JUDGMENT OF THE COURT (Sixth Chamber)
19 November 2002 *

In Case C-188/00,

REFERENCE to the Court under Article 234 EC by the Verwaltungsgericht Karlsruhe (Germany) for a preliminary ruling in the proceedings pending before that court between

Bülent Kurz, né Yüce,

and

Land Baden-Württemberg,

on the interpretation of Article 6(1) and the second paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey,

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting for the President of the Sixth Chamber, C. Gulmann, V. Skouris, F. Macken and N. Colneric, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Mr Kurz, né Yüce, by I. Krebs, Rechtsanwältin,

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

— the German Government, by W.-D. Plessing and B. Muttelsee-Schön, acting as Agents,

— the Commission of the European Communities, by J. Sack, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Kurz, né Yüce, Land Baden-Württemberg and the Commission at the hearing on 21 February 2002,

after hearing the Opinion of the Advocate General at the sitting on 25 April 2002,

gives the following

Judgment

1 By order of 22 March 2000, received at the Court on 22 May 2000, the Verwaltungsgericht Karlsruhe (Administrative Court, Karlsruhe) referred to the Court for a preliminary ruling under Article 234 EC five questions on the interpretation of Article 6(1) and the second paragraph of Article 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 Those questions were raised in proceedings between Mr Kurz, né Yüce, who is a Turkish national, and Land Baden-Württemberg concerning decisions by the latter rejecting his application for grant of a residence permit in Germany of unlimited duration, refusing to extend his temporary residence authorisation and ordering his expulsion from the territory of that Member State.

Decision No 1/80

3 Articles 6 and 7 of Decision No 1/80 are included in Section 1 ('Questions relating to employment and the free movement of workers') of Chapter II ('Social provisions') of that decision.

4 Article 6(1) is worded as follows:

'Subject to Article 7 on free access to employment for members of his family, a Turkish worker duly registered as belonging to the labour force of a Member State:

— shall be entitled in that Member State, after one year's legal employment, to the renewal of his permit to work for the same employer, if a job is available;

— shall be entitled in that Member State, after three years of legal employment and subject to the priority to be given to workers of Member States of the Community, to respond to another offer of employment, with an employer of his choice, made under normal conditions and registered with the employment services of that State, for the same occupation;

— shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment.'

5 The second paragraph of Article 7 provides:

'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.'

The main proceedings and the questions referred for a preliminary ruling

6 It is apparent from the documents in the main proceedings that Mr Kurz was born in Germany in 1977 as the illegitimate child of a Turkish migrant worker, Mr Yüce, who was legally employed in that Member State from 1969 to 1983.

7 From 1978 to 1984 he was placed in Germany with foster parents, Mr and Mrs Kurz, who were German nationals.

8 In 1984 he returned to Turkey with his natural parents under a repatriation assistance programme.

9 In September 1992 he was authorised to return to Germany in order to undergo vocational training. His entry visa and the successive temporary residence authorisations ('Aufenthaltsbewilligungen') which he obtained until 15 July 1997 stated that they were valid for the purposes of vocational training only.

10 Mr Kurz underwent training as a plumber in the host Member State, the conditions of which were laid down in a contract entered into on 16 November 1992 between him and Herbert Schulz GmbH ('Schulz'), a sanitary and heating equipment company established in Altlußheim (Germany).

11 During that training, which took place from 1 October 1992 to 5 May 1997, he attended theory classes at a vocational training establishment once or twice a week and spent the rest of the time working for Schulz by way of practical training, in return for which Schulz paid him a monthly wage of DEM 780 in the first year and DEM 840, DEM 940 and DEM 1 030 respectively in the following years.

12 On 22 February 1997 Mr Kurz passed the practical part of the final apprenticeship examination and, as agreed, terminated his training on 6 May 1997, without however having passed the theoretical part of that examination.

13 From 1992 he again lived with Mr and Mrs Kurz, who adopted him in May 1998. In accordance with the applicable national law, the adoption conferred on him the surname of his adoptive parents. However, according to the Verwaltungsgericht Karlsruhe, the adoption had the effect of bringing to an end his ties with his family of birth but did not entitle him either to German nationality or to authorisation to reside in Germany permanently.

14 On 7 July 1997 Mr Kurz applied for a residence permit ('Aufenthaltserlaubnis') allowing him to reside in Germany permanently and, in the alternative, for the extension of his temporary residence authorisation or the issue of a residence authorisation for humanitarian reasons ('Aufenthaltsbefugnis').

15 By decision of 18 August 1998, the Landratsamt Rhein-Neckar-Kreis (Rhine-Neckar District Administrator's Office) rejected his application of 7 July 1997 and ordered him to leave Germany within one month following notification of the refusal, stating that he would be deported if he failed to comply.

16 Mr Kurz lodged an administrative appeal against that decision and also requested that his appeal have suspensive effect.

17 That request was rejected on 19 November 1998 and Mr Kurz was deported to Turkey on 20 January 1999.

18 On 16 June 1999 the Regierungspräsidium Karlsruhe dismissed the administrative appeal on the ground that Mr Kurz did not fulfil the conditions laid down in Article 6 and the second paragraph of Article 7 of Decision No 1/80. First, he had not been duly registered as belonging to the labour force of a Member State, within the meaning of Article 6(1), during his vocational training, for which he obtained only a temporary residence authorisation. Second, his adoption by German nationals had taken away his status as child of a Turkish worker, he had not completed his vocational training in the host Member State since he had not passed all the tests in the final examination, and his biological father had left Germany for good at the time when he began his vocational training there.

19 Mr Kurz contended in support of the action challenging that decision which he brought before the Verwaltungsgericht Karlsruhe that Article 6(1) and the second paragraph of Article 7 of Decision No 1/80 entitled him to a residence authorisation in Germany. He also stated that he had been offered a job on 20 November 1998 by a business in Mannheim (Germany) but he had been unable to accept it in the absence of the requisite residence and work permits.

20 On 20 November 1999 Mr Kurz received a journeyman's certificate from the chamber of manual trades in Mannheim after the examining board had travelled to Istanbul to enable him to take the theoretical part of his final apprenticeship examination there.

21 According to the Verwaltungsgericht Karlsruhe, the decision of the Regierungspräsidium Karlsruhe of 16 June 1999 is consistent with the Ausländergesetz

(German Law on Aliens) but it should be established whether Mr Kurz was able to claim a right of residence on the basis of Article 6(1) and the second paragraph of Article 7 of Decision No 1/80.

22 The national court is uncertain whether Mr Kurz meets all the conditions laid down in Article 6(1) or, failing that, in the second paragraph of Article 7.

23 Should Mr Kurz be able to derive rights from Decision No 1/80, it considers that a further problem may arise with regard to Paragraph 8(2) of the Ausländergesetz which provides:

'An alien who has been expelled or deported may not re-enter Germany and reside there. He shall not be issued with a residence authorisation even where the conditions of entitlement under this Law are met. A time-limit shall as a rule, upon application, be placed on the effects referred to in the first and second sentences. The time-limit shall run from the time of leaving the country.'

24 The national court states that it should be decided whether it is compatible with Article 6 and the second paragraph of Article 7 of Decision No 1/80 for issue of a residence authorisation to be precluded by the prohibitive effect of the national provision cited in the preceding paragraph so long as no time-limit has been set with respect to deportation.

25 Since the Verwaltungsgericht took the view that, in those circumstances, an interpretation of Community law was necessary in order to decide the case, it resolved to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does a Turkish national who, with the approval of the competent authority for aliens, entered the country with a visa "valid only for the purpose of vocational training" issued by the Consulate General and who subsequently held a temporary residence authorisation restricted to vocational training activity with a specific employer fulfil the requirements of the first, second or third indent of Article 6(1) of Decision No 1/80... if, from 1 October 1992 to 5 May 1997, he was in the training relationship in question and received for that a monthly training remuneration?

(2) Does a Turkish national who is the child by birth of former Turkish workers in the host country fulfil the requirements of the second paragraph of Article 7 of Decision No 1/80... if he was adopted as an adult by German nationals with the effects of adoption of a minor and his kinship with his natural parents has thereby ceased to exist? Is it sufficient in that respect that he was the child of Turkish workers at the time of his parents' legal employment and at the start of his vocational training?

(3) Does a Turkish national fulfil the requirements of the second paragraph of Article 7 of Decision No 1/80... if, eight years after leaving the host country together with his parents who at that time were leaving definitively, he re-entered the country (without his parents) for the purpose of vocational training?

(4) Does a Turkish national fulfil the requirements of the second paragraph of Article 7 of Decision No 1/80... if he did not take the last part of the final examination in the host country, but in his country of origin before the host country's examining board which had travelled there?

(5) Is it compatible with Article 6 or the second paragraph of Article 7 of Decision No 1/80... that, in a case where deportation has taken place, residence authorisation must be refused, by virtue of the prohibitive effect of Paragraph 8(2) of the Ausländergesetz, until a time-limit has, upon application, been placed on the effects of the deportation?'

Question 1

26 The first point to be noted in answering this question is that, since the judgment in Case C-192/89 *Sevince* [1990] ECR I-3461, at paragraph 26, the Court has consistently held that Article 6(1) of Decision No 1/80 has direct effect in the Member States and that Turkish nationals who satisfy its conditions may therefore rely directly on the rights which the three indents of that provision confer on them progressively, according to the duration of their employment in the host Member State (see, in particular, Case C-1/97 *Birden* [1998] ECR I-7747, paragraph 19).

27 Second, it is also settled case-law that the rights which that provision confers on Turkish workers in regard to employment necessarily imply the existence of a corresponding right of residence for the person concerned, since otherwise the right of access to the labour market and the right to work as an employed person would be deprived of all effect (see, *inter alia*, *Birden*, paragraph 20).

28 Third, it is apparent from the very wording of Article 6(1) of Decision No 1/80 that that provision requires the person concerned to be a Turkish worker in a Member State, to be duly registered as belonging to the labour force of the host Member State and to have been in legal employment there for a certain period (*Birden*, paragraph 21).

29 In order to give the national court a helpful answer, those three concepts should be examined in turn.

The concept of worker

30 As regards the first of the concepts, it should be recalled at the outset that the Court has consistently concluded from the wording of Article 12 of the EEC-Turkey Association Agreement of 12 September 1963 and Article 36 of the Additional Protocol, signed on 23 November 1970, annexed to that agreement and concluded by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 18), as well as from the objective of Decision No 1/80, that the principles enshrined in Articles 48 and 49 of the EC Treaty (now, after amendment, Articles 39 EC and 40 EC) and Article 50 of the EC Treaty (now Article 41 EC) must be extended, so far as possible, to Turkish nationals who enjoy the rights conferred by Decision No 1/80 (see to that effect, *inter alia*, Case C-434/93 *Bozkurt* [1995] ECR I-1475, paragraphs 14, 19 and 20; Case C-171/95 *Tetik* [1997] ECR I-329, paragraphs 20 and 28; *Birden*, paragraph 23; and Case C-340/97 *Nazli* [2000] ECR I-957, paragraphs 50 to 55).

31 Reference should consequently be made to the interpretation of the concept of worker under Community law for the purposes of determining the scope of the same concept employed in Article 6(1) of Decision No 1/80.

32 In that respect, it is settled case-law that the concept of worker has a specific Community meaning and must not be interpreted narrowly. It must be defined in accordance with objective criteria which distinguish an employment relationship by reference to the rights and duties of the persons concerned. In order to be treated as a worker, a person must pursue an activity which is genuine and effective, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary. The essential feature of an employment relation-

ship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration. By contrast, neither the *sui generis* nature of the employment relationship under national law, nor the level of productivity of the person concerned, the origin of the funds from which the remuneration is paid or the limited amount of the remuneration can have any consequence in regard to whether or not the person is a worker for the purposes of Community law (see, as regards Article 48 of the Treaty, in particular Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraphs 16 and 17; Case 197/86 *Brown* [1988] ECR 3205, paragraph 21; Case 344/87 *Bettray* [1989] ECR 1621, paragraphs 15 and 16; Case C-357/89 *Raulin* [1992] ECR I-1027, paragraph 10; and Case C-3/90 *Bernini* [1992] ECR I-1071, paragraphs 14 to 17; and, as regards Article 6(1) of Decision No 1/80, Case C-36/96 *Günaydin* [1997] ECR I-5143, paragraph 31, Case C-98/96 *Ertanir* [1997] ECR I-5179, paragraph 43, and *Birden*, paragraphs 25 and 28).

33 As regards, more specifically, activities which, as in the main proceedings, have been carried out in the course of vocational training, the Court has held that a person who serves periods of apprenticeship in an occupation that may be regarded as practical preparation related to the actual pursuit of the occupation in question must be considered to be a worker, provided that the periods are served under the conditions of genuine and effective activity as an employed person. The Court has stated that that conclusion cannot be invalidated by the fact that the productivity of the person concerned is low, that he does not carry out full duties and that, accordingly, he works only a small number of hours per week and thus receives limited remuneration (see to that effect, in particular, *Lawrie-Blum*, cited above, paragraphs 19, 20 and 21, and *Bernini*, cited above, paragraphs 15 and 16).

34 It follows that any person who, even in the course of vocational training and whatever the legal context of that training, pursues a genuine and effective economic activity for and under the direction of an employer and on that basis receives remuneration which can be perceived as the consideration for that activity must be regarded as a worker for the purposes of Community law.

35 It is apparent from the documents before the Court that, from 1 October 1992 to 5 May 1997, Mr Kurz pursued a genuine and effective economic activity for and under the direction of Schulz, in return for which he received monthly remuneration which increased from DEM 780 in the first year to DEM 1 030 in the fourth year. That progressive increase in remuneration is indeed an indication that the work performed by Mr Kurz was of growing economic value to his employer.

36 Since persons such as Mr Kurz thus satisfy the fundamental criteria of an employment relationship, they must be considered to be workers within the meaning of Article 6(1) of Decision No 1/80.

The concept of being duly registered as belonging to the labour force

37 In order to ascertain whether such a worker is duly registered as belonging to the labour force of a Member State for the purposes of that provision of Decision No 1/80, it is necessary, first, to determine, in accordance with settled case-law (*Bozkurt*, paragraphs 22 and 23, *Günaydin*, paragraph 29, *Ertanir*, paragraph 39, and *Birden*, paragraph 33, all cited above), whether the legal relationship of employment of the person concerned can be located within the territory of a Member State or retains a sufficiently close link with that territory, taking account in particular of the place where the Turkish national was hired, the territory on or from which the paid activity is pursued and the applicable national legislation in the field of labour and social security law.

38 In a situation such as that of the applicant in the main proceedings, that condition is undoubtedly satisfied, since the person concerned has been hired and has pursued, in the course of his apprenticeship, a paid activity on the territory of the host Member State and the employment has been subject to the legislation of that State, *inter alia* its labour and social security law.

39 Second, it is clear from the Court's case-law that the concept of being 'duly registered as belonging to the labour force' ('appartenant au marché régulier' in the French version) referred to in Article 6(1) of Decision No 1/80 must be regarded as referring to all workers who have complied with the conditions laid down by law and regulation in the host Member State governing entry into its territory and employment and are thus entitled to pursue an occupation in that State (*Birden*, paragraph 51, and *Nazli*, paragraph 31).

40 In substantiating the interpretation that the term 'regular' ('régulier') is synonymous with 'legal', the Court has relied not only on an analysis of the various language versions in which Decision No 1/80 was drawn up (see *Birden*, paragraphs 47 to 50) but also on the objective of that decision, whose social provisions constitute a further stage in securing freedom of movement for workers on the basis of Articles 48, 49 and 50 of the Treaty (see *Birden*, paragraph 52). As the Advocate General has observed in points 60 and 61 of his Opinion, the performance of work under legal conditions promotes integration of the Turkish nationals in the host Member State.

41 Entitlement to the rights enshrined in the three indents of Article 6(1) of Decision No 1/80 is therefore subject only to the condition that the Turkish worker has complied with the legislation of the host Member State governing entry into its territory and pursuit of employment (*Nazli*, paragraph 32).

42 There is no doubt that a Turkish worker such as Mr Kurz satisfies that requirement, since it is not disputed that he legally entered the territory of the Member State concerned, that he was authorised there to pursue vocational training and that, in the course of that training, he was in legal employment for more than four years in succession.

43 The Court held in paragraph 51 of the judgment in *Birden* that the concept of being 'duly registered as belonging to the labour force of a Member State' cannot be interpreted as applying to the labour market in general as opposed to a restricted market with a specific objective.

44 It is accordingly not possible to accept the interpretation put forward by Land Baden-Württemberg, the German Government and the Commission that an apprentice is not duly registered as belonging to the labour force on the ground that he pursues an activity of a purely temporary and specific nature in the course of his vocational training, distinct from a normal employment relationship and intended to bring about only his future inclusion in the labour market in general.

45 Such an interpretation is inconsistent with the aim and broad logic of Decision No 1/80, which seek to promote the integration of Turkish workers in the host Member State (see paragraph 40 of the present judgment). An apprentice who, as in the main proceedings, has pursued a genuine and effective economic activity with an employer for more than four years, in return for which he has received remuneration corresponding to the work performed, is just as integrated in the host Member State as a worker who has carried out comparable work for an equivalent period.

46 Furthermore, the interpretation provided by the Court in paragraphs 40 to 45 of the judgment in *Birden*, according to which a Turkish national who has lawfully pursued a genuine and effective economic activity in a Member State under a work permit for an uninterrupted period of more than one year for the same employer, in return for which he received the usual remuneration, is duly registered as belonging to the labour force of the host Member State even if, pursuant to the legislation of that State, the activity in question was financed by public funds and restricted to a limited group of persons, in order to facilitate their integration into working life, must apply just as much — if not more so — with regard to gainful activity pursued in the course of vocational training.

47 Consequently, a Turkish worker such as Mr Kurz must be considered to be duly registered as belonging to the labour force of a Member State for the purposes of Article 6(1) of Decision No 1/80.

The concept of legal employment

48 As regards the question whether such a worker has been in legal employment in the host Member State for the purposes of Article 6(1) of Decision No 1/80, it should be recalled that, according to settled case-law (*Sevince*, cited above, paragraph 30, Case C-237/91 *Kus* [1992] ECR I-6781, paragraphs 12 and 22, *Bozkurt*, paragraph 26, and *Birden*, paragraph 55), legality of employment presupposes a stable and secure situation as a member of the labour force of a Member State and, by virtue of this, implies the existence of an undisputed right of residence.

49 In contrast to the factual and legal circumstances forming the basis of the judgments in *Sevince*, at paragraph 31, *Kus*, at paragraphs 13 and 16, and Case C-285/95 *Kol* [1997] ECR I-3069, at paragraph 27, where the Turkish nationals concerned were not legally entitled to a residence permit in the host Member State, it is clear that in a case such as the main proceedings the Turkish worker's right of residence in the host Member State is not in any way contested and the person concerned was not in a precarious situation that could be called into question at any time.

50 It is apparent from the documents before the Court that Mr Kurz was permitted to enter Germany and reside there in order to pursue vocational training under residence authorisations which were extended until 15 July 1997. It was in the course of that training that, having obtained national authorisations permitting him to work, he was legally engaged without interruption from 1 October 1992

to 5 May 1997, that is to say for more than four years in succession, under an employment relationship involving the pursuit of a genuine and effective economic activity for one employer in return for remuneration which appears to be the consideration for the services performed. It follows that his legal position was regular throughout that period.

51 Such a worker must consequently be regarded as having been in legal employment in the Member State concerned for the purposes of Article 6(1) of Decision No 1/80.

52 Since such a worker thus fulfils all the conditions laid down in the third indent of Article 6(1) of that decision, having been legally employed in a Member State for at least four years without interruption, he may rely directly on the rights conferred by that provision, in particular on the unconditional right to seek and take up any employment freely chosen by him, without being subject to any priority for workers of Member States, and on a corresponding right of residence likewise founded on Community law.

53 The foregoing interpretation cannot be affected by the fact that the authorisations to work and reside obtained by Mr Kurz were limited to temporary employment with a specific employer.

54 First, it is settled case-law that the rights conferred on Turkish workers by Article 6(1) of Decision No 1/80 are accorded irrespective of whether or not the authorities of the host Member State have issued a specific administrative document, such as a work permit or residence permit (see, to that effect, *Bozkurt*, paragraphs 29 and 30, *Günaydin*, paragraph 49, *Ertanir*, paragraph 55, and *Birden*, paragraph 65).

55 Secondly, the Court has repeatedly held that if the temporary nature of the employment contract were sufficient to raise doubts as to whether the employment of the person concerned was in fact 'legal employment', Member States would be able wrongly to deprive Turkish migrant workers whom they permitted to enter their territory, and who have pursued an economic activity there which fulfils the conditions laid down in Article 6(1) of Decision No 1/80, of the progressively more extensive rights on which they are entitled to rely directly under that provision. Any other interpretation would render Decision No 1/80 meaningless and deprive it of any practical effect (see *Günaydin*, paragraphs 36 to 40, and *Birden*, paragraphs 37, 38, 39 and 64).

56 Finally, the Court has held equally consistently that Article 6(1) of Decision No 1/80 does not make recognition of the rights which it confers on Turkish workers subject to any condition connected with the reason for which the right to enter, work or reside was initially granted (see, in particular, *Kus*, paragraphs 21, 22 and 23, *Günaydin*, paragraph 52, and *Birden*, paragraph 67).

57 Land Baden-Württemberg submits, however, that Mr Kurz, who was not employed after his training contract ended, thereby forfeited any rights he may have acquired during his apprenticeship.

58 Suffice it to state in that regard that a Turkish national such as Mr Kurz, who was in legal employment in a Member State for an uninterrupted period of more than four years but who has subsequently been unemployed, does not forfeit, as a result of not working for a certain period, the rights conferred on him directly by the third indent of Article 6(1) of Decision No 1/80.

59 Such a Turkish worker has not left the labour market of the host Member State for good and may claim there an extension of his residence authorisation for the

purposes of continuing to exercise his right of free access to any paid employment of his choice under that provision, not only by responding to job offers actually made but also by seeking a new job over a reasonable period (see, to that effect, *Bozkurt*, paragraphs 38 and 39, *Tetik*, paragraph 46, and *Nazli*, paragraphs 40 and 41).

60 Moreover, it is apparent from the documents before the Court that Mr Kurz had an offer of employment from the firm Messebau Thome in Mannheim, subject however to the condition that he possessed a work permit. Mr Kurz stated in his written observations and at the hearing, without being contradicted in this regard, that since he was unable to obtain the extension of his authorisation to reside in Germany or, consequently, issue of a work permit, he was not in a position to take up the offer of employment made to him.

61 In view of the foregoing considerations, the answer to the first question must be that, on a proper construction of Article 6(1) of Decision No 1/80, a Turkish national:

— who was authorised to enter the territory of a Member State with a visa 'valid only for the purpose of vocational training',

— who subsequently received a temporary residence authorisation restricted to vocational training activity with a specific employer, and

— who, in this context, has lawfully pursued a genuine and effective economic activity for that employer in return for which he has received remuneration corresponding to the work performed,

is a worker duly registered as belonging to the labour force of that Member State and legally employed there for the purposes of the said provision.

Where such a Turkish national has thus worked for that employer for an uninterrupted period of at least four years, he enjoys in the host Member State, in accordance with the third indent of Article 6(1) of Decision No 1/80, the right of free access to any paid employment of his choice and a corresponding right of residence.

Questions 2, 3 and 4

62 It is apparent from the order for reference that the second, third and fourth questions are asked only if the first question is answered in the negative.

63 Since the first question has been answered in the affirmative, it is unnecessary to answer the second, third and fourth questions.

Question 5

64 At the hearing, Land Baden-Württemberg claimed that it was no longer necessary to answer the fifth question since, by decision of 13 November 2000, the competent national authorities had limited to 21 January 2002 the prohibitive

effect of Paragraph 8(2) of the Ausländergesetz, so that there was no longer anything to prevent Mr Kurz from returning to Germany after that date.

65 However, in circumstances such as those of the main proceedings, in which it appears that an expulsion has taken place in breach of employment and residence rights conferred on him by Article 6(1) of Decision No 1/80, the Turkish worker retains an obvious interest in securing the grant by the national courts enjoying jurisdiction of a declaration of illegality, and of relief penalising the illegality, from the time when it was committed, and in obtaining for that purpose an interpretation by the Court of Justice of the relevant Community law.

66 In answering this question concerning the relationship between Decision No 1/80 and national legislation on aliens, it should be remembered that it follows both from the primacy of Community law over Member States' domestic law and from the direct effect of a provision such as Article 6 of Decision No 1/80 that a Member State is not permitted to modify unilaterally the scope of the system of gradually integrating Turkish workers into the host Member State's labour force (see, in particular, *Birden*, paragraph 37, and *Nazli*, paragraph 30).

67 It follows that the Member States cannot adopt legislation concerning the control of aliens or apply a measure relating to residence of a Turkish national on their territory which is liable to impede the exercise of rights expressly granted by Community law to such a national.

68 Where, as in the main proceedings, the Turkish national fulfils the conditions laid down by a provision of Decision No 1/80 and accordingly is already duly

integrated in a Member State, the latter no longer has the power to restrict application of those rights, as otherwise that decision would be rendered redundant (see, in particular, *Birden*, paragraph 37, *Nazli*, paragraph 30, and Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraph 41).

69 Furthermore, every court of a Member State must apply Community law in its entirety and protect the rights which Community law confers directly on individuals, setting aside any provision of national law which may conflict with it (see *Eyüp*, paragraph 42, and, by analogy, Case 106/77 *Simmenthal* [1978] ECR 629, paragraph 21).

70 In view of the foregoing considerations, the answer to the fifth question must be that, where a Turkish national who fulfils the conditions laid down in a provision of Decision No 1/80 and therefore enjoys the rights which it confers has been expelled, Community law precludes application of national legislation under which issue of a residence authorisation must be refused until a time-limit has been placed on the effects of the expulsion order.

Costs

71 The costs incurred by the German Government and the Commission, 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 22 March 2000, hereby rules:

1. On a proper construction of Article 6(1) of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey, a Turkish national:

— who was authorised to enter the territory of a Member State with a visa 'valid only for the purpose of vocational training',

— who subsequently received a temporary residence authorisation restricted to vocational training activity with a specific employer, and

— who, in this context, has lawfully pursued a genuine and effective economic activity for that employer in return for which he has received remuneration corresponding to the work performed,

is a worker duly registered as belonging to the labour force of that Member State and legally employed there for the purposes of the said provision.

Where such a Turkish national has thus worked for that employer for an uninterrupted period of at least four years, he enjoys in the host Member State, in accordance with the third indent of Article 6(1) of Decision No 1/80, the right of free access to any paid employment of his choice and a corresponding right of residence.

2. Where a Turkish national who fulfils the conditions laid down in a provision of Decision No 1/80 and therefore enjoys the rights which it confers has been expelled, Community law precludes application of national legislation under which issue of a residence authorisation must be refused until a time-limit has been placed on the effects of the expulsion order.

Schintgen Gulmann Skouris

Macken Colneric

Delivered in open court in Luxembourg on 19 November 2002.

R. Grass J.-P. Puissochet

Registrar President of the Sixth Chamber