Reports of Cases

OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 20 October 2011 [1]

Joined Cases C-7/10 and C-9/10

Staatssecretaris van Justitie
v
Tayfun Kahveci (C-7/10)
Staatssecretaris van Justitie
v
Osman Inan (C-9/10)

(References for a preliminary ruling from the Raad van State (Netherlands))

((EEC-Turkey Association Agreement — Right of residence — Family members of a Turkish worker who has acquired the nationality of the host Member State — Date of naturalisation))

1. These references for a preliminary ruling concern Decision No 1/80 of the EEC-Turkey Association Council ('Decision No 1/80') [2] and, in particular, Article 7 of that decision ('Article 7').

2. The question which the Court has to decide in both cases involves the application of that article where a Turkish worker was duly registered as belonging to the labour force of the host Member State and was subsequently joined there by members of his family. Before their arrival, however, the Turkish worker obtained the nationality of the host Member State, while, at the same time, retaining his original nationality. Does naturalisation in the host Member State deprive the family members of rights that would otherwise have flowed to them by virtue of Article 7?

Legal framework

The EEC-Turkey Association Agreement

3. The EEC-Turkey Association Agreement ('the Association Agreement') [3] was entered into in 1963. Article 12 provides that 'the Contracting Parties agree to be guided by [Articles 45 TFEU, 46 TFEU and 47 TFEU] for the purpose of progressively securing freedom of movement for workers between them'.

4. Article 2(3) of the Association Agreement states that the association is to comprise a preparatory stage, a transitional stage and a final stage. [4]

1 — Original language: English.

2 — Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council created under the Agreement establishing an Association between the European Economic Community and Turkey. The decision has not been published in the Official Journal but can be consulted in: *EEC-Turkey Association Agreement and Protocols and Other Basic Texts*, Office for Official Publications of the European Communities, Brussels, 1992.

3 — Agreement establishing an association between the EEC and Turkey, signed at Ankara on 12 September 1963 (OJ 1977 L 361, p. 29).

4 — The first and second of those stages ended, respectively, on 1 January 1973, with the entry into force of the Additional Protocol cited in footnote 5 below, and on 31 December 1995, with the entry into force of Decision No 1/95 of the Association Council of 22 December 1995 on implementing the final phase of the Customs Union (OJ 1996 L 35, p. 1).

5. As part of the arrangements for implementing the transitional stage, the parties to the Association Agreement entered into an Additional Protocol to that agreement in 1970.[5] Article 36 of that protocol provides that freedom of movement for workers between the Member State and Turkey is to be secured by progressive stages in accordance with the principles set out in Article 12 of the Association Agreement. It empowers the Association Council set up under that agreement to decide on the rules necessary to that end.

Decision No 2/76

6. Decision No 2/76 of the Association Council[6] laid down a number of measures intended to implement the provisions of the Association Agreement relating to freedom of movement for workers. It was, however, relatively limited in its scope.

Decision No 1/80

7. Decision No 1/80 was adopted by the Association Council in order to implement Article 12 of the Association Agreement and Article 36 of the Additional Protocol.[7] According to the third recital in the preamble, it seeks to improve, in the social field, the treatment accorded to workers and members of their families in relation to the arrangements introduced by Decision No 2/76.

8. Articles 6 and 7 of Decision No 1/80 form part of Section 1 ('Questions relating to employment and the free movement of workers') of Chapter II ('Social provisions') of Decision No 1/80. Article 6(1) ('Article 6(1)') provides:

'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.'

9. Article 7 states:

'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;

5 — Additional Protocol signed at Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Regulation (EEC) No 2760/72 of the Council of 19 December 1972 (OJ 1977 L 361, p. 29).

6 — Decision No 2/76 of the Association Council of 20 December 1976 on the implementation of Article 12 of the Association Agreement.

7 — See Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 64.

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

…'

10. In the same section, Article 14(1) of Decision No 1/80 provides:

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

European Union law

11. Article 27(2) of Directive 2004/38[8] provides:

'Measures taken on grounds of public policy or public security shall comply with the principle of proportionality and shall be based exclusively on the personal conduct of the individual concerned. Previous criminal convictions shall not in themselves constitute grounds for taking such measures.

The personal conduct of the individual concerned must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Justifications that are isolated from the particulars of the case or that rely on considerations of general prevention shall not be accepted.'

National legislation

The Vreemdelingenwet 2000

12. Under Article 18(1)(e) of the Vreemdelingenwet (Law on Foreign Nationals) 2000 ('the Vw 2000'), an application for the extension of a temporary residence permit may be refused if the foreign national making the application constitutes a threat to public order. Article 19 of the Vw 2000 provides that a temporary residence permit may be withdrawn on any of the grounds set out in Article 18(1).

13. Article 67(1)(b) of the Vw 2000 provides that the State Secretary may declare a foreign national undesirable if the latter has been convicted by a judgment which has become final of an offence punishable by a sentence of imprisonment of three years or more. By virtue of Article 67(3), a foreign national who has been declared undesirable cannot be lawfully resident in the Netherlands.

The Vreemdelingenbesluit 2000

14. Article 3.86(1)(d) of the Vreemdelingenbesluit (Decree on Foreign Nationals) 2000 ('the Vb 2000') provides that an application for the extension of a temporary residence permit can be refused by virtue of Article 18(1)(e) of the Vw 2000 because of a threat to public order if the foreign national has been convicted by a judgment which has become final of, inter alia, an offence punishable by imprisonment of three years or more, and has been given a custodial sentence, the non-suspended portion of which is at least equal to the period set out in Article 3.86(2), which lays down a sliding scale based on the length of stay of the person concerned in the Netherlands.

8 — Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77, with corrigendum OJ 2004 L 229, p. 35).

Facts and the questions referred for a preliminary ruling

Case C-7/10

15. Mr Kahveci, a Turkish national, entered the Netherlands in 1999, when he was granted a temporary residence authorisation. By decision of 1 December 1999, he was granted a residence permit subject to the restriction 'residence with spouse, R. Kahveci'. As of 1 April 2001, that permit was designated an ordinary temporary residence permit and its validity was extended most recently until 12 March 2009.

16. On 24 June 2004, Mr Kahveci was sentenced in the Netherlands for attempted murder and for being an accessory to false imprisonment. The non-suspended part of his sentence was six years and nine months, which was in excess of the period laid down in Article 3.86(2) of the Vb 2000 by reference to his length of stay in the Netherlands.

17. Mr Kahveci's spouse was born in the Netherlands, the child of a Turkish worker falling under Article 6(1), and resided with her parents for more than five years. On 3 June 1999, before Mr Kahveci's arrival in the Netherlands, she obtained Netherlands nationality, while retaining her Turkish nationality. It is common ground that she is duly registered as belonging to the labour force in the Netherlands and that Mr Kahveci resided with her until his imprisonment.

18. By decision of 20 March 2007, whereby Mr Kahveci was declared undesirable, the State Secretary also withdrew his residence permit. That decision was based on Article 67(1)(b) of the Vw 2000.

19. In his objection lodged against that decision, Mr Kahveci argued that the State Secretary had wrongly failed to take into account his purported right of residence under Article 7. Had the State Secretary done so, he would have been obliged to apply the level of protection given to persons in Mr Kahveci's position by Article 27(2) of Directive 2004/38. [9]

20. By decision of 28 December 2007, the State Secretary rejected the objection, since, at the time of Mr Kahveci's application for his original residence permit his spouse already had Netherlands nationality. It followed, in his view, that neither she nor her family members could rely on the provisions of Decision No 1/80.

21. Mr Kahveci appealed against that decision before the Rechtbank 's-Gravenhage (District Court, the Hague), which allowed the challenge on the basis that Mr Kahveci's spouse — in her capacity as a Turkish worker duly registered as belonging to the labour force in the Netherlands — had not forfeited her rights under Article 7 as a result of her naturalisation.

22. The State Secretary has appealed on a point of law to the referring court. He argues that the Rechtbank was wrong to hold that Decision No 1/80 applied. The order for reference records the State Secretary's position as being that 'with Netherlands nationality, [Mr Kahveci's spouse] acquired the strongest possible position in relation to both residence and work. … [I]t can be concluded that a Turkish worker who is duly registered as belonging to the labour force of the Netherlands can no longer be regarded as a Turkish worker once he has acquired Netherlands nationality'.

9 — See further point 40 below.

Case C-9/10

23. Mr Inan entered the Netherlands in 1999 under a temporary residence authorisation. On 15 February 2000, he was granted a residence permit subject to the restriction 'family reunification with parent H. Inan'. As of 1 April 2001, that permit was designated an ordinary temporary residence permit and its validity was extended most recently until 10 June 2005.

24. On 12 May 2006, Mr Inan was sentenced in the Netherlands for attempted murder, attempted manslaughter, being an accessory to drug-related offences and the commission of violence against persons. The non-suspended part of his sentence was seven years, which was in excess of the period laid down in Article 3.86(2) of the Vb 2000 by reference to his length of stay in the Netherlands.

25. It is not in dispute that Mr Inan's father acquired Netherlands nationality on 22 December 1993, before Mr Inan's entry into the Netherlands, while continuing to have Turkish nationality. The order for reference states that Mr Inan lived with his father until his detention in custody, at the beginning of February 2005. It also records that the State Secretary did not contend that Mr Inan's father was not duly registered as belonging to the labour force in the Netherlands.

26. By decision of 13 November 2007, the State Secretary declared Mr Inan undesirable. As in Mr Kahveci's case, that decision was based on Article 67(1)(b) of the Vw 2000. The State Secretary expressed the view that, since Mr Inan's father had acquired Netherlands nationality before Mr Inan's entry into the host Member State, Mr Inan could not be regarded as a family member for the purposes of Article 7. The fact that his father had retained his Turkish nationality did not alter that.

27. In his objection lodged against that decision, Mr Inan also argued that he was entitled to the level of protection given to persons in his position by virtue of Article 27(2) of Directive 2004/38.[10] To construe the decision as being inapplicable in his case would undermine the integration of Turkish workers and their family members.

28. By decision of 17 July 2008, the State Secretary rejected that objection.

29. Mr Inan challenged that decision before the Rechtbank 's-Gravenhage, which allowed the challenge on the basis that Mr Inan's father had not forfeited his rights under Article 7 as a result of his naturalisation.

30. The State Secretary has again challenged the decision of the Rechtbank before the referring court, arguing that the Rechtbank was wrong to hold that Decision No 1/80 applied.

The questions referred for a preliminary ruling

31. In both cases, the Raad van State has referred the following questions to the Court for a preliminary ruling:

'(1) Must [Article 7] be interpreted as meaning that the family members of a Turkish worker duly registered as belonging to the labour force of a Member State cannot invoke that provision once that worker has acquired the nationality of the host Member State while retaining his Turkish nationality?

(2) In answering the first question, is the time at which the Turkish worker concerned acquired the nationality of the host Member State of relevance?'

10 — See further point 40 below.

32. Written and oral observations have been submitted by the respondents, the Netherlands Government, the Polish Government and the European Commission.

Analysis

Preliminary observations

33. Before addressing the questions referred, I should like to make some brief preliminary observations.

34. First, both the actions in the main proceedings concern the position of family members of a Turkish worker duly registered as belonging to the labour force in the host Member State. In Mr Kahveci's case, his wife was the daughter of a Turkish worker who had acquired rights under Article 6(1) following entry into the Netherlands. She was thus herself a family member of a Turkish worker and, as such, entitled to the benefit of Article 7. In the case of Mr Inan, his father was a Turkish worker having rights under Article 6(1). In both instances, the family member (Mr Kahveci and Mr Inan) claims rights under Article 7. Those rights (assuming always that they exist) derive, in Mr Kahveci's case, from his wife and, in Mr Inan's case, from his father. Since Mr Kahveci and Mr Inan both entered the Netherlands in 1999, they had both, at the material time, resided in that Member State for more than the period of five years specified in the second indent of Article 7.

35. Second, while Article 7 refers expressly only to access to the employment market in the host Member State, the Court has held that it (in the same way as Article 6(1)) necessarily implies a concomitant right of residence, without which the provision would be totally ineffective.[11] It is those rights of residence which are at issue here. Indeed, given the length of the prison sentences imposed on Mr Kahveci and Mr Inan,[12] any present exercise of a right to take up work in the Netherlands would appear academic.[13]

36. The use of the term 'concomitant' to describe the right of residence in question suggests that the right to reside is dependant on the right to enter the employment market. In the context of Article 6(1), the relationship between those two entitlements (to work and to reside) may be said to be adequately clear. The essential purpose of Article 6(1) is to enable Turkish workers who satisfy its requirements to enter into employment in the host Member State. Where a worker is no longer in a position to do so, for example, because he has reached retirement age or has suffered an industrial accident as a result of which he is totally and permanently unfit for further employment, there will be no entitlement to remain there and the right of residence will be lost.[14]

37. The position under Article 7 may be more complicated. The provision serves two related, but none the less distinct, purposes. First, it enhances the position of Turkish workers, who may benefit from the presence of their family members in their State of residence.[15] Second, it benefits the family members themselves, by giving them the right to take up employment in the host Member State, provided they have been legally resident there for a specified period.[16] Given the first of those purposes, can it be said that rights of residence arising under Article 7 must, of necessity, be ancillary to entering into employment in the host Member State, or can they also exist independently? This is not a question

11 — See inter alia, to that effect, as regards Article 6(1), Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 29, and, as regards Article 7, Case C-303/08 *Bozkurt* [2010] ECR I-13445, paragraph 31.

12 — See, as regards Mr Kahveci, point 16 and, as regards Mr Inan, point 24.

13 — At least at the time of the main proceedings, the orders for reference being dated 31 December 2009 in each case.

14 — See, to that effect, Case C-340/97 *Nazli* [2000] ECR I-957, paragraph 37.

15 — See further point 50 below.

16 — See further point 51 below.

which the Court has so far addressed in its case-law,[17] nor is it one in relation to which the parties have submitted observations in these proceedings or one which the Court is asked to answer in the orders for reference submitted to it. It is thus not a question on which I venture to express an opinion. I merely note that there is at least an issue which seems to me to arise.[18] Once the Court has answered the questions referred to it in the present cases, it will then be a matter for the national court to determine whether Mr Kahveci and/or Mr Inan have the appropriate rights under Article 7.

38. Third, a Turkish worker who is duly registered as belonging to the labour force of a host Member State and who subsequently becomes naturalised in that State need no longer rely on Decision No 1/80 in order to participate in the employment market there. The decision, in that context and to that extent, becomes *functus*. However, the correct interpretation of Decision No 1/80 remains of importance in relation to the worker's family members. The national systems of the Member States are likely to allow the family members of their nationals the right to enter their territory and may allow those family members to reside and work there. Absent from that equation, however, are the self-standing rights that a family member of a Turkish national may acquire by virtue of Article 7. It is therefore necessary to determine how that provision applies in the circumstances at issue.

39. Fourth, in the two disputes in the main proceedings, the Turkish family members have committed serious criminal offences and are thus at risk of expulsion from the host Member State. The potential scope of the questions referred is, however, considerably wider. The application of Article 7 to the family members of a Turkish worker who has acquired the nationality of that host Member State may be of material relevance to any of those family members, whatever their situation or past history.

40. Lastly, in the context of those criminal offences and the risk of expulsion which they may entail, the Court's interpretation of Article 14 of Decision No 1/80 is relevant. It has held that, in determining the scope of the public policy exception laid down in that article[19] — and hence the right of the national authorities to apply that article — reference must be made to the interpretation given to that exception in the field of freedom of movement for workers who are nationals of a Member State of the Union. Those provisions are currently laid down by Directive 2004/38. In that regard, measures taken on grounds of public policy or of public security are to be based exclusively on the personal conduct of the person concerned. Previous criminal convictions do not in themselves constitute grounds for the taking of such measures. The existence of a previous criminal conviction can, therefore, be taken into account only in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to the requirements of public policy.[20] It appears that the domestic law of the Netherlands does not automatically provide that enhanced level of protection to persons in the situation of Mr Kahveci or Mr Inan.

Question 1

41. By its first question, the national court is essentially asking how, in the circumstances of these cases, the expression 'members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State' falls to be construed for the purposes of Article 7.

17 — Although the Court held in Case C-373/03 *Aydinli* [2005] ECR I-6181 that the first and second indents of Article 7 'do not impose any obligation on [family members] to work' (paragraph 29) and went on to state in Case C-325/05 *Derin* [2007] ECR I-6495 that 'the status of [family members] does not depend on paid employment' (paragraph 56), I do not regard those observations as determinative of the matter.

18 — I should add that it is clear from the Court's case-law that periods spent in prison in the host Member State do not, in themselves and even if of several years' duration, lead to rights under Article 7 being lost (see, to that effect, *Derin*, cited in footnote 17 above, paragraph 56 and the case-law cited). However, the question is whether, in order to benefit from Article 7, a family member need simply reside in the host Member State as part of the arrangements for family reunification which that provision contemplates or whether some indication of an intention to participate in the employment market in that State (if appropriate, following release from prison and all other relevant circumstances permitting) is required.

19 — The Court has held that 'reliance by a national authority on the concept of public policy presupposes the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to a fundamental interest of society' (see, inter alia, Case C-349/06 *Polat* [2007] ECR I-8167, paragraph 34).

20 — See *Polat*, cited in footnote 19 above, paragraphs 30 to 32.

The objectives of the Association Agreement and Decision No 1/80

42. Since Decision No 1/80 does not define what is meant by that expression, it is necessary to construe it by reference to the wider context in which that measure was enacted.

43. As is clear from Articles 2(1) and 12 of the Association Agreement, its purpose is to establish an association to promote the development of trade and economic relations between the parties, including in the field of employment, through the progressive achievement of freedom of movement for workers. Article 12 provides that the parties to the agreement are to draw guidance from relevant Treaty provisions on freedom of movement 'for the purpose of progressively securing freedom of movement for workers between them'. [21]

44. Article 36 of the Additional Protocol to the Association Agreement lays down further provisions in relation to that freedom of movement and authorises the Association Council to decide on the rules necessary to that end.

45. That is the context in which Decision No 1/80 was adopted. According to the third recital in the preamble, it seeks to improve, in the social field, the treatment accorded to workers and members of their families in relation to the arrangements introduced by Decision No 2/76, which the Association Council had adopted on 20 December 1976.

46. Against that background, Decision No 1/80 lays down specific provisions concerning the employment of Turkish workers (Article 6(1)) and family members of those workers (Article 7) in the Member States.

47. By virtue of Article 6(1), a Turkish worker who is duly registered as belonging to the labour force of a Member State is given certain rights in relation to his employment there. On completion of four years' legal employment, he is to enjoy free access in that State to any paid employment of his choice. As a result, he is put in the same position as regards his access to the employment market in question as a national of that State or a Union citizen exercising his rights to freedom of movement.

48. Article 7 supplements that provision. It lays down rules regarding the family members of such a worker who have been authorised to join him in the host Member State.

49. The Court has held that the purpose of Article 7 is to favour employment and residence of Turkish workers by ensuring that their family links are maintained in the host Member State. [22]

50. That objective is achieved, first, by providing for family members to be authorised to join the Turkish worker in the host Member State and to take up residence there so as to enable the family to be together.

51. Second, and in order to deepen the integration of a migrant Turkish worker's family unit in the host Member State, Article 7 also grants those family members the right, after a specified time, to take up employment there. [23]

52. The Court has summarised that two-stage objective by holding that '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'. [24]

21 — See, to that effect, *Wählergruppe Gemeinsam*, cited in footnote 7 above, paragraph 62.

22 — See, to that effect, Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 34.

23 — See *Kadiman*, cited in footnote 22 above, paragraph 35.

24 — See *Kadiman*, cited in footnote 22 above, paragraph 36.

53. The notion of integration, both of the Turkish worker and of his family members, is therefore crucial to any interpretation of Articles 6(1) and 7.[25]

54. Against that background, can it be said that, where a Turkish worker is duly registered as belonging to the labour force of a host Member State and is exercising rights under Article 6(1) (Mr Inan's father) or Article 7 (Mr Kahveci's wife) but, before family reunification takes place pursuant to Article 7, he acquires the nationality of that State while retaining his Turkish nationality, he must be deemed to have surrendered the rights that would otherwise have been available to his family members by virtue of Article 7?

55. In my view, it cannot.

56. Such a finding would run completely counter to the objective of integration that I have just described.

57. A Turkish worker who satisfied the requirements of Article 6(1) or Article 7 and, at the same time, qualified for naturalisation under the rules of the host Member State governing the acquisition of its nationality would find himself in a dilemma — assuming always that he wished to have his family members join him in that State by virtue of Article 7. He could either abandon his plans for naturalisation and, assuming that the necessary authorisation for his family members to join him under Article 7 was forthcoming, enjoy the benefit of their company in his country of work and residence. Alternatively, he could renounce any plans for family reunification under Article 7 and apply to take the nationality of the host Member State.

58. He would then, it is true, have the benefit of the national rules of that State governing the presence of his family members in its territory. However, whatever the relevant national or EU rules may provide in such a situation, that is not — or, at least, need not be — the same as the enjoyment of rights under Article 7. As the Commission (which adopts the opposite approach to that taken by the Netherlands and Polish Governments) points out, it must be assumed that many Turkish workers would be discouraged from pursing an application for naturalisation in those circumstances. Such a result would be both unfair and unreasonable. It is also unnecessary.

59. Is that conclusion affected by the argument of the Netherlands Government that, by acquiring the nationality of the host Member State, the Turkish worker has achieved the pinnacle of integration? He has, in other words, completed the integration process and there is, accordingly, no reason why he (and, by implication, his family members) should continue to benefit from Decision No 1/80. That argument accepts the integrationist aims underlying that decision, but seeks to claim that those aims are spent.

60. I do not think so.

61. The notion of integration is not only a broad one. It is also complex. As an interpretative tool, it can be of particular relevance in the social and employment field as well as in the context of naturalisation and nationality. Questions of language, family links, culture, religion and education may also fall to be taken into account. The expression can be understood only by having regard to the context in which it is used. In some instances, what is at issue is not what one might term 'full integration' into the society of a State but the degree of integration necessary in order to meet the

25 — See also, as regards Decision No 1/80 generally, Joined Cases C-317/01 and C-369/01 *Abatay and Others* [2003] ECR I-12301, paragraph 90, where the Court refers to the decision being 'essentially aimed at the progressive integration of Turkish workers into [the territory of the host Member State]'.

requirements of a particular legal rule. Thus, in *Bidar*,[26] the Court, called upon to construe what is now Article 18 TFEU, held, in relation to the integration of students in the society of a host Member State, that a period of residence in that State of three years might be sufficient to meet what it termed 'the guarantee of sufficient integration into the society [of that State]'.[27]

62. The notion of integration in the limited context of funding rules regarding students from other Member States is, however, very different from what is at issue here. What I understand the Netherlands Government to be referring to in its submissions in this case is integration in its widest sense. The Netherlands takes the view that, with naturalisation, a Turkish national in the position of Mr Kahveci's spouse or Mr Inan's father has become fully absorbed into the society of the host Member State. Naturalisation and the completion of the integration process are, in other words, one and the same thing.

63. Such an approach seems to me to misconstrue the nature of the integration process in the context in which it falls to be understood here. It is true, obviously, that naturalisation is likely to represent a step in that process. Plainly, that step may be a highly important one. In many cases, it reflects a strong desire on the part of the naturalised person to play a fuller part in the society of the host Member State, and an acceptance on that State's part that he should do so. But to say that once the Turkish worker has obtained the nationality of that State, he has thereby, and without more, become fully integrated into that State and has, by the same token, severed all meaningful contact with his State of origin cannot, in my view, be correct. For a person to become integrated in that way may take many years — rather than the five years laid down under Netherlands law in order for an application for naturalisation to be competent. Indeed, the process may take more than a single generation to achieve. Where such a worker has become naturalised, it may well be right to say that he is on the path, and even well on the path, to integration. That is not the same as saying that he has become completely integrated.

64. The argument of the Netherlands Government should, in my view, be rejected. I should add for the sake of completeness that had either of the Turkish nationals in these cases expressly renounced their original nationality when they acquired the nationality of the host Member State, I can see that the position might differ. Such a step could well represent an indication on that person's part that he no longer wished to avail himself of rights flowing from Decision No 1/80. But that is not the case here.

Nationality

65. The Netherlands and the Polish Governments have devoted a significant part of their observations to what they perceive as being the importance of the law of nationality in the context of the present case. It is therefore necessary to consider the impact, if any, which that area of the law may have on the views I have set out above.

66. The Netherlands Government essentially argues that, where a person has dual nationality including that of the host Member State, that State may apply the rules of its 'own' nationality. It is not open to a person in that position to pick and choose, according to what appears to be in his best interests in any given situation.

26 — Case C-209/03 [2005] ECR I-2119.

27 — The question at issue in *Bidar* involved the validity of national rules which granted assistance to students lawfully resident in the host Member State to cover their maintenance costs, provided that the students were 'settled' in that State. The Court held that it was lawful for a Member State to grant such assistance only to students who had demonstrated a certain degree of integration into the society of that State. Such a requirement might be justified by the need for a Member State to ensure that the grant of assistance to cover the maintenance costs of students from other Member States did not become an unreasonable burden which could have consequences for the overall level of assistance which might be granted by that State. The degree of integration in question might be regarded as established by a finding that the student in question had resided in the host Member State for a certain length of time. See generally, in that regard, paragraphs 48, 57 to 59 and 63 of the judgment.

67. For its part, the Polish Government maintains that each Member State retains the right not only to regulate the acquisition and loss of its nationality but also the legal effects resulting from that nationality. A Member State may, therefore, exclude the right to found on rights arising by virtue of a different nationality in any proceedings before the national authorities.

68. I am not convinced by these lines of reasoning.

69. It is true that, as the law currently stands, the Member States have retained the power to lay down the conditions for the acquisition and loss of their nationality.[28] The position is the same as regards the exercise by the Member States of their powers in the sphere of nationality generally. But that is subject to the proviso that those powers must be exercised with due regard to European Union (EU) law.[29]

70. Rights arising under Articles 6(1) and 7 form an integral part of the legal system of the Union[30] and have direct effect.[31] The Member States are thus bound by obligations arising under those provisions in precisely the same way as they are under a duty to comply with others laid down by EU law.

71. In the absence of any overriding reason to the contrary, it follows, in my view, that the rights in question are enforceable against the Member States in accordance with their terms.

72. In support of their reasoning, the Netherlands and the Polish Governments rely heavily on *Mesbah*.[32] That case involved a Moroccan worker who resided in Belgium and who had, following his entry into that Member State, acquired Belgian nationality while retaining his nationality of origin. His mother, who was also a Moroccan national, lived with him and was disabled. She claimed that she was entitled to be paid disability benefit in that State by virtue of Article 41(1) of the EEC-Morocco Cooperation Agreement ('the Cooperation Agreement'), which provided for the family members living with those workers to be paid social security benefits under the same rules as applied to Belgian nationals.[33] Under Belgian law, however, and notwithstanding that he had retained his Moroccan nationality, the worker was treated as having only Belgian nationality. Basing its decision on the facts of the case before it, the Court held that, since (1) the nationality held by the worker was that of the host Member State, (2) the rights at issue did not arise by virtue of the worker's being a national of another Member State but by reason of his nationality of a non-member country and (3) the rights claimed related to an agreement whose purpose was not to enable Moroccan workers to move freely within what was then the Community but merely to consolidate the social-security position of those workers and members of their families living with them in the host Member State, it was open to Belgium to apply its nationality law to the effect of precluding the mother of the Moroccan worker from drawing disability benefit.[34]

28 — See, inter alia, Declaration No 2 on nationality of a Member State, annexed by the Member States to the final act of the Treaty on European Union (OJ 1992 C 191, p. 98); the Decision of the Heads of State and Government, meeting within the European Council at Edinburgh on 11 and 12 December 1992, concerning certain problems raised by Denmark on the Treaty of European Union (OJ 1992 C 348, p. 1); and Article 3 of the European Convention on Nationality, adopted by the Council of Europe on 6 November 1997 and which entered into force on 1 March 2000.

29 — See, Case C-369/90 *Micheletti and Others* [1992] ECR I-4239, paragraph 10; Case C-179/98 *Mesbah* [1999] ECR I-7955, paragraph 29; Case C-200/02 *Zhu and Chen* [2004] ECR I-9925, paragraph 39; and Case C-135/08 *Rottmann* [2010] ECR I-1449, paragraphs 39 and 41. The underlying principle is of course much wider in its application — see generally for example, as regards freedom of establishment, Case C-213/89 *Factortame and Others* [1990] ECR I-2433 and, as regards taxation, Case 106/77 *Simmenthal* [1978] ECR 629.

30 — See, to that effect, *Sevince*, cited in footnote 11 above, paragraph 9.

31 — See, as regards Article 6(1), *Sevince*, cited in footnote 11 above, paragraph 26; and, as regards Article 7, *Kadiman*, cited in footnote 22 above, paragraph 28, and Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraph 25.

32 — Cited in footnote 29 above.

33 — Cooperation Agreement between the European Economic Community and the Kingdom of Morocco signed in Rabat on 27 April 1976 and approved on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1). Article 41(1) provided: 'workers of Moroccan nationality and any members of their families living with them, are to enjoy, in the field of social security, treatment free from any discrimination based on nationality in relation to nationals of the Member States in which they are employed'.

34 — See paragraphs 34, 35, 36 and 39 of the judgment in that case.

73. I cannot agree that the Court's dicta in *Mesbah* should apply in the circumstances of the present case. The scope and objectives of the Cooperation Agreement were considerably more restricted than those of the Association Agreement which forms the basis of the rights at issue here.[35] It is true that the Cooperation Agreement provided for there to be no discrimination based on nationality as regards working conditions or remuneration as regards Moroccan nationals.[36] Beyond that, however, the provisions of Title 3 of the Cooperation Agreement (entitled 'Cooperation in the Field of Labour') were essentially limited to the area of social security, where, again, non-discriminatory treatment was to be provided.[37] There was nothing similar to the integration-based rights arising under Articles 6(1) and 7. The Court has repeatedly stated that those articles must be broadly and purposively construed. It has held, for example, that the provisions of Section 1 of Chapter II of Decision No 1/80, of which Articles 6(1) and 7 form part, 'constitute a further stage in securing freedom of movement for workers on the basis of [Articles 45 TFEU, 46 TFEU and 47 TFEU]'.[38] It has also 'consistently inferred from the wording of Article 12 of the Association Agreement and Article 36 of the Additional Protocol, as well as from the objective of Decision No 1/80, that the principles enshrined in [Articles 45 TFEU, 46 TFEU and 47 TFEU] must be extended, so far as possible, to Turkish nationals who enjoy the rights conferred by Decision No 1/80'.[39] Such an approach appears to me to be radically different from that adopted by the Court to the construction of the Cooperation Agreement in *Mesbah*.

74. Generally, it seems to me that while, as a matter of national law, it is open to the Netherlands authorities to regard a worker with dual Netherlands and Turkish nationality as having only Netherlands nationality in their dealings with that worker, they cannot ignore that person's Turkish nationality in their dealings with non-Netherlands nationals. Objectively, and from the point of view of the family member, the dual national is a person having Turkish nationality who is lawfully on the employment market in the Netherlands, and therefore a 'Turkish worker' within the meaning of Decision No 1/80. Provided they have gained lawful entry into the Netherlands, the family members can therefore derive rights under Article 7, even if the source of those rights can no longer do so himself because, when dealing with him, the Netherlands authorities are entitled to be blind to one half of his nationality status.

75. I would add this. Plainly, nationality, and the rights and obligations of a Member State in that connection, is *an* issue in the present case. It is necessary, in order to answer the national court's first question, to construe Decision No 1/80 by having regard to the impact the acquisition of the nationality of the host Member State will have on rights arising under Articles 6(1) and 7. But, I do not believe it to be *the* issue. The real question in the present case does not concern the rules of Member States regarding nationality, as such, but the proper construction to be given to the provisions in question. I have already set out my views in that regard. I have also indicated that I see nothing in the national rules concerning nationality that requires a different approach to be taken in this case.

76. While recent case-law concerning the interrelationship of the principle of freedom of movement and the law of nationality has tended to involve notions of Union citizenship,[40] it is worth bearing in mind that the rules on freedom of movement preceded the introduction of that concept and can be seen, in so far as it is necessary to categorise them along 'traditional' lines, as being essentially a matter of immigration law.[41] The same applies, in my view, to concepts that must be understood as

35 — See, in that regard, Case C-275/02 *Ayaz* [2004] ECR I-8765, where the Court described the Association Agreement as having 'a more ambitious objective' than the Cooperation Agreement (paragraph 47).

36 — Article 40.

37 — Article 41.

38 — See, inter alia, *Wählergruppe Gemeinsam*, cited in footnote 7 above, paragraph 64.

39 — See, inter alia, *Nazli*, cited in footnote 14 above, paragraph 55.

40 — See, for example, Case C-148/02 *Garcia Avello* [2003] ECR I-11613; *Rottmann*, cited in footnote 29 above; Case C-34/09 *Ruiz Zambrano* [2011] ECR I-1177; and Case C-434/09 *McCarthy* [2011] ECR I-3375.

41 — See, in that regard, White, R.M., 'Nationality and Citizenship', in *Stair Memorial Encyclopaedia*, Reissue 9, paragraph 5.

being akin to freedom of movement, such as rights arising under Articles 6(1) and 7. They involve the exercise of rights, once entry has been authorised, to reside and, where appropriate, enter the employment market in the territory of a Member State. The essential question in this case is not 'what nationality did the applicants in the main proceedings possess?' Rather, it is 'who are the categories of persons to whom a Member State may owe obligations by virtue of Articles 6(1) and 7?'

77. Since the following additional points have been raised in the observations of certain of the parties, I shall consider them briefly.

78. First, the Polish Government argues that to construe Decision No 1/80 in the manner I have suggested would have the effect of creating discrepancies in treatment as between Netherlands citizens, namely those having dual Turkish nationality and those having the nationality of the host Member State alone. If and to the extent that such a situation may arise, it would be the result of obligations arising by virtue of the Association Agreement itself. Such obligations are, as I have mentioned, binding on all the Member States. This is no different from the situation which arises in the context of Union citizenship; it is inevitable that discrepancies may occur in such circumstances. [42]

79. Second, the Polish Government cites Article 3 of the Hague Convention [43] in support of its reasoning. As the Court made clear in *Garcia Avello*, that provision does not impose an obligation but simply provides an option for the contracting parties. [44] That being so, it will not be open to a Member State to exercise that option where it is subject to binding obligations that prevent it from doing so.

80. Third, the Commission bases part of its reasoning on the Court's case-law concerning the loss of rights under Article 7. The Court has held that there can be only two kinds of restrictions on the rights conferred by the first paragraph of Article 7 on family members who fulfil the conditions laid down in that paragraph, namely, either a restriction based on the presence of the Turkish migrant in the host Member State where he 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 a restriction based on the fact that the person concerned has left the territory of that State for a significant length of time without significant reason. [45]

81. I cannot see that that line of reasoning assists the discussion in the present case. By it, the Court is seeking to delimit the circumstances in which a host Member State may withdraw established rights under Article 7. That is not an issue which arises in this case. The question is whether such rights have arisen in the first place — not whether, once they exist, they may be withdrawn. In order to answer the national court's questions, a different starting point is therefore necessary.

82. In the light of all of the above, I am of the view the answer to Question 1 should be that Article 7 must be interpreted as meaning that the family members of a Turkish worker duly registered as belonging to the labour force of a Member State may continue to invoke that provision notwithstanding that that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.

42 — See, to that effect, the Opinion of Advocate General Alber in *Mesbah*, cited in footnote 29 above, point 49. Although the Court did not follow that Opinion when delivering judgment, it did not take issue with the Advocate General's view set out on the point in question.

43 — The Hague Convention of 12 April 1930 on certain questions relating to the conflict of nationality laws (*League of Nations Treaty Series*, Vol. 179, p. 89). It entered into force on 1 July 1937. It has been ratified by a number of Member States, including the Netherlands. Article 3 of the Convention provides: 'subject to the provisions of the present Convention, a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses'.

44 — Cited in footnote 40 above. See paragraph 28 of the judgment in that case.

45 — See, inter alia, Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraphs 36 and 38; Case C-453/07 *Er* [2008] ECR I-7299, paragraph 30; and Case C-337/07 *Altun* [2008] ECR I-10323, paragraph 62. For a discussion of the position in relation to Article 6, see point 36 above.

Question 2

83. By its second question, the national court asks whether, in answering the first question, the time at which the Turkish worker concerned acquired the nationality of the host Member State is of relevance. An answer would be necessary if, for example, the answer to the first question were to depend on the precise moment at which the nationality of the host Member State was acquired. Since, however, it is implicit in the answer I propose to that question that timing issues of that kind do not arise, it is not necessary to answer Question 2.

Conclusion

84. I therefore propose that the Court answer the questions referred by the Raad van State as follows:

Article 7 of Decision No 1/80 of the EEC-Turkey Association Council of 19 September 1980 on the development of the Association must be interpreted as meaning that the family members of a Turkish worker duly registered as belonging to the labour force of a Member State may continue to invoke that provision notwithstanding that that worker has acquired the nationality of the host Member State while retaining his Turkish nationality.