JUDGMENT OF THE COURT
6 June 1995 *

In Case C-434/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Raad van State (Council of State, Netherlands) for a preliminary ruling in the proceedings pending before that court between

Ahmet Bozkurt

and

Staatssecretaris van Justitie,

on the interpretation of Article 2 of Decision No 2/76 of 20 December 1976 and Article 6 of Decision No 1/80 of 19 September 1980 of the Association Council established by the agreement establishing an Association between the European Economic Community and Turkey, signed on 12 September 1963 in Ankara and approved on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ, English Special Edition 1973 C 113, p. 1),

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, F. A. Schockweiler (Rapporteur), P. J. G. Kapteyn and C. Gulmann (Presidents of Chambers),

* Language of the case: Dutch.

G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, J. L. Murray, D. A. O. Edward, J.-P. Puissochet and G. Hirsch, Judges,

Advocate General: M. B. Elmer,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the applicant, by D. Schaap, of the Rotterdam Bar,

— the Netherlands Government, by J. G. Lammers, Legal Adviser seconded to the Ministry of Foreign Affairs, acting as Agent,

— the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and B. Kloke, Regierungsrat in the same Ministry, acting as Agents,

— the Greek Government, by N. Mavrikas, Deputy Legal Adviser in the State Legal Service, and C. Sitara, Legal Representative of the State Legal Service, acting as Agents,

— the United Kingdom, by E. Sharpston, Barrister, and J. D. Holahan of the Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities, by P. van Nuffel of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Bozkurt, of the Netherlands Government, represented by J. W. De Zwaan, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, of the German Government, of the Greek Government, represented by M. Apessos, Deputy Legal Adviser in the State Legal Service, acting as Agent, of the United Kingdom and of the Commission of the European Communities at the hearing on 17 January 1995,

after hearing the Opinion of the Advocate General at the sitting on 28 March 1995,

gives the following

Judgment

1 By interlocutory judgment of 24 September 1993, received at the Court on 4 November 1993, the Raad van State der Nederlanden (Council of State of the Netherlands) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty four questions on the interpretation of Article 2 of Decision No 2/76 of 20 December 1976 and Article 6 of Decision No 1/80 of 19 September 1980 of the Association Council established by the Agreement establishing an Association between the European Economic Community and Turkey, signed on 12 September 1963 in Ankara and approved on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ, English Special Edition 1973 C 113, p. 1, 'the Agreement').

2 Those questions were raised in proceedings between Ahmet Bozkurt, a Turkish national, and the Netherlands Ministry of Justice, concerning a request for the grant of a permit, unrestricted as to time, to reside in the territory of the Netherlands.

3 Mr Bozkurt was employed, from at least 21 August 1979, as an international lorry-driver on routes to the Middle East by Rynart Transport B. V., a company incorporated under Netherlands law, with its head office at Klundert in the Netherlands. His contract of employment was concluded under Netherlands law. In the periods between his journeys and during his periods of leave he lived in the Netherlands.

4 A work permit issued by the Ministry of Social Affairs was not required for the work carried out by Mr Bozkurt because, for the purposes of the application of the Wet Arbeid Buitenlandse Werknemers of 9 November 1978 (Law on Work by Foreign Employees, Staatsblad 1978, 737, 'the WABW'), international lorry-drivers are not, by virtue of the Decree of 25 October 1979 adopting a general administrative measure pursuant to Article 2(1)(c) of the WABW (Staatsblad 1979, 574), regarded as foreigners.

5 Nor did Mr Bozkurt, the holder of a visa valid for multiple journeys, require a residence permit under Articles 9 and 10 of the Vreemdelingwet of 13 January 1965 (Law on Aliens, Staatsblad 1965, 40) in order to be able to work as an international driver and to stay in the Netherlands during the periods between his journeys, described as 'free periods', the duration of which is stated on the visa. In the Netherlands international lorry-drivers are not covered by the general policy on aliens, as is apparent from a 1982 circular regarding aliens.

6 In June 1988 Mr Bozkurt was the victim of an accident at work. The degree of his incapacity for work was determined at between 80 and 100%. For that reason he receives benefits under the Wet op de Arbeidsongeschiktheidsverzekering (Law on

Insurance against Incapacity for Work) and the Algemene Arbeidsongeschiktheidswet (General Law on Incapacity for Work).

7 On 6 March 1991 the chief of the municipal police of Rotterdam rejected Mr Bozkurt's request for an unrestricted residence permit. On 18 March 1991 the applicant submitted to the Minister of Justice a request that that decision be reviewed. That request was also rejected. On 16 July 1991 Mr Bozkurt made an application to the Raad van State for annulment of the decision, claiming that Article 2 of Decision No 2/76 and Article 2 of Decision No 1/80 conferred on him the right to stay in the Netherlands.

8 Decisions No 2/76 and No 1/80 implement Article 12 of the Agreement, a provision which appears in the last chapter of Title II, concerning 'Other Economic Provisions'. Under that article 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 Article 2(1) of Decision No 2/76 provides as follows:

'(a) After three years of legal employment in a Member State of the Community, a Turkish worker shall be entitled, subject to the priority to be given to workers of Member States of the Community, to respond to an offer of employment, made under normal conditions and registered with the employment services of that State, for the same occupation, branch of activity and region.

(b) After five years of legal employment in a Member State of the Community, a Turkish worker shall enjoy free access in that country to any paid employment of his choice.'

10 Article 6(1) of Decision No 1/80 provides as follows:

'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.'

11 Article 2(1)(c) of Decision No 2/76 provides:

'Annual holidays and short absences for reasons of sickness, maternity or an accident at work shall be treated as periods of legal employment. Periods of involuntary employment duly certified by the relevant authorities and long absences on account of sickness shall not be treated as periods of legal employment, but shall not affect rights acquired as the result of the preceding period of employment.'

12 The wording of Article 6(2) of Decision No 1/80 is slightly different:

'Annual holidays and absences for reasons of maternity or an accident at work or short periods of sickness shall be treated as periods of legal employment. Periods of involuntary employment duly certified by the relevant authorities and long absences on account of sickness shall not be treated as periods of legal employment, but shall not affect rights acquired as the result of the preceding period of employment.'

13 Considering that an interpretation of the provisions quoted above was necessary for its decision in the proceedings, the Raad van State referred to the Court the following questions for a preliminary ruling:

'(1) Is the criterion laid down in the judgment of the Court of Justice in Case 9/88 *Lopes da Veiga* v *Staatsecretaris van Justitie* [1989] ECR 2989 also to be applied in resolving the question whether work carried out by a Turkish worker pursuant to a an employment contract under Netherlands law as international lorry-driver in the service of a Netherlands company established in the Netherlands can be regarded as (legal) employment in a Member State within the meaning of Article 2 of Decision No 2/76 and/or Article 6 of Decision No 1/80, and in that respect are the same circumstances to be taken into account *mutatis mutandis* by the national courts?

(2) Is there a situation of legal employment in a Member State within the meaning of Article 2 of Decision No 2/76 and/or Article 6 of Decision No 1/80 where a Turkish worker does not need to hold a work permit or a residence permit in order to carry out his work as an international lorry-driver because

of the usually short periods that he remains in the Netherlands between his journeys, but cannot in principle acquire a right of long-term residence on the basis of that work under Netherlands legislation and Netherlands policy with regard to immigration?

(3) If the answers to Questions 1 and 2 are in the affirmative, does it follow from Article 2 of Decision No 2/76 and/or Article 6 of Decision No 1/80 that a Turkish worker has a right of residence at least for so long as he is in legal employment within the meaning of those Decisions?

(4) If the answer to Question 3 is affirmative, does the Turkish worker retain that right of residence ensuing from Article 2 of Decision No 2/76 and/or Article 6 of Decision No 1/80 if he becomes permanently and completely incapable of working?'

14 It should first be noted that Decision No 2/76 is presented, in Article 1 thereof, as constituting a first stage in securing freedom of movement for workers between the Community and Turkey which was to last for four years as from 1 December 1976. Section 1 of Chapter II, headed 'Social Provisions', of Decision No 1/80, which includes Article 6, constitutes a further stage in securing freedom of movement for workers and has applied, pursuant to Article 16, since 1 December 1980. As from that date, Article 6 of Decision No 1/80 has replaced the corresponding, less favourable, provisions of Decision No 2/76. That being so, for the purposes of giving a helpful answer to the questions submitted to the Court, and having regard to the times at which the facts summarized above occurred, it is solely to Article 6 of Decision No 1/80 that reference should be made.

The first question

15 By means of this question the national court seeks essentially to ascertain what criteria should be used to determine whether a Turkish worker employed as an international lorry-driver belongs to the legitimate labour force of a Member State for the purposes of Article 6 of Decision No 1/80.

16 In its judgment in Case 9/88 *Lopes da Veiga* v *Staatsecretaris van Justitie* [1989] ECR 2989, paragraph 17, the Court ruled that in the case of a worker who is a national of a Member State and who is permanently employed on board a ship flying the flag of another Member State, in that instance the Netherlands, in deciding whether the legal relationship of employment could be located within the territory of the Community or retained a sufficiently close link with that territory, for the purposes of the application of 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), it was for the national court to take into account the following circumstances apparent from the case-file before the Court: the fact that the applicant worked on board a vessel registered in the Netherlands in the employment of a shipping company established in the Netherlands, that he was hired in the Netherlands, that the employment relationship between him and his employer was subject to Netherlands law and, finally, that he was insured under the social security system of the Netherlands and paid income tax there.

17 Mr Bozkurt and the Commission consider that the same criteria should be applied in this case. The Commission maintains, in particular, that the Court's decision in *Lopes da Veiga* falls to be applied because Article 12 of the Agreement requires the contracting parties to be guided by Articles 48, 49 and 50 of the EEC Treaty for the purpose of progressively securing freedom of movement for workers between them.

18 In contrast, the German, Greek and Netherlands Governments and the United Kingdom consider that the *Lopes da Veiga* judgment is concerned with the interpretation of a fundamental concept of Community law in the field of freedom of movement for workers and they oppose the view that that judgment can be used to interpret provisions in an association agreement, with its more modest objectives, governing the situation of a national of a non-member country in the labour force of a Member State.

19 On that point, it should first be noted that, when the Association Council adopted the social provisions in Decision No 1/80, its aim was to go one stage further, guided by Articles 48, 49 and 50 of the Treaty, towards securing freedom of movement for workers.

20 In order to ensure compliance with that objective, it would seem to be essential to transpose, so far as is possible, the principles enshrined in those articles to Turkish workers who enjoy the rights conferred by Decision No 1/80.

21 Article 6(1) is confined to regulating, so far as access to employment is concerned, the situation of a Turkish worker who already belongs to the legitimate labour force of a Member State.

22 In order to determine, for the purposes of the application of Article 6(1), whether a Turkish worker is to be regarded as belonging to the labour force of a Member State, it must, in accordance with the principle laid down in Article 12 of the Agreement and by analogy with the situation of a worker who is a national of a Member State employed in another Member State, be ascertained, as the Court has held, in particular in the *Lopes da Veiga* judgment, whether the legal relationship of employment can be located within the territory of a Member State or retains a sufficiently close link with that territory.

23 It is for the national court to determine whether the employment relationship of the applicant in the main proceedings as an international lorry-driver retained a sufficiently close link with the territory of the Netherlands, and, in so doing, to take account in particular of the place where he was hired, the territory on which the paid employment was based and the applicable national legislation in the field of employment and social security law.

24 The answer to the first question must therefore be that, in order to ascertain whether a Turkish worker employed as an international lorry-driver belongs to the legitimate labour force of a Member State, for the purposes of Article 6(1) of Decision No 1/80, it is for the national court to determine whether the applicant's employment relationship retains a sufficiently close link with the territory of the Member State, and, in so doing, to take account in particular of the place where he was hired, the territory on which the paid employment was based and the applicable national legislation in the field of employment and social security law.

The second and third questions

25 By means of its second and third questions the national court seeks essentially to ascertain whether the existence of legal employment in a Member State can be established in the case of a Turkish worker who was not required under national legislation to hold a work permit or a residence permit issued by the authorities of the host State in order to carry out his work and, if so, whether that worker may claim a right of residence for so long as he is in legal employment.

26 It should be borne in mind, as the Court pointed out in its judgment in Case C-192/89 *Sevince* v *Staatssecretaris van Justitie* [1990] ECR I-3461, paragraph 30, that legality of employment for the purposes of Article 6(1) presupposes a stable and secure situation as a member of the labour force of a Member State.

27 The legality of employment engaged in over a certain period must be determined in the light of the legislation of the host State governing the conditions under which the Turkish worker entered the national territory and is employed there.

28 Where those conditions are satisfied, Article 6(1) of Decision No 1/80, which grants Turkish workers the right, after specified periods of legal employment, to continue working for the same employer or in the same occupation for an employer of his choice, or to enjoy free access to any paid employment of his choice, necessarily implies the existence of a right of residence for the person concerned, since otherwise the right of access to the labour force and the right to work as an employed person would be deprived of all effect (see, to that effect, the judgments in *Sevince*, cited above, paragraph 29, and Case C-237/91 *Kus* v *Landeshauptstadt Wiesbaden* [1992] ECR I-6781, paragraphs 29 and 30).

29 Article 6(1) of Decision No 1/80 does not subject recognition of those rights to the condition that Turkish nationals must establish the legality of their employment by possession of any specific administrative document, such as a work permit or residence permit, issued by the authorities of the host country.

30 It follows that the rights conferred under Article 6(1) on Turkish nationals who are already duly integrated into the labour force of a Member State are accorded to such nationals irrespective of whether or not the competent authorities have issued administrative documents which, in this context, can only be declaratory of the existence of those rights and cannot constitute a condition for their existence.

31 The answer to the second and third questions must therefore be that the existence of legal employment in a Member State within the meaning of Article 6(1) of Decision No 1/80 can be established in the case of a Turkish worker who was not required under the national legislation concerned to hold a work permit or a residence permit issued by the authorities of the host State in order to carry out

his work and that the existence of such employment necessarily implies the recognition of a right of residence for the person concerned.

The fourth question

32 By means of this question the Raad van State seeks to ascertain whether, where it has been established that a Turkish worker such as Mr Bozkurt duly belongs to the legitimate labour force of the Netherlands because he is employed as an international driver, Article 6(1) of Decision No 1/80 entitles him to remain in the territory of the host State following an accident at work which rendered him permanently incapacitated for work.

33 Mr Bozkurt considers that he can derive a right to remain in the Netherlands from the second sentence of Article 6(2) of Decision No 1/80, inasmuch as it refers to long absences on account of sickness, taking into account the preceding period of employment.

34 The Commission shares that view, drawing support from the wording of the first sentence of Article 6(2) of Decision No 1/80, which treats certain periods of absence as periods of legal employment. It therefore considers that a period of permanent incapacity for work resulting from an accident at work must be treated in the same way as permanent legal employment, which implies the existence of a right of residence for the person concerned.

35 In contrast, the German, Greek and Netherlands Governments and the United Kingdom are at one in considering that, in the absence of any express provision on the subject, along the lines of Article 48(3)(d) of the Treaty and Commission Regulation (EEC) No 1251/70 of 29 June 1970 on the rights of workers to remain in the territory of a Member State after having been employed in that State (OJ,

English Special Edition 1970 (II), p. 402), Turkish workers must be regarded as not entitled to claim the right to remain. The consequences of any permanent incapacity for work from which they may suffer are therefore, from the point of view of their right of residence in a Member State, governed exclusively by the national law of the Member State concerned.

36 The German Government adds that, taking into account the objective of Decision No 1/80, which it maintains is to consolidate the situation of Turkish workers who are already in employment, the right of residence must remain a corollary of the worker's employment so that, where there is a break in employment, the right of residence can subsist only if that break is of limited duration. That interpretation is in conformity with the wording of Article 6(2) of Decision No 1/80, which refers only to temporary absences which would not as a rule affect the worker's subsequent participation in working life. In contrast, in the case of long-lasting incapacity for work, the worker is no longer available as a member of the labour force at all and there is no objectively justified reason for guaranteeing him the right of access to the labour force and an ancillary right of residence. To maintain in being a right of residence in the event of permanent incapacity for work would, according to the German Government, amount to conferring on it an independent character, contrary to the purpose of Decision No 1/80. The observations of the United Kingdom are to the same effect.

37 As the provisions adopted by the Association Council for the purpose of progressively securing freedom of movement for workers between the Member States of the Community and Turkey, in accordance with the principle stated in Article 12 of the Agreement, now stand, the argument set out in the preceding paragraph must be accepted.

38 Article 6(2) is intended only to regulate the consequences, for the application of Article 6(1), of certain breaks in employment. Accordingly, annual holidays and absences for reasons of maternity or an accident at work or short periods of sickness are treated as periods of legal employment, particularly in calculating the length of the period of legal employment required in order to acquire the right of free access to any paid employment. Periods of unemployment and long absences on account of sickness, which are not treated as periods of legal employment, are taken into account only in order to ensure that rights acquired by the

worker as the result of preceding periods of employment are preserved. Consequently, the provisions of Article 6(2) merely ensure the continuation of the right to employment and necessarily presuppose fitness to continue working, even if only after a temporary interruption.

39 It follows that Article 6 of Decision No 1/80 covers the situation of Turkish workers who are working or are temporarily incapacitated for work. It does not, on the other hand, cover the situation of a Turkish worker who has definitively ceased to belong to the labour force of a Member State because he has, for example, reached retirement age or, as in the present case, become totally and permanently incapacitated for work.

40 Consequently, in the absence of any specific provision conferring on Turkish workers a right to remain in the territory of a Member State after working there, a Turkish national's right of residence, as implicitly but necessarily guaranteed by Article 6 of Decision No 1/80 as a corollary of legal employment, ceases to exist if the person concerned becomes totally and permanently incapacitated for work.

41 Furthermore, as far as Community workers are concerned, the conditions under which such a right to remain may be exercised were, under Article 48(3)(d) of the Treaty, made subject to regulations to be drawn up by the Commission, with the result that the rules applicable under Article 48 cannot simply be transposed to Turkish workers.

42 The answer to the fourth question must therefore be that Article 6(2) of Decision No 1/80 does not confer on a Turkish national who has belonged to the legitimate labour force of a Member State the right to remain in the territory of that State following an accident at work rendering him permanently incapacitated for work.

Costs

43 The costs incurred by the German, Greek and Netherlands Governments, the United Kingdom and 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Raad van State der Nederlanden by interlocutory judgment of 24 September 1993, hereby rules:

1. In order to ascertain whether a Turkish worker employed as an international lorry-driver belongs to the legitimate labour force of a Member State, for the purposes of Article 6(1) of Decision No 1/80 of 19 September 1980 of the Association Council established by the agreement establishing an Association between the European Economic Community and Turkey, signed on 12 September 1963 in Ankara and approved on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963, it is for the national court to determine whether the applicant's employment relationship retained a sufficiently close link with the territory of the Member State, and, in so doing, to take account, in particular, of the place where he was hired, the territory on which the paid employment is based and the applicable national legislation in the field of employment and social security law.

2. **The existence of legal employment in a Member State within the meaning of Article 6(1) of Decision No 1/80, cited above, can be established in the case of a Turkish worker who was not required by the national legislation concerned to hold a work permit or a residence permit issued by the authorities in the host State in order to carry out his work. The fact that such employment exists necessarily implies the recognition of a right of residence for the person concerned.**

3. **Article 6(2) of Decision No 1/80 does not confer on a Turkish national who has belonged to the legitimate labour force of a Member State the right to remain in the territory of that State following an accident at work rendering him permanently incapacitated for work.**

Rodríguez Iglesias Schockweiler Kapteyn

Gulmann Mancini Kakouris

Moitinho de Almeida Murray Edward

Puissochet Hirsch

Delivered in open court in Luxembourg on 6 June 1995.

R. Grass G. C. Rodríguez Iglesias

Registrar President