JUDGMENT OF THE COURT (Sixth Chamber)
29 May 1997 *

In Case C-386/95,

REFERENCE to the Court under Article 177 of the EC Treaty by the Bundesverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between

Süleyman Eker

and

Land Baden-Württemberg,

joined to the proceedings: the **Oberbundesanwalt beim Bundesverwaltungsgericht** and the **Vertreter des öffentlichen Interesses bei den Gerichten der allgemeinen Verwaltungsgerichtsbarkeit in Baden-Württemberg,**

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

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, P. J. G. Kapteyn, H. Ragnemalm and R. Schintgen (Rapporteur), Judges,

Advocate General: M. B. Elmer,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Mr Eker, by Renate Becker, Rechtsanwältin, Titisee-Neustadt,

— Land Baden-Württemberg, by Walter Scheifele, Oberregierungsrat (Landratsamt Waldshut), acting as Agent,

— the Vertreter des öffentlichen Interesses bei den Gerichten der allgemeinen Verwaltungsgerichtsbarkeit in Baden-Württemberg, by Harald Fliegauf, Leitender Oberlandesanwalt, acting as Agent,

— the German Government, by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, acting as Agent,

— the Greek Government, by Aikaterini Samoni-Rantou, special assistant legal adviser in the Community Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Lydia Pnevmatikou and Georgios Karipsiadis, specialist technical advisers in that department,

— the French Government, by Catherine de Salins, Deputy Director in the Directorate of Legal Affairs of the Ministry of Foreign Affairs, and Claude Chavance, Secretary for Foreign Affairs in that directorate, acting as Agents,

— the Austrian Government, by Wolf Okresek, Ministerialrat in the Constitutional Service of the Federal Chancellor's Office, acting as Agent,

— the Commission of the European Communities, by Jörn Sack, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Eker, the Vertreter des öffentlichen Interesses bei den Gerichten der allgemeinen Verwaltungsgerichtsbarkeit in Baden-Württemberg, the German Government, the French Government and the Commission at the hearing on 30 January 1997,

after hearing the Opinion of the Advocate General at the sitting on 6 March 1997,

gives the following

Judgment

1 By order of 29 September 1995, received at the Court on 11 December 1995, the Bundesverwaltungsgericht (Federal Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of the first indent of Article 6(1) of Decision No 1/80 of the Council of Association of 19 September 1980 on the development of the Association (hereinafter 'Decision No 1/80'). The Council of Association 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 That question arose in a dispute between Mr Eker, a Turkish national, and the Land Baden-Württemberg concerning the refusal to extend his residence permit for Germany.

3 It appears from the documents in the main proceedings that Mr Eker entered Germany illegally on 1 December 1988 and was expelled on 13 February 1989.

4 On 17 January 1991 Mr Eker married a German national in Turkey, and he returned to Germany on 6 April 1991 with an entry permit.

5 On 17 April 1991 he was granted a work permit with no geographical restrictions and covering all types of employment, and on 24 July 1991 he received a residence permit valid until 24 July 1992.

6 From 15 June to 30 September 1991 Mr Eker was employed at a hotel in Schluchsee (Germany).

7 He then worked in a cure and rehabilitation clinic in Höchenschwand (Germany) from 1 October 1991 to 15 November 1992. He resumed working there on 1 February 1993.

8 According to Mr Eker, the spouses separated on 24 July 1991. In April 1992 he confirmed that divorce proceedings had been initiated.

9 On 22 July 1992 Mr Eker applied for an extension of his permit to reside in Germany.

10 The Landratsamt Waldshut issued him with a certificate valid until 11 August 1992, while stating that it was minded to refuse his application. By decision of 12 August 1992 the Landratsamt refused to extend Mr Eker's residence permit and ordered him to leave German territory, failing which he would be expelled.

11 Mr Eker's action challenging that decision was upheld at first instance, but dismissed on appeal by the Verwaltungsgerichtshof (Higher Administrative Court), Baden-Württemberg in a judgment dated 30 November 1994. That court considered that there was no basis in German law for conferring on a Turkish national separated from his German spouse an independent right to remain. It further considered that Mr Eker could not rely on the first indent of Article 6(1) of Decision No 1/80, since that provision required the Turkish worker to have had one year's legal employment with the same employer, a condition which Mr Eker had not satisfied at the time when his residence permit expired.

12 Mr Eker then appealed on a point of law to the Bundesverwaltungsgericht. He argued that the first indent of Article 6(1) of Decision No 1/80 merely requires that the renewal of the work and residence permits is applied for with a view to working for the same employer, and that he satisfied that condition when he made the application.

13 The Bundesverwaltungsgericht held that the refusal to renew the residence permit could not be criticized under German law, but was uncertain whether an outcome more favourable to Mr Eker might not ensue from the first indent of Article 6(1) of Decision No 1/80.

14 Article 6(1), which appears in Chapter II ('Social provisions'), Section 1 ('Questions relating to employment and the free movement of workers') of Decision No 1/80, reads 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.'

15 In this connection, the Bundesverwaltungsgericht is uncertain whether a Turkish worker may claim an extension of his work and residence permits under the first indent of Article 6(1) of Decision No 1/80 only if he has been legally employed continuously for one year by the same employer, or whether it suffices for the application of that provision that the worker has been employed, for one year continuously and with valid work and residence permits, with several employers and wishes to continue working for the last of his employers.

16 Since it took the view that the resolution of the dispute required an interpretation of that provision, the Bundesverwaltungsgericht stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Does a Turkish worker fulfil the requirements of the first indent of Article 6(1) of Decision No 1/80 of the EEC/Turkey Association Council even if during the first year of employment he has, with the permission of the national authorities, worked without interruption but for different employers and wishes to continue employment with his last employer?'

17 By its question the national court is essentially asking whether the first indent of Article 6(1) of Decision No 1/80 is to be interpreted as making extension of a Turkish worker's residence permit in the host Member State subject to his having been legally employed for one year continuously with the same employer, or whether that provision merely requires one year's continuous employment, duly covered by work and residence permits, even for several employers, provided that the worker applies for his residence permit to be extended with a view to continuing working for the employer by whom he is employed.

18 To answer that question, it should be observed, first, that since its judgment in Case C-192/89 *Sevince* v *Staatssecretaris van Justitië* [1990] ECR I-3461 the Court has consistently held that Article 6(1) of Decision No 1/80 has direct effect in the Member States, so that Turkish nationals who satisfy its conditions may rely directly on the rights conferred on them by the various indents of that provision (see, most recently, Case C-171/95 *Tetik* v *Land Berlin* [1997] ECR I-329, paragraph 22).

19 Second, the Court has consistently held that the rights which the three indents of Article 6(1) confer on a Turkish worker in regard to employment necessarily imply

the existence of a 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, most recently, *Tetik*, paragraph 24).

20 Third, the first indent of Article 6(1) of Decision No 1/80 requires, for a Turkish worker to be entitled to renewal of his work permit, the completion of one year's legal employment, without specifying whether this must be a period of employment with the employer for whom renewal of the permit is sought, or whether it may be a period comprised of employment with different employers.

21 On this point, it should be noted that the three indents of Article 6(1) confer on Turkish workers rights which vary and are subject to conditions which differ according to the duration of legal employment in the relevant Member State (see, most recently, *Tetik*, paragraph 23).

22 Since it requires the completion of one year's continuous employment for there to be a right to renewal of the work permit in respect of the same employer, the first indent of Article 6(1) is based on the premiss that only a contractual relationship which lasts for one year is expressive of employment relations stable enough to guarantee the Turkish worker continuity of his employment with the same employer.

23 The coherence of the system of gradual integration of Turkish workers in the host State's labour force, established by the three indents of Article 6(1), would be disrupted if the worker had the right to enter the service of another employer even

before satisfying the condition of one year's legal employment specified in the first indent of Article 6(1). In accordance with the second indent of Article 6(1), it is only after three years of legal employment in the Member State concerned that a Turkish worker is entitled to take up work with a different employer, on condition that the employer is engaged in the same business as the previous employer and respects the priority to be given to workers of the Member States.

24 In those circumstances, the first indent of Article 6(1), which does not confer on the worker the right to choose another employer and does not contain the reservations set out in the second indent, cannot be understood as meaning that a Turkish worker may satisfy its conditions, and therefore exercise the rights it confers, if before completion of the first year of legal employment with a given employer he takes up employment with a new employer.

25 It follows that in a case such as that in point in the main proceedings where the competent national authorities have authorized a Turkish worker to change employers before completing one year of legal employment with the first employer in respect of whom the work and residence permits were issued, the right to renewal of those permits, referred to in the first indent of Article 6(1), arises only on expiry of a further period of one year's legal employment.

26 That interpretation finds support in the Court's case-law.

27 In Case C-355/93 *Eroglu* v *Land Baden-Württemberg* [1994] ECR I-5113 the Court has already interpreted the first indent of Article 6(1) of Decision No 1/80

as not conferring the right to renewal of his permit to work for his first employer on a Turkish national who worked for more than a year for that employer and then for some ten months for another employer.

28 In that judgment the Court pointed out that the aim of that provision is solely to ensure continuity of employment with the same employer and that the provision is accordingly applicable only where a Turkish worker requests an extension of his work permit in order to continue working for the same employer after the initial period of one year's legal employment (paragraph 13).

29 The Court then stated that extending the application of that provision to a Turkish worker who, after one year's legal employment, has changed employers and is seeking an extension of his work permit in order to work for the first employer again would allow that worker to change employers under that provision before the expiry of the period of three years prescribed in the second indent and would also deprive workers of the Member States of the priority conferred on them pursuant to that indent when a Turkish worker changes employers (paragraph 14).

30 While the facts of that case admittedly differ from those of the main proceedings in this case, in that Ms Eroglu had changed employers after one year's legal employment in the host Member State and sought renewal of her work permit in order to work for her first employer again, the Court's interpretation in that judgment of the first indent of Article 6(1) must apply *a fortiori* in a case such as Mr Eker's, where a Turkish worker has changed employers before the end of the first year of employment in the Member State concerned and applies for an extension of his residence permit in order to continue working for his new employer before even completing one year's legal employment with that employer.

31 In the light of all the foregoing considerations, the answer to the national court's question must be that the first indent of Article 6(1) of Decision No 1/80 must be interpreted as making the extension of a Turkish worker's residence permit in the host Member State subject to his having been legally employed continuously for one year with the same employer.

Costs

32 The costs incurred by the German, Greek, French and Austrian Governments and by the Commission of the European Communities, 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 question referred to it by the Bundesverwaltungsgericht by order of 29 September 1995, hereby rules:

The first indent of Article 6(1) of Decision No 1/80 of 19 September 1980 on the development of the Association adopted by the Council of Association established by the Association Agreement between the European Economic

Community and Turkey must be interpreted as making the extension of a Turkish worker's residence permit in the host Member State subject to his having been legally employed continuously for one year with the same employer.

Mancini Murray Kapteyn

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 29 May 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber