JUDGMENT OF THE COURT
30 September 1987 *

In Case 12/86

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

Meryem Demirel, residing at Schwäbisch Gmünd,

and

Stadt Schwäbisch Gmünd (City of Schwäbisch Gmünd),

on the interpretation of Articles 7 and 12 of the Association Agreement between the European Economic Community and Turkey, and Article 36 of the Additional Protocol thereto,

THE COURT

composed of: Lord Mackenzie Stuart, President, Y. Galmot, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, U. Everling, K. Bahlmann, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

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

after considering the observations submitted on behalf of

Stadt Schwäbisch Gmünd, the defendant in the main proceedings, by Dieter Schädel, of the City's Legal Department, in the written procedure,

the Vertreter des öffentlichen Interesses (Representative of the public interest), who intervened in the main proceedings in support of the conclusions of the City

* Language of the Case: German.

of Schwäbisch Gmünd, by Professor Harald Fliegauf, Leitender Oberlandesanwalt (Senior Regional Prosecutor), in the written and the oral procedure,

the Government of the Federal Republic of Germany, by Martin Seidel, Ministerialrat at the Federal Ministry of Economics, and Jochim Sedemund, of the Cologne Bar, in the written procedure, and by Martin Seidel in the oral procedure,

the Government of the French Republic, by Gilbert Guillaume, Directeur des affaires juridiques at the Ministry of Foreign Affairs, in the written procedure, and by Philippe Pouzoulet, Secrétaire des affaires étrangères at the Legal Department of the Ministry of Foreign Affairs, in the oral procedure,

the Government of the Hellenic Republic, by Iannos Kranidiotis, Secretary at the Ministry of Foreign Affairs, assisted by Stelios Perrakis, Legal Adviser in the European Communities Section of the Ministry of Foreign Affairs, in the written procedure, and by Stelios Perrakis, in the oral procedure,

the United Kingdom, by B. E. McHenry of the Treasury Solicitor's Department, in the written procedure, and by Professor David Edward, of the Scottish Bar, in the oral procedure,

the Commission of the European Communities, by its Legal Adviser, Peter Gilsdorf, in the written and the oral procedure,

having regard to the Report for the Hearing, as supplemented further to the hearing on 10 February 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 19 May 1987,

gives the following

Judgment

1 By an order of 11 December 1985, lodged at the Court Registry on 17 January 1986, the Verwaltungsgericht (Administrative Court) Stuttgart referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Articles 7 and 12 of the Agreement establishing an association between the European Economic Community and Turkey (hereinafter referred to as 'the Agreement'), signed at Ankara on 12 September 1963 and concluded on behalf of the Community by a Decision of the Council of 23 December 1963 (Official Journal 1973, C 113, p. 2), and of Article 36 of the Additional Protocol (hereinafter referred to as 'the Protocol'), signed at Brussels on 23 November 1970 and concluded on behalf of the Community by Council Regulation No 2760/72 of 19 December 1972 (Official Journal 1973, C 113, p. 18).

2 The questions arose in the course of an action for the annulment of an order to leave the country, accompanied by the threat of expulsion, which the City of Schwäbisch Gmünd had issued against Mrs Meryem Demirel, a Turkish national, on the expiry of her visa. Mrs Demirel is the wife of a Turkish national who had been living and working in the Federal Republic of Germany since entering that country in 1979 for the purpose of rejoining his family. She had come to rejoin her husband holding a visa which was valid only for the purposes of a visit and was not issued for family reunification.

3 It appears from the order of the Verwaltungsgericht that the conditions for family reunification in the case of nationals of non-member countries who have themselves entered the Federal Republic of Germany for the purposes of family reunification were tightened in 1982 and 1984 by amendments to a circular issued for the *Land* of Baden-Württemberg by the Minister for the Interior of that *Land* pursuant to the Ausländergesetz (Aliens Law); those amendments raised from three to eight years the period during which the foreign national was required to have resided continuously and lawfully on German territory. Mrs Demirel's husband did not fulfil that condition at the time of the events which led to the main proceedings.

4 The Verwaltungsgericht Stuttgart, to which application was made for annulment of the order that Mrs Demirel leave the country, referred the following questions to the Court of Justice:

(1) Do Article 12 of the Association Agreement between the European Economic Community and Turkey and Article 36 of the Additional Protocol thereto, in conjunction with Article 7 of the Association Agreement, already lay down a prohibition that under Community law is directly applicable in the Member States on the introduction of further restrictions on freedom of movement applicable to Turkish workers lawfully residing in a Member State in the form of a modification of an existing administrative practice?

(2) Is the expression 'freedom of movement' in the Association Agreement to be understood as giving Turkish workers residing in a Member State the right to bring children under the age of majority and spouses to live with them?

5 Reference is made to the Report for the Hearing for a fuller account of the facts in the main proceedings, the provisions of German legislation, the Agreement and the Protocol thereto, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Jurisdiction of the Court

6 Since, in their written observations, the Government of the Federal Republic of Germany and the United Kingdom call in question the jurisdiction of the Court to interpret the provisions of the Agreement and the Protocol regarding the freedom of movement for workers, it is appropriate to consider the issue of the Court's jurisdiction before ruling on the questions submitted by the national court.

7 It should first be pointed out that, as the Court held in its judgment of 30 April 1974 in Case 181/73 *Haegeman* v *Belgium* [1974] ECR 449, an agreement concluded by the Council under Articles 228 and 238 of the Treaty is, as far as the Community is concerned, an act of one of the institutions of the Community within the meaning of Article 177 (1) (b), and, as from its entry into force, the provisions of such an agreement form an integral part of the Community legal system; within the framework of that system the Court has jurisdiction to give preliminary rulings concerning the interpretation of such an agreement.

8 However, the German Government and the United Kingdom take the view that, in the case of 'mixed' agreements such as the Agreement and the Protocol at issue here, the Court's interpretative jurisdiction does not extend to provisions whereby Member States have entered into commitments with regard to Turkey in the exercise of their own powers which is the case of the provisions on freedom of movement for workers.

9 In that connection it is sufficient to state that that is precisely not the case in this instance. Since the agreement in question is an association agreement creating special, privileged links with a non-member country which must, at least to a certain extent, take part in the Community system, Article 238 must necessarily empower the Community to guarantee commitments towards non-member countries in all the fields covered by the Treaty. Since freedom of movement for workers is, by virtue of Article 48 *et seq.* of the EEC Treaty, one of the fields covered by that Treaty, it follows that commitments regarding freedom of movement fall within the powers conferred on the Community by Article 238. Thus the question whether the Court has jurisdiction to rule on the interpretation of a provision in a mixed agreement containing a commitment which only the Member States could enter into in the sphere of their own powers does not arise.

10 Furthermore, the jurisdiction of the Court cannot be called in question by virtue of the fact that in the field of freedom of movement for workers, as Community law now stands, it is for the Member States to lay down the rules which are necessary to give effect in their territory to the provisions of the Agreement or the decisions to be adopted by the Association Council.

11 As the Court held in its judgment of 26 October 1982 in Case 104/81 *Hauptzollamt Mainz* v *Kupferberg* [1982] ECR 3641, in ensuring respect for commitments arising from an agreement concluded by the Community institutions the Member States fulfil, within the Community system, an obligation in relation to the Community, which has assumed responsibility for the due performance of the agreement.

12 Consequently, the Court does have jurisdiction to interpret the provisions on freedom of movement for workers contained in the Agreement and the Protocol.

The questions referred to the Court

13 The Verwaltungsgericht's first question seeks essentially to establish whether Article 12 of the Agreement and Article 36 of the Protocol, read in conjunction with Article 7 of the Agreement, constitute rules of Community law which are directly applicable in the internal legal order of the Member States.

14 A provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure.

15 According to Articles 2 to 5 thereof, the Agreement provides for a preparatory stage to enable Turkey to strengthen its economy with aid from the Community, a transitional stage for the progressive establishment of a customs union and for the alignment of economic policies, and a final stage based on the customs union and entailing closer coordination of economic policies.

16 In structure and content, the Agreement is characterized by the fact that, in general, it sets out the aims of the association and lays down guidelines for the attainment of those aims without itself establishing the detailed rules for doing so. Only in respect of certain specific matters are detailed rules laid down by the protocols annexed to the Agreement, later replaced by the Additional Protocol.

17 In order to achieve the aims set out in the Agreement, Article 22 confers decision-making powers on the Council of Association which consists of members of the Governments of the Member States and members of the Council and Commission, on the one hand, and members of the Turkish Government, on the other.

18 Title II of the Agreement, which deals with the implementation of the transitional stage, includes two chapters on the customs union and agriculture, together with a third chapter containing other economic provisions, of which Article 12 on the freedom of movement for workers forms part.

19 Article 12 of the Agreement provides that 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.

20 Article 36 of the Protocol provides that freedom of movement shall be secured by progressive stages in accordance with the principles set out in Article 12 of the Agreement between the end of the 12th and the 22nd year after the entry into force of that Agreement, and that the Council of Association is to decide on the rules necessary to that end.

21 Article 36 of the Protocol gives the Council of Association exclusive powers to lay down detailed rules for the progressive attainment of freedom of movement for workers in accordance with political and economic considerations arising in particular out of the progressive establishment of the customs union and the alignment of economic policies, pursuant to such arrangements as the Council of Association may deem necessary.

22 The only decision which the Council of Association adopted on the matter was Decision No 1/80 of 19 September 1980 which, with regard to Turkish workers who are already duly integrated in the labour force of a Member State, prohibits any further restrictions on the conditions governing access to employment. In the sphere of family reunification, on the other hand, no decision of that kind was adopted.

23 Examination of Article 12 of the Agreement and Article 36 of the Protocol therefore reveals that they essentially serve to set out a programme and are not sufficiently precise and unconditional to be capable of governing directly the movement of workers.

24 Accordingly, it is not possible to infer from Article 7 of the Agreement a prohibition on the introduction of further restrictions on family reunification. Article 7, which forms part of Title I of the Agreement dealing with the principles of the association, provides in very general terms that the Contracting Parties are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from the Agreement and that they are to refrain from any measures liable to jeopardize the attainment of the objectives of

the Agreement. That provision does no more than impose on the contracting parties a general obligation to cooperate in order to achieve the aims of the Agreement and it cannot directly confer on individuals rights which are not already vested in them by other provisions of the Agreement.

25 Consequently, the answer to be given to the first question is that Article 12 of the Agreement and Article 36 of the Protocol, read in conjunction with Article 7 of the Agreement, do not constitute rules of Community law which are directly applicable in the internal legal order of the Member States.

26 By its second question the national court wishes to establish whether the conditions subject to which the spouse and minor children of a Turkish worker established within the Community may join him are covered by the concept of 'freedom of movement' within the meaning of the Agreement.

27 In the light of the answer to the first question, the second question does not call for an answer.

28 As to the point whether Article 8 of the European Convention on Human Rights has any bearing on the answer to that question, it must be observed that, as the Court ruled in its judgment of 11 July 1985 in Joined Cases 60 and 61/84 *Cinéthèque* v *Fédération nationale des cinémas français* [1985] ECR 2605, at p. 2618, although it is the duty of the Court to ensure observance of fundamental rights in the field of Community law, it has no power to examine the compatibility with the European Convention on Human Rights of national legislation lying outside the scope of Community law. In this case, however, as is apparent from the answer to the first question, there is at present no provision of Community law defining the conditions in which Member States must permit the family reunification of Turkish workers lawfully settled in the Community. It follows that the national rules at issue in the main proceedings did not have to implement a provision of Community law. In those circumstances, the Court does not have jurisdiction to determine whether national rules such as those at issue are compatible with the principles enshrined in Article 8 of the European Convention on Human Rights.

Costs

29 The costs incurred by the Government of the Federal Republic of Germany, the Government of the French Republic, the Government of the Hellenic Republic,

the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the proceedings 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 Verwaltungsgericht Stuttgart by an order of 11 December 1985, hereby rules:

Article 12 of the Agreement establishing an association between the European Economic Community and Turkey, signed in Ankara on 12 September 1963 and concluded on behalf of the Community by a Council Decision of 23 December 1963, and Article 36 of the Additional Protocol, signed at Brussels on 23 November 1970 and concluded on behalf of the Community by Council Regulation No 2760/72 of 19 December 1972, read in conjunction with Article 7 of the Agreement, do not constitute rules of Community law which are directly applicable in the internal legal order of the Member States.

Mackenzie Stuart Galmot O'Higgins Schockweiler Bosco

Koopmans Everling Bahlmann Joliet Moitinho de Almeida Rodríguez Iglesias

Delivered in open court in Luxembourg on 30 September 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President