JUDGMENT OF THE COURT (Third Chamber)

25 September 2008 *

In Case C-453/07,

REFERENCE for a preliminary ruling under Article 234 EC by the Verwaltungsgericht Gießen (Germany), made by decision of 24 September 2007, received at the Court on 4 October 2007, in the proceedings

**Hakan Er**

v

**Wetteraukreis,**

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, U. Lõhmus, J.N. Cunha Rodrigues, A. Ó Caoimh and P. Lindh (Rapporteur), Judges,

* Language of the case: German.

Advocate General: P. Mengozzi,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Er, by C. Momberger, Rechtsanwalt,

— the Wetteraukreis, by E. Meiß, acting as Agent,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

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

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

gives the following

## Judgment

1 The request for a preliminary ruling concerns the interpretation of the second indent of the first 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, which was signed at Ankara on 12 September 1963 by the Republic of Turkey, on the one hand, and by the Member States of the EEC and the Community, on the other hand, and concluded, approved and confirmed on the part of the latter by Council Decision 64/732/EEC of 23 December 1963 (JO 1964 217, p. 3685).

2 This request has been made in the context of a dispute between Mr Er, a Turkish national, and the Wetteraukreis (district of Wetterau), concerning a procedure for deportation from German territory.

### Legal context

3 Article 6(1) of Decision No 1/80 is drafted 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.'

4 Article 7 of Decision No 1/80 provides:

'The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorised to join him:

— shall be entitled — subject to the priority to be given to workers of Member States of the Community — to respond to any offer of employment after they have been legally resident for at least three years in that Member State;

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

Children of Turkish workers who have completed a course of vocational training in the host country may respond to any offer of employment there, irrespective of the length of time they have been resident in that Member State, provided one of their parents has been legally employed in the Member State concerned for at least three years.'

5 In accordance with Article 14(1) of Decision No 1/80:

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

**The dispute in the main proceedings and the question referred for a preliminary ruling**

6 It is apparent from the decision to refer that Mr Er was born in Turkey in April 1984. Two years later, in 1986, he travelled to Berlin to join his father, who was duly registered as belonging to the labour force of the Federal Republic of Germany, and lived with him in Germany for at least five years. His father subsequently returned to Turkey without his family.

7 In 1998, Mr Er applied for his first residence permit, which was granted to him for a period of one and a half years. This document included the comments 'mother holder of a residence permit of unlimited duration' and 'father registered in Berlin'.

8 Mr Er left school in 2000, at the age of 16, without qualifications. His residence permit was extended up to 21 March 2002.

9 In 2002, Mr Er applied for a second residence permit, which was granted to him up to April 2003, that being the date at which his mother ceased to be responsible for his maintenance. Mr Er then applied for an extension of his residence permit, which was granted for one year despite the changes to his situation, namely that his mother was no longer responsible for his maintenance and that a living allowance had been paid to him for four months. The Aliens Authority for the district of Wetterau ('the Aliens Authority'), however, required Mr Er to make a visible effort to find employment.

10 Mr Er took part in a course designed to improve his chances of training and of finding work on the job market, but he gave it up due to insufficient aptitude. He received social security assistance for one month and registered as a job-seeker.

11 In September 2004, Mr Er applied for a new extension.

12 Whilst processing this application, the Aliens Authority interviewed Mr Er on several occasions. The latter declared that he was looking for work, that he ought to find work after submitting a certificate of good behaviour, and that he would contact the Aliens Authority again. These declarations were not, however, followed up and Mr Er was not offered employment. He received unemployment benefits for 18 months.

13 By decision of 17 August 2005, the Aliens Authority rejected the application for extension presented by Mr Er in September 2004 and ordered him to leave the country by a specific deadline, failing which he would be deported to Turkey.

14 According to this decision, the grant of the right of residence in the context of the first paragraph of Article 7 of Decision No 1/80 presupposes that the applicant is present on the employment market at the time of his application, and that he has a realistic prospect of obtaining employment in the foreseeable future. The Aliens Authority took the view that limiting the duration of residence to six months in order to seek employment was not, in principle, open to criticism.

15 On 9 September 2005, Mr Er submitted an appeal against this decision, which is still pending. He also applied to the referring court for interim measures. The latter declared, by way of an order of 4 December 2006, that that appeal brought about a stay of proceedings.

16 During the interlocutory proceedings, Mr Er claimed to be making efforts to find work. He produced a letter of 20 December 2005 from the training centre in Frankfurt inviting him to take part in a job-support scheme for one month. Mr Er started the programme, but gave it up on the ground that it did not address his needs. The report evaluating Mr Er's abilities concluded that these were mediocre, that he had very little perseverance and that he was unpunctual. It was considered appropriate that he enter the job market immediately, there being no point in the acquisition of further qualifications. Mr Er was, however, regarded as being capable of simple and repetitive work.

17 Mr Er was then put in contact with a recruitment organisation for airports, which involved a training course. As a result of the successful progression of his course from the beginning of February 2006, it was planned that Mr Er would secure a position as a baggage handler at Frankfurt airport.

18 The referring court points out, however, that, in the absence of a certificate of good behaviour, the job application was not sent to the potential employer.

19 Mr Er did not mention any other participation on a job-support scheme, or any paid work, with the exception of a one-day job.

20 The referring court also alludes to a note from the Federal Employment Agency, dated 18 August 2006, concerning an interview with Mr Er. According to this note, Mr Er had not made an effort to enter the job market. He was, moreover, in debt, and his mother wished him to leave the family home.

21 On 22 January 2007, following the end of the interlocutory proceedings, Mr Er submitted the application which initiated the main proceedings. He pleads that the Aliens Authority should be ordered to extend his residence permit on the ground that he benefits from the legal status conferred by the first paragraph of Article 7 of Decision No 1/80, irrespective of whether he has, or is seeking, employment in Germany.

22 The decision to refer states that, at the present time, Mr Er is not receiving social security benefits but that, because of his reluctance to work, he will be able to meet his living expenses over the long term only with the assistance of social security benefits.

23 In those circumstances, the Verwaltungsgericht Gießen decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Does a Turkish national who, as a family member, received authorisation to join his father living in Germany who, as a Turkish worker, was duly registered as belonging to the labour force of the Federal Republic of Germany, and who acquired, by virtue of having previously lived together legally with his father for five years, the legal status as referred to in the second indent of the first paragraph of Decision No 1/80, lose that legal status as a consequence of the fact that, for more than seven years after leaving school, apart from one alleged single day of work on a trial basis, he has at no time been in employment, drops out of all government support schemes designed to

promote the taking-up of employment and does not himself make any serious efforts to take up employment, instead living by turns on social security benefits, financial support from his mother living in Germany and means of unknown origin?'

**The question referred for a preliminary ruling**

24 By its question, the referring court is essentially asking whether a Turkish national who benefits from the right to take up any paid employment of his choice in a Member State in accordance with the second indent of the first paragraph of Article 7 of Decision No 1/80 loses his right to reside in that Member State, and thereby that right freely to take up employment, on the ground that, having reached the age of 23, he has not engaged in paid employment since leaving school at the age of 16, and has participated in government job-support schemes without, however, completing them.

25 In order to answer this question, it should be noted that the first paragraph of Article 7 of Decision No 1/80 has direct effect in the Member States, with the result that Turkish nationals fulfilling the conditions which it lays down may rely directly on the rights conferred on them by that provision. In particular, they have the right, in accordance with the second indent of that provision, of free access to any paid employment of their choice in the host Member State after having been legally resident there for at least five years (see Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraphs 27 and 28, as well as Case C-325/05 *Derin* [2007] ECR I-6495, paragraph 47).

26 The rights that this provision grants the child of a Turkish worker with regard to employment in the Member State concerned necessarily imply, so as not to render the right of access to the labour market and to engage in paid employment totally ineffective, a concomitant right of residence in favour of the person concerned (see, inter alia, Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraph 31, and *Derin*, paragraph 47).

27 The Court has ruled that the unconditional right to take up any employment freely chosen by the person concerned would be rendered wholly meaningless if the competent national authorities were able to impose conditions or restrictions of any sort on the application of the specific rights conferred on Turkish migrants by Decision No 1/80 (see Case C-329/97 *Ergat* [2000] ECR I-1487, paragraph 41).

28 It follows that it is no longer open to the Member States to adopt measures relating to residence which are such as to impede the exercise of the rights expressly conferred by Decision No 1/80 on a person who satisfies the conditions which it lays down and who is therefore already legally integrated into the host Member State (see *Ergat*, paragraph 42).

29 It is particularly important not to deprive such a person of his right of residence, precisely at the time when, by virtue of free access to employment of his choosing, he has the prospect of becoming permanently integrated in his host Member State (see, to that effect, *Ergat*, paragraph 43).

30 The Court has thus consistently held that there can be only two kinds of restrictions on the rights conferred by the first paragraph of Article 7 of Decision No 1/80 on members of a Turkish worker's family who fulfil the conditions laid down in that paragraph, namely, either that 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 that decision, or that relating to the fact that the person concerned has left the territory of that State for a significant length of time without legitimate reason (*Ergat*, paragraphs 45, 46 and 48; *Cetinkaya*, paragraphs 36 and 38; *Derin*, paragraph 54; Case C-373/03 *Aydinli* [2005] ECR I-6181, paragraph 27; Case C-502/04 *Torun* [2006] ECR I-1563, paragraph 21; and Case C-349/06 *Polat* [2007] ECR I-8167, paragraph 21).

31 The Court has concluded, on that basis, that a Turkish national accorded rights under Article 7 of Decision No 1/80 cannot be deprived of them either because he

was unemployed on account of being sentenced to a term of imprisonment, even one of several years' duration which was not suspended, or because he never acquired rights relating to employment and residence pursuant to Article 6(1) of that decision. It has held that, in contrast to Turkish workers to whom Article 6(1) applies, the status of members of their family referred to in Article 7 of that decision does not depend on paid employment (*Derin*, paragraph 56).

32 Therefore, the fact that the person concerned was not active on the labour market for several years does not prevent him from relying on the provisions of the second indent of the first paragraph of Decision No 1/80 in order to claim a right of residence in the host Member State (see *Polat*, paragraph 21).

33 This applies *a fortiori* to a Turkish national, such as Mr Er, who has not left the labour market. The fact that, at the age of 23, he still does not have paid employment does not prevent his being granted a right of residence.

34 A Turkish national who has joined his parents in a Member State in the context of a family reunion, and has lived with them since the age of two, fulfils the conditions of the second indent of the first paragraph of Article 7 of Decision No 1/80. If, having reached the age of 23, he still has not been in paid employment, he does not as a result lose his right of residence. It is important, on the contrary, not to deny him this right, without which he would be unable to accede to such employment or be able to exercise the right granted to him by that provision in order to become better integrated in the host Member State.

35 The question referred must, therefore, be answered to the effect that a Turkish national, who was authorised to enter the territory of a Member State as a child in the context of a family reunion and who has acquired the right to take up freely any paid employment of his choice under the second indent of the first paragraph of Article 7 of Decision No 1/80, does not lose the right of residence in that State, which is the corollary of that right of free access, even though, at the age of 23, he has not

been in paid employment since leaving school at the age of 16 and has taken part in government job-support schemes without, however, completing them.

## Costs

36 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 (Third Chamber) hereby rules:

**A Turkish national, who was authorised to enter the territory of a Member State as a child in the context of a family reunion, and who has acquired the right to take up freely any paid employment of his choice under the second indent of the first 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, does not lose the right of residence in that State, which is the corollary of that right of free access, even though, at the age of 23, he has not been in paid employment since leaving school at the age of 16 and has taken part in government job-support schemes without, however, completing them.**

[Signatures]