Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

21 December 2016*

(References for a preliminary ruling — EEC-Turkey Association Agreement — Decision No 1/80 — Article 7, first paragraph — Right of residence of family members of a Turkish worker duly registered as belonging to the labour force of a Member State — Conditions — No need for the Turkish worker to be duly registered as belonging to the labour force of a Member State for the first three years of the residence of a family member)

In Joined Cases C-508/15 and C-509/15,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany), made by decisions of 9 July 2015, received at the Court on 24 September 2015, in the proceedings

Sidika Ucar (C-508/15),

Recep Kilic (C-509/15)

v

Land Berlin,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J.-C. Bonichot, A. Arabadjiev, C.G. Fernlund and S. Rodin, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Ms Ucar, by P. Meyer, C. Rosenkranz and M. Wilken, Rechtsanwälte,

— the Land Berlin, by M. Wehner, acting as Agent,

— the European Commission, by D. Martin and T. Maxian Rusche, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 15 September 2016,

* Language of the case: German

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 7, first paragraph, of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed in 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, 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) ('the Association Agreement').

2 The requests have been made in two disputes between Ms Sidika Ucar (Case C-508/15) and Mr Recep Kilic (Case C-509/15) and the Land Berlin (Land Berlin, Germany) concerning the rejection by the Ausländerbehörde Berlin (Authority responsible for foreign nationals, Berlin) of the Landesamt für Bürger- und Ordnungsangelegenheiten (Berlin Civil Administration Authority) of their applications for the extension of their residence permits in Germany and, as regards Mr Kilic, the decision of the Authority with responsibility for foreign nationals also ordering his expulsion from the territory of that Member State.

Legal context

EU law

The Association Agreement

3 It is apparent from Article 2(1) of the Association Agreement that it is intended to promote the continuous and balanced strengthening of trade and economic relations between the parties, while taking full account of the need to ensure an accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people.

4 To that end, the Association Agreement provides for a preparatory stage enabling the Republic of Turkey to strengthen its economy with aid from the Community (Article 3 of the agreement), a transitional stage, during which a customs union is to be progressively established and economic policies are to be aligned more closely (Article 4 of the agreement) and a final stage which is to be based on the customs union and is to entail closer coordination of the economic policies of the Contracting Parties (Article 5 of the agreement).

5 Article 12 of the Association Agreement, which is included under Title II thereof, entitled 'Implementation of the transitional stage', provides:

'The Contracting Parties agree to be guided by Articles [45, 46 and 47 TFEU] for the purpose of progressively securing freedom of movement for workers between them.'

Additional Protocol

6 Article 1 of the Additional Protocol, which was signed in Brussels on 23 November 1970 and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 18, 'the Additional Protocol'), lays down the conditions, arrangements and timetables for implementing the transitional phase referred to in Article 4 of the Association Agreement.

7 Under Article 62 thereof, the Additional Protocol is to form an integral part of that agreement.

8 The Additional Protocol contains a Title II ('Movement of persons and services'), Chapter I of which relates to workers.

9 Article 36 of the Additional Protocol, which is part of Chapter I, provides that freedom of movement for workers between Member States of the Community and Turkey is to be secured by progressive stages in accordance with the principles set out in Article 12 of the Association Agreement between the end of the 12th and the 22nd year after the entry into force of that agreement and that the Association Council is to decide on the rules necessary to that end.

Decision No 1/80

10 The Council of Association adopted Decision No 1/80 on 19 September 1980. Articles 6, 7 and 14 of that decision are in Section 1, concerning questions relating to employment and the free movement of workers in Chapter II thereof, entitled 'Social provisions'

11 Article 6(1) of that decision 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.'

12 Article 7, first paragraph, of that decision 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.'

13 Article 14(1) of Decision No 1/80 provides:

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

German law

14 It is apparent from the order for reference in Case C-509/15 that, by May 1997 at the latest, the issue of a residence permit in Germany and, in April 1999, the extension of such a permit, were governed, first, by the Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet (Law on the entry and residence of foreign nationals within Federal territory) ('AuslG') of 9 July 1990 (BGBl. 1990 I, p. 1354), in its version of 29 October 1997 (BGBl. 1997 I, p. 2584) and, second, by the Verordnung zur Durchführung des Ausländergesetzes (Regulation implementing the AuslG).

15 Under Paragraph 7(2) of the AuslG, in the version of 29 October 1997:

Such authorisation shall in principle be refused where:

…

2. the foreign national is not able to support himself … as a result of his own professional activity, his own assets or other own resources …'

16 Under the heading 'Family reunification with a foreign national', Paragraph 17 of the AuslG, in the version of 29 October 1997, provided:

'(1) For the purposes of protecting marriage and the family, as required by Article 6 of the Grundgesetz (Basic Law), a residence permit may be issued to and extended for a foreign national who is a member of the family of another foreign national in order to establish and maintain family life together with the foreign national within Federal territory.

(2) A residence permit may be issued for the purpose stated in subparagraph 1 only if:

1. the foreign national is in possession of a residence permit or a residence entitlement;

2. adequate accommodation is available; and

3. material support for the family member is ensured by the foreign national's own professional activity, his own assets or other own resources; in order to avoid excessive hardship, a residence permit may be issued if material support for the family is ensured also by way of the family member whose stay within Federal territory is lawful or tolerated or by a family member who is under a maintenance obligation.'

17 In accordance with Paragraph 96(4) of the AuslG, in the version of 29 October 1997, Turkish nationals under the age of 16 who prior to 15 January 1997 were exempt from the requirement to possess a residence permit and who are lawfully resident within Federal territory are to be issued with a residence permit, by derogation from Paragraph 17(2)(2) and (3) and Paragraph 8(1)(1) and (2), in accordance with Paragraph 17(1).

18 Under Paragraph 28(4) of the regulation implementing the AuslG, Turkish nationals under the age of 16 who are in possession of a national passport or an identification document for a child recognised in lieu of a passport shall be automatically issued by 30 June 1998 with a residence permit, in accordance with the statutory provisions, provided that their entry was authorised, that they have since that time resided lawfully within Federal territory, at least one parent is in possession of a residence permit and the notification or registration requirements have been complied with.

19 It is apparent from the order for reference in Case C-508/15, that the issue of a residence permit in November 2001 and the requests for extensions of such a permit introduced in 2002 and 2004 were governed by the provisions of the AuslG, as amended by the laws of 16 February 2001 (BGBl. 2001 I, p. 266) and 9 January 2002 (BGBl. 2002 I, p. 361). Under the heading 'Reunification of spouses', Paragraph 18 of the AuslG, as amended, provided:

'(1) The spouse of a foreign national shall be granted a residence permit in accordance with Paragraph 17 if the foreign national

…

3. is in possession of a residence permit, the marriage already existed at the date on which the foreign national entered Germany and that marriage was mentioned in the first application for a residence permit; …

…

(2) A residence permit may also be issued in circumstances other than those specified in point 3 of subparagraph 1.'

20 Finally, it is apparent from the orders for reference that, as regards the disputes in the main proceedings, the national provisions governing the extension of a residence permit in 2006, the issue of a residence permit pursuant to the Association Agreement and expulsion were contained in the Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Law on the residence, employment and integration of foreign nationals on Federal territory) of 30 July 2004 (BGBl. 2004 I, p. 1950), respectively in the version published on 25 February 2008 (BGBl. 2008 I, p. 162) thereof ('the AufenthG').

21 Article 4(5) of the Agreement reads:

'A foreign national who possesses a right of residence in accordance with [the Association Agreement] is required to prove the existence of that right through the possession of a residence permit, if he does not possess a settlement permit or an EC long-term residence permit. The residence permit shall be issued on application.'

22 Under the heading 'General conditions of issue', Paragraph 5 of the AufenthG was worded as follows:

'(1) the issue of a residence permit presupposes, as a rule, that

1. material support is ensured

…'

23 Paragraph 8 of the AufenthG, entitled 'Extension of a residence permit', provided:

'(1) The same provisions apply to the extension of a residence permit as apply to the issue thereof.

…'

24 According to Paragraph 11(1) of the AufenthG:

'A foreign national who has been expelled, removed or deported may not re-enter the Federal territory and reside there. He shall not be issued with a residence authorisation even where the conditions of entitlement under this Law are met …'

25 Paragraph 27 of the AufenthG, concerning the principle of family reunification, provided:

‘(1) For the purpose of protecting marriage and the family in accordance with Article 6 of the Grundgesetz (Basic Law), residence permits may be issued to and extended for foreign nationals who are family members in order to establish and maintain family life within Federal territory (family reunification).’

…’

26 Under the heading, ‘Reunification of spouses’, Paragraph 30 of the AufenthG provided:

‘(1) The spouse of a foreign national shall be granted a residence permit if the foreign national

1. is in possession of an establishment permit’.

…’

27 Under Paragraph 53 of the AufenthG:

‘A foreign national shall be expelled:

1. where, after being convicted of one or more intentional offences, he has been definitively sentenced to at least three years’ imprisonment or youth custody or where, after being convicted of a number of intentional offences within a period of five years, he has been definitively sentenced to a number of terms of imprisonment or youth custody amounting to at least three years or where, on the occasion of the most recent definitive conviction, a term of preventive detention was ordered.

2. where he has been definitively sentenced to an unsuspended term of at least two years’ youth custody or to an unsuspended term of imprisonment for an intentional offence under the Law on narcotics …’

28 According to Paragraph 55 of the AufenthG:

‘(1) A foreign national may be expelled where his presence endangers public security, public order or other important interests of the Federal Republic of Germany.

(2) A foreign national may be expelled in accordance with subparagraph 1 in particular:

…

2. where he has committed an infringement not merely of an isolated or minor nature of legal provisions, court rulings or official orders …’

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-508/15

29 Ms Ucar is a Turkish national who married Mr Ucar, also a Turkish national, in 1977. The couple lived in Turkey. Between 1978 and 1986, they had four children. The marriage was dissolved in 1991.

30 In that same year, Mr Ucar married a German national with whom he lived from then on in Germany. In 1996, he was issued with an indefinite residence permit by the authorities of that Member State. The couple divorced in 1999.

31 In September 2000, Ms Ucar remarried her ex-husband Mr Ucar. In November 2001, Ms Ucar, accompanied by their youngest child, entered Germany with a visa issued for the purpose of family reunification with her husband. On 27 November 2001, the Authority with responsibility for foreign nationals issued her a spouse's residence permit, valid until 26 November 2002. At that time, Mr Ucar worked in an employed capacity as a baker from May 2000. Mr Ucar left that employment at the end of 2001 and took up an activity as a self-employed person at the start of 2002.

32 In the procedure for the extension of her residence permit the applicant relied, as proof of sufficient resources, on her husband's income from his business. Her residence permit was extended the first time on 28 November 2002 for two years, then again on 29 November 2004 until 28 November 2006, still on the basis of the proof of income deriving from her husband's business. In October 2005, Mr Ucar ended his activity as a self-employed person and from 1 November 2005 he was employed again as a baker continuously until December 2011.

33 On 21 November 2006, the Authority with responsibility for foreign nationals issued Ms Ucar a residence permit for the purpose of family reunification mentioning that her husband had again been working in an employed capacity since November 2005. That residence permit was then extended several times, the last time until 12 December 2013.

34 On 16 August 2013, Ms Ucar applied for the issue of a residence permit on the basis of the right of residence under the Association Agreement, in accordance with Paragraph 4(5) of the AufenthG. In support of that application, she stated that she fulfilled the requirements of Article 7, first paragraph, of Decision No 1/80 on the basis of her husband's continuous employment since November 2005.

35 By decision of 6 May 2014, the Authority with responsibility for foreign nationals refused to extend once again Ms Ucar's marriage- related residence permit on the ground that her means of subsistence were not sufficient. Furthermore, taking the view that she had not acquired the right of residence under the Association Agreement, the Authority with responsibility for foreign nationals did not issue a residence permit to Ms Ucar on the basis of the combined provisions of Paragraph 4(5) of the AufenthG and Article 7, first paragraph, of Decision No 1/80.

36 According to the Authority with responsibility for foreign nationals, for the purpose of acquiring a right of residence on the basis of those provisions, it is necessary, first, for the family member who gives entitlement to the right to family reunification to be duly registered as belonging to the labour force in Germany at the time the residence permit for the purposes of family reunification was first issued, and, second, that the status as belonging to the labour force must be maintained for the first three years following the issue of that permit. Therefore, it is not sufficient for that purpose that the individual joined by a family member subsequently acquires the status of employed worker and maintains that status for three years. Finally, the Authority with responsibility for foreign nationals takes the view that the extension of a residence permit cannot be treated as the authorisation to join the worker, referred to in Article 7, first paragraph, of Decision No 1/80, since, when she entered German territory in 2001, Ms Ucar had already been authorised to join her spouse in his capacity as a Turkish worker.

37 Ms Ucar brought an appeal against the decision of 6 May 2014 of the Authority with responsibility for foreign nationals before the referring court, the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany).

38 In that appeal, the referring court is uncertain as to the scope of Article 7, first paragraph, of Decision No 1/80.

39 In those circumstances, the Verwaltungsgericht Berlin (Administrative Court, Berlin) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is the first indent of the first paragraph of Article 7 of Decision No 1/80 to be interpreted as meaning that the basic conditions of that provision are also met in the case where the three years of legal residence of the member of the family of the Turkish worker duly registered as belonging to the labour force were preceded by a period in which the principal person entitled, after having been joined by the family member authorised to do so in accordance with that provision, was no longer duly registered as belonging to the labour force of that Member State?

(2) Is the first paragraph of Article 7 of Decision No 1/80 to be interpreted as meaning that the extension of a residence permit is to be regarded as constituting the authorisation specified in that provision to join a Turkish worker duly registered as belonging to the labour force in the case where the family member concerned has lived continuously, since being authorised to join the Turkish worker within the meaning of that provision, together with that person but the latter, following a period of temporary absence therefrom, is duly registered as belonging afresh to the labour force of the Member State only at the date on which the residence permit is extended?’

Case C-509/09

40 Mr Kilic, a Turkish national, was born on 11 November 1993 in Turkey while his parents, Turkish nationals already living in Germany at that time, were on holiday. On 16 April 1994, the applicant entered German territory. At that time, his father had been unemployed for more than one year. His mother, who, following the couple’s separation in May 1996, raised the applicant on her own until he reached the age of 14, was also not duly registered as belonging to the labour force. Following the introduction in January 1997 of the requirement for all Turkish nationals under the age of 16 to hold a residence permit, on 5 May 1997 the applicant was issued with a residence permit valid until 5 May 1999. On 30 June 1998 the applicant’s mother took up an activity as an employed person, which she continued almost without interruption until April 2003, when a break of several years attributable to maternity and parental leave ensued.

41 On 23 April 1999, the Authority with responsibility for foreign nationals extended Mr Kilic’s residence permit for one year. It should be noted that on that occasion a statement from his mother’s employer was produced. However, the Authority also noted that the mother was in receipt of social assistance, a fact which, according to the legal position at the time, did not preclude the extension of the residence permit. The residence permit was subsequently extended on several occasions for a limited period, on the last occasion until 10 November 2011. Since then the applicant has been in possession of provisional residence documents.

42 The applicant has on several occasions appeared before the courts on criminal charges. The last time he was sentenced by judgment of 11 June 2013 of the Amtsgericht Tiergarten (District Court, Tiergarten, Germany) to a prison sentence of three years and three months for crimes committed as a juvenile and for narcotics trafficking with others. That judgment also mentions many previous convictions, in particular, assault occasioning actual bodily harm, threatening behaviour, extortion with accomplices, stalking and criminal damage.

43 Before his periods of incarceration, Mr Kilic’s school years were chaotic but on 17 June 2011, whilst in custody, he nevertheless obtained an extended certificate of secondary education.

44 By decision of 24 July 2014, the Authority with responsibility for foreign nationals, first, rejected the application to extend Mr Kilic's residence permit and, second, on the basis of the combined provisions of Paragraph 53(1) and (2) and Paragraph 55 of the AufenthG, ordered his expulsion from Germany.

45 According to the Authority with responsibility for foreign nationals, Mr Kilic's residence was not protected under the Association Agreement. He had not, in fact, acquired any rights under Article 7 of Decision No 1/80 because, in the first three years following his admission to German territory, his parents had not been duly registered as belonging to the labour force.

46 Furthermore, taking the view, first, that in light of the number and seriousness of the offences committed by Mr Kilic, the likelihood of further misconduct in the future, and, second, that he posed a serious threat to fundamental interests of society, the Authority with responsibility for foreign nationals took the view that there were serious grounds of public security and public policy in support of his expulsion. According to that authority, after weighing the facts and the legal position, expulsion was unavoidable as the public interest therein clearly outweighed the limited personal ties of the applicant to the Federal Republic of Germany and his interest in continued residence.

47 On 1 September 2014, Mr Kilic, who was released on 27 May 2015, brought an appeal against the decision of the Authority with responsibility for foreign nationals of 24 July 2014 before the referring court, arguing that he had acquired a right to residence under Article 7 of Decision No 1/80 because his mother had been duly registered as belonging to the labour force for more than three years from 30 June 1998. Thus, Mr Kilic claimed that the protection he enjoys against expulsion under Article 14 thereof had not been sufficiently taken into consideration in weighing the relevant interests.

48 In those circumstances, the Verwaltungsgericht Berlin (Administrative Court, Berlin) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'Can the extension of the residence permit of a family member — who was permitted to join the principal person entitled at a time when the latter was not duly registered as belonging to the labour force — at a date on which the principal person entitled, with whom the family member is lawfully resident, has become an employed person be regarded as constituting an "authorisation to join" for the purposes of Article 7 of Decision No 1/80?'

49 By order of the President of the Court of 27 October 2015, Cases C-508/15 and C-509/15 were joined for the purposes of the written and oral procedure and the judgment.

Consideration of the questions referred

Preliminary observations

50 The present joined cases concern two Turkish nationals, Ms Ucar and Mr Kilic, who, in their capacity as family members, namely the spouse and son of another Turkish national legally resident in Germany, are settled in that Member State, where they have legally resided for more than 10 years, and who have been refused an extension of their residence permits by the German authorities.

51 As a preliminary point, it must be recalled that, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the question referred to it (judgment of 8 December 2011, *Banco Bilbao Vizcaya Argentaria*, C-157/10, EU:C:2011:813, paragraph 18).

52 In the present case, having regard to the facts in the two disputes in the main proceedings, it appears that the first question referred in Case C-508/15 is also relevant in Case C-509/15, so that in order to give the referring court a useful answer which will enable it to decide the latter case before it, the first question in Case C-508/15 must be examined in the context of the factual circumstances in the two disputes in the main proceedings.

The first question in Case C-508/15

53 By its first question in C-508/15, the referring court asks essentially whether Article 7, first paragraph, first indent, of Decision No 1/80 must be interpreted as meaning that that provision confers a right of residence in the host Member State on a family member of a Turkish worker who has been authorised to enter that Member State for the purposes of family reunification and who, from his entry into that Member State has lived with that Turkish worker, where the period of three years during which the latter was duly registered as belonging to the labour market did not follow immediately the arrival of the family member concerned in the host Member State, but is subsequent to that.

54 As a preliminary point, it must be recalled that the provisions of Article 7, first paragraph, of Decision No 1/80 confer, in clear, precise and unconditional terms, the right on the members of the family of a Turkish worker duly registered as belonging to the labour force of the host Member State to respond, subject to priority being granted to workers of the Member States, to any offer of employment after being legally resident there for at least three years (first indent), and the right freely to take up paid employment of their choice in the Member State in whose territory they have been legally resident for at least five years (second indent) (judgment of 17 April 1997, *Kadiman*, C-351/95, EU:C:1997:205, paragraph 27).

55 Thus, under that provision, the family members of a Turkish worker have, subject to compliance with the conditions set out therein, a right of their own of access to the labour force in the host Member State. In that regard, the Court has repeatedly held that the rights granted by the first paragraph of Article 7 to the family members of a Turkish worker with regard to employment in the Member State concerned necessarily imply the existence of a concomitant right of residence for the person concerned, without which the right of access to the labour force and actually to take up paid employment would be rendered totally ineffective (judgment of 19 July 2012, *Dülger*, C-451/11, EU:C:2012:504, paragraph 28 and the case-law cited).

56 It is clear from the wording of that provision that the acquisition of the rights set out in that provision is subject to three cumulative conditions: the person concerned must be a member of the family of a Turkish worker who is already duly registered as belonging to the labour force of the host Member State; that person has been authorised by the competent authorities of that State to join that worker there, and he has been legally resident in that Member State for three or five years (see, to that effect, judgment of 19 July 2012, *Dülger*, C-451/11, EU:C:2012:504, paragraph 29).

57 First of all, as regards the condition that the Turkish worker must be duly registered as belonging to the labour force in the host Member State, the Court has held that that condition relates to the concept of 'legal employment' which appears in Article 6(1) of Decision No 1/80, embraces all workers who have met the conditions laid down by law or regulation in the host Member State and who are thus entitled to pursue an occupation in its territory (see, to that effect, judgment of 18 December 2008, *Altun*, C-337/07, EU:C:2008:744, paragraphs 22, 23 and 28).

58 Next, as far as concerns the condition requiring that the family member concerned is authorised to join the Turkish worker, the Court has stated that that condition seeks to exclude from the scope of Article 7, first paragraph, of Decision No 1/80, family members of a Turkish worker who have entered the host Member State and reside there in breach of that Member State's legislation (see, to that effect, judgment of 11 November 2004, *Cetinkaya*, C-467/02, EU:C:2004:708, paragraph 23).

59 In that context, the Court has held that that provision covers the situation of a Turkish national who, as a member of the family of a Turkish worker who is or was duly registered as belonging to the labour force of the host Member State, has either been authorised to join that worker there to reunite the family or was born and has always resided in that State (judgment of 18 July 207, *Derin*, C-325/05, EU:C:2007:442, paragraph 48 and the case-law cited).

60 Finally, as regards the condition of residence, the Court has decided that Article 7, first paragraph, first indent, of Decision No 1/80 imposes on the family member of a Turkish worker the obligation to reside with the latter for a continuous period of at least three years (judgment of 18 December 2008, *Altun*, C-337/07, EU:C:2008:744, paragraph 30).

61 It is clear from the settled case-law of the Court that that provision requires that the unity of the family, in pursuit of which the person concerned entered the territory of the host Member State, should be evidenced for a specified period by actual cohabitation in a household with the worker and that this must be so until he or she becomes entitled to enter the labour market in that State (see, in particular, judgment of 16 March 2000, *Ergat*, C-329/97, EU:C:2000:133, paragraph 36).

62 In that connection, the Court states that, for the purposes of the acquisition, in accordance with Article 7, first paragraph, of Decision No 1/80, of the right of access to employment in the host Member State by the family member of a Turkish worker, the condition that the latter be duly registered as belonging to the labour force must have been fulfilled for at least the three-year period of cohabitation (judgment of 18 December 2008, *Altun*, C-337/07, EU:C:2008:744, paragraph 37).

63 In the present case, it is common ground that both Ms Ucar and Mr Kilic were authorised to join their respective family members, all Turkish nationals, in the host Member States and that they have always lived with their husband and mother respectively.

64 It is also agreed that Ms Ucar's husband and Mr Kilic's mother have worked in an employed capacity for three years (which confers on their family member the right referred to in Article 7, first paragraph, of Decision No 1/80), not immediately after the arrival of the applicants in the main proceedings in the host Member State, but subsequently.

65 Therefore, it must be determined whether, for the purposes of acquiring the right of residence under Article 7, first paragraph, of Decision No 1/80, the condition that the reference Turkish worker is duly registered as belonging to the labour force must necessarily be fulfilled both at the date of the arrival of the family member concerned in the host Member State and during the three or five years immediately after that date, which is the view of the Authority with responsibility for foreign nationals, relied on by the German Government.

66 It must be made clear, in the first place, that such a condition is not expressly set out in Article 7, first paragraph, of Decision No 1/80.

67 In the second place, Article 7, first paragraph, of Decision No 1/80 must be interpreted in the light of the objective pursued by that provision and the system it establishes.

68 In that connection, it must be recalled that the scheme of gradual acquisition of rights which is provided for in Article 7, first paragraph, of Decision No 1/80 pursues a dual objective. First, before the initial period of three years expires, that provision seeks to enable family members to be with a migrant worker, with a view to thus furthering, by means of family reunification, the employment and residence of the Turkish worker who is already legally integrated in the host Member State. Secondly, that provision seeks to deepen the lasting integration of the Turkish migrant worker's family in the host Member State by granting to the family member concerned, after three years of legal residence, the possibility of himself gaining access to the labour force. The fundamental objective thus pursued is that of consolidating the position of that family member, who is, at that stage, already legally

integrated in the host Member State, by giving him the means to support himself in that State and therefore to establish a position which is independent of that of the migrant worker (judgment of 19 July 2012, *Dülger*, C-451/11, EU:C:2012:504, paragraphs 38 to 40 and the case-law cited).

69 In the light of the general objective pursued by Decision No 1/80, which is to improve, in the social field, the treatment accorded to Turkish workers and members of their families with a view to achieving gradually freedom of movement, the system put in place by, in particular, the first paragraph of Article 7 of that decision is thus intended to create conditions which will promote family reunification in the host Member State (judgment of 29 March 2012, *Kahveci*, C-7/10 and C-9/10, EU:C:2012:180, paragraph 34).

70 An interpretation of Article 7, first paragraph, first indent, of Decision No 1/80, such as that proposed by the German Government, according to which, in circumstances such as those at issue in the main proceedings, solely because the three-year period in which the reference Turkish worker worked in an employed capacity for an uninterrupted period was not immediately after the date of family reunification, a Turkish national, such as Ms Ucar or Mr Kilic cannot rely on the rights conferred by that provision, is excessively restrictive with regard to the objective it pursues.

71 Moreover, it must be observed that since the family members concerned do not fulfil the conditions laid down in Article 6(1) of Decision No 1/80, they have no right to join the labour force in the host Member State, so that they cannot consolidate their position in that State, even though they have regularly resided there for many years and they are, in principle, well integrated, and have lived with the Turkish national from the date of their arrival in the host Member State, and for a period in which the latter worked in an employed capacity for at least three or five years, which is not consistent with the objective of Article 7, first paragraph, of Decision No 1/80.

72 However, nothing in the wording of the latter provision nor, generally in Decision No 1/80, suggests that the intention of the authors of the latter was to exclude the family members of such an important category of Turkish workers of the rights laid down in Article 7, first paragraph, thereof.

73 Furthermore, it must be recalled that, according to settled case-law, the exercise of the rights that Turkish nationals derive from Decision No 1/80 is not subject to any condition relating to the ground on which the right of entry and of residence was originally granted in the host Member State (judgment of 18 December 2008, *Altun*, C-337/07, EU:C:2008:744, paragraph 42 and the case-law cited).

74 In that context, the Court has already held that Article 6(1) of Decision No 1/80 thus covers Turkish nationals who have the status of workers in the host Member State without, however, requiring that they have entered the European Union as workers. They can have acquired that status after their entry into the European Union (see, to that effect, judgment of 24 January 2008, *Payir and Others*, C-294/06, EU:C:2008:36, paragraph 38).

75 In those circumstances, it must be held that, for the purposes of acquiring a right to residence under Article 7, first paragraph, of Decision No 1/80, by a family member of the reference Turkish worker, the condition that the latter is duly registered in the labour force of that Member State must not necessarily be satisfied on the actual date of arrival of the family member concerned in the host Member State or during the three or five years immediately after that date.

76 Having regard to the foregoing considerations, the answer to the first question in Case C-508/15 is that Article 7, first paragraph, first indent, of Decision No 1/80 must be interpreted as meaning that that provision confers a right of residence in the host Member State on a family member of a Turkish worker, who has been authorised to enter that Member State, for the purposes of family reunification, and who, from his entry into the territory of that Member State, has lived with that Turkish worker,

even if the period of at least three years during which the latter is duly registered as belonging to the labour force does not immediately follow the arrival of the family member concerned in the host Member State, but is subsequent to it.

The second question in Case C-508/15 and the question in Case C-509/15

77 In the light of the answer given to the first question in Case C-508/15 there is no need to answer the second question in that case or the question in Case C-509/15.

Costs

78 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:

Article 7, first paragraph, first indent, of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association must be interpreted as meaning that that provision confers a right of residence in the host Member State on a family member of a Turkish worker, who has been authorised to enter that Member State, for the purposes of family reunification, and who, from his entry into the territory of that Member State, has lived with that Turkish worker, even if the period of at least three years during which the latter is duly registered as belonging to the labour force does not immediately follow the arrival of the family member concerned in the host Member State, but is subsequent to it.

[Signatures]