OPINION OF ADVOCATE GENERAL GEELHOED
delivered on 25 May 2004 [1]

I — Introduction

1. In this case the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) has referred to the Court for a preliminary ruling a question concerning the interpretation of Decision No 1/80 of the EEC-Turkey Council of Association [2] (hereinafter 'Decision No 1/80'). More specifically, the national court wishes to ascertain whether the stepson aged under 21 years of a Turkish worker duly registered as belonging to the labour force of a Member State is to be regarded as a member of the family within the meaning of the first paragraph of Article 7 of that decision.

2. The importance of the case stems primarily from the context in which this question has been raised. Turkish workers and the members of their families derive rights in the territory of the European Community from Articles 6 and 7 of Decision No 1/80, a decision which implements the Association Agreement between the EEC and Turkey. [3] Those rights differ fundamentally from those which Community workers and the members of their families derive from Article 39 et seq. EC and Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community [4] (hereinafter 'Regulation No 1612/68'), which is based on Article 40 EC.

3. The national court asks for an interpretation of the term 'member of the family' in Article 7 of Decision No 1/80. The decision itself does not explain this term, and the Court has not yet been called upon to consider its substance. In its judgment in

1 — Original language: Dutch.

2 — Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Council of Association created under the Agreement establishing an Association between the European Economic Community and Turkey.

3 — 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 the Member States of the EEC and the Community on the other hand and concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (Journal Officiel 1964 217, p. 3685; the Agreement is published at OJ 1977 L 361, p. 29).

4 — OJ, English Special Edition 1968 (II), p. 475.

Baumbast and R,[5] however, the Court recognised the rights of the stepchildren of a Community worker on the basis of Regulation No 1612/68. The case here at issue concerns the relevance of this judgment to the rights of a stepchild of a Turkish worker, given the fundamental difference between Decision No 1/80 and Regulation No 1612/68.

4. In addition, the question gives cause for a more precise definition of a stepchild benefiting from Decision No 1/80. At the time of his application for a residence permit (which gave rise to the main proceedings), the applicant in the main proceedings had reached the age of majority under German law, but was not yet 21 years of age. He had also been found guilty of a number of criminal activities.

II — Legal background

A — *The EEC-Turkey Association Agreement*

5. The aim of the Association Agreement, according to Article 2(1) thereof, is to promote the continuous and balanced strengthening of trade and economic relations between the Contracting Parties, including relations concerning workers, by progressively securing freedom of movement for workers (Article 12) and by abolishing restrictions on freedom of establishment (Article 13) and on freedom to provide services (Article 14), for the purpose of improving the standard of living of the Turkish people and facilitating the accession of the Republic of Turkey to the Community at a later date (fourth recital in the preamble and Article 28).

6. To this end, the Association Agreement provides for a preparatory stage to enable the Republic of Turkey to strengthen its economy with aid from the Community (Article 3), a transitional stage during which a customs union is progressively to be established and the economic policies of Turkey and the Community are to be aligned more closely (Article 4) 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).

7. Article 6 of the Association Agreement reads: 'To ensure the implementation and the progressive development of the Association, the Contracting Parties shall meet in a Council of Association which shall act within the powers conferred upon it by this Agreement.' The Council of Association thus has

5 — Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 57.

the power to take decisions to attain the objectives of the Agreement in the cases provided for therein (Article 22(1) of the Association Agreement). Each of the Parties is to take the measures necessary to implement the decisions taken.

8. Article 9 of the Association Agreement stipulates: 'The Contracting Parties recognise that within the scope of this Agreement and without prejudice to any special provisions which may be laid down pursuant to Article 8, any discrimination on grounds of nationality shall be prohibited in accordance with the principle laid down in Article 7 of the Treaty establishing the Community.'

B — *Decision No 1/80*

9. The Council of Association adopted Decision No 1/80 on 19 September 1980. Surprisingly, this decision has never been published in the Official Journal.[6] Article 6(1) of the decision states:

'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.'

10. Of prime importance in this case is Article 7, which governs the position of the members of the family of a Turkish worker

6 — The Court has not seen this deficiency in the adoption of the decision as a reason to question its substantive legal force.

duly registered as belonging to the labour force of a Member State. Family members who have been authorised to join the worker:

— are to 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 the Member State concerned;

— are to 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.

11. Article 14(1) reads: 'The provisions of this section [7] shall be applied subject to limitations justified on grounds of public policy, public security or public health.'

C — *Regulation No 1612/68*

12. Article 10 of the Regulation reads:

'1. The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:

(a) his spouse and their descendants who are under the age of 21 years or are dependants;

(b) dependent relatives in the ascending line of the worker and his spouse.

2. Member States shall facilitate the admission of any member of the family not coming within the provisions of paragraph 1 if dependent on the worker referred to above or living under his roof in the country whence he comes.

7 — Articles 6 and 7 are included in this section of the decision.

3. For the purposes of paragraphs 1 and 2, the worker must have available for his family housing considered as normal for national workers in the region where he is employed; this provision, however, must not give rise to discrimination between national workers and workers from the other Member States.'

13. I would also refer, finally, to Article 11 of the Regulation, which stipulates:

'Where a national of a Member State is pursuing an activity as an employed or self-employed person in the territory of another Member State, his spouse and those of the children who are under the age of 21 years or dependent on him shall have the right to take up any activity as an employed person throughout the territory of that same State, even if they are not nationals of any Member State.'

III — Facts

A — *The facts in the main proceedings*

14. Engin Ayaz, the applicant in the main proceedings, was born on 24 September 1979, is unmarried and is a Turkish national. On 19 May 1991 he entered the territory of the Federal Republic of Germany from Turkey with his mother to live with his mother and stepfather. The stepfather has been legally resident in Germany as a worker since the 1980s.

15. According to the order for reference, the mother is not in active employment; she has never received an Arbeitserlaubnis or Arbeitsgenehmigung (work permit).

16. Since his arrival in Germany Ayaz has lived, apart from a brief interruption from the late autumn of 1999 until early 2000, together with his stepfather and his mother in a shared dwelling. During this period he completed Hauptschule (preparatory intermediate vocational education) and then took a one-year course of vocational training. Subsequently, he began (but did not complete) two courses of vocational training, was unemployed at times and worked as a driver at other times. Between 1997 and 2001 he was convicted of a number of criminal offences, varying from driving without a licence to aggravated theft, causing bodily harm and rape.

17. This brings me to the plaintiff's residence status. Engin Ayaz had a residence permit for a limited period under provisions of the German legislation on aliens concern-

ing family unity and the protection of family life. [8] Then, on 8 July 1999, he submitted an application for a residence permit for an indefinite period. No formal decision was taken on that application. On 24 March 2000 he applied for a limited extension of his residence permit. By decision of 9 August 2000 the Landratsamt Rems-Murr-Kreis (Rems-Murr district administration) rejected the application and ordered the applicant to leave the Federal Republic within one month following notification of the decision under threat of deportation to Turkey.

18. On 14 September 2000 the applicant lodged an administrative appeal against that decision with the Regierungspräsidium Stuttgart (Stuttgart regional administration). At the same time he applied to the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) for the grant of interim relief. By decision of 30 October 2000, the Verwaltungsgericht ruled that the administrative appeal lodged by the applicant had suspensory effect.

19. By decision of 8 February 2002, the Regierungspräsidium Stuttgart rejected the administrative appeal as unfounded on the basis of a statement of reasons which includes the following:

— The criminal offences of which the applicant had been convicted were particularly serious. There was no doubt, according to the Regierungspräsidium, that the applicant could not or would not abide by German law. He therefore posed a high and real risk to public policy and public security. The offences committed by him were evidence of personal conduct constituting a genuine and sufficiently serious threat affecting one of the fundamental interests of society.

— Expulsion did not infringe Article 6 of the German Grundgesetz (Basic Law) or Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), since the applicant was of full age and unmarried.

— The applicant was not entitled to rely on the first paragraph of Article 7 of Decision No 1/80. Although he maintained in the appeal proceedings that his mother had worked regularly since 1996, he produced only a wage certificate for January 2001, and no other proof had been received to date. It must therefore be assumed that his mother had not been duly registered as available for work.

20. On 5 March 2002 the applicant brought an action before the Verwaltungsgericht Stuttgart, which, while considering the action, raised the question submitted for a preliminary ruling to which reference is made in point 1.

8 — In particular, Articles 17 and 22 of the Ausländergesetz (Law on Aliens).

B — *The views of the national court*

21. The national court begins by stating as the reason for its reference that neither German law (specifically, Articles 47 and 48 of the Ausländergesetz) nor the ECHR opposes expulsion.

22. If, on the other hand, the applicant falls within the scope of the first paragraph of Article 7 of Decision No 1/80, he can rely on the special protection against expulsion provided in Article 14(1) of that decision. Expulsion is then possible only if, apart from the disturbance of public policy which any infringement of the law involves, there is a genuine and sufficiently serious threat to one of the fundamental interests of society. The national court bases this — strict — interpretation of Article 14(1) of Decision No 1/80 on the *Nazli* judgment. [9]

23. The national court takes the view that the conditions specified in Article 14(1) of Decision No 1/80 have not been satisfied in this instance. Although Ayaz had been convicted on a number of occasions, it could not be assumed that he represented so concrete and present a threat to public policy and public security that one of the fundamental interests of society was affected. Nor could this threat be inferred from the two criminal cases pending before the Amtsgericht Waiblingen (Waiblingen Local Court), the court requesting the preliminary ruling not being convinced that the applicant was in fact guilty of the offences for which he was being prosecuted.

24. For the resolution of the dispute it is therefore important to know whether the applicant falls within the scope of Article 7 of Decision No 1/80. As her alien's file revealed that his mother could not at any time have been classified as a worker, it must be determined whether the applicant is a member of his stepfather's family.

25. To determine this, the national court gives an explanation of the text of the articles of Regulation No 1612/68 of greatest relevance to the interpretation of Article 7 of Decision No 1/80. I emphasise that its explanation concerns the German language version: on the basis of Article 11 of Regulation No 1612/68 the applicant is not a member of his stepfather's family since that provision refers only to the children (under 21 years of age) of 'a national'. The fact that, like Decision No 1/80, Article 11 of Regulation No 1612/68 concerns access to the labour market argues for the application of that article. If, on the other hand, the concept of family member as used in Article 10(1) of Regulation No 1612/68 is taken as the basis, the applicant falls within the scope of Decision No 1/80, since Article 10 uses in respect of children, unlike in connection with the spouse, not the possessive pronoun 'sein' [his] but merely the definite article 'die'

9 — Case C-340/97 [2000] ECR I-957, paragraph 55 et seq.

[the]. Thus children other than the couple's own offspring would also benefit. That view is predominant in German academic writing and case-law. As the applicant was not yet 21 years of age when his last residence permit expired (31 October 1999), it is irrelevant to the assessment whether the stepfather provides or provided for the plaintiff's maintenance since Community law does not require the payment of a contribution towards maintenance.

C — *Proceedings before the Court*

26. In this case written observations have been lodged by the defendant in the main proceedings (through the Landratsamt Rems-Murr-Kreis), the German Government and the Commission. The defendant argues that stepchildren may not be regarded as members of the family within the meaning of Article 7 of Decision No 1/80. The German Government and the Commission, on the other hand, take the view that a stepchild under 21 years of age does fall within this definition, the German Government adding that the stepchild must have been authorised to join the Turkish worker under the national law of the Member State.

IV — Assessment

A — *Scope*

27. The national court phrases its question in general terms. It seeks to ascertain whether a stepson who is not yet 21 years old must be regarded as a member of the family for the purposes of Article 7 of Decision No 1/80. It is thus asking a simple question, abstracting from the special circumstances of the case. In asking for this interpretation, it proceeds from an analogy with concepts defined in Regulation No 1612/68 (and especially Articles 10 and 11 thereof). This is natural since the Court has ruled in various judgments that the principles accepted in Article 39 et seq. EC must be extended, so far as possible, to Turkish nationals who enjoy the rights conferred by Decision No 1/80. [10]

28. In the meantime, shortly after receiving the reference for a preliminary ruling in the present case, the Court recognised in its judgment in *Baumbast and R*, [11] in connection with Regulation No 1612/68, certain rights of the stepchildren of Community workers. It might therefore be thought that the question submitted by the national court could be dealt with quickly, by reference to *Baumbast and R.*

10 — The most recent of these judgments being that in Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 72.

11 — Cited in footnote 5, point 57. I will consider this in greater depth later.

29. As we know, however, a simple question does not, by definition, elicit a simple answer inferred, without further ado, from existing case-law. This is especially true in the present case, where a more or less mechanical extrapolation from a ruling by the Court, made in a case concerning the movement of persons within the Community, would lead to a result which would be unsatisfactory because it would signify a failure to recognise the fundamental difference between Article 39 et seq. EC and Regulation No 1612/68 on the one hand and Decision No 1/80 on the other. That difference forms the very foundation of my Opinion.

30. Article 39 et seq. EC focus on freedom of movement for workers and require the Member States, subject to a number of strict limitations in the area of public policy, public security and public health, to grant a right of residence derived from Community law to any national of another Member State who is covered by the broadly interpreted concept of worker. [12]

31. Decision No 1/80 defines rights of a completely different and far less fundamental nature. Under Article 6 of Decision No 1/80 workers of Turkish nationality may claim certain rights in the labour market if they are legally resident in a Member State and are employed there in accordance with national immigration and employment legislation. Article 7 of that decision also grants rights in the labour market to family members of those nationals, who have acquired a right under national law to reside with the national concerned in that Member State. The family members enjoy these rights even if they are not themselves already working in the Member State.

32. Thus Decision No 1/80 does not make any provision in the area of freedom of movement for workers. This is not altered by the fact that Articles 6 and 7 of the decision may form one of the first steps towards the progressive establishment of freedom of movement for workers, one of the objectives of the Association Agreement between the EEC and Turkey.

33. I therefore consider that an answer to the question submitted can be given only after a thorough analysis of the substance and scale of the protection afforded to Turkish workers and the members of their families by Decision No 1/80, with account also being taken of the Court's case-law. My analysis comprises two parts: in part B I describe the characteristics of the system established by Articles 6 and 7 of Decision No 1/80; in part C I consider more specifically the rights which the children of a duly registered Turkish worker derive from Article 7.

12 — See, for example, the recent judgment in Case C-138/02 *Collins* [2004] ECR I-2703, paragraph 26 et seq.

B — *The system established by Articles 6 and 7 of Decision No 1/80*

34. This case concerns the expulsion of a third-country national from a Member State. [13] In principle, the expulsion of third-country nationals comes within the autonomous competence of the Member States, at least until the European Community has taken the measures on immigration policy provided for in Article 63(3) EC. The German authorities wish to take advantage of this autonomous competence, and the third-country national concerned is therefore relying on the privileged position he claims to enjoy as a member of a Turkish worker's family. He is thus relying on an exception to the general rule that the Member States still have extensive powers of their own in the pursuit of their immigration policies.

35. In the system established by Articles 6 and 7 of Decision No 1/80 four steps need to be distinguished.

— Step 1: the admission of Turkish workers to the Member States' territory and the conditions relating to their initial employment in that territory are governed by national law.

— Step 2: subsequent access to the labour force after a Turkish worker has been legally employed in a Member State for at least one year. That worker then derives rights not only from national labour law but also directly from Article 6 of Decision No 1/80.

— Step 3: the authorisation to reside granted to members of Turkish workers' families and their access to the labour force during the first three years of residence. In this phase they are subject only to the national law of the Member States. None the less, the exercise of the autonomous competence of the Member States in this phase is subject to the ECHR and to Community law, within the limits indicated below.

— Step 4: subsequent access to the labour force after the member of a Turkish worker's family has been legally resident in the Member State for at least three years. The family member then derives rights not only from national labour law but also directly from Article 7 of Decision No 1/80.

36. As regards Step 1, it is settled case-law that Decision No 1/80 does not encroach upon the power of the Member States to lay

13 — See also my Opinion in Case C-109/01 *Akrich* [2003] ECR I-9607 and especially the introduction to that Opinion.

down rules on the access of Turkish nationals to their territory and the conditions relating to their initial employment. [14] The Member States continue to have the power to make their own policy when it comes to attracting Turkish workers to fill vacancies in the national labour force. As Advocate General Mischo rightly said in his Opinion in the *Ergat* case, [15] Turkish workers have no right of residence. And they acquire rights based on the EEC-Turkey Association only after they have worked in the territory of a Member State for one year.

37. This being the case, not a great deal can be said about Step 1 from the angle of Community law. Turkish workers are no different from any other third-country nationals. They do not derive any particular rights from Community law.

38. As regards Step 2, the Association rules govern only the situation of Turkish workers who are duly registered as belonging to the labour force of the host Member State for a certain period (i.e. at least one year) in accordance with the conditions set out in Article 6 of Decision No 1/80. They then derive certain rights from Decision No 1/80, which must make it possible for them to continue to make their way in the labour market. Those rights become progressively stronger, as is evident from Article 6(1). The grant of rights in the labour market necessarily results in those concerned enjoying a right of residence associated with those work-related rights. Those rights could not otherwise be fully effective. [16]

39. Turkish workers do not have the right to move freely within the Community, and they consequently have no rights in other Member States. [17] Decision No 1/80 gives Turkish workers certain privileges in the labour market of the Member State in which they are legally employed. The decision entails no less, but no more either. A Turkish worker's right of residence is not therefore a fundamental right conferred on him, similar to the right which every citizen of the Union enjoys under Article 18 EC, [18] but merely a necessary corollary of his rights as a worker. This is also clear from the fact that the Association provisions assume that the Turkish worker's residence will be temporary. No provision is made, for instance, as in Article 2 of Regulation No 1251/70, for him to remain in the Member State concerned after reaching pensionable age. [19]

14 — See, most recently, Joined Cases C-317/01 and C-369/01 *Abatay and Others and Nadi Sahin* [2003] ECR I-12701, paragraph 63 et seq.

15 — See the Opinion in Case C-329/97 *Ergat* [2000] ECR I-1487, paragraph 47.

16 — See inter alia *Nazli* (cited in footnote 9), paragraph 28.

17 — See, in particular, Cases C-171/95 *Tetik* [1997] ECR I-329 and C-37/98 *Savas* [2000] ECR I-2927.

18 — See, in this context, *Baumbast and R* (cited in footnote 5), paragraph 81 et seq.

19 — Regulation (EEC) No 1251/70 of the Commission of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402).

40. To understand Article 6 properly, it is necessary to consider the objectives of the Association Agreement.[20] To cite Article 2(1): '[t]he aim ... is to promote the continuous and balanced strengthening of trade and economic relations between the Parties ... .' Decision No 1/80 covers three areas to this end: trade in agricultural products, movement for workers and economic and technical cooperation. The rules on these areas are meant to help strengthen the economic ties between the Community and Turkey.[21]

41. The main element of Article 6 of the decision is, as I see it, that it seeks to give Turkish workers certain, more specific rights in the labour market after they have been admitted to a Member State and begin to work there. They must be able to advance in the labour market and so to change their employer. Their position in the labour market should be as similar as possible to that of a worker who is a national of the Member State itself.

42. The advancement of a Turkish worker naturally takes real shape only if the members of his family may join him and they too may develop as independent individuals. In other words, where the circumstances of a Turkish worker are not favourable enough for him to be joined by his family, he may be prevented from taking advantage of the rights granted to him in so many words by Article 6 of Decision No 1/80. I also see in this light the rights conferred on family members by Article 7 of Decision No 1/80.

43. Family unity in the host Member State was not, then, the primary social aim when Decision No 1/80 was adopted, but over the years it has come to play a part in the interpretation which the Court has given to the decision.

44. Step 3: in essence, the rights of a member of a worker's family are similar to the worker's own rights. The family member does not have a right under Decision No 1/80 to be admitted to the Member State in which the worker is duly registered as belonging to the labour force: in this phase the national legislature is autonomous. And during the first three years after being admitted the family member's legal position continues to be governed by national law, with the proviso, however, that the freedom of the national authorities is restricted by the rules on family unity. They must take account of Article 8 ECHR (and the case-law relating thereto) and of the privileged status enjoyed by the worker himself as a

20 — For further details see point 5 above.

21 — See also the provisions of the Association Agreement referred to in point 6.

result of the EEC-Turkey Association, by which he is inter alia protected against discrimination on the ground of his Turkish nationality. [22]

45. I refer in this context to the *Kadiman* judgment. According to the Court, the purpose of the first paragraph of Article 7 'is to favour employment and residence of Turkish workers duly registered as belonging to the labour force of a Member State by ensuring that their family links are maintained there.' [23] The Court continues: 'the system established by the first paragraph of Article 7 is designed to create conditions conducive to family unity in the host Member State, first by enabling family members to be with a migrant worker and then by consolidating their position by granting them the right to obtain employment in that State.' The Court therefore appears to consider Article 7 relevant in the first phase, before the period of three years of residence. This also appears to be the assumption in the Opinion of Advocate General Léger in the *Akman* case. He emphasises that the purpose of the first paragraph of Article 7 of Decision No 1/80 (in contrast to the second paragraph of Article 7) is clearly to promote family unity. [24]

46. I note that in the interpretation of the first paragraph of Article 7 increasing importance has been attached to the aspect of family unity, but that the decision does not as a result create a right to family unity. I refer to the objective of the Association Agreement. What is decisive is the unequivocal wording of the provision: the family member does not have a right to be admitted to the Member State in which the worker is legally employed. The first paragraph of Article 7 refers, after all, only to a possibility of admission ('who have been authorised to join him'). Only after the family has been reunited do the family members derive rights from the decision.

47. Viewed from the angle of the Turkish worker, there will be many cases of Turkish nationals moving to a Member State to work there. The family stays behind. After some time has passed, the worker decides to continue working in the Member State for a longer period. He then also decides to have his family join him. However, under Decision No 1/80 he does not have the automatic right to be joined by the members of his family. This is primarily a matter for national immigration law (see point 44).

48. This brings me to Step 4. The first paragraph of Article 7 of Decision No 1/80 confers certain rights in a Member State's

22 — I will confine myself here to pointing out that the policy-making freedom of the national legislature or national immigration authorities is not unrestricted. It would be going too far to indicate in this Opinion precisely by what criteria the Member State is bound when it refuses to admit a member of a Turkish worker's family: this is not the issue in the Ayaz case.

23 — Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 34.

24 — Point 48 et seq. of the Opinion in Case C-210/97 *Akman* [1998] ECR I-7519.

labour market on persons belonging to the family united or reunited in that Member State. Those rights are comparable to the worker's own rights. Firstly, those persons do not acquire their rights immediately: they must have been settled in the Member State for a certain period. Secondly, the longer their period of residence, the stronger their position in the labour market. Thirdly, family members also have a right of residence. The right of residence is, after all, essential for access to and the exercise of any paid activity. [25]

49. The aim of these rules is to prevent Member States from prohibiting family members of Turkish workers to find employment. With a view to the advancement of the Turkish worker himself, the members of his family — whether his spouse or one of his children — must also have access to the labour market. In this sense the rights of the family members are derived from the rights of the worker himself. However, the decision regards family members expressly as independent individuals on whom the right to work is thus conferred.

C — *The rights of children under the first paragraph of Article 7 of Decision No 1/80*

50. The first paragraph of Article 7 of Decision No 1/80 is to the advantage of various categories of family members who have been authorised to join the worker. I make a distinction between the worker's spouse, children who are still minors and other members of the family who are dependent on the worker, such as the Moroccan woman living with her son-in-law in *Mesbah*. [26]

51. The rights of the Turkish worker's spouse are comparatively easy to interpret. After a certain period of residence in the Member State concerned the spouse has access to the labour market under the first paragraph of Article 7 of the decision. She must have lived under the same roof as the worker in the Member State for at least three years. [27] Once she has been legally employed for at least one year, she also has independent rights under Article 6 of Decision No 1/80 (in that case the spouse must also have Turkish nationality).

52. Children who are still minors have the same rights as the spouse. In addition, they

25 — See (with regard to the second indent of the first paragraph of Article 7 of Decision No 1/80) *Ergat* (cited in footnote 15), paragraph 40.

26 — Case C-179/98 [1999] ECR I-7955.

27 — This can be deduced from *Kadiman* (cited in footnote 23), inter alia paragraphs 44 and 54.

have a right under the second paragraph of Article 7 if they have completed a course of vocational training. There is one essential difference, however: at a given moment they no longer form part of the worker's family, because, for example, they have reached the age of majority. I distinguish three situations:

— the child continues to be dependent on the worker after reaching the age of majority, where, for example, he studies at the expense of his parents: he then continues to fall within the scope of the first paragraph of Article 7;

— the child is employed in a Member State's normal labour market: he then derives rights of his own from Article 6;

— the child is not (yet) employed and is not dependent on the worker. In this situation the child in principle loses his rights under Decision No 1/80 and national law governs his access to the labour market.

53. The third situation requires some explanation. In principle, a person who derives his right of access to the labour market from his status as a member of a worker's family loses that right once he no longer enjoys that status. I would refer to a further nuance here: in the context of Article 6(1) of Decision No 1/80 the Court has recognised a Turkish worker's right to be able actively to seek new employment in the host Member State for a reasonable period and in this connection to enjoy a right of residence during that period. Article 6(1) could not otherwise be fully effective. [28] With a similar line of reasoning, a child reaching the age of majority can be granted a period to seek employment.

D — *Significance of the difference in content and scope between Decision No 1/80 and Regulation No 1612/68*

54. As I have explained above, Decision No 1/80 differs substantially in content and scope from the Community legislation on freedom of movement within the Community for workers. The decision enables a Turkish worker (and the members of his family) to escape the force of the Member States' autonomous national immigration law to only a limited extent and gives him far less extensive rights than his Community

28 — *Tetik* (cited in footnote 17), paragraphs 30 and 31. The Court bases its reasoning on the case-law concerning Article 39 EC and, in particular, Case C-292/89 *Antonissen* [1991] ECR I-745, paragraphs 13, 15 and 16.

counterpart. As Advocate General Mischo says in his Opinion in *Nazli*, 'there can therefore be no question of asserting as a principle that the former must be treated in all respects like the latter.' [29]

55. On the other hand, according to the Court's settled case-law, the principles accepted in the context of Article 39 et seq. EC for the benefit of citizens of the European Union — as elaborated inter alia in Regulation No 1612/68 — must be applied as far as possible to Turkish nationals who enjoy the rights granted by Decision No 1/80.

56. The case-law essentially seeks to give equal value to the principles on which Regulation No 1612/68 and Decision No 1/80 are based. I infer this inter alia from *Wählergruppe Gemeinsam*, [30] which explicitly prohibits discrimination against Turkish nationals on the ground of their nationality. Admittedly, the Court goes a step further when it says that, where texts are almost identical, the same interpretation must be adopted. [31] However, this view cannot, to my mind, constitute more than a presumption of the same interpretation.

57. I refer to the settled case-law according to which a mere similarity in the wording of a provision of one of the Treaties establishing the Communities and of an international agreement between the Community and a non-member country is not sufficient in itself to give to the wording of that agreement the same meaning as that of the Treaty provision. The extension of the interpretation of a provision in the Treaty to a comparably, similarly or even identically worded provision of an agreement concluded by the Community with a non-member country depends, in particular, on the aim pursued by each provision in its own particular context, and a comparison between the objectives and context of the agreement and those of the Treaty is of considerable importance in that regard. [32]

58. As I have said, the aim pursued by Decision No 1/80 differs fundamentally from the Community legislation on freedom of movement for workers. In my view, this difference makes it possible for the group of family members deriving benefit to be

29 — Cited in footnote 9, point 67 of the Opinion.

30 — Cited in footnote 10.

31 — The Court says this inter alia in paragraph 56 of the *Nazli* judgment (cited in footnote 9).

32 — Case C-162/00 *Pokrzeptowicz-Meyer* [2002] ECR I-1049, paragraphs 32 and 33.

restricted to a greater extent than is possible under Regulation No 1612/68 and for each stepchild of a Turkish worker, who has not yet reached the age of 21 years, not to be granted automatically, according to the letter of Regulation No 1612/68, the rights referred to in Article 7 of Decision No 1/80.

59. To summarise, the text of Regulation No 1612/68 and the interpretation of that text by the Court form an important point of departure for the interpretation of Decision No 1/80, but they do not determine that interpretation. After all, the aim of Decision No 1/80 differs fundamentally from that of Regulation No 1612/68.

60. The difference of interpretation can also be deduced by analogy from *Kaba*.[33] According to this judgment, the Member States are entitled to rely on any objective difference there may be between their own nationals and those of other Member States when they lay down the conditions under which indefinite residence permits are to be granted to the spouses of the latter. That is to say, as Community law does not confer on Turkish workers the same rights as on Community workers, a Member State may grant a less favourable legal position to those enjoying rights as a result of their relationship with those Turkish workers.

33 — Case C-356/98 [2000] ECR I-2623.

E — *Answering the national court's question*

61. The national court's question is brief: is a stepson aged under 21 years of a Turkish worker a member of the family for the purposes of Article 7 of Decision No 1/80? As I have already indicated (inter alia in point 29), this question cannot be answered with a simple 'yes' or 'no'. I see the problem as follows: Article 7 of Decision No 1/80 grants certain rights to admitted members of the families of legal Turkish workers, but does not define the category of persons who benefit. The Court must fill this gap, with due regard for the content and scope of the rules concerned and can, in this context, find connecting factors in comparable concepts used in comparable cases.

62. The first connecting factor is the text of Articles 10 and 11 of Regulation No 1612/68. The national court has pointed to the difference in the wording of those two articles. Both the defendant in the main proceedings and the Commission discuss this point in the written observations they have submitted to the Court. Their comments have prompted me to compare the various language versions of Articles 10 and 11 of Regulation No 1612/68. In view of the time at which the regulation was adopted — in the late 1960s, when the EEC had only six

Member States — I was able to confine myself to four language versions. This comparison of texts does not, as is evident from the following considerations, produce an unequivocal answer to the question submitted by the national court.

63. To begin with Article 10 of Regulation No 1612/68, it might be deduced from the German version that children of the worker's spouse are also covered since that provision refers to the worker, *his* spouse and *the* children. The Dutch version too alludes to this. Article 10 refers to *his* spouse and — without any further specification — blood relations. The other language versions, however, indicate precisely the opposite view. In the Italian and French versions Article 10 refers to the worker, his spouse and *their* children ('i loro discendenti' and 'leurs descendants'), which might indicate that it concerns only their own offspring.

64. Article 11 of the German text refers to 'Kinder dieses Staatsangehörigen' [the children of that national], which seems to imply a restriction to the children of the worker. The Dutch, French and Italian versions, on the other hand, use only neutral definite articles ('de', 'les' and 'i', respectively).

65. This comparison of texts can lead, in my view, to only one conclusion: the text of Articles 10 and 11 of Regulation No 1612/68 does not allow of an unambiguous answer regarding the position of stepchildren.

66. The second connecting factor is to be found in *Baumbast and R* inasmuch as it recognises that a stepchild of a Community worker has a right of residence. In paragraph 57 of its judgment the Court states: 'Furthermore, the right of "his spouse and their descendants who are under the age of 21 years or are dependants" to install themselves with the migrant worker must be interpreted as meaning that it is granted both to the descendants of that worker and to those of his spouse. To give a restrictive interpretation to that provision to the effect that only the children common to the migrant worker and his spouse have the right to install themselves with them would run counter to the aim of Regulation No 1612/68 noted above.' [34]

67. First of all, it should be remembered that the Court's judgment in *Baumbast and R* was given in a case in which, according to the order for reference, the parties to the main proceedings had agreed that the stepchild

34 — Cited in footnote 5.

concerned was to be treated as a member of the family. [35] The Court was therefore able to confine itself to briefly reflecting on the legal position of the stepchild and did not need to rule on the merits of that aspect.

68. In addition and, to my mind, more importantly, mechanical application would not do justice to the text of the *Baumbast and R* judgment, in which the Court detects that sameness in the light of the objective of Regulation No 1612/68 and so not with an eye to the legal framework of Decision No 1/80. In paragraph 50 of the *Baumbast and R* judgment the Court recalls [36] that 'the aim of Regulation No 1612/68, namely freedom of movement for workers, requires, for such freedom to be guaranteed in compliance with the principles of liberty and dignity, the best possible conditions for the integration of the Community worker's family in the society of the host Member State.' The regulation seeks to create the best possible conditions for freedom of movement for workers. An essential condition is that the family must also be able to integrate in the host Member State. As I have explained in point 32, Decision No 1/80 does not provide for freedom of movement for workers.

69. As there is no reason to make the number of benefiting family members larger than the number who really contribute to the achievement of the aim of the first paragraph of Article 7 of the decision, there is no compelling reason to apply the *Baumbast and R* judgment analogously.

70. I derive the third connecting factor from the *Mesbah* judgment, [37] which concerns the mother-in-law of a Moroccan worker. In that judgment the Court holds that the term 'members of the family,' as used in the EEC-Morocco Cooperation Agreement, [38] is not restricted to blood relations. It also includes relations by marriage — such as the mother-in-law in the *Mesbah* case — on the express condition that such persons actually live with the worker.

71. I draw two conclusions from this judgment. Firstly, the term *member of the family* may not be interpreted too restrictively in the case of non-Community workers as meaning that only blood relations have rights. If a broader interpretation applies in the case of workers from Morocco, a country

35 — See paragraph 17 of the judgment.

36 — With a reference to Case C-308/89 *Di Leo* [1990] ECR I-4185, paragraph 13.

37 — Cited in footnote 26, inter alia paragraph 44.

38 — See Article 41(1) of the Cooperation Agreement between the European Economic Community and the Kingdom of Morocco, signed in Rabat on 27 April 1976 and approved, on behalf of the Community, by Council Regulation (EEC) No 2211/78 of 26 September 1978 (OJ 1978 L 264).

with which less ambitious cooperative links exist than with Turkey, [39] it should be all the more applicable to members of Turkish workers' families.

72. Secondly, the Court considers it important for the worker and the relation by marriage to be living under the same roof, although I would point out that the *Mesbah* case concerns an adult mother-in-law, while the case here under discussion concerns a stepchild under 21 years of age. The *Mesbah* judgment in any case opens the way for the imposition of an additional requirement to be satisfied in the case of family members related by marriage rather than its simply being assumed that they belong to the worker's family.

F — *The two decisive criteria: when must a stepson be regarded as a member of the family for the purposes of Article 7 of Decision No 1/80?*

73. I now come to the essence of the answer: when does Decision No 1/80 give stepchildren a right of access to employment in the Member State because of their status as family members? I make a distinction between the establishment and the loss of the right.

74. Turning first to the establishment of the right, as the aim of Article 7 of Decision No 1/80 is to promote the economic integration of Turkish workers duly registered as belonging to a Member State's labour force, the determining factor is whether a family member really belongs to the worker's family. It must be possible for the stepchild's rights to contribute to that economic integration. In other words, if the stepchild did not derive any rights from Article 7, the worker's integration would be hampered. And this can be the case only if a family bond genuinely emerges.

75. Stepchildren must be regarded as really belonging to the worker's family if they:

— live under the same roof as the worker, or have lived under the same roof as

39 — The Cooperation Agreement with Morocco extends to the consolidation of relations between the Community and Morocco and is not geared to subsequent accession, unlike the agreement with Turkey.

him for at least three years, in a family context;

— are not yet 18 years of age, unless they are entirely dependent on the worker.

76. I deduce the first criterion from the *Kadiman* judgment.[40] The Member States may, the Court held, require that a family member — in this case, a spouse no longer living with the Turkish worker — has actually lived with a worker in a family context for a period of three years. If this is not the case, the Member States may refuse to extend the family member's residence permit or to grant him access to the labour market. Objective circumstances — particularly in connection with the distance between the worker's residence and the place of work of the family member or a vocational training establishment attended by the latter — may result in Member States having to waive the cohabitation requirement. I would also point out that Decision No 1/80 itself requires children to live together with their parents in the context of access to education for Turkish children. Pursuant to Article 9 of the decision those children have access to education only if they are residing legally with their parents in a Member State.

77. If cohabitation may be required in the case of one of the worker's own children, then it plays a role *a fortiori* where a stepchild of the worker is concerned. A marriage between a worker and a person who already has children does not always forge the same link between the worker and the children related to him as a result of that marriage. That link may differ somewhat in nature, as a function, for example, of the child's age, the married partner's relationship to the child (does that parent primarily have the parental rights or do those parental rights rest primarily with his or her former partner?), the financial responsibility for the child, whether, before this marriage was contracted, the child lived with the married partner in a family context, whether the intention is that after the marriage the child is to live with the newly married couple and possibly even whether the child itself is already married. If cohabitation is required for the purpose of the application of Article 7 of Decision No 1/80, a right may be conferred only on stepchildren who may be assumed really to belong to the worker's family.

78. The second distinguishing criterion is the stepchild's age. In Article 10 of Regulation No 1612/68 Community law imposes an age limit of 21 years. Below that age limit the law does not require a child to be dependent on the worker. The age limit of 21 years corresponds to the legal age of majority applicable in many Western European coun-

40 — Cited in footnote 23, paragraphs 40 to 46.

tries at the time when the regulation was adopted. During the 1970s and 1980s many of those countries lowered the age limit to 18 years. This was true, for example, of the United Kingdom, Germany, France, Italy, Belgium and the Netherlands. Member States thus regard persons as being independent from the age of 18 years, which is reflected, for example, in the requirement that from that time they themselves apply for a residence permit.

79. In short, the age limit of 21 years no longer has any foundation either in the reality of society or in the legislation of the Member States. This statement does not, to my mind, imply that rights which the children or stepchildren of Community workers between the ages of 18 and 21 years derive directly from Article 10 of Regulation No 1612/68 can no longer be claimed. What that statement does imply is that the age limit can no longer serve as a relevant basis for reasoning by analogy. I consider the most obvious solution to be the imposition of an age limit of 18 years. Stepchildren older than 18 years may acquire the privileged position only if they are dependent on the Turkish worker (like the mother-in-law in the *Mesbah* judgment). [41]

80. As regards, secondly, the loss of the right: the right based on Article 7 is lost as soon as a stepchild reaches the age of 18 years unless he is dependent on the Turkish worker. If he cannot himself derive any rights from Article 6 of Decision No 1/80, the stepchild must have an opportunity to seek employment in the host Member State for a reasonable period. [42]

81. What does all this mean for Engin Ayaz, the applicant in the main proceedings? According to the order for reference, he moved to Germany with his mother from Turkey in 1991 and certainly lived with his stepfather and his mother until the autumn of 1999. He would thus appear to satisfy the first of the criteria I have set. As regards the age criterion, Ayaz made his application for a residence permit for an indefinite period on 8 July 1999. At that time he was 19 years old and exceeded the age limit I have suggested. I also deduce from the file that, to a significant extent at least, he earns his own living. He is not therefore covered by the term 'member of the family' for the purposes of Article 7 of Decision No 1/80.

41 — See paragraph 70.

42 — For this aspect see paragraph 53.

G — *The plaintiff's personal conduct*

82. The question that remains is whether any importance must be attached to the fact that Engin Ayaz has appeared before the German criminal courts on a number of occasions. As I have said, the national court does not consider the allegations serious enough to be included in the question referred for a preliminary ruling. It is not for the Court to adjudicate in preliminary ruling proceedings on a finding of fact by the national court. I shall not therefore discuss further the seriousness of Ayaz's conduct, although a reading of the order for reference causes some doubt about the national court's ruling. The list of offences in that order cannot, in my view, be simply brushed aside with the conclusion that they do not represent any threat to public policy, a view which was also taken, moreover, by the Regierungspräsidium Stuttgart. [43]

83. I shall now briefly consider the consequences of the plaintiff's conduct for the application of Decision No 1/80 — unnecessarily, since the national court merely asks whether a stepson should be regarded as a family member. Criminal behaviour may lead to a change of family relationships, but not to a change of family ties as such. The plaintiff's conduct is not therefore relevant when it comes to determining whether a stepson should be regarded as a family member.

84. Member States have considerable discretion, which indeed they need, in the implementation of their immigration policies. Given the huge numbers of potential immigrants, the Member States must be able to choose whom they want to admit to their territory. This being the case, their autonomous power also includes the ability to deny persons who have committed offences access to their territory or to expel them, with due regard in either case, of course, for such international treaties as the ECHR. In this context they are not in principle, it seems to me, bound by the strictly interpreted Community criterion of posing an actual threat to public policy. [44]

85. This discretion is somewhat reduced where someone is protected by Decision No 1/80. In *Nazli* [45] the Court gives, with respect to a Turkish worker, an analogous interpretation to the strictly interpreted rules applicable to Community workers. Expulsion is permitted only where that measure is justified because personal conduct indicates a specific risk of new and serious prejudice to public policy.

43 — See point 19.

44 — See, for example, Case C-100/01 *Olazabal* [2002] ECR I-10981, paragraph 39.

45 — Cited in footnote 9, particularly paragraph 61.

86. *Nazli* serves primarily to prevent national measures from affecting the legal position of legal Turkish workers guaranteed by the EEC-Turkey Association where such measures are not required by a compelling national interest. With due regard for all the foregoing, it seems to me that this strict interpretation must also apply to family members of Turkish workers in so far as they are protected by Article 7 of Decision No 1/80.

87. A wider margin of assessment exists in the case of decisions by national authorities which do not directly encroach upon rights granted unconditionally by the Association.

88. If, as stated in point 81 above, Engin Ayaz were not to be regarded as a member of the family for the purposes of Article 7 of Decision No 1/80, the national authorities might ignore Article 14 of that decision and apply broader criteria when assessing whether they wished to admit a Turkish national to their territory or to expel him.

V — Conclusion

89. In view of the foregoing I propose that the Court should answer the question referred by the Verwaltungsgericht Stuttgart as follows:

— The stepchild of a Turkish worker duly registered as belonging to the labour force of a Member State is to be regarded as a member of the family for the purposes of the first paragraph of Article 7 of Decision No 1/80 of the EEC-

Turkey Council of Association if he really forms part of the worker's family. To determine whether a stepchild forms part of the family, the Member States may:

— require stepchildren of a Turkish worker to live under the same roof as the worker or to have lived with him for a period of three years;

— restrict the application of the term 'member of the family' to stepchildren who have not yet reached the age of 18 years unless they are older stepchildren who are entirely dependent on the worker.

— The Member States may stipulate that the rights based on Article 7 are lost as soon as a stepchild reaches the age of 18 years unless he is dependent on the Turkish worker. However, on reaching the age of 18 years, a stepchild who cannot derive any rights from Article 6 of Decision No 1/80 must have the opportunity for a reasonable period to seek employment in the host Member State.