JUDGMENT OF THE COURT (Sixth Chamber)
5 October 1994 *

In Case C-355/93,

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

Hayriye Eroglu

and

Land Baden-Württemberg,

on the interpretation of Articles 6 and 7 of Decision established by the Association Agreement between the European Economic Community and Turkey, of 19 September 1980, on the development of the Association,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, C. N. Kakouris, F. A. Schockweiler (Rapporteur), P. J. G. Kapteyn and J. L. Murray, Judges,

* Language of the case: German.

Advocate General: M. Darmon,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mrs Hayriye Eroglu, by H. Lichtenberg, Professor at the University of Bremen,

— the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent,

— the Commission of the European Communities, by J. Pipkorn, Legal Adviser, and H. Kreppel, a national civil servant seconded to the Commission, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Hayriye Eroglu, the German Government and the Commission at the hearing on 5 May 1994,

after hearing the Opinion of the Advocate General at the sitting on 12 July 1994,

gives the following

Judgment

1 By order of 26 May 1993, received at the Court Registry on 14 July 1993, the Verwaltungsgericht (Administrative Court) Karlsruhe (Germany) referred to the

Court for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Articles 6 and 7 of Decision No 1/80 of the Association Council established by the Association Agreement between the European Economic Community and Turkey, of 19 September 1980, on the development of the Association ('Decision No 1/80').

Those questions were raised in proceedings between Mrs Hayriye Eroglu, a Turkish national, and the Land Baden-Württemberg, concerning the refusal to extend the residence permit allowing her to stay in the Federal Republic of Germany.

It is apparent from the order for reference that in April 1980 Mrs Eroglu, who was born in Turkey on 12 May 1960, entered the Federal Republic of Germany where her father had been living and working quite lawfully without interruption since 4 May 1976, in order to take a business administration course at the University of Hamburg. She completed those studies in 1987 and obtained a diploma in further business studies, then began to study for a doctorate. During her studies, and until October 1989, she was granted several residence permits, all limited to one year and marked 'valid only for the purposes of study ...'.

In October 1989, Mrs Eroglu moved to Hardheim. At her request, the Landratsamt Neckar-Odenwald-Kreis (the Neckar-Odenwald Rural District Central Administrative Office) issued her with residence permits on 15 January 1990 and 27 June 1990 valid initially until 1 March 1991, and containing the proviso: 'Gainful employment not permitted; valid only for the "hotel project" activity with company B. in Hardheim'. On 7 February 1991 she received a conditional residence authorization valid until 1 March 1992, allowing her to undertake practical training with company B. At the same time, she was told that it would not be possible to renew the residence authorization beyond 1 March 1992. In a decision of 9 April 1991, the conditions attached to the authorization were changed so to permit Mrs Eroglu thereafter to pursue 'activity as a trainee (marketing assistant) at company F. GmbH in Tauberbischofsheim'.

5 For all those activities Mrs Eroglu was issued with corresponding work permits. Those which were valid from 6 February 1990 to 14 January 1991 and from 25 April 1991 to 1 March 1992 respectively authorized her in general and without further restriction to carry on certain occupational activities, the one as commercial management assistant and the other as marketing assistant, in the employment of a certain company. The permit applying from 15 January 1991 to 14 April 1991, on the other hand, was limited to carrying on 'occupational activity as a trainee'. As a matter of fact, Mrs Eroglu was employed from 1 March 1990 to 15 April 1991 by company B., then from 15 April 1991 to 18 May 1992 by company F. Both employers paid her a monthly gross salary of more than DM 3 000.

6 On 24 February 1992 Mrs Eroglu applied to the Landratsamt Neckar-Odenwald-Kreis for an extension of her residence permit to allow her to continue her activity with her last employer, company F. That application and her subsequent complaint to the Regierungspräsidium Karlsruhe (Chief Executive's Office of Karlsruhe District) were rejected, whereupon Mrs Eroglu brought proceedings before the Verwaltungsgericht Karlsruhe. In that court Mrs Eroglu, who had in the meantime again been offered employment with her first employer, company B., claimed that she had a right of residence by virtue of the first indent of Article 6(1) and the second paragraph of Article 7 of Decision No 1/80, which provide as follows:

'*Article 6*

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.

(...)

Article 7

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 that 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.'

7 The Verwaltungsgericht Karlsruhe found that the refusal to renew the residence permit was in accordance with German law but was uncertain whether a solution more favourable to Mrs Eroglu might not follow from the abovementioned provisions of Decision No 1/80, with particular regard to the Court's judgments in Case C-192/89 *Sevince* v *Staatssecretaris van Justitie* [1990] ECR I-3461 and Case C-237/91 *Kus* v *Landeshauptstadt Wiesbaden* [1992] ECR I-6781.

8 Consequently, it decided to stay the proceedings until the Court of Justice had given a ruling on the following questions:

'1. Does a Turkish national satisfy the conditions of the first indent of Article 6(1) of Decision No 1/80 of the Association Council of the Association between the European Economic Community and Turkey on the development of the Association if under national law she was granted, as a graduate of a German university, a conditional residence authorization for two years and corresponding work permits for the purpose of deepening her knowledge by pursuing an occupational activity or a period of specialized practical training and if she initially worked for more than a year for one employer (gross monthly earnings: approximately DM 3 000) and immediately afterwards worked, with the authorities' permission, for some ten months for another employer, after which she was offered work by her first employer?

2. May a Turkish national who, as a graduate of a German university, satisfies the conditions set out in the second paragraph of Article 7 of the aforementioned decision and who may therefore "respond to any offer of employment", demand the extension of her residence permit on the basis thereof, or does the second paragraph of Article 7 of the decision govern exclusively the position under employment law of children of Turkish workers who have been legally employed in the host Member State for at least three years?'

Question 1

9 In its first question, the national court asks whether the first indent of Article 6(1) of Decision No 1/80 is to be construed as giving the right to the renewal of his permit to work for his first employer to a Turkish national who is a university graduate and who worked for more than one year for his first employer and for some ten months for another employer, having been issued with a two-year conditional residence authorization and corresponding work permits in order to allow him to deepen his knowledge by pursuing an occupational activity or specialized practical training.

10 Decision No 1/80 does not encroach upon the power of the Member States to regulate both the entry into their territory of Turkish nationals and the conditions of their first employment, but makes provision exclusively, particularly in Article 6, for the case of Turkish workers who are already duly registered as belonging to the labour force of the Member States (see the judgment in *Kus,* cited above, at paragraph 25).

11 In *Sevince,* cited above, the Court held that Article 6(1) of Decision No 1/80 has direct effect in the Member States of the European Community (paragraph 2 of the

operative part). Turkish nationals who satisfy its conditions may thus rely directly on the rights given them by the various indents of that provision.

12 Those rights themselves vary and are subject to conditions which vary according to the length of time that legal employment in the relevant Member State has lasted. After one year of legal employment, a Turkish worker is entitled to the renewal of his permit to work for the same employer (first indent). After three years of legal employment, and subject to the priority to be given to workers of Member States of the Community, he may respond to another offer of employment with an employer of his choice for the same occupation (second indent). After four years of legal employment, he is entitled to free access to any paid employment of his choice (third indent).

13 The aim of the first indent of Article 6(1) of Decision No 1/80 is to ensure solely continuity of employment with the same employer and is, accordingly, applicable only where a Turkish worker requests an extension of his work permit in order to continue working for the same employer after the initial period of one year's legal employment.

14 Extending the application of that provision to a Turkish worker who, after one year's legal employment, changed employers and is seeking an extension of his work permit in order to work for the first employer again would allow that worker to change employers under that provision before the expiry of the three years prescribed in the second indent and would also deprive workers of the Mem-

ber States of the priority conferred on them pursuant to that indent when a Turkish worker changes employers.

15 It is sufficiently clear from the foregoing that the answer to the first question must be that the first indent of Article 6(1) of Decision No 1/80 is to be construed as not giving the right to the renewal of his permit to work for his first employer to a Turkish national who is a university graduate and who worked for more than one year for his first employer and for some ten months for another employer, having been issued with a two-year conditional residence authorization and corresponding work permits in order to allow him to deepen his knowledge by pursuing an occupational activity or specialized practical training.

Question 2

16 In its second question, the national court seeks to ascertain whether a Turkish national who satisfies the conditions set out in the second paragraph of Article 7 of Decision 1/80 and may therefore respond to any offer of employment in the Member State concerned may, by the same token, also rely on that provision to obtain the extension of his residence permit.

17 Like Article 6(1) of Decision No 1/80, Article 7 clearly, precisely and unconditionally embodies the rights of those children of Turkish workers who have completed a course of vocational training in the host country to 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. Like Article 6(1), the second paragraph of Article 7 has direct effect in the Member States of the European Community.

18 It is noteworthy that in *Sevince,* in the context of the third indent of Article 6(1) of Decision No 1/80, the Court held that even if that provision merely governs the circumstances of the Turkish worker as regards employment and makes no reference to the right of residence, those two aspects of the personal situation of a Turkish worker are closely linked and that by granting to such a worker, after a specified period of legal employment in the Member State, access to any paid employment of his choice, the provision in question necessarily implies — since otherwise the right granted by it to the Turkish worker would be deprived of any effect — the existence, at least at that time, of a right of residence for the person concerned (paragraph 29).

19 In *Kus,* the Court applied the same reasoning to the first indent of Article 6(1) of Decision No 1/80, since, without a right of residence the grant to a Turkish worker of the right to renewal of his permit to work for the same employer after one year's legal employment would likewise be deprived of any effect (paragraph 30).

20 Since the right of residence is essential to access to and the pursuit of any paid employment, whether for the same employer in connection with renewal of a

work permit or for another employer, chosen freely or subject to the priority given to workers of the Member States of the Community, it must also be accepted that the right conferred on a person by the second paragraph of Article 7 of Decision No 1/80 to respond to any offer of employment necessarily implies the recognition of a right of residence for that person.

21 No argument to the contrary can be based on Article 48(3) of the Treaty which, in the field of freedom of movement for workers within the Community, explicitly sets out, in addition to the right to accept offers actually made, the right to stay in a Member State for the purpose of employment. Article 48(3) enumerates in a non-exhaustive way certain rights benefiting nationals of Member States in the context of the free movement of workers (Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 13), and that freedom entails the right for Community nationals to stay in the Member States not only in order to accept offers actually made there, but also to look for employment there (*Kus*, paragraph 35).

22 Contrary to the assertions of the German Government, the right to respond to any offer of employment, conferred by the second paragraph of Article 7 of Decision No 1/80 on children of Turkish workers who have completed a course of vocational training in the host country is not subject to any condition concerning the ground on which a right to enter and to stay was originally granted. The fact that that right was not given them with a view to reuniting the family but, for example, for the purposes of study does not, therefore, deprive the child of a Turkish worker who satisfies the conditions of the second paragraph of Article 7 of the enjoyment of the rights conferred thereunder.

23 In view of the foregoing, the answer to the second question must be that a Turkish national who satisfies the conditions set out in the second paragraph of Article 7 of

Decision No 1/80 and may therefore respond to any offer of employment in the Member State concerned may, by the same token, also rely on that provision to obtain the extension of his residence permit.

Costs

24 The costs incurred by the German Government 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 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 referred to it by the Verwaltungsgericht Karlsruhe, by order of 26 May 1993, hereby rules:

1. **The first indent of Article 6(1) of Decision No 1/80 of the Association Council established by the Association Agreement between the European Economic Community and Turkey, of 19 September 1980, on the development of the Association is to be construed as not giving the right to the renewal of his permit to work for his first employer to a Turkish national who is a university graduate and who worked for more than one year for his first employer and for some ten months for another employer, having been issued with a two-year conditional residence authorization and corresponding work permits in order to allow him to deepen his knowledge by pursuing an occupational activity or specialized practical training.**

2. A Turkish national who satisfies the conditions set out in the second paragraph of Article 7 of Decision No 1/80 and may therefore respond to any offer of employment in the Member State concerned may, by the same token, rely on that provision to obtain the extension of his residence permit.

Mancini Kakouris Schockweiler Kapteyn Murray

Delivered in open court in Luxembourg on 5 October 1994.

R. Grass

Registrar

G. F. Mancini

President of the Sixth Chamber