JUDGMENT OF THE COURT (First Chamber)

26 October 2006 *

In Case C-4/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Verwaltungsgericht Aachen (Germany), made by decision of 29 December 2004, received at the Court on 6 January 2005, in the proceedings

Hasan Güzeli

v

Oberbürgermeister der Stadt Aachen,

THE COURT (First Chamber),

composed of P. Jann, President of Chamber, K. Lenaerts and K. Schiemann (Rapporteur), Judges,

* Language of the case: German.

Advocate General: L.A. Geelhoed,
Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 12 January 2006,

after considering the observations submitted on behalf of:

— Mr Güzeli, by R. Hofmann, Rechtsanwalt,

— the German Government, by M. Lumma and C. Schulze-Bahr, acting as Agents,

— the Slovak Government, by R. Procházka, acting as Agent,

— the Commission of the European Communities, by V. Kreuschitz and G. Rozet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 March 2006,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 10(1) of Decision No 1/80 of the EEC-Turkey 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 Güzeli, a Turkish national, and the Oberbürgermeister der Stadt Aachen (Mayor of Aachen) ('the Oberbürgermeister') concerning the latter's refusal to extend Mr Güzeli's residence permit.

Law

Community law

3 Article 6(1) and (2) of Decision No 1/80 reads as follows:

'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 Under Article 10(1) of Decision No 1/80:

'The Member States of the Community shall as regards remuneration and other conditions of work grant Turkish workers duly registered as belonging to their labour forces treatment involving no discrimination on the basis of nationality between them and Community workers.'

National law

5 Under Paragraph 284(5) of the third book of the German Social Security Code (Sozialgesetzbuch), applicable until 31 December 2004, a work permit could be

granted only if the alien held a residence permit as provided for in Paragraph 5 of the Law on Aliens (Ausländergesetz).

6 Following the entry into force of the Law on Immigration (Zuwanderungsgesetz) on 1 January 2005, a work permit as such is no longer necessary. The question whether a foreign worker is entitled to pursue employment is now determined directly by the residence permit itself.

The main proceedings and the questions referred for a preliminary ruling

7 According to the order for reference, Mr Güzeli, a Turkish national, entered Germany on 13 September 1991.

8 On 7 March 1997 he married a German national and was granted a residence permit, valid for one year, by the Oberbürgermeister on 29 July 1997. Furthermore, on 31 July 1997, the Aachen employment office granted him a work permit of unlimited duration valid for any type of occupation.

9 On 19 June 1998 Mr Güzeli applied for an extension to his residence permit. He separated from his wife on 8 July 1998 and divorced in 2002.

10 On 6 January 1999 the Oberbürgermeister initially extended Mr Güzeli's residence permit until 6 December 1999 and then again until 9 October 2001, indicating that Mr Güzeli could claim rights under the first indent of Article 6(1) of Decision No 1/80. The residence permit contained the rider: 'self-employed occupations and comparable paid occupations not permitted. Only permitted to work as a waiter in the Café Marmara in Aachen.'

11 On 25 September 2001 Mr Güzeli applied for an extension to his residence permit.

12 From 1 October to 31 December 1997, 1 February 1998 to 31 March 1999 and 1 June 1999 to 31 March 2000 he was employed in Aachen at the Café Marmara by the various undertakings which ran that establishment (together 'the Café Marmara'). Mr Güzeli was employed there as a waiter.

13 From 10 April to 14 December 2000 and from 1 March to 30 November 2001 Mr Güzeli was employed on various occasions, in Aachen, as a seasonal worker by the Aachener Printen-und Schokoladenfabrik Henry Lambertz GmbH & Co KG ('Lambertz'). In the interim periods he received benefit from the Aachen employment office. The claimant did not at any time receive social security benefit.

14 After 2 April 2002, namely from 23 November 2002 to 5 December 2003 and from 2 June 2004 until the end of the 2004 season, he was employed by Lambertz.

15 By decision of the Amtsgericht Aachen (Aachen Local Court) of 27 June 2002 Mr Güzeli was fined for a twofold breach of the Ausländergesetz on the ground that by working for Lambertz he had breached the conditions attached to his residence permit.

16 On 2 January 2003 Mr Güzeli's application for an extension to his residence permit was rejected by the Oberbürgermeister and he was threatened with deportation to Turkey. Mr Güzeli's objection against that decision was dismissed by the Bezirksregierung Köln (Cologne regional authority) by decision of 20 July 2004. On 9 August 2004 Mr Güzeli brought an action before the Verwaltungsgericht Aachen.

17 In those circumstances, the Verwaltungsgericht Aachen decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the prohibition of discrimination in Article 10(1) of Decision No 1/80 preclude a Member State from refusing to allow a Turkish worker in the position of the claimant, who was duly registered as belonging to the labour force of the Member State and had a right of unlimited duration in relation to employment on the date of expiry of the national residence permit originally granted to him, to continue to reside there for the duration of his employment?

Is it material in this context whether the work permit granted to the Turkish migrant worker

— was granted under national law without any time-limit,

— was granted under national law subject to the continuation of the original residence permit but does not automatically expire when residence authorisation comes to an end and remains valid until such time as the alien is no longer entitled to stay in the Member State on even a temporary basis?

(2) Is the Member State permitted, having regard to Article 10(1) of Decision No 1/80, to refuse to allow a Turkish worker residence if he is employed as a seasonal worker after the expiry date of the latest residence permit granted to him — that is to say, if he does not work in the periods between employment?

(3) Does a change in the legal form of national law governing permission to work that takes place after the expiry date of the original residence permit have any effect on the prohibition on refusal of further residence consequent on Article 10(1) of Decision No 1/80?'

The questions

18 It is apparent from the order for reference that the national court rejects from the outset the possibility that a Turkish national in a position such as Mr Güzeli's could rely on the rights conferred upon him by Article 6(1) of Decision No 1/80. On that premiss, the national court asks whether Article 10(1) of that decision might be applicable.

19 In order for a useful reply to be given to the national court, it is necessary to ascertain, first, whether the premiss that Mr Güzeli's right to an extension of his residence permit cannot be founded on Article 6(1) of Decision No 1/80 is correct.

Article 6(1) of Decision No 1/80

20 Article 6(1) of Decision No 1/80 lists the main conditions applicable to the employment of Turkish nationals duly registered as belonging to the labour force of a Member State as regards the grant and extension of work permits.

21 The first indent of that provision requires one year's legal employment in order for the Turkish worker to be entitled to renewal of his permit to work for the same employer.

22 The second indent of that provision essentially authorises a Turkish worker, after three years of legal employment, to respond to another offer of employment, with an employer of his choice, for the same occupation.

23 The third indent of that provision allows a Turkish worker to enjoy free access to any paid employment of his choice, after four years of legal employment.

24 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-192/89 *Sevince* [1990] ECR I-3461, paragraph 26, and Case C-188/00 *Kurz* [2002] ECR I-10691, paragraph 26).

25 The rights that that provision confers on a Turkish worker with regard to employment necessarily imply the existence of a concomitant right of residence for the person concerned, without which the right to have access to the employment market and to take up employment would be rendered totally ineffective (*Kurz*, paragraph 27).

26 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 (*Kurz*, cited above, paragraph 28).

27 It is therefore necessary to inquire whether, on the date of expiry of his residence permit, namely 9 October 2001, the date from which Mr Güzeli seeks the extension of that permit ('the relevant date'), he satisfied the conditions for entitlement to the rights under Article 6(1).

28 It is apparent from the documents in the case-file submitted to the Court that on the relevant date Mr Güzeli was employed by Lambertz. That employment had commenced on 10 April 2000, that is, after Mr Güzeli had left his employment with his first employer, the Café Marmara, for whom he had worked, with interruptions, from 1 October 1997 to 31 March 2000.

29 It should be borne in mind that Mr Güzeli's residence permit, which was extended by the German authorities until 6 December 1999, then again until 9 October 2001, stated that he could claim rights under the first indent of Article 6(1) of Decision No 1/80. To this end, Mr Güzeli's residence permit contained the following rider: 'self-employed occupations and comparable paid occupations not permitted. Only permitted to work as a waiter in the Café Marmara in Aachen'.

30 By limiting, in his residence permit, Mr Güzeli's occupation to that performed in the Café Marmara, the German authorities gave expression to the rights that Mr Güzeli could at that stage derive from Article 6(1) of Decision No 1/80. Before being entitled to respond to another offer of employment (for the same occupation) with an employer of his choice, Mr Güzeli had to remain in the service of his first employer, the Café Marmara, for three years, in accordance with the second indent of that provision. He did not do so.

31 It is however necessary to inquire whether, after one year's employment with Lambertz, Mr Güzeli could derive from the first indent of Article 6(1) of Decision No 1/80 a right to renewal of his work permit. In order for that provision to confer such a right on Mr Güzeli, he would need to have been duly registered as belonging to the labour force of the host Member State on the relevant date.

32 It is settled case-law that the concept of being 'duly registered as belonging to the labour force' 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 (*Kurz*, paragraph 39).

33 Entitlement to the rights set out 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 employment (Case C-340/97 *Nazli* [2000] ECR I-957, paragraph 32).

34 As regards that condition, it must be stated that the first indent of Article 6(1) of Decision No 1/80 cannot be construed as meaning that a Turkish worker can rely on the rights conferred upon him by that provision where he is in paid employment with a second employer without satisfying the requirements laid down by the second indent of Article 6(1) of Decision No 1/80.

35 None the less, it is apparent from the grounds of the order for reference and the wording of the first question that the national court considers that, on the relevant date, Mr Güzeli was 'duly registered as belonging to the labour force' of the host Member State.

36 Since the Court has no power, within the framework of Article 234 EC, to give preliminary rulings on the interpretation of rules pertaining to national law (see Case C-341/94 *Allain* [1996] ECR I-4631, paragraph 11), it is for the national court to make the requisite findings in that regard in order to establish whether, on the relevant date, Mr Güzeli had complied with the conditions imposed by the German authorities for his paid employment, in particular in light of the importance, in German law, of the condition relating to his employment at the Café Marmara attached to his residence permit. The national court will have to determine whether that condition took precedence over the work permit granted to Mr Güzeli on 31 July 1997, which was valid in respect of any type of occupation.

37 If, in carrying out that examination, the national court finds that, on the relevant date, Mr Güzeli was not duly registered as belonging to the German labour force, it

would have correctly excluded the possibility of an extension to Mr Güzeli's residence permit on the basis of Article 6(1) of Decision No 1/80.

38 If, on the other hand, that court reaches the conclusion that, on the relevant date, Mr Güzeli was duly registered as belonging to that labour force, he might be able to claim the rights under the first indent of Article 6(1) of Decision No 1/80 in view of the periods of employment that he had completed at Lambertz. It will be for the national court to ascertain whether that employment was 'legal employment' within the meaning of Article 6(1). In this respect, it should be borne in mind that the concept of 'legal employment' is a Community law concept and presupposes a stable and secure situation as a member of the labour force of a Member State (see Case C-98/96 *Ertanir* [1997] ECR I-5179, paragraph 59, and *Sevince*, paragraph 30).

39 It is apparent from the documents in the case-file submitted to the Court that Mr Güzeli was employed at Lambertz as a seasonal worker and that he worked there with interruptions (in particular between 14 December 2000 and 1 March 2001). It is necessary to consider whether that fact could have an impact on the assessment of the length of Mr Güzeli's periods of legal employment.

40 For the purpose of calculating the periods of legal employment referred to in the three indents of Article 6(1) of Decision No 1/80, Article 6(2) provides for preferential rules for a Turkish worker who temporarily ceases work depending on the type and length of those periods of inactivity.

41 It follows from the second sentence of Article 6(2) of Decision No 1/80 that periods of inactivity on account of long-term sickness or involuntary unemployment (that is

to say where the inactivity cannot be attributed to the worker) are not treated as periods of legal employment, but do not affect rights acquired as the result of the preceding period of employment.

42 That provision is solely intended to avoid a situation where a Turkish worker returning to work after having been compelled to cease work on grounds of long-term sickness or involuntary unemployment was required, in the same way as a Turkish national who had not yet been in paid employment in the Member State concerned, to recommence the periods of legal employment laid down in the first to third indents of Article 6(1) of Decision No 1/80 (see, to that effect, Case C-171/95 *Tetik* [1997] ECR I-329, paragraph 39, and Case C-230/03 *Sedef* [2006] ECR I-157, paragraph 52).

43 It is apparent from the grounds of the order for reference that the national court relies, in its reasoning, on the premiss that only preceding periods of employment satisfying the condition of duration set out in the three indents of Article 6(1) of Decision No 1/80 are not affected by the interruptions in employment referred to in the second sentence of Article 6(2) of that decision. The notion underlying the national court's analysis is that Mr Güzeli had to have been employed for at least one year (the length of time provided for in the first indent of Article 6(1) of Decision No 1/80) in order to claim entitlement to a 'right acquired' within the meaning of the second sentence of Article 6(2) of that decision which would not be affected by a temporary interruption.

44 Such an interpretation complies with the objective of the second sentence of Article 6(2) of Decision No 1/80 which is to ensure the maintenance and continuation of the rights that a Turkish worker has already acquired on account of preceding periods of employment. The term 'rights' used there implies that that provision does not envisage periods of any length, however minimal, but rather preceding periods of employment of sufficient duration to create a right to employment, a right which, according to the logic of that provision, is to continue to exist notwithstanding temporary interruption of the occupation for reasons not attributable to the Turkish worker.

45 In the present case, at the time when his employment at Lambertz was interrupted, Mr Güzeli had not yet acquired such a 'right' since he had worked for only eight months (from 10 April to 14 December 2000), that is to say an insufficient period to form the basis of any right under Article 6(1) of Decision No 1/80.

46 It is in the light of those considerations that the questions referred for a preliminary ruling must be considered.

Article 10 of Decision No 1/80

47 The national court has referred for a preliminary ruling three questions on the interpretation of Article 10(1) of Decision No 1/80.

48 It is apparent from the very wording of Article 10(1) of Decision No 1/80 that the rights conferred by that provision are subject, just like those conferred by Article 6(1) of that decision, to the condition that the Turkish worker is duly registered as belonging to the labour market of the Member State concerned.

49 As regards the relevance, in this context, of the fact that the Turkish worker changed employer prior to the expiry of the period of three years laid down in the second indent of Article 6(1) of Decision No 1/80, it must be borne in mind, as was held at paragraph 36 of this judgment, that it is for the national court to interpret rules pertaining to national law and to make the requisite findings in that regard.

50 If, in the light of the examination by the national court of the provisions of German law, it were to be established that, on the relevant date, Mr Güzeli did not satisfy the condition relating to his being duly registered as belonging to the labour force, he could not rely on Article 10(1) of Decision No 1/80 for the purposes of obtaining an extension to his residence permit.

51 If, on the other hand, it were to be established that, on the relevant date, Mr Güzeli was indeed duly registered as belonging to the labour force, the question arises as to whether he could rely on Article 10(1) of Decision No 1/80.

52 In this respect, in his observations to the Court, Mr Güzeli referred to the interpretation of an analogous provision in the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 27 April 1976 and concluded on behalf of the Community by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264, p. 1) which was given by the Court in Case C-416/96 *Eddline El-Yassini* [1999] ECR I-1209, paragraphs 62 to 64. According to that interpretation, although a Member State is not in principle prohibited from refusing to extend the residence permit of a Moroccan national whom it has previously authorised to enter its territory and to work there where the initial reason for the grant of a right of residence no longer exists at the time that his residence permit expires, the situation would be different if the host Member State had granted the Moroccan migrant worker specific rights in relation to employment which were more extensive than the rights of residence conferred on him by that State.

53 It is for the national court to establish whether such a situation arose in the main proceedings, taking account in particular of Mr Güzeli's conviction for breach of the conditions set out in his residence permit.

54 Having regard to the foregoing considerations, the answer to the national court must be that the first indent of Article 6(1) of Decision No 1/80 must be interpreted as meaning that a Turkish worker can rely on the rights conferred upon him by that provision only where his paid employment with a second employer complies with the conditions laid down by law and regulation in the host Member State governing entry into its territory and employment. It is for the national court to make the requisite findings in order to establish whether that is the case in respect of a Turkish worker who changed employer prior to expiry of the period of three years provided for in the second indent of Article 6(1) of that decision.

55 The second sentence of Article 6(2) of Decision No 1/80 must be interpreted as meaning that it is intended to ensure that periods of interruption of legal employment on account of involuntary unemployment or long-term sickness do not affect the rights that the Turkish worker has already acquired on account of preceding periods of employment of the length fixed in each of the three indents of Article 6(1) respectively.

Costs

56 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 (First Chamber) hereby rules:

The first indent of Article 6(1) 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 a Turkish worker can rely on the rights conferred upon him by that provision only where his paid employment with a second employer complies with the conditions laid down by law and regulation in the host Member State governing entry into its territory and employment. It is for the national court to make the requisite findings in order to establish whether that is the case in respect of a Turkish worker who changed employer prior to expiry of the period of three years provided for in the second indent of Article 6(1) of that decision.

The second sentence of Article 6(2) of Decision No 1/80 must be interpreted as meaning that it is intended to ensure that periods of interruption of legal employment on account of involuntary unemployment and long-term sickness do not affect the rights that the Turkish worker has already acquired owing to preceding periods of employment the length of which is fixed in each of the three indents of Article 6(1) respectively.

[Signatures]