JUDGMENT OF THE COURT (Fifth Chamber)

7 July 2005 *

In Case C-373/03,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Freiburg (Germany), made by decision of 12 March 2003, received at the Court on 5 September 2003, in the proceedings

Ceyhun Aydinli

v

Land Baden-Württemberg,

THE COURT (Fifth Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, R. Schintgen (Rapporteur) and P. Kūris, Judges,

* Language of the case: German.

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Land Baden-Württemberg, by I. Karrais, acting as Agent,

— the German Government, by A. Tiemann, acting as Agent,

— the Commission of the European Communities, by G. Rozet and H. Kreppel, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 6 and 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association ('Decision No 1/80'). The Association Council was set up by the Agreement establishing an Association between the European

Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey and by the Member States of the EEC and the Community and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1).

2 The reference was made in the course of proceedings between Mr Aydinli, a Turkish national, and Land Baden-Würtemberg concerning proceedings to expel him from German territory.

Law

3 According to Article 6(1) and (2) of Decision No 1/80:

'(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.

(2) 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 unemployment 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.'

4 In accordance with Article 7 of Decision No 1/80:

'The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorised 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 According to Article 14(1) of Decision No 1/80:

'The provisions of this section shall be applied subject to limitations justified on grounds of public policy, public security or public health.'

The main proceedings and the questions referred for a preliminary ruling

6 It is stated in the file that Mr Aydinli was born in Germany in 1974. Between 1980 and 1989 he lived with his grandparents in Turkey and was educated there. In September 1989 he was authorised to join his parents in Germany where he completed a course of vocational training. From January 1995 until September 2000 he was in paid employment with the same employer and, since June 1995, he has had a German residence permit of indefinite duration.

7 Having engaged in the unlawful trafficking of a significant quantity of drugs, he was arrested on 27 September 2000, detained in custody pending trial and sentenced, on

31 May 2001, to three years in prison which included time he had already spent in custody.

8 After Mr Aydinli had served part of his sentence the enforcement of the remainder, from 2 October 2001, was deferred to enable him to undergo long-term drug therapy which he successfully completed on 16 July 2002. By order of 6 November 2002 the period spent in drug therapy was off-set against the prison sentence and the remainder was suspended.

9 Since the end of his treatment Mr Aydinli has been working with his father in Germany.

10 On 16 August 2001 the German authorities made an order for Mr Aydinli's immediate expulsion, against which he brought an appeal on 20 September 2001.

11 Whilst it took the view that the expulsion order was in accordance with national law, pursuant to which an alien who had been definitively sentenced to an unconditional term of imprisonment of at least three years for an offence contrary the provisions of the Law on narcotics must be expelled, the national court was unsure as to whether that expulsion measure was compatible with Decision No 1/80.

12 It is settled case-law that Article 14(1) of Decision No 1/80 precludes expulsion as a rule of a Turkish national following a criminal conviction and as a deterrent to other aliens, without the personal conduct of the person concerned giving reason to consider that he will commit other serious offences prejudicial to the requirements of public policy in the host Member State (Case C-340/97 *Nazli* [2000] ECR I-957).

13 In that connection, the national court is convinced that Mr Aydinli no longer presented any real danger of re-offending at the time the order to expel him was made.

14 However, the national court considers that before deciding whether Article 14(1) of Decision No 1/80 is applicable in the main proceedings, it is necessary to determine the extent to which the person concerned was able to rely on a right conferred by a provision of that decision and, more particularly, on Articles 6 or 7.

15 It is true that, as a Turkish worker who had had legal employment for more than four years consecutively, Mr Aydinli had acquired the status provided for in the third indent of Article 6(1) of Decision No 1/80. As a child of a Turkish worker duly registered as belonging to the labour market of a Member State where he legally resided for at least five years, and as he completed vocational training in that Member State, Mr Aydinli likewise enjoyed the rights laid down in the second indent of the first sentence and in the second sentence of Article 7 of that decision.

16 The national court is unsure, however, whether, at the date of the order to expel him, Mr Aydinli had forfeited those rights on account of his long absence from the labour market due, first of all, to his detention in custody from 27 September 2000 to 3 July 2001, then to the enforcement of his prison sentence from 4 July 2001 to 1 October 2001 and, finally, to his drug therapy from 2 October 2001 to 16 July 2002.

17 Taking the view that in those circumstances the resolution of the dispute required an interpretation of Community law, the Verwaltungsgericht Freiburg decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Can the fact that a Turkish worker is not duly registered as belonging to the labour force due to enforcement of a fixed-term prison sentence cause him to have ceased to belong to that labour force, thereby leading to the forfeiture of rights that he has acquired under the third indent of Article 6(1) as a result of his many years of employment in the Member State?

(2) Where applicable, how is the duration of an absence from the labour force due to enforcement of a prison sentence, which leads to forfeiture of rights, to be determined?

(3) When determining that duration can account also be taken of the period during which the Turkish worker was absent as a result of detention pending trial under a court order immediately preceding enforcement of the prison sentence?

(4) When determining that duration can account also be taken of the fact that, at the time that the expulsion order is made, the claimant is expected to remain absent from the labour force for some time because, if expulsion is not ordered, he can in all probability, enforcement of the prison sentence being deferred, commence long-term drug therapy aimed at his social and occupational rehabilitation for which there are sufficient prospects of success?

(5) In order for a member of the family of a Turkish worker to forfeit his legal status under the second indent of the first sentence of Article 7 of Decision No 1/80 is it necessary for that member of the family to have ceased living as a family with the Turkish worker from whom he originally derived his right of residence and also for that member of the family to have definitively ceased to be duly registered as belonging to the labour force of the Member State in which they are both living?

(6) Should ceasing to live as a family with a person generally be deemed to occur for this purpose where the Turkish worker's adult child moves out of the Turkish worker's home on a permanent basis and neither the child nor the Turkish worker continues to require particular proximity or care?

(7) Should ceasing to belong to the labour force, in the context of the legal status of a member of the family of a Turkish worker under the second indent of the first sentence of Article 7, be determined by reference to criteria the same as those applicable to the forfeiture of rights under the third indent of Article 6(1)?

(8) Does the child of a Turkish worker who has completed a course of vocational training in the host country forfeit his right under the second sentence of Article 7 of Decision No 1/80 to respond to any offer of employment in that

Member State if he has already entered the labour force there by taking up permanent employment?

(9) Is that right under the second sentence of Article 7 of Decision No 1/80 forfeited if a person with that right has ceased to be duly registered as belonging to the labour force of that Member State in a way that would lead to the loss of a Turkish worker's legal status under the third indent of Article 6(1)?'

The questions referred for a preliminary ruling

Preliminary observation

18 As a preliminary point, it must be observed that the main proceedings concern the situation of a Turkish national who, as the child of a Turkish migrant couple, at least one of whom is duly registered as belonging to the labour market of a Member State, was authorised to join them on the territory of that State to reunite the family, on the basis of the first sentence of Article 7 of Decision No 1/80. The national court held, in that context, that the person concerned enjoys the right to free access to any paid employment of his choice, in accordance with the second indent of the first sentence of Article 7, on account of his legal residence for five years in that Member State.

19 Furthermore, Article 6(1) of Decision No 1/80 applies 'subject to the provisions of Article 7 on free access to employment for members of [the] family' of a Turkish worker. It follows that those provisions constitute a *lex specialis* in relation to the rights which are gradually extended according to the period of stable paid employment, laid down in the three indents of Article 6(1).

20 In those circumstances it is appropriate to examine first the fifth, sixth and seventh questions on the interpretation of the second indent of the first sentence of Article 7 of Decision No 1/80.

The fifth, sixth and seventh questions

21 Those questions all ask to what extent a Turkish national, such as Mr Aydinli, who enjoys the right to free access in the host Member State to any paid work of his choice under the second indent of the first sentence of Article 7 of Decision No 1/80 may forfeit that right where he has been given an unconditional prison sentence of several years, part of which has been replaced by the obligation to undertake long-term drug therapy. It is therefore appropriate to examine them together.

22 In order to provide a useful reply to those questions it is necessary to consider, first of all, the case-law which provides that the first sentence of Article 7 of Decision No 1/80 applies to the situation of a Turkish national who, as a member of the family of a Turkish worker who is or was duly registered as belonging to the legal labour force of the host Member State, has either been authorised to join that worker to reunite the family or was born and has always resided in that State. The applicability of the first sentence of Article 7 to that type of situation is independent of the fact that, at the time of the proceedings, the person concerned is an adult no longer living with his family, but living independently and working in the Member State concerned (see, to that effect, Case C-329/97 *Ergat* [2000] ECR I-1487, paragraphs 26 and 27, and Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraph 34).

23 Such a Turkish national cannot, therefore, forfeit a right acquired on the basis of that provision as a result of circumstances arising such as those referred to in the previous paragraph. Furthermore, the right of access to employment in the host Member State by members of a Turkish worker's family, after a certain period, is specifically intended to consolidate their position in that State by offering them the chance to become independent.

24 Furthermore, although the first indent of the first sentence of Article 7 of Decision No 1/80 requires, as a rule, that a member of the family of a Turkish worker must actually reside with him for the three years during which the person concerned fails to satisfy the conditions for access to the labour market in the host Member State (see Case C-351/95 *Kadiman* [1997] ECR 2133, paragraph 33, 37, 40, 41 and 44, and *Cetinkaya*, paragraph 30), the fact remains that Member States are no longer entitled to attach conditions to the residence of a member of a Turkish worker's family after that three-year period; this must *a fortiori* be the case for a Turkish migrant who fulfils the conditions laid down in the second indent of the first sentence of Article 7 (see *Ergat*, paragraphs 37 to 39, and *Cetinkaya*, paragraph 30).

25 In that connection, the Court has specifically held, as regards family members covered by the first sentence of Article 7 of Decision No 1/80 who, like Mr Aydinli, enjoy the right to free access to employment in the host Member State after five years of legal residence in accordance with the second indent of that provision, not only that the direct effect of that provision means that the person concerned derives an individual employment right directly from Decision No 1/80, but also that to be effective that right necessarily implies a concomitant right of residence which does not depend on the continuing existence of the conditions for access to those rights (see *Ergat*, paragraph 40, *Cetinkaya*, paragraph 31, and, by analogy, Case C-383/03 *Dogan* [2005] ECR I-6237, paragraph 14).

26 Accordingly, the fact that the condition of eligibility for the right in question, in this case residence with the Turkish worker for a certain period, ceases to apply after the family member has acquired the relevant right cannot affect the enjoyment of that right.

27 Secondly, it is clear from the case-law that the limits on the right of residence, as a corollary of the right to access to the employment market and the right to take up employment which members of the family of a Turkish worker who satisfy the conditions laid down in the first sentence of Article 7 of Decision No 1/80 enjoy, are of two kinds. Either the presence of a Turkish migrant in the host Member State constitutes, on account of his own conduct, a genuine and serious threat to public policy, public security or public health, in accordance with Article 14(1) of Decision No 1/80, or the person concerned has left the territory of that State for a significant length of time without legitimate reason (see, to that effect, *Ergat*, paragraphs 45, 46 and 48, and *Cetinkaya*, paragraph 36).

28 On the other hand, the first sentence of Article 7 of Decision No 1/80 does not permit the rights conferred by that provision on a Turkish national in Mr Aydinli's position to be limited following the imposition of a custodial sentence, even a sentence of several years which is initially unconditional followed by long-term drug therapy, on the ground of his prolonged absence from the labour market (see, by analogy, *Cetinkaya*, paragraph 39).

29 The interpretation set out in the preceding paragraph is borne out especially by the fact that under the first sentence of Article 7, unlike Article 6(1) of Decision No

1/80, which concerns Turkish workers, the creation of employment rights for family members is not conditional on those family members being duly registered as belonging to the labour force of the State concerned and having worked for a certain period, but simply to a requirement of actual residence with the worker from whom they derive their rights for an initial period of three years. In addition, the first and second indents of the first sentence of Article 7 grant family members of a Turkish worker a right to employment, but do not impose any obligation on them to work such as that set out in the first sentence of Article 1 of Decision No 1/80.

30 It follows that, first, the provisions of Article 6(2) of Decision No 1/80 are in no case applicable in the context of Article 7. It is solely for the purpose of calculating the periods of employment necessary to acquire the rights provided for in Article 6(1) that Article 6(2) sets out the effects, for the purposes of that calculation, of the various causes of interruption of employment (see *Dogan*, paragraph 15).

31 Secondly, a member of the family of a Turkish worker, who satisfies the conditions laid down in the first sentence of Article 7 of Decision No 1/80 and who wishes to work in the host Member State, does not have to comply with the more rigorous conditions laid down in that regard in Article 6(1) (see to that effect, by analogy, Case C-210/97 *Akman* [1998] ECR I-7519, paragraphs 48 to 50).

32 Taking account of all of the foregoing considerations, the answer to the fifth, sixth and seventh questions must be that a Turkish national who enjoys the right of free access to any paid employment of his choice, pursuant to the second indent of the first sentence of Article 7 of Decision No 1/80, does not forfeit that right either as a result of his prolonged absence from the labour market due to imprisonment, even for a period of several years followed by long-term drug treatment, or on account of the fact that at the time of the decision to expel him he was an adult and no longer resided with the Turkish worker from whom he derived his right of residence but lived independently of him.

The first to fourth questions and the eighth and ninth questions

33 Having regard to the answer to the fifth, sixth and seventh questions, there is no longer any need to give a ruling on the other questions referred.

Costs

34 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

A Turkish national who enjoys the right of free access to any paid employment of his choice under the second indent of the first sentence of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Agreement establishing an Association between the European Economic Community and Turkey, does not forfeit that right either as a result of his prolonged absence from the labour market due to imprisonment, even for a period of several years followed by long-term drug treatment, or on account of the fact that at the time of the decision to expel him he was an adult and no longer resided with the Turkish worker from whom he derived his right of residence but lived independently.

[Signatures]