

JUDGMENT OF THE COURT (Sixth Chamber)
17 April 1997^{*}

In Case C-351/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bayerisches Verwaltungsgericht München (Germany) for a preliminary ruling in the proceedings pending before that court between

Selma Kadiman

and

Friestaat Bayern

on the interpretation of the first paragraph of Article 7 of Decision No 1/80 of the Association Council 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: G.F. Mancini, President of the Chamber, J.L. Murray, P. J. G. Kapteyn, H. Ragnemalm and R. Schintgen (Rapporteur), Judges,

^{*} Language of the case: German.

Advocate General: M.B. Elmer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- Mrs Kadiman, by R. Gutmann, Rechtsanwalt, Stuttgart,

- the French Government, by C. de Salins and C. Chavance, respectively Assistant Director and Secretary for Foreign Affairs in the Directorate for Legal Affairs, Ministry of Foreign Affairs, acting as Agents,

- the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

- the Commission of the European Communities, by J. Sack, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Kadiman, represented by R. Gutmann; the German Government, represented by E. Röder, Ministerialrat in the Federal Ministry of the Economy, acting as Agent; the French Government, represented by C. Chavance; and the Commission, represented by J. Sack, at the hearing on 14 November 1996,

after hearing the Opinion of the Advocate General at the sitting on 16 January 1997,

gives the following

Judgment

- 1 By order of 14 June 1995, received at the Court on 13 November 1995, the Bayerisches Verwaltungsgericht München (Administrative Court of Bavaria, Munich) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of the first paragraph of Article 7 of Decision No 1/80 of the Association Council, of 19 September 1980, on the development of the Association (hereinafter 'Decision No 1/80'). The Association Council was established by the Agreement creating an Association between the European Economic Community and Turkey, signed on 12 September 1963 in Ankara by the Republic of Turkey and 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).
- 2 Those questions were raised in proceedings brought by Mrs Kadiman, a Turkish national, against the Friestaat Bayern concerning the latter's refusal to extend her German residence permit.
- 3 Article 6(1) of Decision No 1/80 provides as follows:

'1. 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.’
- 4 Article 7 of Decision No 1/80 provides:

‘The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorized to join him:

- shall be entitled — subject to the priority to be given to workers of Member States of the Community — to respond to any offer of employment after they have been legally resident for at least three years in that Member State;

- shall enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years.

Children of Turkish workers who have completed a course of vocational training in the host country may respond to any offer of employment there, irrespective of the length of time they have been resident in that Member State, provided one of their parents has been legally employed in the Member State concerned for at least three years’.

- 5 Those two provisions are contained in Chapter II (Social provisions), Section 1 (Questions relating to employment and the free movement of workers), of Decision No 1/80.
- 6 It appears from the documents forwarded by the national court that Mrs Kadiman was married in 1985, when aged 15, to a Turkish national living in Germany and in legal employment there since 1977. In 1988, Mrs Kadiman's husband obtained a permit to reside in that Member State for an unlimited period.
- 7 On 17 March 1990 Mrs Kadiman was authorized by the German authorities to join her husband in order to reunite the family; she then established her residence with her husband in Ruhpolding (Germany).
- 8 In July 1990, the German authorities granted Mrs Kadiman a residence permit which expired on 14 May 1991; they then extended it until 14 May 1993.
- 9 Mrs Kadiman also obtained a work permit for a job in Ruhpolding for the period from 6 February 1991 to 1 February 1992.
- 10 In September 1991, Mr Kadiman declared to the authorities in Ruhpolding that he had been living apart from his wife for about five months, that he had commenced divorce proceedings in Turkey and that his wife had returned to her country of origin on 7 September 1991.
- 11 On 4 February 1992, Mrs Kadiman registered with the authorities in Ruhpolding at an address different from that of her husband. On 1 April 1992, she established

her residence at Bad Reichenhall (Germany), where she obtained a further work permit, initially for the period from 6 April 1992 to 5 April 1995; however, its period of validity was amended twice, covering successively the periods from 30 October 1992 to 29 October 1995 and from 1 July 1993 to 30 June 1994, because Mrs Kadiman had on both occasions changed employer.

- 12 By decision of 4 May 1992, the Landratsamt Traunstein (Central Administrative Office of the District of Traunstein) reduced the period of validity of Mrs Kadiman's residence permit and ordered her to leave German territory because she was not living with her husband. However, that decision was cancelled on 21 May 1992 on the ground that, because of her move to Bad Reichenhall, Mrs Kadiman came within the jurisdiction of the Landratsamt Berchtesgadener Land.
- 13 In July 1992, Mrs Kadiman explained to the latter authority that she had ceased living with her husband because he mistreated her and deceived her. Several attempts to resume life together had failed and her husband had beaten her and ejected her from the matrimonial home. Moreover, Mrs Kadiman had stayed in Turkey from 7 September 1991 for holidays with her husband, but her stay had been involuntarily extended until 1 February 1992 because her husband had concealed her passport from her before returning alone to Germany and she had not been able to return to Germany until she obtained a visa on 22 January 1992.
- 14 By decision of 5 January 1993, the Landratsamt Berchtesgadener Land brought forward to 26 January 1993 the expiry date of Mrs Kadiman's residence permit and threatened to deport her if she failed to leave Germany within two months on the ground that she and her husband were no longer living under the same roof.
- 15 Mr Kadiman then declared that he was prepared to resume living with his wife, whereupon that decision was set aside and on 13 May 1993 Mrs Kadiman obtained a new residence permit valid until 14 May 1994.

- 16 However, since the spouses were still living apart, the Landratsamt Berchtesgadener Land on 13 October 1993 brought forward to 19 October 1993 the expiry date of Mrs Kadiman's residence permit and ordered her to leave Germany within one month following the date on which its decision became final. The reason given by the Landratsamt for that decision was that, since September 1991, Mrs Kadiman had no longer lived with her husband and, therefore, was no longer entitled to a residence permit granted to her in order to enable the family to be together.
- 17 Mrs Kadiman lodged an appeal against that decision, which is at present pending before the Bayerisches Verwaltungsgericht München. She then amended her pleadings, and requested that court to order the Landratsamt Berchtesgadener Land to extend her German residence permit.
- 18 In support of her appeal, Mrs Kadiman maintains that she was legally resident in Germany from 17 March 1990, that she was in legal and continuous employment there and that the contested decisions were contrary to the first paragraph of Article 7 of Decision No 1/80.
- 19 The Bayerisches Verwaltungsgericht München took the view that Mrs Kadiman could not rely on German legislation in order to obtain an extension of her residence permit. Moreover, Article 6 of Decision No 1/80, which granted certain independent employment rights to Turkish workers duly registered as belonging to the labour force of a Member State, was not applicable in this case because Mrs Kadiman had not been legally employed by the same employer for at least one year, as required by that article. Accordingly, Mrs Kadiman's appeal could succeed only on the basis of the first paragraph of Article 7 of Decision No 1/80.
- 20 In that regard, the Bayerisches Verwaltungsgericht München takes the view that it is necessary, first, to consider whether that provision requires the family member of a Turkish worker employed in a Member State, who is authorized to join him

there, to live continuously with that worker as part of his family, in view of the fact that in this case Mr and Mrs Kadiman have not been living under the same roof since September 1991.

- 21 Second, that court questions the impact of the interruptions in Mrs Kadiman's stay in Germany for the purposes of calculating the period of three years' legal residence in the host Member State referred to in the first indent of the first paragraph of Article 7 of Decision No 1/80: to arrive, in this case, at a period of three years, it would be necessary to add together the periods for which Mrs Kadiman was legally present in Germany before and after the suspension of her residence permit from 26 January to 13 May 1993 and then to determine whether Mrs Kadiman's involuntary four-month stay in Turkey, caused by the removal of her passport by her husband, may be taken into account for the purposes of that calculation.
- 22 Considering that the decision to be given in the proceedings thus required an interpretation of the first paragraph of Article 7 of Decision No 1/80, the Bayerisches Verwaltungsgericht München referred the following three questions to the Court for a preliminary ruling:
- '(1) Does the applicability of the first paragraph of Article 7 of Decision No 1/80 of the EEC/Turkey Association Council on the development of the Association presuppose that the family must still be living together at the time when the other conditions are fulfilled?
- (2) Does the applicability of the first indent of the first paragraph of Article 7 of Decision No 1/80 presuppose three years' uninterrupted legal residence in a Member State of the Community?
- (3) Is a voluntary or forced intermediate stay of five months in Turkey to be counted towards the period of three years' legal residence within the meaning of the first indent of the first paragraph of Article 7 of Decision No 1/80?'

- 23 In the first place, it must be observed that the three questions concern the situation of a Turkish national who, as the wife and, therefore, a member of the family of a Turkish migrant worker duly registered as belonging to the labour force of a Member State, was authorized to join him in that State and is seeking extension of her permit to reside there in reliance on the first paragraph of Article 7 of Decision No 1/80. The national court has found that, although legally employed for a particular period in the Member State in question, the person concerned cannot rely on the rights conferred by Article 6 of that decision on Turkish workers integrated into the labour force of a Member State because she does not fulfil the conditions laid down by that provision.

The first question

- 24 It is apparent from the order for reference that Mr and Mrs Kadiman, who were married in 1985 and lived under the same roof in Germany as from 17 March 1990, ceased cohabiting no later than 4 February 1992, the date on which Mrs Kadiman registered as residing at an address other than that of her husband.
- 25 In order to give an answer which may be of use to the national court, it must therefore be considered whether the concept of legal residence for at least three years, referred to in the first indent of the first paragraph of Article 7 of Decision No 1/80, presupposes that the Turkish worker and his spouse have been living together throughout the period mentioned and whether the national authorities are entitled to withdraw the latter's residence permit where the spouses are no longer living together.
- 26 In those circumstances, the first question must be construed as seeking essentially to ascertain whether the first paragraph of Article 7 of Decision No 1/80 precludes the competent authorities of a Member State from requiring the members of the family of a Turkish worker referred to in that provision to live with him for the period of three years prescribed by the first indent of that article in order to be entitled to a residence permit in that Member State.

- 27 In order to answer that question, it must first be noted that the first indent of Article 7 of Decision No 1/80, in the same way as Article 6(1) and the second paragraph of Article 7 of that decision, confer, in clear, precise and unconditional terms, the right on the members of the family of a Turkish worker duly registered as belonging to the labour force of the host Member State to respond, subject to priority being granted to workers of the Member States, to any offer of employment after being legally resident there for at least three years, and the right freely to take up paid employment of their choice in the Member State in whose territory they have been legally resident for at least five years.
- 28 Like Article 6(1) (see in particular Case C-192/89 *Sevinçe* [1990] ECR I-3461, paragraph 26) and the second paragraph of Article 7 (see Case C-355/93 *Eroglu v Land Baden-Württemberg* [1994] ECR I-5113, paragraph 17), the first paragraph of Article 7 of Decision No 1/80 thus has direct effect in the Member States, so that Turkish nationals fulfilling the conditions which it lays down may directly rely on the rights conferred on them by that provision.
- 29 Next, the specific periods of legal residence referred to in the first paragraph of Article 7 necessarily imply the existence, as regards the members of the family of a Turkish worker who are authorized to join him in the host Member State, of a right of residence during such periods, since the effect of withholding such a right would be to negate the possibility offered to the persons concerned of residing in that Member State. Moreover, without a right of residence, the authorization granted to the family members concerned in order to join the Turkish worker in the territory of the host Member State would itself be rendered entirely inoperative.
- 30 Finally, it must be emphasized that, although the social provisions of Decision No 1/80, which include the first paragraph of Article 7, constitute a further stage in securing freedom of movement for workers on the basis of Articles 48, 49 and 50 of the Treaty, and although, therefore, the Court has held that it is essential to transpose, so far as possible, the principles enshrined in those Treaty articles to Turkish workers who enjoy the rights conferred by that decision (see Case C-434/93 *Bozkurt v Staatssecretaris van Justitie* [1995] ECR I-1475, paragraphs 14,

19 and 20, and Case C-171/95 *Tetik* [1997] ECR I-329, paragraph 20), the fact nevertheless remains that, as the law stands at present, Turkish nationals are not entitled to move freely within the Community but benefit only from certain rights in the host Member State whose territory they have lawfully entered and where they have been in legal employment for a specified period (*Tetik*, cited above, paragraph 29) or, in the case of members of a Turkish worker's family, they have been authorized to join him and have been legally resident there for the period laid down in the two indents of the first paragraph of Article 7.

31 It is also apparent from settled case-law (see in particular Case C-237/91 *Kus v Landeshauptstadt Wiesbaden* [1992] ECR I-6781, paragraph 25) that Decision No 1/80 does not encroach upon the competence of the Member States to regulate both the entry into their territories of Turkish nationals and the conditions under which they take up their first employment, but merely regulates, in Article 6, the situation of Turkish workers already legally integrated into the labour force of the host Member State.

32 Similarly, as regards the first paragraph of Article 7, that decision provides that the members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State are entitled to take up employment in that country after being legally resident there for a specified period, without thereby affecting the power of the Member State concerned to authorize any such persons to join the Turkish worker legally employed there, to regulate their stay until they become entitled to respond to any offer of employment and, if necessary, to allow them, under such conditions as it may specify, to take up employment before the expiry of the initial period of three years laid down by the first indent.

33 With regard more particularly to the residence of a family member during that initial period of three years, at issue in the main proceedings, it must be pointed out that, although, as is apparent from paragraph 29 of this judgment, a Member State which has authorized a person to enter its territory in order to join a Turkish worker cannot then withhold from that person the right to reside there in order to enable the family to be together, that Member State nevertheless retains the power

to subject that right of residence to conditions of such a kind as to ensure that the presence of the family member in its territory is in conformity with the spirit and purpose of the first paragraph of Article 7 of Decision No 1/80.

- 34 In that connection, it must be emphasized that the purpose of that provision is to favour employment and residence of Turkish workers duly registered as belonging to the labour force of a Member State by ensuring that their family links are maintained there.
- 35 Accordingly, it provides, for the initial stage, that family members of a Turkish worker already duly registered as belonging to the labour force of a Member State may be authorized to join him and take up residence there so as to enable the family to be together. In order to deepen the integration of a migrant Turkish worker's family unit in the host Member State, it also grants those family members the right, after a specified time, to take up employment in that State.
- 36 Thus, the system established by the first paragraph of Article 7 is designed to create conditions conducive to family unity in the host Member State, first by enabling family members to be with a migrant worker and then by consolidating their position by granting them the right to obtain employment in that State.
- 37 In view of its meaning and purpose, that provision cannot therefore be interpreted as merely requiring the host Member State to have authorized a family member to enter its territory to join a Turkish worker without at the same time requiring the person concerned to continue actually to reside there with the migrant worker until he or she becomes entitled to enter the labour market.

- 38 Such an interpretation would not only seriously undermine the objective of family unity pursued by that provision but would also entail the risk that Turkish nationals might evade the stricter requirements of Article 6 by abusing, in particular by entering into sham marriages, the favourable conditions contained in the first paragraph of Article 7.
- 39 Whilst Article 6(1) of Decision No 1/80 makes entitlement to progressive employment rights for Turkish migrant workers subject to the condition that the person concerned must already be duly registered as belonging to the labour force of the Member State concerned, the first paragraph of Article 7 regulates the employment rights of members of the Turkish worker's family exclusively by reference to the duration of their residence in the host Member State. On the other hand, the first paragraph of Article 7 expressly states that the family member must have been authorized by the Member State concerned to 'join' the Turkish worker duly registered as belonging to the labour force of that State, whereas Article 6 does not make recognition of the rights which it confers on the worker dependent upon the circumstances under which the right of entry and residence was obtained (see in particular *Kus*, cited above, paragraph 21).
- 40 Where, in circumstances such as those of the main proceedings, the Turkish national can rely only on his status as a member of the family of a migrant worker within the meaning of the first paragraph of Article 7 because he does not fulfil the conditions for claiming, in his own right, the rights provided for by Article 6(1), the practical effect of Article 7 requires, as emphasized in paragraph 37 of this judgment, that the unity of the family, in pursuit of which the person concerned entered the territory of the Member State concerned, should be evidenced for a specified period by actual cohabitation in a household with the worker.
- 41 It follows that Decision No 1/80 does not in principle prevent the authorities of a Member State from making extension of the residence permit of a family member authorized to join a Turkish worker in that Member State in order to enable the family to be together subject to the condition that the person concerned actually lives with that worker for the period of three years prescribed by the first indent of the first paragraph of Article 7 of that decision.

- 42 As the Commission has convincingly argued, the position would be different only if objective circumstances justified the failure of the migrant worker and the member of his family to live under the same roof in the host Member State. That would be the case in particular if the distance between the worker's residence and the place of employment of the member of his family or a vocational training establishment attended by that person required him or her to live in separate accommodation.
- 43 In a situation such as that of the plaintiff in the main proceedings, it is for the national court, which alone has jurisdiction to establish and assess the facts of the case before it, to decide whether objective circumstances exist of such a kind as to justify the fact that the Turkish migrant worker and the family member live apart.
- 44 In view of the foregoing considerations, the answer to the first question must be that the first paragraph of Article 7 of Decision No 1/80 does not in principle preclude the competent authorities of a Member State from requiring that the family members of a Turkish worker, referred to by that provision, live with him for the period of three years prescribed by the first indent of that article in order to be entitled to reside in that Member State. There may however be objective reasons to justify the family member concerned living apart from the Turkish migrant worker.

The second and third questions

- 45 By its second and third questions, which it is appropriate to consider together, the national court seeks essentially to ascertain whether the first indent of the first paragraph of Article 7 of Decision No 1/80 must be interpreted as meaning that the family member concerned is required to reside uninterruptedly for a period of three years in the host Member State. It also seeks to ascertain whether account should be taken, for the purpose of calculating the three-year period of legal residence within the meaning of that provision, first, of an involuntary stay of some

four months by the person concerned in his country of origin and, second, of the period during which the validity of his residence permit was suspended in the host Member State.

- 46 It must be borne in mind in that connection that the first indent of the first paragraph of Article 7 aims to enable the Turkish worker and the members of his family actually to be together in the host Member State, so that the national authorities may in principle require the family members to live under the same roof as the migrant worker for the initial period of three years (see in particular paragraphs 37, 38, 41 and 44 of this judgment).
- 47 It thus follows from the meaning and purpose of that provision that the family member must in principle reside uninterruptedly during those three years with the Turkish worker.
- 48 However, that interpretation does not mean that the person concerned may not be absent from the family residence for a reasonable period and for legitimate reasons, for example in order to take holidays or visit his family in his country of origin. Such short interruptions of cohabitation, not intended to detract from residence together in the host Member State, must be treated as periods in which the family member concerned actually lived with the Turkish worker.
- 49 The same must apply, *a fortiori*, to a period of less than six months spent by the person concerned in his country of origin for reasons beyond his control.
- 50 In those circumstances, an intermediate stay of that kind must be taken into account for the purpose of calculating the three-year period of legal residence within the meaning of the first indent of the first paragraph of Article 7 of Decision No 1/80.

- 51 As regards the limitation of the period of validity of the residence permit held by the Turkish worker's family member in the host Member State, it must be observed that, whilst the Member States retain the power to lay down the conditions under which that family member may enter their territory and reside there until he or she becomes entitled to respond to any offer of employment (see paragraphs 32 and 33 of this judgment), the fact nevertheless remains that the rights conferred by the first paragraph of Article 7 on family members of a Turkish worker are granted by that provision to the persons concerned regardless of the issue by the authorities of the host Member State of a specific administrative document, such as a residence permit (see, by analogy with Article 6 of Decision No 1/80, *Bozkurt*, cited above, paragraphs 29 and 30).
- 52 Moreover, in the case before the national court, the validity of the residence permit issued to the family member concerned was suspended only for a brief period and that limitation was removed by the issue of a new residence permit; nor do the competent authorities of the host Member State claim, on that ground, that the person concerned is not legally resident within national territory.
- 53 In those circumstances, the period during which the person concerned was not in possession of a residence permit is not such as to affect the running of time for the purposes of the three-year period laid down in the first indent of the first paragraph of Article 7 of Decision No 1/80.
- 54 In view of the foregoing, the answer to the second and third questions must be that the first indent of the first paragraph of Article 7 of Decision No 1/80 is to be interpreted as meaning that the family member concerned is in principle required to reside uninterruptedly for three years in the host Member State. However, account must be taken, for the purpose of calculating the three-year period of legal

residence within the meaning of that provision, of an involuntary stay of less than six months by the person concerned in his country of origin. The same applies to the period during which the person concerned was not in possession of a valid residence permit, where the competent authorities of the host Member State did not claim on that ground that the person concerned was not legally resident within national territory, but on the contrary issued a new residence permit to him.

Costs

55 The costs incurred by the German, French and Netherlands Governments and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action 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 submitted to it by the Bayerisches Verwaltungsgericht München by order of 14 June 1995, hereby rules:

1. The first paragraph of Article 7 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, does not in principle preclude the competent authorities of a Member State from requiring that the family members of a

Turkish worker, referred to by that provision, live with him for the period of three years prescribed by the first indent of that article in order to be entitled to reside in that Member State. There may however be objective reasons to justify the family member concerned living apart from the Turkish migrant worker.

2. The first indent of the first paragraph of Article 7 of Decision No 1/80 is to be interpreted as meaning that the family member concerned is in principle required to reside uninterruptedly for three years in the host Member State. However, account must be taken, for the purpose of calculating the three-year period of legal residence within the meaning of that provision, of an involuntary stay of less than six months by the person concerned in his country of origin. The same applies to the period during which the person concerned was not in possession of a valid residence permit, where the competent authorities of the host Member State did not claim on that ground that the person concerned was not legally resident within national territory, but on the contrary issued a new residence permit to him.

Mancini

Murray

Kapteyn

Ragnemalm

Schintgen

Delivered in open court in Luxembourg on 17 April 1997.

R. Grass

G. F. Mancini

Registrar

President of the Sixth Chamber