JUDGMENT OF THE COURT (Sixth Chamber)

8 May 2003 *

In Case C-171/01,

REFERENCE to the Court under Article 234 EC by the Verfassungsgerichtshof (Austria) for a preliminary ruling in the proceedings brought before that court by

Wählergruppe 'Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG',

also represented:

Bundesminister für Wirtschaft und Arbeit,

Kammer für Arbeiter und Angestellte für Vorarlberg,

Wählergruppe 'Vorarlberger Arbeiter- und Angestelltenbund (ÖAAB) — AK-Präsident Josef Fink',

Wählergruppe 'FSG — Walter Gelbmann — mit euch ins nächste Jahrtausend/ Liste 2',

Wählergruppe 'Freiheitliche und parteifreie Arbeitnehmer Vorarlberg — FPÖ',

* Language of the case: German.

Wählergruppe 'Gewerkschaftlicher Linksblock',

and

Wählergruppe 'NBZ — Neue Bewegung für die Zukunft',

on the interpretation of Article 10(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey,

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, R. Schintgen (Rapporteur), V. Skouris, F. Macken and J.N. Cunha Rodrigues, Judges,

Advocate General: F.G. Jacobs,
Registrar: M.-F. Contet, Principal Administrator,

after considering the written observations submitted on behalf of:

— Wählergruppe 'Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG', by W.L. Weh, Rechtsanwalt,

— Kammer für Arbeiter und Angestellte für Vorarlberg, by W.-G Schärf, Rechtsanwalt,

— the Austrian Government, by H. Dossi, acting as Agent,

— the Commission of the European Communities, by J. Sack and H. Kreppel, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Wählergruppe 'Gemeinsam Zajedno/ Birlikte Alternative und Grüne GewerkschafterInnen/UG', the Kammer für Arbeiter und Angestellte für Vorarlberg and the Commission at the hearing on 24 October 2002,

after hearing the Opinion of the Advocate General at the sitting on 12 December 2002,

gives the following

Judgment

1 By order of 2 March 2001, received at the Court on 19 April 2001, the Verfassungsgerichtshof referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Article 10(1) of Decision

No 1/80 of the Association Council of 19 September 1980 on the development of the Association ('Decision No 1/80'). The Association Council was set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey and by the Member States of the EEC and the Community and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1, 'the Association Agreement').

2 Those questions were raised in proceedings brought before the Verfassungsgerichtshof by the voters' group Wählergruppe 'Gemeinsam Zajedno/Birlikte Alternative und Grüne GewerkschafterInnen/UG' ('Wählergruppe Gemeinsam') for annulment of the elections to the general assembly of the chamber of workers of the *Land* of Vorarlberg (Austria) which took place between 6 and 23 April 1999.

Legal background

The EEC-Turkey Association

3 According to Article 2(1), the aim of the Association Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties, including in the labour sector, by progressively securing freedom of movement for workers (Article 12) and by abolishing restrictions on freedom of establishment (Article 13) and on freedom to provide services

(Article 14) in order to improve the standard of living of the Turkish people and facilitate the accession of the Republic of Turkey to the Community at a later date (fourth recital in the preamble and Article 28).

4 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 during which a customs union is progressively to be established and economic policies are to be aligned (Article 4) and a final stage based on the customs union and entailing closer coordination of the economic policies of the Contracting Parties (Article 5).

5 Article 6 of the Association Agreement is worded as follows:

'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.'

6 According to Article 8 of the Association Agreement, which is included under Title II, entitled 'Implementation of the Transitional Stage':

'In order to attain the objectives set out in Article 4, the Council of Association shall, before the beginning of the transitional stage and in accordance with the procedure laid down in Article 1 of the Provisional Protocol, determine the

conditions, rules and timetables for the implementation of the provisions relating to the fields covered by the Treaty establishing the Community which must be considered; this shall apply in particular to such of those fields as are mentioned under this Title and to any protective clause which may prove appropriate.'

7 Article 9 of the Association Agreement, which is also part of Title II, states:

'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.'

8 Article 12 of the Association Agreement, which is also included under Title II in Chapter 3, entitled 'Other economic provisions', 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.'

9 According to Article 22(1) of the Association Agreement:

'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....'

10 Article 1 of the Additional Protocol, which was 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 1973 C 113, p. 18, 'the Additional Protocol'), lays down the conditions, arrangements and timetables for implementing the transitional phase referred to in Article 4 of the Association Agreement. According to Article 62, the Additional Protocol forms an integral part of that agreement.

11 Title II of the Additional Protocol is entitled 'Movement of Persons and Services' and Chapter I of that title deals with 'Workers'.

12 Article 36 of the Additional Protocol, which is part of Chapter I, provides that freedom of movement for workers between the Member States of the Community and Turkey is to be secured by progressive stages in accordance with the principles set out in Article 12 of the Association Agreement between the end of 12th and 22nd year after the entry into force of that agreement and that the Association Council is to decide on the rules necessary to that end.

13 Article 37 of the Additional Protocol, which is likewise in Chapter I of Title II, is worded as follows:

'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.'

14 On 19 September 1980, the Association Council, established by the Association Agreement and consisting of members of the Governments of the Member States and members of the Council and of the Commission of the European Communities on the one hand and of members of the Turkish Government on the other, adopted Decision No 1/80.

15 Article 6 of that decision is contained in Section 1, concerning 'Questions relating to employment and the free movement of workers', of Chapter II, entitled 'Social provisions'. Article 6(1) states:

'Subject to Article 7 on free access to employment for members of his family, a Turkish worker duly registered as belonging to the labour force of a Member State:

— shall be entitled in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available;

— shall be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation;

— shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.'

16 Article 10 of that decision is also part of Section 1 of Chapter II. Article 10(1) 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.'

The other relevant provisions of Community law

17 The first paragraph of Article 6 of the EC Treaty (now, after amendment, the first paragraph of Article 12 EC) provides:

'Within the scope of application of this Treaty... any discrimination on grounds of nationality shall be prohibited.'

18 According to Article 48 of the EC Treaty (now, after amendment, Article 39 EC):

'1. Freedom of movement for workers shall be secured within the Community.

2. Such freedom of movement shall 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.

...

4. The provisions of this article shall not apply to employment in the public service.'

19 The first recital in the preamble to Council Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968(II), p. 475), as amended by Council Regulation (EEC) No 2434/92 of 27 July 1992 (OJ 1992 L 245, p. 1, 'Regulation No 1612/68'), states:

'... freedom of movement for workers should be secured within the Community by the end of the transitional period at the latest;... the attainment of this objective entails 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, as well as the right of such workers to move freely within the Community in order to pursue activities as employed persons, subject to any limitations justified on grounds of public policy, public security or public health'.

20 Articles 7 and 8 of Regulation No 1612/68 are contained in Part I, dealing with 'Employment and Workers' Families', of Title II, entitled 'Employment and equality of treatment'.

21 Article 7 of Regulation No 1612/68 provides:

'1. 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 become unemployed, reinstatement or re-employment.

2. He shall enjoy the same social and tax advantages as national workers.

...

4. Any clause of a collective or individual agreement or of any other collective regulation concerning eligibility for employment, employment, remuneration and other conditions of work or dismissal shall be null and void in so far as it lays

down or authorises discriminatory conditions in respect of workers who are nationals of the other Member States.'

22 According to Article 8 of Regulation No 1612/68:

'A worker who is a national of a Member State and who is employed in the territory of another Member State 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.

The provisions of this article shall not affect laws or regulations in certain Member States which grant more extensive rights to workers coming from the other Member States.'

National law

23 In Austria, Paragraph 1 of the Arbeiterkammergesetz (Law on Chambers of Workers, BGBl. 1991/626, in the version published in BGBl. I, 1998/166, 'the AKG') provides that the aim of chambers of workers and employees ('chambers of workers') and the Federal Chamber of Workers and Employees ('Federal Chamber of Workers') is to represent and promote the social, economic and cultural interests of workers of both sexes.

24 According to Paragraph 3 of the AKG, chambers of workers and the Federal Chamber of Workers are corporations governed by public law. The chambers of workers form the Federal Chamber of Workers. The competency of a chamber of workers covers a single *Land*, while that of the Federal Chamber of Workers covers the whole of Austrian territory.

25 Under Paragraphs 4 to 7 of the AKG, the task of the chambers of workers, within their own area — where they are not subject to the instructions of State bodies but merely under their supervision (Paragraph 91 of the AKG) — is:

— to take all measures necessary for representing the interests of workers, including unemployed and retired persons, and, in particular, to send representatives to corporations or other institutions (Paragraph 4),

— to monitor conditions of work (Paragraph 5 of the AKG),

— to cooperate with the voluntary occupational associations entitled to enter into collective agreements and with the institutions representing interests within undertakings (Paragraph 6 of the AKG),

— to advise workers who belong to the chamber on matters of employment and social law and to protect their legal rights by representing them, in particular before tribunals, in employment and social-law disputes (Paragraph 7 of the AKG).

26 In addition, the chambers of workers, in their capacity as legal representatives of workers' interests, must exert influence over the legislation applying to conditions of work and, for that purpose, are authorised to sign collective agreements. However, according to the national court, this is a subsidiary competence which is not exercised in practice.

27 Within the areas of competence conferred on them, the chambers of workers have the task, subject to the binding instructions of State bodies, of exercising functions of State administration which are conferred on them by law (Paragraph 8 of the AKG). However, according to the national court, there are no significant provisions of this kind — apart from the powers regarding the works committee funds conferred on the chambers of workers by Paragraphs 74(5), (6) and (12) to (14) of the Arbeitsverfassungsgesetz (Law on organisation of work, BGBl. 1974/22, in the version published in BGBl. I, 1998/69).

28 All workers are, in principle, members of a chamber of workers (Paragraph 10 of the AKG).

29 Under Paragraph 17 of the AKG, every worker belonging to a chamber of workers is obliged to pay a contribution.

30 The institutions of a chamber of workers include, *inter alia*, the general assembly (Paragraph 46 of the AKG). It is elected — for a term of five years (Paragraph 18(1) of the AKG) — by the workers entitled to vote by equal, direct and secret ballot in accordance with the principles of proportional representation (Paragraph 19 of the AKG). Under Paragraph 20(1) of the AKG, all workers who belong to the chamber on the relevant date are entitled to vote.

31 As regards the conditions for eligibility for election, Paragraph 21 of the AKG provides:

'All workers belonging to a chamber of workers who on the relevant date

1. have completed their 19th year, and

2. have, for a total of at least two years during the previous five years, been in a work or employment relationship in Austria giving rise to membership of the chamber, and

3. apart from the age requirement, are not excluded from eligibility for election to the Nationalrat (Parliament)

are eligible for election to the chamber of workers.'

32 According to Article 26(4) of the Bundesverfassungsgesetz (Federal Constitutional Law):

'All persons possessing Austrian nationality on the relevant date who have reached the age of 19 before 1 January of the year of the election shall be eligible for election.'

33 Under Paragraph 37(1) of the AKG, lists of candidates are to be lodged in writing (by the groups seeking election) with the principal election committee within the prescribed period. Under Paragraph 37(3), that committee must examine the lists of candidates which have been lodged and delete from the lists candidates who are not eligible.

34 Under Paragraph 42 of the AKG, any group which has lodged a list of candidates may contest the validity of the election before the Federal Minister for Employment, Health and Social Affairs within 14 days of the declaration of the results on the ground of an alleged infringement of the election procedure. The challenge must be upheld if provisions of the election procedure were infringed and the result of the election could have been influenced thereby. If the competent minister upholds the challenge, a new election must be announced within the following three months.

The main proceedings and the questions referred for a preliminary ruling

35 It is clear from the documents concerning the case in the main proceedings that, among others, Wählergruppe Gemeinsam put forward a list of candidates for the elections to the general assembly of the chamber of workers for the *Land* of Vorarlberg which took place in April 1999.

36 The results of those elections were as follows:

ÖAAB:	43 delegates
FSG:	11 delegates

Freiheitliche und parteifreie Arbeitnehmer:	9 delegates
Wählergruppe Gemeinsam:	2 delegates
Gewerkschaftlicher Linksblock:	0 delegates
NBZ:	5 delegates.

37 The list of candidates lodged by Wählergruppe Gemeinsam originally comprised 26 candidates, including five Turkish nationals who, the parties agree, fulfilled all the conditions laid down in the third indent of Article 6(1) of Decision No 1/80 and were in possession of a 'Befreiungsschein' (a certificate exempting the holder from the national provisions on the employment of foreigners) in accordance with Paragraph 4c of the Ausländerbeschäftigungsgesetz (Law on employment of foreigners).

38 It is likewise undisputed that the five Turkish candidates concerned fulfilled all the criteria for eligibility laid down by national law, except that relating to the possession of Austrian nationality.

39 On 8 February 1999, the principal election committee decided to delete the five Turkish nationals from the list of candidates submitted by Wählergruppe

Gemeinsam on the ground that they did not have Austrian nationality and were therefore ineligible.

40 By letter of 5 May 1999, Wählergruppe Gemeinsam contested the validity of the elections pursuant to Paragraph 42(1) of the AKG, alleging an infringement of the election procedure which significantly influenced the result of the election. By excluding from its list the five Turkish nationals, the principal election committee infringed a specific right directly applicable in the European Union, namely the prohibition of discrimination laid down in Article 10(1) of Decision No 1/80.

41 By decision of 19 November 1999, the competent Federal Minister rejected the complaint.

42 The Minister acknowledged that it follows from the prohibition of discrimination laid down in Article 10(1) of Decision No 1/80 that Turkish workers are likewise eligible for election to the general assembly of a chamber of workers. Since Community law takes precedence, the contrary national law is not to be applied. However, the unlawfulness arising from the deletion of the names of the Turkish nationals from the list of Wählergruppe Gemeinsam was not such as to influence the results of the election since, in view of the non-personalised list voting system prescribed for elections to the general assembly of a chamber of workers, the person of the individual candidate is of little importance to voters, who cast their vote according to the political orientation of the list as a whole.

43 Wählergruppe Gemeinsam then took the dispute to the Verfassungsgerichtshof. It claims that the principal election committee's decision of 8 February 1999 should be declared unlawful and annulled in so far as the five Turkish candidates were

deleted from the list put forward by it on the ground that they were ineligible under Austrian law. It also claims that the electoral procedure as a whole should be declared unlawful and annulled and that fresh elections should be held.

44 With a view to ruling on those claims, the Verfassungsgerichtshof raises the question whether the applicable Austrian law is compatible with Community law.

45 The Verfassungsgerichtshof takes the view, first, that it should be determined whether a national provision such as that in Paragraph 21(3) of the AKG, which excludes, *inter alia*, migrant workers of Turkish nationality duly registered as belonging to the labour force of the host Member State from eligibility for election to the general assembly of a chamber of workers, is contrary to Article 10(1) of Decision No 1/80, in particular as regards 'other conditions of work' within the meaning of that article.

46 In that connection, it observes that it follows from Article 48 of the Treaty and the first paragraph of Article 8 of Regulation No 1612/68 and from the judgments in Case C-213/90 *ASTI* [1991] ECR I-3507 ('*ASTI I*') and Case C-118/92 *Commission* v *Luxembourg* [1994] ECR I-1891 ('*ASTI II*') that workers who are nationals of another Member State are eligible for election to the full assembly of a body such as the chambers of workers in Austria.

47 All the criteria considered by the Court to be relevant in relation to the Luxembourg occupational guilds which were the subject of the *ASTI I* and *ASTI II* judgments, namely the establishment by law of the body concerned,

compulsory membership for all workers in the occupational sector in question, the body's general task of representing the interests of its members, its right to make proposals and submit opinions to the government and the legislature and the duty of every member to pay a contribution, would appear to apply to the chambers of workers in Austria also.

48 In order to decide whether that interpretation can be applied to Turkish workers, it must be determined whether the term 'other conditions of work' in Article 10(1) of Decision No 1/80 encompasses the right to stand as a candidate in elections to the bodies legally representing the interests of workers.

49 The national court considers that the judgments in Case C-434/93 *Bozkurt* [1995] ECR I-1475 and Case C-116/94 *Meyers* [1995] ECR I-2131 support a broad interpretation of that term.

50 On the other hand, the contrary conclusion may have to be drawn from the fact that, in contrast to the specific form given to the term 'conditions of work' used in Article 48(2) of the Treaty by, *inter alia*, Article 8 of Regulation No 1612/68, the right deriving from the EEC-Turkey Association did not expressly provide for such a specific meaning to be given to that term.

51 Second, the national court considers that, if Article 10(1) of Decision No 1/80 precludes a national law under which workers who are not Austrian nationals are ineligible for election to the general assembly of a chamber of workers, it must be determined, in addition, whether that article is unconditional and sufficiently precise to be directly applicable, with the result that it precludes the application of the incompatible national law.

52 Considering that, in those circumstances, the solution to the dispute required an interpretation of Community law, the Verfassungsgerichtshof decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Is Article 10(1) of Decision No 1/80... to be interpreted as precluding a provision of a Member State which excludes Turkish workers from eligibility for the general assembly of a chamber of workers?

2. If so, is Article 10(1) of Decision No 1/80... directly applicable Community law?'

The questions referred for a preliminary ruling

53 In order to provide a helpful answer to the question whether a provision in an agreement concluded between the Community and a non-member country which lays down a prohibition on discrimination on the grounds of nationality precludes a Member State from refusing, within the scope of the agreement, to grant a national of the non-member country a benefit on the sole ground that that person is a national of the non-member country, it is necessary to consider, first, whether the provision in question is, by its nature, such as to confer directly on an individual rights which he may assert before a court of a Member State and, if so, to determine, second, the scope of the prohibition of discrimination laid down by that provision (see, to that effect, Case C-18/90 *Kziber* [1991] ECR I-199, paragraph 14; Case C-416/96 *Eddline El-Yassini* [1999] ECR I-1209, paragraph 24; Case C-262/96 *Sürül* [1999] ECR I-2685, paragraph 47; and Case C-162/00 *Pokrzeptowicz-Meyer* [2002] ECR I-1049, paragraph 18).

The direct effect of Article 10(1) of Decision No 1/80

54 According to the settled case-law of the Court, a provision in an agreement concluded by the Community with a non-member country must be regarded as being directly applicable when, regard being had to its wording and to the purpose and nature of the agreement, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure (see, *inter alia*, Case 12/86 *Demirel* [1987] ECR 3719, paragraph 14; and the judgments, cited above, in *Kziber*, paragraph 15; *Eddline El-Yassini*, paragraph 25; *Sürül*, paragraph 60; and *Pokrzeptowicz-Meyer*, paragraph 19).

55 In Case C-192/89 *Sevince* [1990] ECR I-3461, paragraphs 14 and 15, the Court stated that the same conditions apply in determining whether the provisions of a decision of the EEC-Turkey Association Council may have direct effect.

56 In order to decide whether Article 10(1) of Decision No 1/80 satisfies those conditions, it is first necessary to examine its terms.

57 Article 10(1) prohibits Member States, in clear, precise and unconditional terms, from discriminating, on the basis of nationality, against Turkish migrant workers duly registered as belonging to their labour force as regards remuneration and other conditions of work.

58 That rule of equal treatment lays down a precise obligation of result and, by its nature, can be relied on by an individual before a national court as a basis for requesting it to disapply the discriminatory provisions of the legislation of a

Member State under which the grant of a right is subject to a condition not imposed on nationals. No further implementing measures are required (see, by analogy, *Sürül*, paragraph 63).

59 That finding is supported by the fact that Article 10(1) of Decision No 1/80 constitutes merely the implementation and the specific expression, in the particular field of remuneration and conditions of work, of the general principle of non-discrimination on grounds of nationality laid down in Article 9 of the Association Agreement, which refers to Article 7 of the EEC Treaty, which became Article 6 of the EC Treaty (see, by analogy, *Sürül*, paragraph 64).

60 The above interpretation is also confirmed by the case-law of the Court (see *Eddline El-Yassini*, paragraph 27, and *Pokrzeptowicz-Meyer*, paragraphs 21 and 22) relating to the principle of equal treatment as regards conditions of work laid down in the first paragraph of Article 40 of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1) and Article 37(1) of the Europe Agreement establishing an association between the European Communities and their Member States and the Republic of Poland, concluded and approved on behalf of the Communities by Decision 93/743/Euratom, ECSC, EC of the Council and the Commission of 13 December 1993 (OJ 1993 L 348, p. 1).

61 Moreover, the finding that the prohibition of discrimination embodied in Article 10(1) of Decision No 1/80 is capable of directly governing the situation of individuals is not contradicted by an examination of the purpose and the nature of that decision and the Association Agreement of which it is part.

62 As is clear from Articles 2(1) and 12, the purpose of the Association Agreement is to establish an association to promote the development of trade and economic relations between the parties, including in the field of employment, through the progressive achievement of freedom of movement for workers. In particular, Article 12 provides that 'the Contracting Parties agree to be guided by Articles 48, 49 and 50 the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them'.

63 Article 36 of the Additional Protocol provides for the timetable for the progressive achievement of such freedom of movement for workers and states that the Association Council is to adopt the rules necessary to that end.

64 Decision No 1/80 was adopted by the Association Council in order to implement Article 12 of the Association Agreement and Article 36 of the Additional Protocol. According to the third recital in the preamble, it seeks to improve, in the social field, the treatment accorded to workers and members of their families in relation to the arrangements introduced by Decision No 2/76, which the Council of Association adopted on 20 December 1976. The provisions of Section 1 of Chapter II of Decision No 1/80, of which Article 10(1) forms part, thus constitute a further stage in securing freedom of movement for workers on the basis of Articles 48, 49 and 50 of the EEC Treaty, which became Articles 48 and 49 of the EC Treaty (now, after amendment, Articles 39 EC and 40 EC) and Article 50 of the EC Treaty (now Article 41 EC). The fact that, as the Court recognised in *Demirel*, cited above, the abovementioned provisions of the Association Agreement and the Additional Protocol essentially set out a programme therefore does not prevent the decisions of the Council of Association which give effect in specific respects to the programmes envisaged in that agreement from having direct effect (see, to that effect, *Sevince*, paragraph 21, and Case C-1/97 *Birden* [1998] ECR I-7747, paragraph 52, and the case-law cited there).

65 Finally, the fact that the Association Agreement is intended essentially to promote the economic development of Turkey and therefore involves an imbalance in the

obligations assumed by the Community towards the non-member country concerned is not such as to prevent recognition by the Community of the direct effect of certain of its provisions or, *a fortiori*, of those intended to implement that agreement (see, to that effect, *Sürül*, paragraph 72, and the case-law cited there).

66 That conclusion applies in particular to Article 10(1) of Decision No 1/80, which, far from being purely programmatic in nature, establishes, in the field of working conditions and remuneration, a clear and unconditional principle which is sufficiently practical to be applied by national courts and is therefore capable of directly governing the legal situation of individuals (see, by analogy, *Eddline El-Yassini*, paragraph 31, and *Sürül*, paragraph 74).

67 In light of the above, Article 10(1) of Decision No 1/80 must be recognised as having direct effect in the Member States, which means that Turkish nationals to whom that article applies are entitled to rely on it before the courts of the host Member State.

The scope of Article 10(1) of Decision No 1/80

68 First of all, it should be observed that it is undisputed that the five Turkish nationals who were removed from the list of candidates of Wählergruppe Gemeinsam for the election to the general assembly of the chamber of workers of the *Land* of Vorarlberg are workers duly registered as belonging to the labour force of a Member State within the meaning of Article 10(1) of Decision No 1/80, as that term is explained in the case-law of the Court (see, most recently, with respect to the same term 'duly registered as belonging to the labour force' in Article 6(1) of Decision No 1/80, Case C-188/00 *Kurz* [2002] ECR I-10691, paragraphs 37 and 39 to 41).

69 The Turkish workers are therefore among the persons covered by Article 10(1) of Decision No 1/80.

70 It is likewise undisputed that the five Turkish nationals with whom the case in the main proceedings is concerned fulfil all the criteria for eligibility laid down by the applicable national law, except that requiring the possession of Austrian nationality, their candidature for election to the general assembly of the chamber of workers of the *Land* of Vorarlberg having been excluded only on the ground that they are Turkish nationals.

71 It must therefore be determined whether such a condition of nationality, to which eligibility for election to the general assembly of a chamber of workers in the host Member State is subject, is compatible with the prohibition laid down in Article 10(1) of Decision No 1/80 of any discrimination based on nationality in the field of conditions of work.

72 Since *Bozkurt* (cited above), paragraphs 14, 19 and 20, 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 — which is progressively to secure freedom of movement for workers, guided by Articles 48, 49 and 50 of the Treaty — that the principles laid down in those articles must be extended, so far as possible, to Turkish nationals who enjoy the rights conferred by Decision No 1/80 (see, *inter alia*, Case C-340/97 *Nazli* [2000] ECR I-957, paragraphs 50 to 55, and the references cited therein).

73 It follows that, when determining the scope of the prohibition of discrimination as regards conditions of work laid down by Article 10(1) of Decision 1/80, reference should be made to the interpretation given to that principle in the field of freedom of movement for workers who are nationals of a Member State of the Community.

74 Such an approach is all the more justified because that article is formulated in terms almost identical to those of Article 48(2) of the Treaty.

75 In the context of Community law and, in particular, Article 48(2) of the Treaty, the Court has consistently held that national legislation which denies workers who are nationals of other Member States the right to vote and/or the right to stand as a candidate in elections held by bodies such as occupational guilds to which those workers are compulsorily affiliated, to which they must pay contributions, which are responsible for defending and representing workers' interests and which perform a consultative function in the legislative field is contrary to the fundamental principle of non-discrimination on the grounds of nationality (see *ASTI I* and *ASTI II*).

76 In those two judgments, the Court concluded that Community law precludes the application of national legislation which denies nationals of other Member States who are employed in the host Member State the right to vote and to stand as candidates in elections of the members of such bodies.

77 As was pointed out in paragraphs 73 and 74 of this judgment, Article 10(1) of Decision No 1/80 imposes on each Member State, as regards the conditions of work for Turkish workers duly registered as belonging to its labour force, obligations analogous to those applying to nationals of other Member States.

78 Consequently, in the light of the principles laid down in connection with the freedom of movement for workers who are nationals of a Member State and applicable by analogy to Turkish workers enjoying the rights conferred by Decision No 1/80, national legislation which makes eligibility for election to a

body representing and defending the interests of workers, such as the chambers of workers in Austria, subject to possession of the nationality of the host Member State must be considered to be incompatible with Article 10(1) of that decision.

79 Moreover, as the Commission rightly pointed out, the above interpretation is the only one consistent with the aim and broad logic of Decision No 1/80, which is intended to secure progressively freedom of movement for workers and to promote the integration in the host Member State of Turkish workers who satisfy the conditions laid down in that decision and thus enjoy the rights conferred on them by it (see *Kurz*, paragraphs 40 and 45). Granting Turkish workers legally employed in the territory of a Member State entitlement to the same conditions of work as those enjoyed by workers who are nationals of the Member States is an important step towards creating an appropriate framework for the gradual integration of migrant Turkish workers.

80 However, the Kammer für Arbeiter und Angestellte für Vorarlberg (Chamber of Workers and Employees of the *Land* of Vorarlberg, 'the Kammer') and the Austrian Government claim, essentially, that the term 'other conditions of work' within the meaning of Article 10(1) of Decision No 1/80 does not encompass a right for Turkish workers to stand as candidates in elections to the bodies representing the legal interests of workers such as the chambers of workers in Austria. That term must be regarded as having a narrower scope than the same term used in Article 48(2) of the Treaty because that article was clarified in specific terms by Regulation No 1612/68, the first paragraph of Article 8 of which expressly refers to trade-union and similar rights, whereas no such specific terms are used in the EEC-Turkey Association Agreement, and because the aims of that agreement are less ambitious than those of the Treaty. Accordingly, the findings in *ASTI I* and *ASTI II* cannot be applied by analogy in the context of chambers of workers.

81 That argument cannot be upheld.

82 It is clear, first of all, that Regulation No 1612/68 was adopted on the basis of Article 49 of the Treaty, according to which the Council is to adopt the measures necessary to secure progressively freedom of movement for workers, which is defined in Article 48 of the Treaty.

83 The aim of Regulation No 1612/68 is therefore solely to clarify the requirements of Article 48; as secondary legislation, it cannot supplement the rules of the Treaty which it is intended to implement and which are its legal basis.

84 The first paragraph of Article 8 of that regulation must thus be regarded as constituting merely a particular expression of the prohibition of discrimination laid down by Article 48(2) of the Treaty in the specific field of workers' participation in trade-union and similar activities, which are guaranteed by any organisation representing and defending workers' interests (see, to that effect, *ASTI I*, paragraph 15).

85 Next, it must be emphasised that, given that Article 48(2) of the Treaty — which is likewise simply a particular expression of the fundamental rule, laid down in the first paragraph of Article 7 of the Treaty, that discrimination on the basis of nationality is prohibited — must be regarded as a general principle, the term 'conditions of work' within the meaning of Article 48(2) must be interpreted as having a broad scope in so far as that article provides for equal treatment in all matters directly or indirectly related to the exercise of activity as an employee in the host Member State. As is clear from paragraphs 82 to 84 of the present judgment, that rule was, subsequently, merely implemented and given particular expression by the more specific provisions of Regulation No 1612/68.

86 Accordingly, Article 48(2) of the Treaty and the first paragraph of Article 8 of Regulation No 1612/68 are an expression of that general principle of non-discrimination on the basis of nationality, which is one of the fundamental principles of Community law.

87 That finding is supported by paragraph 11 of the *ASTI I* judgment, according to which the fundamental principle of non-discrimination on grounds of nationality 'laid down' in Article 48(2) of the Treaty is 'restated' in several 'individual' provisions of Regulation No 1612/68, including, in particular, Articles 7 and 8. It is likewise confirmed by the fact that, in *ASTI II*, the Court found that the Member State concerned had failed to fulfil its obligations on the double basis of those two articles read in conjunction.

88 Finally, it is clear from the wording of Article 10(1) of Decision No 1/80, which is drafted in terms almost identical to those of Article 48(2) of the Treaty, and from a comparison of the aims and the context of the Association Agreement with those of the Treaty that there is no reason to regard Article 10(1) of that decision as having a scope other than that given by the Court to Article 48(2) in *ASTI I* and *ASTI II*.

89 Although Article 10(1) of Decision No 1/80 does not establish a principle of freedom of movement for Turkish workers within the Community, whilst Article 48 of the Treaty lays down for the benefit of Community nationals the principle of freedom of movement for workers, Article 10(1) lays down for workers of Turkish nationality, once they are legally employed within the territory of a Member State, a right to equal treatment as regards conditions of work and remuneration of the same extent as that conferred in similar terms by Article 48(2) of the Treaty on nationals of the Member States (see, by analogy, *Pokrzeptowicz-Meyer*, paragraphs 40 and 41).

90 The Kammer also maintains that, even if eligibility for election to the general assembly of the chambers of work in Austria falls within the scope of Article 10(1) of Decision No 1/80, those chambers are institutions governed by public law which participate in the exercise of public-law powers and that the exclusion of a right for foreign workers to be elected to such bodies is justified for that reason.

91 However, it should be stated, first of all, that, in the order for reference, the Verfassungsgerichtshof found that all the considerations on which the *ASTI I* and *ASTI II* judgments were based — including the absence of participation in the exercise of powers conferred by public law by the Luxembourg occupational chambers at issue in the cases leading to those judgments — can be applied to the chambers of workers in Austria and that those chambers do not appear to be of a type to participate in the exercise of such public-law powers.

92 It must be added that, in any event, it is settled case-law that the non-application of the rules laid down in Article 48 of the Treaty to activities which constitute participation in the exercise of powers conferred by public law is an exception to a fundamental freedom and must therefore be interpreted in such a way as to limit its scope to that which is strictly necessary in order to safeguard the interests which that exception allows the Member States to protect. It follows that that exception cannot permit a Member State to submit generally any participation in a public-law institution such as the chambers of work in Austria to a condition of nationality but merely permits foreign workers to be excluded, where appropriate, from certain specific activities of the institution in question which, in themselves, actually entail direct participation in the exercise of public-law powers conferred (see, *inter alia*, *ASTI I*, paragraph 19).

93 It follows that, with respect to foreign workers enjoying equal treatment as regards remuneration and other conditions of work, the denial of the right to stand as a candidate for election to a body representing and defending the

interests of workers, such as the chambers of workers in Austria, can be justified neither by the legal nature of the body in question under national law nor by the fact that certain of its functions could involve participation in the exercise of powers conferred by public law (see *ASTI I*, paragraph 20).

94 In the light of all the above findings, the answer to the questions referred for a preliminary ruling must be that Article 10(1) of Decision No 1/80 is to be interpreted as:

— having direct effect in the Member States, and

— precluding the application of national legislation which excludes Turkish workers duly registered as belonging to the labour force of the host Member State from eligibility for election to the general assembly of a body representing and defending the interests of workers, such as the chambers of workers in Austria.

Costs

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

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Verfassungsgerichtshof by order of 2 March 2001, hereby rules:

Article 10(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey, must be interpreted as:

— **having direct effect in the Member States, and**

— **precluding the application of national legislation which excludes Turkish workers duly registered as belonging to the labour force of the host Member State from eligibility for election to the general assembly of a body representing and defending the interests of workers, such as the chambers of workers in Austria.**

Puissochet Schintgen Skouris

Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 8 May 2003.

R. Grass — Registrar

J.-P. Puissochet — President of the Sixth Chamber