeinsam obtained two of the total of 70 seats, with 1 535 votes out of a total of 45 444 validly cast. It then contested the validity of the elections before the competent Federal minister, who rejected the complaint, essentially on the ground that, although the requirement of Austrian nationality was indeed unlawful in the light of the directly applicable prohibition of discrimination in Article 10(1) of Decision No 1/80, the deletion of the Turkish nationals' names could not have influenced the result of the election, since voting was for a list and not for individual candidates.

25. Gemeinsam and the five Turkish nationals excluded from the election then brought a further challenge before the Verfassungsgerichtshof contesting, essentially, the second part of the minister's reasoning. That court appears to agree with the applicants in that regard, but seems concerned with the first part of the reasoning, in which the minister accepted the illegality of the rule in issue. It expresses doubt as to whether eligibility to the general assembly of a chamber of workers may fall within the meaning of 'other conditions of work' in Article 10(1) of the Decision.

26. It therefore seeks a preliminary ruling on the following questions:

'(1) Is Article 10(1) of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association to be interpreted as precluding a provision of a Member State which excludes Turkish workers from eligibility to the general assembly of a chamber of workers?

(2) If the answer to Question 1 is affirmative: Is Article 10(1) of Decision No 1/80 of the Association Council of 19 September

1980 on the development of the Association directly applicable Community law?’

pean Union and other EEA citizens, but the ruling in this case may help to settle the areas of dispute in those proceedings.

27. Written observations have been submitted to the Court by Gemeinsam, the Vorarlberg Chamber of Workers, the Austrian Government and the Commission, all of whom, with the exception of the Austrian Government, made oral submissions at the hearing on 24 October 2002.

Assessment

The first question

28. It may be useful to bear in mind that related infringement proceedings brought by the Commission against the Republic of Austria are also currently pending before the Court, in Case C-465/01.

29. On 9 July 1999, the Commission informed the Austrian authorities in accordance with Article 226 EC that it considered the Austrian provisions concerning eligibility to both chambers of workers and works councils to be in breach of Article 39 EC, of Article 28 of the EEA Agreement and of the prohibitions of discrimination in various association agreements concluded by the Community. The Court action was lodged on 4 December 2001.

31. Article 10(1) of Decision No 1/80 of the Association Council precludes discrimination on the basis of nationality, as regards remuneration and other conditions of work, between Community nationals and Turkish nationals who are duly registered for employment in their host Member State. It is common ground that the present case concerns only Turkish nationals who are so registered.

32. The question which arises is whether the right to be elected to the general assembly of a chamber of workers in Austria is covered by that prohibition of discrimination.

30. Those proceedings are broader in scope than the present case since they also cover works councils and extend to both Euro-

33. Essentially, two reasons have been suggested why that might not be so. First,

as the national court suggests and the Austrian Government argues, such a right might not fall within the definition of 'conditions of work' for the purposes of the provision in issue. Second, as is argued by the Vorarlberg Chamber of Workers, even if the right does fall within that definition, it might none the less be excluded from the prohibition of discrimination on the ground that those elected participate in the exercise of powers conferred by public law.

(a) Is the right of eligibility to the general assembly of a chamber of workers a 'condition of work'?

34. In the field of freedom of movement for workers the Court has interpreted the EEC-Turkey Agreement, the Additional Protocol and the decisions of the Association Council in the light of Articles 39 to 41 EC — as is clearly correct, having regard to Article 12 of the Agreement.

35. Most recently, for example, in *Nazli*,¹⁴ it stated:

'The provisions of Section 1 of Chapter II of Decision No 1/80 [15]... constitute a

further stage in securing freedom of movement for workers on the basis of Articles [39 to 41 EC]... [16]

The Court has consistently inferred from the wording of Article 12 of the Association Agreement and Article 36 of the Additional Protocol, as well as from the objective of Decision No 1/80, that the principles enshrined in Articles [39 to 41 EC] must be extended, so far as possible, to Turkish nationals who enjoy the rights conferred by Decision No 1/80... [17]

It follows that, when determining the scope of the public policy exception provided for by Article 14(1) of Decision No 1/80, reference should be made to the interpretation given to that exception in the field of freedom of movement for workers who are nationals of a Member State of the Community. Such an approach is all the more justified because Article 14(1) is formulated in almost identical terms to [Article 39(3) EC].'¹⁸

16 — Citing Case C-434/93 *Bozkurt* [1995] ECR I-1475, paragraphs 14 to 19 of the judgment, Case C-171/95 *Tetik* [1997] ECR I-329, paragraph 20, and Case C-210/97 *Akman* [1998] ECR I-7519, paragraph 20.

17 — Citing *Bozkurt*, paragraphs 14, 19 and 20 of the judgment, *Tetik*, paragraphs 20 and 28, Case C-1/97 *Birden* [1998] ECR I-7747, paragraph 23, Case C-36/96 *Gunaydin* [1997] ECR I-5143, paragraph 21, and Case C-98/96 *Ertanir* [1997] ECR I-5179, paragraph 21.

18 — Both the provisions cited state that the rights conferred are 'subject to limitations justified on grounds of public policy, public security or public health'.

14 — Case C-340/97 [2000] ECR I-957, at paragraphs 54 to 56 of the judgment.

15 — That is to say, those relating to employment and freedom of movement for workers, including Article 10.

36. That latter consideration seems important in the present case, in view of the close similarity between the relevant terms of Article 39(2) EC and of Article 10(1) of Decision No 1/80.

37. In addition, Article 9 of the EEC-Turkey Agreement explicitly embraces the general prohibition of discrimination embodied in Article 12 EC.

38. Within the sphere of the Treaty, it is clear from *ASTI* and *Commission v Luxembourg* that Austrian law may not exclude Community nationals from eligibility to the general assembly of a chamber of workers.

39. Only one argument would appear capable of militating against the application of that principle to Turkish workers who are already part of the workforce of a Member State and who may thus not be discriminated against as regards conditions of work.

40. Article 8(1) of Regulation No 1612/68, on which the Court particularly relied in those cases, is more explicit than Article 39(2) EC. It is also more explicit than Article 7(1) of Regulation No 1612/68, whose wording is more comparable to that

of Article 10(1) of Decision No 1/80. It might thus be thought that Article 8(1) provides an extension of the rights normally accorded to workers in the context of freedom of movement, going beyond what is normally understood as 'conditions of work', but an extension which is specifically confined to Community (and other EEA) nationals covered by Regulation No 1612/68. The fact that no such explicit provision has been adopted in the context of the EEC-Turkey Agreement might thus be taken to mean that the right of eligibility to workers' representative bodies does not apply.

41. I none the less disagree with that view.

42. It seems clear to me that the right to participate in employee representation is inherently a 'condition of work' of the kind contemplated in the Treaty, Regulation No 1612/68, the EEC-Turkey Agreement and its additional protocol, and Decision No 1/80.

43. The concept of working conditions, which appears in a variety of Community instruments in the context of a prohibition of discrimination, has, as the national court, the Austrian Government and the

Commission have all pointed out, been given a broad definition by the Court in, for example, *Meyers*,¹⁹ which concerned discrimination on grounds of sex with regard to entitlement to family credit. The Court refused to confine the concept solely to working conditions set out in the contract of employment or applied by the employer, which, it said, would remove situations directly covered by an employment relationship from the scope of the prohibition of discrimination in issue.²⁰

45. To put it in other terms, where all workers are subject to the same material working conditions and where a body exists which may exert some influence over those conditions, it cannot be said that there is no discrimination, as regards conditions of work, between one group which is entitled to stand for membership of that body as well as to vote for candidates and another group which is entitled only to vote.

44. It cannot in my view reasonably be asserted that a worker deprived of the right — enjoyed by nationals of his host State — to the benefits of participation in trade unions or other comparable bodies representing workers' interests is not the victim of discrimination as regards conditions of work. No broad definition of that concept, such as consistently accepted by the Court, can separate participation in the various processes by which working conditions are regulated from the conditions themselves, or participation in the form of a right to vote from participation in the form of the right to stand for election.

46. Indeed, to deny any worker such a right seems incompatible with the attachment of the Member States, expressed for example in the preamble to the Treaty on European Union and in Article 136 EC, to the fundamental social rights of workers. It might moreover — quite apart from the discrimination against the individuals concerned — adversely affect the influence and compromise the legitimacy of such representative bodies if, in a particular sector, area or undertaking, a sizeable proportion of workers were to be excluded by a rule such as that in issue.

47. I therefore take the view that Article 8(1) of Regulation No 1612/68 clarifies the scope of the prohibition of discrimination laid down in Article 39(2) EC and confirmed in Article 7(1) of the same regulation.

19 — Case C-116/94 [1995] ECR I-2131, in particular at paragraph 24 of the judgment.

20 — Namely, in that case, Article 5(1) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, OJ 1976 L 39, p. 40.

48. In addition, however, it clarifies the limitation on that scope which flows from Article 39(4) EC — under which Article 39 does not apply to employment in the public service — by providing that non-nationals may be excluded from ‘taking part in the management of bodies governed by public law and from holding an office governed by public law’. Both aspects of the clarification should thus be taken into account when defining the scope of the equivalent prohibition under Article 10(1) of Decision No 1/80.

(b) Does election to the general assembly of a chamber of workers involve participation in the exercise of powers conferred by public law?

49. The Vorarlberg Chamber of Workers puts forward three types of argument, stressing that the right to participate in employee representation is subject to Article 39(4) EC, which applies where ‘the posts in question are typical of the specific activities of the public service in so far as the powers conferred by public law and responsibility for safeguarding the general interests of the State are vested in it’.²¹

²¹ — Case 307/84 *Commission v France* [1986] ECR 1725, at paragraph 12 of the judgment, and the case-law cited there.

50. First in that connection, chambers of workers are in its submission autonomous, non-territorial, representative authorities governed by public law and subject to constitutional requirements of democracy, with quasi-legislative and decision-making powers involving the exercise of powers conferred by public law. Participation in the democratic process is subject to possession of the relevant nationality, the only exception being the right to vote and stand as a candidate in municipal elections, open to all citizens of the Union in accordance with Article 19(1) EC. However, that is a limited exception expressly laid down in the Treaty. Austrian chambers of workers form another sub-national democratic organ, not covered by the exception, so that even citizens of the Union are barred from standing as candidates. The same must apply *a fortiori* to Turkish nationals.

51. Second, the chamber of workers has provided the Court with a painstakingly exhaustive list of governmental bodies to which members or delegates may be nominated or appointed, and which may in its submission exercise State powers.

52. Third, it points out that Article 3(2) of Decision No 3/80 of the Association Council, adopted on the same day as Decision No 1/80, expressly excludes Turkish workers from eligibility to organs of social security institutions whilst allowing them

to participate in elections.²² Article 10(1) of Decision No 1/80 should, it considers, be interpreted in that light.

53. It is noteworthy here that the submissions of the Vorarlberg Chamber of Workers appear to contradict the view of the Verfassungsgerichtshof in the main proceedings. The national court clearly states²³ that the characteristics which the Court of Justice considered relevant in *ASTI* and *Commission v Luxembourg* appear to apply to Austrian chambers of workers and that the latter's typical powers of participation in economic and social administration or sending members to administrative bodies do not give them as such a share in the exercise of State powers.

54. The Verfassungsgerichtshof is undoubtedly better qualified than this Court to determine the role, nature and

22 — The full text of Article 3 is as follows: 'Equality of treatment 1. 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. 2. The provisions of paragraph 1 shall apply to the right to elect members of the organs of social security institutions or to participate in their nomination, but shall not affect the legislative provisions of any Member State relating to eligibility or methods of nomination of persons concerned to those organs.'

23 — At point 3.2.4 of the order for reference.

powers of chambers of workers under national law. The extent to which such chambers may exercise powers conferred by public law will therefore be primarily a matter for that court to determine.

55. In any event, even in the light of the very full submissions put to the Court by the chamber of workers, it does not seem to me that there is any support in Community law for its argument.

56. First, it must be emphasised that what is at issue is a limitation on a fundamental right, which as such must be interpreted restrictively.

57. Moreover, that limitation flows from Article 39(4) EC and should be interpreted accordingly in both Article 8(1) of Regulation No 1612/68 and Article 10(1) of Decision No 1/80. The type of employment concerned, the Court has consistently held, 'must be understood as meaning a series of posts which involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities and which, because of that fact, presume on the part of those occupying them the existence of a special relationship of allegiance to the State and reciprocity of rights and duties

which form the foundation of the bond of nationality. The only posts excluded are those which, having regard to the tasks and responsibilities involved, are apt to display the characteristics of the specific activities of the public service in the spheres described above.’²⁴ None of the instances adduced by the chamber of workers displays, in my view, any evidence of the existence of such a special relationship of allegiance and of reciprocity of rights and duties.

58. The fact that such chambers are subject to democratic and constitutional constraints does not in itself seem significant, and any assessment of their democratic legitimacy must surely take account of the identity and interests of those represented — here those working in the Member State rather than its nationals. Moreover, the types of measure which the chambers may themselves adopt seem to be essentially self-regulatory; the Vorarlberg Chamber of Workers itself stresses their autonomous nature and the fact that their sphere of activity is confined essentially to the interests of those whom they represent.

59. It is true that, of the list of bodies to which chambers of workers may send

members, several may exercise powers conferred by public law (though many others appear to have a purely advisory role, and it seems that in most cases the right of the chambers of workers is limited to proposing a number of candidates of whom one or more may be appointed by a State authority). However, even if the exception embodied in Article 39(4) EC and Article 8(1) of Regulation No 1612/68 applies to membership of such bodies, so that Turkish workers may not be appointed to them, that does not mean that such workers must be excluded from membership of the general assemblies of the chambers of workers themselves. As the Court stated in *Commission v Belgium*,²⁵ which it cited in *ASTI*:

‘Article 8 of Regulation No 1612/68 is not intended to debar workers from other Member States from certain posts, but simply permits them to be debarred in some circumstances from certain activities which involve their participation in the exercise of powers conferred by public law, such as — to use the examples given by the Belgian Government itself — those involving “the presence of trade-union representatives on the boards of administration of many bodies governed by public law with powers in the economic sphere”.’

60. Nor does the proposed comparison with the exclusion of Turkish workers from

24 — See, for example, Case C-4/91 *Bleis* [1991] ECR I-5627, paragraph 6 of the judgment, together with the case-law cited there.

25 — Cited in note 12, at paragraph 15 of the judgment.

eligibility to the organs of social security institutions under Article 3(2) of Decision No 3/80 seem to me to support the approach put forward. If anything, it appears rather to confirm that which I have outlined above, allowing such workers to participate in bodies which send members to organs with powers conferred by public law but not themselves to be members of those organs.

61. I thus reach the view that, on the assessment of the role and powers of Austrian chambers of workers made by the Verfassungsgerichtshof, and subject only to any change in that assessment, Article 10(1) of Decision No 1/80 of the Association Council precludes a national rule excluding Turkish workers from eligibility to the general assembly of such chambers.

The second question

62. It is clear that both the Association Agreement and decisions of the Association Council are in principle capable of having direct effect. The Court, in one of its most recent rulings in this area, has expressed that principle as follows: 'a provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when,

having regard to its wording and to 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'.²⁶

63. In *Sevince*,²⁷ the Court had already confirmed that, since they are directly connected with the Agreement to which they give effect, decisions of the Association Council form an integral part of the Community legal system as from their entry into force, in the same way as the Agreement itself.

64. As regards Article 10(1) of Decision No 1/80, it is helpful to refer to the judgment in *Sürül*²⁸ on the comparable provision in Article 3(1) of Decision No 3/80 of the Association Council.²⁹ That paragraph, the Court found, laid down in clear, precise and unconditional terms a prohibition of discrimination based on nationality against persons to whom the decision was applicable. It contained a precise obligation of result and could thus be relied on by an individual requesting a

26 — Judgment of 29 January 2002 in Case C-162/00 Pokrzep-towicz-Meyer, at paragraph 19, citing, inter alia, Case C-262/96 *Sürül* [1999] ECR I-2685, paragraph 60, and Case C-63/99 *Głoszczuk* [2001] ECR I-6369, paragraph 30. The case concerned the Europe Agreement between Poland and the Communities.

27 — Case C-192/89 [1990] ECR I-3461, at paragraph 9 of the judgment.

28 — Cited above in note 26, at paragraph 60 et seq. of the judgment.

29 — Quoted above in note 22.

national court to disapply discriminatory provisions of national legislation under which the grant of a right is subject to a condition not imposed on nationals. No further implementing measures were required. Article 3(1) was merely the implementation and 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 Agreement, referring in turn to Article 12 EC.³⁰

working conditions or remuneration, in relation to its own nationals.’ And non-discrimination rules in the Europe Agreement with Poland have likewise been held to have direct effect.³³

65. The Court had earlier reached a similar conclusion³¹ with regard to the first paragraph of Article 40 of the EEC-Morocco Agreement,³² which reads: ‘The treatment accorded by each Member State to workers of Moroccan nationality employed in its territory shall be free from any discrimination based on nationality, as regards

66. In the light of the Court’s case-law, of the purpose and nature of the EEC-Turkey Agreement³⁴ and of the wording of the provision itself, it seems evident that, like those other provisions, Article 10(1) of Decision No 1/80 contains a clear and precise obligation which is not conditional on the adoption of any subsequent measure. It therefore has direct effect and may be relied upon by individuals in proceedings before national courts. Nor do I see any reason to make that direct effect dependent, as the Vorarlberg Chamber of Workers proposes, on interpreting Article 10(1) in conjunction with Article 3(2) of Decision No 3/80, which is a wholly separate measure and in any event does not appear to lead to the conclusion argued for by the chamber.

30 — The Court cited Case C-18/90 *Kziber* [1991] ECR I-199, paragraphs 15 to 23 of the judgment, confirmed by Case C-58/93 *Yousfi* [1994] ECR I-1353, paragraphs 16 to 19; Case C-103/94 *Krid* [1995] ECR I-719, paragraphs 21 to 24; Case C-126/95 *Hallouzi-Choho* [1996] ECR I-4807, paragraphs 19 and 20; and Case C-113/97 *Babahenini* [1998] ECR I-183, paragraphs 17 and 18, relating to the principle of equal treatment contained in Article 39(1) of the EEC-Algeria Cooperation Agreement (see Council Regulation (EEC) No 2210/78 of 26 September 1978, OJ 1978 L 263, p. 1), and to Article 41(1) of the EEC-Morocco Cooperation Agreement (see Council Regulation (EEC) No 2211/78, OJ 1978 L 264, p. 1).

31 — In Case C-416/96 *El-Yassini* [1999] ECR I-1209, at paragraphs 25 to 32 of the judgment.

32 — Cited above in note 30.

67. The answer to the second question referred thus follows ineluctably — as does the answer to the first question — from the Court’s existing case-law.

33 — See *Glosczuk*, paragraphs 29 to 38 of the judgment, and *Pokrzepowicz-Meyer*, paragraphs 19 to 30, both judgments cited above in note 26.

34 — See paragraphs 2 to 4 above, and *Nazli*, quoted in paragraph 35.

Conclusion

68. I am therefore of the opinion that the Court should give the following reply to the questions raised by the Verfassungsgerichtshof:

- (1) Article 10(1) of Decision No 1/80 of the Association Council set up by the EEC-Turkey Agreement is to be interpreted as precluding a national rule excluding Turkish workers duly registered as belonging to the labour force of a Member State from the right to be elected to the general assembly of a body such as a chamber of workers in Austria, provided that such a general assembly does not itself participate in the exercise of powers conferred by public law.

- (2) Article 10(1) of Decision No 1/80 has direct effect.