OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 15 May 1990 *

Mr President,
Members of the Court,

1. By judgment of 1 June 1989, the Raad van State (Netherlands court of last instance in administrative matters) referred to the Court for a preliminary ruling three questions on provisions contained in decisions of the EEC-Turkey Association Council, an authority established by the EEC-Turkey Association Agreement. [1] The questions relate to a dispute between Mr Sevince, a Turkish national, and the Staatssecretaris van Justitie (State Secretary of Justice) of the Netherlands.

2. Mr Sevince, who on 22 February 1979 obtained a residence permit allowing him to live in the Netherlands by reason of his marriage to a fellow national residing there, was refused an extension of his permit on 11 September 1980 by the Staatssecretaris van Justitie. The extension was refused because Mr and Mrs Sevince had separated. The application for review lodged by Mr Sevince and his appeal against the implied decision rejecting his request, brought before the Raad van State, suspended the effect of the refusal to extend his residence permit. Under Netherlands legislation, that suspensory effect is automatic in the case of appeals. [2] Mr Sevince's appeal was dismissed by a judgment delivered on 12 June 1986 by the Raad van State and on 13 April 1987 Mr Sevince applied to the Staatssecretaris van Justitie for a residence permit, indicating as the ground for his application the fact that he was working as an employed person and relying on a provision of Decisions Nos 2/76 and 1/80 of the EEC-Turkey Association Council, according to which a Turkish worker duly registered as belonging to the labour force of a Member State is entitled, after a specified period of legal employment, to free access to any employment of his choice. It is important to note that Mr Sevince considers that the periods of employment completed under the authorization issued by the Minister for Social Affairs whilst the effect of the non-extension of his residence permit was suspended pending final judgment on his appeal should be taken into account in calculating his period of legal employment within the meaning of the abovementioned decisions.

3. In appeal proceedings brought by Mr Sevince against the decision of the Staatssecretaris van Justitie rejecting his application of 13 April 1987, the Raad van State decided to refer questions to the Court on the scope and meaning of the provisions of Decisions Nos 2/76 and 1/80. Essentially, the national court asks whether the relevant provisions of those decisions are ones which the Court has jurisdiction to interpret under Article 177 of the EEC Treaty, if so whether they are directly applicable in the Member States of the EEC, and, if they are, whether the term 'legal employment' used in them refers only to compliance with the legislation on the employment of aliens or whether it also relates to the possession of a residence permit.

* Original language: French.

1 — Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963, concluded on behalf of the Community by Council Decision of 23 December 1963 (published in English in OJ 1973 C 113, p. 1).

2 — Article 38 of the Vreemdelingenwet (Aliens Law).

I — The first preliminary question

4. The first question, it seems to me, does not present any real difficulty. As pointed out at the hearing by the Netherlands Government and the Commission, the judgment of the Court of 14 November 1989 in *Greece* v *Commission*[3] appears to have dispelled any doubts which might have persisted regarding the jurisdiction of the Court to interpret under Article 177 the EEC Turkey-Association Council decisions at issue.

5. What does that judgment tell us? The Court stated first that, as it has consistently held, most recently in the judgment in *Demirel*,[4] precisely with regard to the EEC Turkey-Association Agreement,

'the provisions of an agreement concluded by the Council under Articles 228 and 238 of the Treaty form, as from the entry into force of the Agreement, an integral part of the Community legal system'.[5]

The Court then stated that,

'for the attainment of the objectives laid down by the EEC-Turkey Association Agreement and in the circumstances provided for by that Agreement, Article 22 thereof confers a power of decision on the Association Council'.

Thus, with regard to Association Council Decision No 2/80, laying down the conditions for the provision of aid to Turkey, the Court considered that the Association Council placed that aid within the institutional framework of the Association and that

'since it is directly connected with the Association Agreement',

Decision No 2/80 formed,

'from its entry into force, an integral part of the Community legal system'.[6]

6. I consider that the acts of the Association Council with which this case is concerned, namely Decisions Nos 2/76 and 1/80, fall to be classified in the same way and form part of the Community legal system. The relevant provisions of those decisions, which relate to the circumstances of Turkish workers duly registered as belonging to the labour force of a Member State, are linked with the objectives laid down in Article 12 of the Association Agreement, according to which the contracting parties agreed to be guided by Articles 48, 49 and 50 of the EEC Treaty for the purpose of progressively securing freedom of movement for workers between them, and by Article 36 of the additional protocol,[7] which provides that free movement is to be secured by progressive stages between the end of the 12th year and 22nd year after the entry into force of the Association Agreement. The second recital in the preamble to Decision No 2/76 makes clear that the abovementioned provisions of the Agreement and of the Additional Protocol imply that the Member States of the Community and Turkey accord each other priority as

3 — Case 30/88 [1989] ECR 3711.

4 — Case 12/86 [1987] ECR 3719.

5 — Case 30/88, *supra*, paragraph 12.

6 — Ibid., paragraph 13.

7 — Additional protocol signed at Brussels on 23 November 1970, concluded on behalf of the Community by Council Regulation No. 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 18).

regards access by their workers to their respective employment markets. As indicated in the third recital, the agreement implements that principle as a first stage. The second stage was brought about by the social provisions of Decision No 1/80.

7. It will also be seen that Decisions Nos 2/76 and 1/80 are directly associated with the Association Agreement and its Additional Protocol. I see no reason not to draw the same conclusion as for Decision No 2/80, namely that they are included in the Community legal system. In particular, it cannot be objected that, with respect to freedom of movement for workers, Decisions Nos 2/76 and 1/80 remain outside the Community legal order by reason of the fact that it is incumbent upon the Member States to issue the necessary implementing rules. In the *Demirel* judgment, referring back to the *Kupferberg* judgment of 26 October 1982,[8] the Court stated that,

'in ensuring respect for commitments arising from an agreement concluded by the Community institutions the Member States fulfil, within the Community system, an obligation in relation to the Community, which has assumed responsibility for the due performance of the agreement',[9]

and drew the conclusion that it did indeed have jurisdiction to interpret the provisions of the EEC-Turkey Association Agreement and of the protocol on the free movement of workers. I therefore consider that the matter to which the relevant provisions of Decisions Nos 2/76 and 1/80 relate does not place them outside the Community legal order or, accordingly, mean that the Court has no jurisdiction to interpret them.

8. The previous decisions of the Court clearly establish that its jurisdiction to interpret provisions of an agreement concluded by the Council derives directly from the fact that the latter form part of the Community legal order. The *Demirel* judgment referred expressly in that regard to the judgment of the Court of 30 April 1974 in *Haegeman*[10] and drew the conclusion indicated above. The Court's jurisdiction to interpret the provisions at issue of Decisions Nos 2/76 and 1/80 may also be inferred from the fact that, as from their entry into force, they form part of the Community legal order. Therefore, I suggest that the Court answer the first question submitted by the Raad van State in the affirmative.

II — The second preliminary question

9. The second question seeks to determine whether the provisions at issue of Decisions Nos 2/76 and 1/80 are directly applicable in the territory of the Member States. This issue was the focus of greatest attention both in the written procedure and at the hearing. Whilst Mr Sevince and the Commission consider that it should be answered in the affirmative, the Governments of the Netherlands and the Federal Republic of Germany take the opposite view.

10. Since the provisions at issue are neither in a Community Treaty nor in a 'traditional' measure of a Community institution but appear in decisions adopted by an authority

8 — Case 104/81 [1982] ECR 3641.

9 — Case 12/86, *supra*, paragraph 11

10 — Case 181/73 [1974] ECR 449.

set up under an agreement concluded by the Community with a non-member country, it is first necessary to clarify the principles to be referred to in deciding whether or not they are directly applicable.

11. In the *Demirel* judgment, the Court stated in general terms:

'A provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure'. [11]

Applying those principles, the Court considered, in that same decision, whether certain provisions of the EEC-Turkey Association Agreement were directly applicable. Those principles seem to me likewise to be relevant to a decision as to the direct applicability or otherwise of provisions contained in *decisions* of the Association Council set up by the EEC-Turkey Agreement. The decisions of that Council, as we have seen, form part, like the Association Agreement, of the Community legal order and therefore there is no apparent reason for taking the view, a priori, that they cannot contain directly applicable provisions, and in any event the Agreement itself ruled out any such impossibility. On the contrary, I consider that the fact that a provision belongs to the Community legal order rules out any automatic impossibility of its containing directly applicable provisions. Thus, the criteria laid down in the *Demirel* judgment must be relied on in this case, a view expressed, moreover, by the parties to the main proceedings and the Commission, and, for its part, the Federal Republic of Germany submitted that it was impossible to transpose them to the decisions of the Association Council only because, in its view, they did not belong to the Community legal order. In other words, their inclusion in the Community legal order having been established, there can no longer be any dispute as to the relevance to the present case of the criteria laid down in the *Demirel* judgment.

12. It is therefore necessary now to examine the relevant provisions in the light of those criteria, nevertheless bearing in mind that the purpose and nature of Association Council decisions must be appraised against the background of the Association Agreement and the Additional Protocol.

13. For the purpose of attaining the objectives set by the Agreement and in the circumstances envisaged in it, Article 22 of the Association Agreement confers on the Association Council a 'power to take decisions', also indicating that each of the parties is to 'take the measures necessary to implement the decisions taken'. The provisions of the Association Council decisions whose direct applicability is at issue relate, as I have pointed out, to the free movement of workers. On that subject, Article 12 of the Ankara Agreement states that 'the Contracting Parties agree to be guided by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them'. For its part, Article 36 of the Additional Protocol provides that 'freedom of movement for workers between Member

11 — Case 12/86, *supra*, paragraph 14.

States of the Community and Turkey shall be secured by progressive stages in accordance with the principles set out in Article 12 of the Agreement of Association between the end of the 12th and 22nd year after the entry into force of that Agreement', adding that 'the Council of Association shall decide on the rules necessary to that end'.

14. Article 1 of Decision No 2/76 'establishes for a first stage the detailed rules for the implementation of Article 36 of the Additional Protocol', that first stage lasting four years, as from 1 December 1976. According to Article 1 thereof, Decision No 1/80 is intended to provide for 'the revitalization and development of the Association'. For that purpose, it includes provisions on agricultural and economic and technical cooperation, which enter into force on 1 July 1980, together with social provisions, which apply as from 1 December 1980.

15. The national court's questions relate specifically to Article 2(b) of Decision No 2/76 and/or Article 6(1) of Decision No 1/80, on the one hand, and, on the other, to Article 7 of Decision No 2/76 and/or Article 13 of Decision No 1/80. In order to determine the effects of those provisions, it is essential to cite their precise terms.

16. Article 2(b) of Decision No 2/76 provides that 'after five years of legal employment in a Member State of the Community, a Turkish worker shall enjoy free access in that country to any paid employment of his choice'. For its part, Article 6(1), third indent, of Decision No 1/80, which is included amongst the social provisions of that decision, provides that a Turkish worker who is duly registered as belonging to the labour force of a Member State 'shall enjoy free access in that Member State to any paid employment of his choice, after four years of legal employment'. As is apparent, the second provision differs essentially from the first in so far as it reduces the requirement of legal employment from the original five years to four years.

17. Article 7 of Decision No 2/76 provides that 'the Member States of the Community and Turkey may not introduce new restrictions on the conditions of access to employment applicable to workers legally resident and employed in their territory'. By contrast, Article 13 of Decision No 1/80 inserts, after the word 'workers', the words 'and members of their families'.

18. If, to start with, we rely solely on the letter of the provisions, it would be difficult not to recognize that the provisions just cited are, prima facie, clear. Article 2(b) of Decision No 2/76 and Article 6(1), third indent, of Decision No 1/80 seemed to me unambiguously to lay down the requirement that free access to any employment of his choice must be granted to a Turkish worker who has been legally employed for a clearly specified period in a Member State. Articles 7 of Decision No 2/76 and 13 of Decision No 1/80 appear unequivocally to impose a standstill clause on the Member States and Turkey regarding the conditions of access to the employment of workers legally resident and employed in their territories.

19. But appearances can be deceiving and it is necessary to verify whether the purpose and nature of the Association Agreement or

the scheme of Decisions Nos 2/76 and 1/80 preclude the conclusion that the obligations at issue are clear, precise and unconditional. In other words, the provisions at issue must be placed in their context.

20. Does the general spirit of the Association Agreement, as evinced by its essential approach, disclose any features which are incompatible with direct applicability of the provisions concerned? The Court's judgment in *Demirel* does not, it would appear, allow that question to be answered positively. If, in its basic approach, the EEC-Turkey Association Agreement excluded from the legal framework created by it any directly applicable rule, the *Demirel* judgment would have taken that fact into account and stated that Article 12 of the Agreement and Article 36 of the Additional Protocol were not directly applicable. However, it did not do so. In fact, essentially, the Court stated that

'in structure and content, the Agreement is characterized by the fact that, in general, it sets out the aims of the Association and lays down guidelines for the attainment of those aims without itself establishing the detailed rules for doing so'. [12]

Then, after observing that

'only in respect of certain specific matters are detailed rules laid down by the protocols annexed to the Agreement', [13]

the Court analysed the content of Articles 12 of the Agreement and 36 of the protocol before concluding that

'[those articles] essentially serve to set out a programme and are not sufficiently precise and unconditional to be capable of governing directly the movement of workers'. [14]

21. Thus, it was from the legal approach adopted, the method — one might say — employed by the Agreement and the protocol, in particular by means of Article 12 of one and Article 36 of the other, that the Court inferred that there was no direct applicability. On the other hand, the Court did not make the slightest mention of anything relating to the actual foundations of the Agreement which militated against the direct applicability of its provisions. I therefore consider that there is nothing in the basic approach underlying the Agreement to exclude direct applicability.

22. That impression is not changed by a comparison between, on the one hand, the EEC-Greece Association Agreement and, on the other, the EEC-Turkey Association Agreement and the Additional Protocol thereto. In fact, such a comparison discloses fairly broad similarities. It is to be noted that the preambles to the two Agreements are almost entirely identical, and in particular it should be noted that the fourth paragraph in the preamble to the EEC-Turkey Association Agreement, 'recognizing that the support given by the European Economic Community to the efforts of the Turkish people to improve their standard of living will facilitate the accession of Turkey to the Community at a later date', is drafted in exactly the same terms as the fourth paragraph in the

12 — Case 12/86, *supra*, paragraph 16.

13 — Ibid.

14 — Case 12/86, *supra*, paragraph 23.

preamble to the EEC-Greece Association Agreement, except of course that in the latter reference is made to the Greek people and the accession of Greece. That certainly accounts for the fact that the actual content of the EEC-Turkey Association Agreement, supplemented by the Additional Protocol, is often very close to that of the EEC-Greece Association Agreement.

23. Thus, in view of the similarities of basic approach in the preambles to the Agreements, it would be difficult to find in one reasons for excluding direct applicability which are absent from the other. It will be remembered that, in its judgment in *Pabst & Richarz*,[15] the Court decided that Article 53(1) of the EEC-Greece Association Agreement was directly applicable. That result would have been inconceivable if the basic approach set out in the preamble to that Agreement, in terms almost identical to those of the preamble to the EEC-Turkey Agreement, had excluded direct applicability. Accordingly, there is no reason, a priori, to conclude that the basic approach underlying the latter agreement, for its part, excluded such direct applicability.

24. A similar conclusion must be drawn regarding the general objectives set out in Title I of the EEC-Greece Association Agreement and Title I of the EEC-Turkey Association Agreement. Article 2(1) of the latter agreement, which states that 'the aim of this Agreement is 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' is drafted in almost identical terms to those of Article 2(1) of the EEC-Greece Association Agreement, and the second paragraph of Article 2 in both cases shows that, in principle, each of the agreements is devoted to the attainment of the 'objectives' mentioned in the first paragraph. It will also be seen that, in the EEC-Turkey Agreement, in order to attain those 'objectives' a 'customs union shall be progressively established',[16] and the Contracting Parties are to 'align the economic policies of Turkey' and the Community more closely in order to ensure the proper functioning of the Association and the progress of the joint measures which this requires'[17] whereas in the EEC-Greece Agreement, the attainment of the abovementioned 'objectives' will involve the 'establishment of a customs union'[18] and 'the promotion of joint measures by the Parties and harmonization of their policies in the fields mentioned in this Agreement'.[19] In fact, the significant differences between the two agreements, as regards matters of principle, appear to reside above all in the speed at which the objectives pursued are to be attained. In that regard, the EEC-Turkey Association Agreement provides for a preparatory phase prior to a transitional phase, whereas the EEC-Greece Association Agreement provides for no preparatory phase. These specific 'rates' account for the adverb 'progressively' used in the EEC-Turkey Agreement in relation to the establishment of a customs union. They also account for the fact that the EEC-Turkey Agreement, the content of which is, in numerous respects, more general than that of the EEC-Greece Agreement, was supplemented, at the end of the preparatory

15 — Case 17/81 [1982] ECR 1331.

16 — Article 2(2) of the EEC-Turkey Agreement

17 — Second indent of Article 4(1) of the EEC-Turkey Agreement.

18 — Article 2(2) of the EEC-Greece Agreement

19 — Ibid.

phase, by an additional protocol which clarified most of those points.

25. Thus, as far as the general objectives of the two Agreements are concerned, as set out in each of them in Title I, the heading of which is 'Principles', the similarities again seem to predominate, particularly in the context of the transitional phase of the EEC-Turkey Agreement, which is what is at issue in the present case. Apart from the question of 'rates' of progress, it is apparent that, in the definition of general objectives, the only noteworthy difference lies in the fact that the EEC-Turkey Agreement places greater emphasis on the need for 'coordination of the economic policies of the Contracting Parties' [20] whereas, as pointed out earlier, the EEC-Greece Agreement lays greater stress on 'harmonization' [21] of policies. I do not think that such a difference in the enumeration of principles is sufficient, *in principle*, to deprive of any direct applicability the provisions by means of which the general objectives of the EEC-Turkey Agreement are to be attained.

26. If we now move on from the question of basic approach and general objectives of the EEC-Turkey Agreement to the question of implementation of its specific objectives, we find that a further comparison must be made with the EEC-Greece Association Agreement, by reference to the *Pabst & Richarz* judgment cited earlier. As I said, the Court analysed Article 53(1) of that Agreement and held that that provision, drafted in similar terms to those of Article 95 of the Treaty, served, for the purposes of the association between the Community and Greece, a function identical to that of the latter article. The Court added that

'it forms part of a group of provisions the purpose of which was to prepare for the entry of Greece into the Community by the establishment of a customs union, by the harmonization of agricultural polices, by the introduction of freedom of movement for workers and by other measures for the gradual adjustment to the requirements of Community law'. [22]

Then, stating that accordingly it followed

'from the wording of Article 53(1) ... and from the objective and nature of the Association Agreement of which it forms part'

that that provision precluded a national system of relief from providing more favourable tax treatment for domestic spirits than for those imported from Greece and that it contained

'a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure', [23]

the Court concluded that, 'in those circumstances' [24] the provision in question was to be regarded as directly applicable.

27. As we have seen, the preamble to the EEC-Turkey Association Agreement contains nothing to indicate a priori that the

20 — Article 5 of the EEC-Turkey Agreement.

21 — Article 2(2) of the EEC-Greece Agreement.

22 — Case 17/81, *supra*, paragraph 26.

23 — Paragraph 27.

24 — Ibid.

provisions of the Agreement do not pursue the objective of preparing for the possible entry of Turkey into the Community. It should also be noted that those provisions are, as far as the conditions for establishing a customs union are concerned, broadly similar to those of the EEC-Greece Agreement. On the other hand, the provisions of the EEC-Turkey Agreement concerning agriculture do not relate to harmonization of agricultural policies, as in the EEC-Greece Agreement, but to the adoption by Turkey of common agricultural policy measures 'which must be applied in Turkey if free movement of agricultural products between it and the Community is to be achieved'.[25] With respect to freedom of movement for workers, the third matter expressly referred to in the *Pabst & Richarz* judgment, it must be noted that, according to Article 44(1) of the EEC-Greece Association Agreement, 'freedom of movement for workers *under Articles 48 and 49* of the Treaty establishing the Community shall be secured between the Member States and Greece at a date and in accordance with rules to be determined by the Council of Association'.[26] Article 12 of the EEC-Turkey Association Agreement, for its part, merely provides that the Contracting Parties agree to *be guided* by Articles 48, 49 and 50 of the Treaty establishing the Community for the purpose of progressively securing freedom of movement for workers between them. It is clear that, in this area as in that of agriculture, the wording of the EEC-Turkey Agreement reflects a lesser concern for 'gradual adjustment to the requirements of Community law', to use the precise words of the *Pabst & Richarz* judgment. It must be emphasized, however, that that Agreement, supplemented by the Additional Protocol, contains, with regard to approximation of economic policies, in particular competition, and approximation of laws, provisions which are fairly close, if not similar, to those of the EEC-Greece Association Agreement, which to some extent reflect a concern for the 'gradual adjustment' just referred to.

28. Undeniably, the EEC-Turkey Association Agreement, although containing, with its Additional Protocol, a set of provisions which reflect the aim of gradual adjustment by Turkey to the requirements of Community law, goes less far in that direction than the EEC-Greece Agreement. It does not thereby follow that the provisions in the first Agreement referring to the attainment of that objective cannot, in principle, be directly applicable. The previous decisions of the Court indicate that it is not necessary for a provision to be included in an 'in-depth' Association Agreement, if you will pardon the expression, for it to be capable of direct application. In fact, the Court recognized the direct applicability of a provision of the Yaoundé Convention of 1963[27] and of a provision of the Free Trade Agreement concluded in 1972 with Portugal,[28] even though, in those two cases, which, moreover, related to circumstances very different from each other, the degree of adjustment to the requirements of Community law was clearly less far-reaching than in the case of the EEC-Turkey Association Agreement and there was no mention of the objective of subsequent accession to the EEC, by contrast with the indication given in the preamble to the latter Agreement.

29. I am therefore of the opinion that there is nothing in the content of the EEC-Turkey Association Agreement as a whole, supplemented by its Additional Protocol, to indicate, despite the provision for less extensive adjustment to the

25 — Article 33(1) of the Additional Protocol.

26 — Emphasis added.

27 — Judgment of 5 February 1976 in Case 87/75 *Bresciani* [1976] ECR 129.

28 — Case 104/81, *supra*.

requirements of Community law than in the case of the EEC-Greece Agreement, that the principle of direct applicability does not extend to its provisions. Consequently, it likewise does not seem to me that the direct applicability of the decisions of the Association Council provided for by the Agreement can be excluded.

30. May one then rely on the essentially programmatic nature that the Court attributed to Article 12 of the Association Agreement and Article 36 of the Additional Protocol and infer as a result that the provisions of the decisions of the Association Council which add the detail thereto cannot be directly applicable? It seems in fact that such an analysis cannot be based on the Court's judgment in *Demirel*. In that decision the Court expressly accounted for the purely programmatic scope of those articles by referring to the fact that the specific rules applicable in that area are a matter to be dealt with by the Association Council by means of decisions. In particular, the Court stated that

'Article 36 of the Protocol gives the Council of Association exclusive powers to lay down detailed rules for the progressive attainment of freedom of movement for workers in accordance with political and economic considerations arising in particular out of the progressive establishment of the customs union and the alignment of economic policies, pursuant to such arrangements as the Council of Association may deem necessary'. [29]

The Court added that

'the only decision which the Council of Association adopted on the matter was Decision No 1/80 of 19 September 1980 which, with regard to Turkish workers who are already duly integrated in the labour force of a Member State, prohibits any further restrictions on the conditions governing access to employment',

and then pointed out that

'in the sphere of family reunification, on the other hand, no decision of that kind was adopted', [30]

before concluding that the articles in question of the Agreement and of the protocol 'serve to set out a programme'.

31. I thus consider that, far from excluding a priori the direct applicability of decisions of the Association Council on free movement of workers, the Court's judgment in *Demirel* in fact makes it clear, in the light of the provisions of the Agreement and of the Protocol, that those decisions to some extent have the *function* of laying down precise rules in that regard. One might also ask whether in fact it did not expressly attach a clarifying 'label' to Decision No 1/80 in so far as it prohibits the imposition on Turkish workers already duly integrated into the labour market of the Member States of any new restrictions concerning conditions of access to employment. In so far as the decisions of the Association Council on freedom of movement for workers are intended to serve that purpose, it seems wholly irrelevant to claim that the mere fact of recognizing that Article 12 of the Agreement and Article 36 of the Protocol serve to set out a programme stands in the way, by definition, of the

29 — Case 12/86, *supra*, paragraph 21.

30 — Paragraph 22.

direct applicability of the decisions which expound on those articles.

32. Having reached this stage of the discussion, I consider that it is impossible to detect in the external context of Decisions Nos 2/76 and 1/80 *strictu sensu* any obstacle which as a matter of principle prevents clear, precise and unconditional provisions of those decisions which implement Article 12 of the Agreement and 36 of the Additional Protocol from being directly applicable.

33. It is now appropriate, therefore, to focus on the scheme of the provisions in question within the context of the abovementioned decisions of the Association Council. It is in that connection in particular that the Governments of the Netherlands and of the Federal Republic of Germany regard those provisions as neither precise nor unconditional.

34. The objections of the Government of the Netherlands and of the Government of the Federal Republic of Germany relate to the scope of the provisions in question. The Federal Republic of Germany laid particular emphasis on the fact that the Agreement, whilst not wholly excluding the adoption of decisions directly conferring individual advantages, nevertheless took as its starting point the principle that transposition was necessary of the decisions of the Association Council and emphasized that, pursuant to the agreement on the measures to be taken for implementation of the Association Agreement concluded by the representatives of the Governments of the Member States on 12 September 1963, and in particular Article 2 thereof, it was provided that, with regard to the EEC, all decisions of the Association Council require a measure transposing them. Accordingly, a measure of that kind, the type of which would vary according to whether the field in question came within the competence of the Community or within that of the Member States, was necessary in any case in order to give effect to decisions of the Association Council in the Member States and there is thus no question of the direct application of decisions of that type.

35. Those statements regarding the need, as a matter of principle, for transposition of the decisions of the Association Council appear to be contradicted by the judgment of the Court in *Greece* v *Commission*, *supra*. The Court, after analysing the provisions of Decision No 2/80 of the EEC-Turkey Association Council, expressed the view that they

'enabled them to be implemented without the prior adoption of supplementary measures',

and concluded therefore that

'Article 2 of the inter-governmental agreement does not have to be applied in any circumstances'.[31]

It is not therefore, in my opinion, at all *necessary as a matter of principle* that 'transposition measures' be adopted to enable provisions contained in decisions of the Association Council to be implemented. As illustrated by the judgment of the Court, the question whether implementing measures are to be taken by the Community or by the Member States depends on the degree of precision of the terms in which the provisions at issue are expressed. But such measures do not constitute an absolutely essential requirement.

31 — Case 30/88, *supra*, paragraph 16

36. The same judgment also gives some inkling of an answer to the arguments of the two governments which emphasize that Article 12 of Decision No 2/76 and Article 29 of Decision No 1/80 provide that the Contracting Parties are, each for their own part, to take any measures required for the purposes of implementing the provisions of the decision, and to the specific observations of the Government of the Netherlands based on Article 2(2) of Decision No 2/76 and Article 6(3) of Decision No 1/80. According to the latter provisions, the procedures for applying those articles are to be those established under national rules. For my part, I consider, in the light of the judgment of the Court, that a provision contained in a decision of the Association Council may be drafted in terms such that its application is not conditional upon implementing measures. The Contracting Parties must implement the provisions of the decisions of the Association Council but it is certainly not established that, in all cases, the application of those provisions is *conditional* upon implementing measures. That depends, as the Court indicated, on the scheme of the provisions in question. The implementing measures affect the application of the provisions in question only *if* they are necessary and not *because* they are in all cases, a priori, necessary.

37. If we consider the very terms of the specific provisions in question, I confess that I do not see in them any clear indication that the obligations formulated by them are too vague or too imprecise to be applied without recourse to implementing measures. Freedom for a lawfully employed Turkish worker to undertake any employment of his choice, after a particular time, on the labour market of a Member State appears to constitute a sufficiently precise rule to be applied as such. The wording of Article 2(1)(b) of Decision No 2/76 and of Article 6(1), third indent, of Decision No 1/80 appears, in particular, to make it possible to determine whether a situation is in breach of the terms of those provisions by hampering freedom of access to any employment covered by them. Similarly, the standstill clause contained in Article 7 of Decision No 2/76 and Article 13 of Decision No 1/80 appears to constitute a precise prohibition whose application does not, in itself, call for recourse to implementing measures. Here again, it seems to me that the terms of those provisions make it possible to determine whether a given situation is in breach of them. It should also be observed that the last-mentioned articles do not even contain specific provisions concerning determination of the procedures for implementation by national rules.

38. That does not mean that certain procedures do not have to be laid down to deal with certain details or to specify the conditions for implementation in cases which display certain particular features. But the fact that a provision does not contain as many specific rules as there are types of situations to be governed by it does not mean that it should be regarded as imprecise or conditional and, as such, not capable of being directly applicable. The case-law of the Court contains a plethora of examples of provisions whose general nature, which made necessary an interpretation by the Court as to whether they apply to a particular type of case, did not in any way prevent their being recognized as directly applicable. If it were necessary to deny direct applicability to any provision of Community law which did not give an exhaustive description of the cases in which it applied, whole sections of the case-law of

the Court would disappear. Moreover, is it necessary to point out that the undeniable competence of the Member States to determine the means of attaining the result pursued by a directive has not prevented the Court, in many cases, from recognizing the direct applicability of the provisions of a directive in the absence of national measures of transposition which are, nevertheless, necessary to provide the details of the implementing procedures?

39. A parallel may, in that respect, be drawn with the reasoning followed by the Court in its judgment of 4 December 1986 in *FNV*.[32] Called on to give a decision on the direct applicability of Article 4(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security,[33] the Court stated that it is not possible, from the terms of Article 5 of that directive, which requires the Member States

'to take the measures necessary to ensure that any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished'

to infer that it lays down

'conditions to which the prohibition of discrimination is subject',

adding that

'whilst Article 5 leaves the Member States a discretion with regard to methods, it prescribes the result which those methods must achieve'.[34]

The Court thus concluded that Article 4(1) of the directive in question

'does not confer on Member States the power to make conditional or to limit the application of the principle of equal treatment within its field of application'

and that that provision

'is sufficiently precise and unconditional to allow individuals . . . to rely upon it before the national courts'.[35]

40. It seems to me that that analysis may, *mutatis mutandis*, be transposed to the present case in which, having regard to the terms of the provisions at issue of Decisions Nos 2/76 and 1/80, the fact that the latter provide that the Contracting Parties are to take the measures required for their implementation and, if necessary, that the Member States are to lay down procedures for application is not sufficient to found the view that the application of the rule ensuring access to employment or application of the standstill clause may be restricted or made conditional by the Member States. The clear content of those rules does not grant the Member States any power to make modifications thereto or to add conditions.

32 — Case 71/85 [1986] ECR 3855.
33 — OJ 1979 L 6, p. 24.
34 — Case 71/85, *supra*, paragraph 20.
35 — Paragraph 21.

41. The Government of the Netherlands also referred, in arguing against recognition of direct applicability, to the presence in Article 6 of Decision No 2/76 and Article 12 of Decision No 1/80 of a safeguard clause. According to the first provision, 'where a Member State of the Community or Turkey experiences or is threatened with disturbances on its employment market which might seriously jeopardize the standard of living or level of employment in a particular region, branch of activity or occupation, the State concerned may refrain from automatically applying Article 2(1)(a) and (b)'. The second is identical, apart from a change in the numbering of the provisions which it is possible not to apply automatically. The Netherlands Government considers that the unilateral power thus reserved to the States which are parties to the Agreement, without prior authorization or consultation and with notice merely being given to the Association Council, must prompt the inference that the rule granting access to any employment, which is among those which it is possible not to apply automatically in the circumstances referred to earlier, cannot be directly applicable.

42. In its judgment in *Kupferberg*, the Court noted, with respect to safeguard clauses contained in the free trade agreement between the EEC and Portugal, that

'they apply only in specific circumstances and as a general rule after consideration within the joint committee'

and that

'apart from specific situations which may involve their application, the existence of such clauses which, moreover, do not affect the provisions prohibiting tax discrimination, is not sufficient in itself to affect the direct applicability which may attach to certain stipulations of the agreement'.[36]

Admittedly, the safeguard clauses contained in the EEC-Turkey decisions differ from those in the free-trade agreement at issue in *Kupferberg* in so far as the latter applied 'as a general rule' only after consideration within the joint committee in the presence of both parties, whereas no such consideration is necessary before the former are applied. It will be noted, however, that it does not follow from the terms of the *Kupferberg* judgment that that fact is alone sufficient to exclude the direct applicability of the provisions in question. The Court's decision states that 'as a general rule' there was prior consideration in the presence of both parties within the joint committee, but not in all cases. Above all, it seems to me that the judgment places emphasis on the specificity of the situations which may involve the application of the safeguard clauses. That specificity is also apparent in the relevant provisions of Decisions Nos 2/76 and 1/80. They refer to the threat of 'disturbances on its employment market which might seriously jeopardize the standard of living or level of employment in a particular region, branch of activity or occupation', and it is also indicated therein that only those circumstances make it possible to 'refrain from automatically applying' certain provisions of the decisions. This emphasizes, in my view, the fact that the safeguard clauses must be allowed to cover only exceptional situations and that, for such situations, the rule is *automatic application* by the Member States of the provisions in question.

36 — Case 104/81, *supra*, paragraph 21.

43. In passing, it should be observed that such automatic application, referred to *a contrario* in those safeguard clauses, appears to detract from the view that the power of the Member States to adopt measures to implement decisions of the Association Council or, as appropriate, to adopt detailed arrangements for applying certain of their provisions implies that they are empowered to expound the content of the provisions at issue in this case, in particular by adding conditions, and that would prevent their direct application. The adjective 'automatic' suggests rather, in my view, that the implementing conditions are no longer open to discussion.

44. An analysis of the safeguard clauses contained in the Association Council decisions calls for reference to the position adopted by the Court in its judgment in *International Fruit Company*[37] as to whether the provisions of the General Agreement on Tariffs and Trade (GATT) confer on individuals in the Community the right to rely on them in legal proceedings. Having regard, in replying to that question, to 'the spirit, the general scheme and the terms' of GATT,[38] the Court stated that the latter

'which, according to its preamble, is based on the principle of negotiations undertaken on the basis of single "reciprocal and mutually advantageous arrangements" is characterized by the great flexibility of its provisions, in particular those conferring the possibility of derogation, the measures to be taken when confronted with exceptional difficulties and the settlement of conflicts between the Contracting Parties'.[39]

Then, after examining more specifically certain provisions of the Agreement, the Court concluded that the provision at issue, when examined in such a context, was

'not capable of conferring on citizens of the Community rights which they can invoke before the courts'.[40]

The Court has reaffirmed that position on several occasions, relying on the general context of GATT, with respect to other provisions of the Agreement, in particular in the Court's two judgments of 16 March 1983.[41]

45. It should be noted in the first place that the EEC-Turkey Association Agreement does not appear to display the same general flexibility as that expressly referred to in the case of GATT. Without reverting to the overall context of the Association Agreement, it is nevertheless important to note, parenthetically, that that context is clearly much more restrictive. It is apparent from a reading of paragraphs 22 to 26 of the judgment in *International Fruit Company*, focusing in particular on Article XXII (1) of GATT, according to which 'each Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations', Article XXV (1) of the same document, which provides that the Contracting Parties 'may consult with one or more Contracting Parties on any question to which a satisfactory conclusion cannot be found through

37 — Joined Cases 21/72 to 24/72 [1972] ECR 1219.

38 — Paragraph 20.

39 — Paragraph 21

40 — Paragraph 27.

41 — Case 266/81 *SIOT* v *Ministero delle finanze* [1983] ECR 731, and Joined Cases 267 to 269/81 *Amministrazione delle finanze dello Stato* v *SPI and SAMI* [1983] ECR 801

the consultations provided under paragraph 1', and the measures for settling disputes which, in the Court's own words include

'written recommendations or proposals which are to be "given sympathetic consideration', investigations possibly followed by recommendations, consultations between or decisions of the Contracting Parties, including that of authorizing certain Contracting Parties to suspend the application to any others of any obligations or concessions under the General Agreement', [42]

that, on the other hand, the provisions of the Association Agreement are considerably more directive in character.

46. But, with regard more particularly to safeguard clauses, it must be emphasized above all that those contained in the Association Council decisions do not display the same degree of flexibility as those of GATT and that it would not therefore be at all justified to draw an analogy with the latter and conclude that the provisions of those decisions were not directly applicable. In *International Fruit Company* the Court stated that

'where, by reason of an obligation assumed under the General Agreement or of a concession relating to a benefit, some producers suffer or are threatened with serious damage, Article XIX gives a Contracting Party power unilaterally to suspend the obligation or to withdraw or modify the concession, either after consulting the Contracting Parties jointly and failing agreement between the Contracting Parties concerned, or even, if the matter is urgent and on a temporary basis, without prior consultation'. [43]

A comparison with the safeguard clauses in the Association Council decisions prompts the observation, in the first place, that their overall context is more restrictive than that of GATT and, secondly, that they are expressly defined as exceptions to the rule that the provisions in question are to be automatically applied, whereas those of GATT, which appear to be in harmony with the generally 'flexible' overall system of which they form part, could hardly be classified as exceptions to a rule of automatic application which, in fact, does not form part of that system.

47. In view of these various considerations, I consider that the safeguard clauses in Decisions Nos 2/76 and 1/80, the use of which, being reserved for specific emergency situations, is not purely discretionary, do not appear to be so conceived that the direct applicability of certain provisions of those decisions could be affected.

48. Finally, a last objection must be discussed, namely that the decisions of the EEC-Turkey Association Council are not published. It is true that those decisions are not subject to publication rules and are not published in the Official Journal. Admittedly, the question might be asked whether the fact that those decisions form part of the Community legal order would justify arrangements being made for their publication. However, I would observe with regard to the question at issue here that, to my knowledge, the Court has never formally declared the direct applicability of

42 — Joined Cases 21/72 to 24/72, *supra*, paragraph 25.

43 — Paragraph 26.

a provision to be conditional upon publication of the text containing it. Moreover, once the parties to the Association Agreement, including the Member States, have notice of the decisions of the Association Council, since they are represented therein by virtue of Article 23 of the Agreement, it would be difficult to rely, as against a Turkish national, merely on the absence of publication of a decision of the Association Council in order to deny him the possibility of invoking one of its provisions in legal proceedings against a Member State, when that decision, moreover, satisfies the requirement of clarity, precision and unconditionality laid down by decisions of the Court in that regard and he has notice thereof. That is why I suggest that the Court should not attach decisive importance to the lack of publication in replying to the second question.

49. Having regard to the various considerations relating to the second question submitted by the Raad van State, I am persuaded that, in view of the apparently clear and precise terms of the provisions at issue of Decisions Nos 2/76 and 1/80, no consideration relating to the fundamental objects of the Association Agreement, its overall structure or the very scheme of those provisions within the decisions in question has emerged as being capable of causing them ultimately to be regarded as insufficiently precise or conditional. I therefore see no reason to justify not recognizing the direct applicability of the provisions referred to in the national court's question. It should also be observed that, by stating that Decision No 1/80 had, by virtue of the provisions in the present case, prohibited 'any further restrictions governing access to employment', the Court's judgment in *Demirel* did not appear to express any doubts regarding the precise meaning of that provision. The direct applicability of the provisions referred to the Court in my view is wholly in conformity with that judgment which, as I have already stated, pointed out that the Association Council had

'exclusive powers to lay down detailed rules for the progressive attainment of freedom of movement for workers'. [44]

The contrast drawn by the Court's judgment between the provisions of the Agreement, which essentially set out a programme, and those of the Council decisions, the purpose of which was, in some degree, to be precise, thus gave an indication that the latter were intended to be directly applicable.

50. I therefore propose that the national court's second question be answered in the affirmative.

III — The third question

51. We now come to the third question. It seeks to establish whether the expression 'legal employment' contained in Article 2(1)(b) of Decision No 2/76 and in Article 6(1), third indent, of Decision No 1/80 in fact covers employment of a Turkish national who is in possession of a residence permit issued under the legislation relating to aliens or is simply legally authorized to work solely by virtue of the requirements concerning the employment of aliens. The scope of the question is clearly illustrated by the circumstances which gave rise to the main proceedings. Mr Sevince was officially authorized to work — and apparently did

44 — Case 12/86, *supra*, paragraph 21

work — for a period in which, having no residence permit properly so called, he nevertheless benefited from the suspension of the effects of the administrative decision whereby extension of his residence permit was refused until a final decision had been given in the Court proceedings instituted by him. Thus, Mr Sevince worked lawfully in accordance with the legislation on the employment of aliens, under which he had received a 'certificate' enabling him no longer to be regarded as an alien for the purposes of that legislation and consequently was entitled to access to any activity as an employed person,[45] but his circumstances were not at the same time in conformity with the legislation on aliens, because he had no residence permit.

52. In support of the view that the legality of the employment in question relates only to compliance with the requirements of the legislation on the employment of aliens, regardless of the legality or otherwise of residence, the plaintiff in the main proceedings and the Commission attach particular importance to a comparison of the wording of several provisions of the decisions of the Association Council at issue. In particular, they claim that, in Decision No 1/80, for example, certain articles contain an express reference to the right of residence. They refer, for instance, to Article 13 which refers to 'workers and members of their families legally resident and employed' and to Article 8(2) concerning 'Turkish workers who are registered as unemployed and legally resident in the territory of [a] Member State'. They therefore consider that the mention in other provisions, including those to which the preliminary question relates, only of *legal employment* without any reference to *residence* reflects the intention of the authors of Decisions Nos 2/76 and 1/80 to grant rights to people complying with the legal requirements concerning employment, without their position under the legislation on residence having any effect whatsoever.

53. The Governments of the Netherlands and the Federal Republic of Germany do not subscribe to that analysis. In particular, the Netherlands Government indicated, with respect to the third indent of Article 6(1) of Decision No 1/80, that registration as belonging to a labour force and the exercise of regular activity imply that 'the activity as an employed person is carried on by virtue of a residence permit issued (in particular) for the purposes of exercising an activity as an employed person'.[46] It added, with respect to Article 13 of the same decision, that the term 'legally resident' within the meaning of that provision should be taken to refer to the fact of satisfying the conditions for the issue of a residence permit, in particular in order to exercise an activity as an employed person, and that the rule did not therefore cover residence authorized under court proceedings whose very purpose was to establish whether the person concerned satisfied the conditions for the issue of a residence permit.

54. In view of those contradictory arguments, I would point out, by way of preliminary, that I consider that reasoning based on an analogy with Community law on freedom of movement for workers is not, prima facie, relevant. Let us bear in mind, once again, that Article 12 of the Association Agreement, to which Article 36 of the Additional Protocol refers, provided that the Contracting Parties agreed to be guided by Articles 48, 49 and 50 of the EEC Treaty with a view to progressively securing

45 — Article 3 of the Wet Arbeid Buitenlandse Werknemers.

46 — Netherlands Government submissions, p. 9, paragraph 24.

freedom of movement for workers between them. Thus, the principles laid down by those articles and the rules which implemented them are not *de plano* applicable to freedom of movement for workers covered by the Association Agreement. The right to such freedom of movement derives essentially from precise rules to be laid down by the Association Council. It is those rules which must be analysed, and it is only to the extent to which they are *precisely* inspired by Community law on freedom of movement for workers that there is any possible room for reasoning based on analogy.

55. It must be clearly appreciated that the rules laid down by the Association Council appear to draw their inspiration from a source too remote from the EEC rules for reasoning by analogy to be admissible here. They are intended, in fact, not to govern the conditions for freedom of movement for workers between Turkey and the Member States, in particular for the benefit of Turkish nationals, but simply to consolidate the position of Turkish workers who are already duly integrated into the labour force of one of the Member States. The objectives here are thus much more modest, at the stage of operation of the Association Agreement under consideration, than in the context of the EEC Treaty, and the EEC Treaty cannot therefore be regarded as a suitable basis at this stage for interpretation of the decisions of the Association Council.

56. Must an examination of the provisions at issue of the Association Council decisions lead to acceptance of the analysis, which relies particularly on *a contrario* reasoning, made by Mr Sevince and the Commission? Is compliance with the laws concerning residence required only where express reference is made to legal residence, which is not the case in the said provisions, or is such residence included in the concept of legal employment? It is undeniable that, whereas Article 2(1)(b) of Decision No 2/76 and 6(1), third indent, of Decision No 1/80 refer only to legal employment, Articles 7 and 13 of the same respective decisions appear to distinguish between the concepts of residence and employment. A literal interpretation might thus lead one to think that, where only legal employment is referred to, the appraisal of legality should not take account of whether or not the residence is legal.

57. It seems to me, however, that there should be some hesitation about following such reasoning, in view of certain consequences which would follow from it. A purely 'independent' concept of legal employment appears to me to produce somewhat absurd results, or even a distortion of the applicable law. Let us examine the course of the procedure in a case like that of Mr Sevince. The extension of a Turkish worker's residence permit is refused. He appeals against that decision. Pending judgment, the effect of the expulsion order deriving from the non-extension is suspended. During the period of suspension, the person concerned is given the opportunity to work under conditions envisaged by the law on the employment of aliens, and therefore in conformity with that law. The suspension is brought to an end by the final judgment. If the refusal to extend is annulled no particular comment is called for, since that would entail recognition of the contested right of residence and would bring the dispute to an end. But confirmation of that refusal by the court, as occurred in the present case, could prove fruitless if the work done during the period of suspension made it possible to complete the prescribed period of 'legal employment' within the meaning of the provisions in question, interpreted 'independently'. Such a situation would make it possible to frustrate the

judicial confirmation of the refusal to extend the residence, since the person concerned, by acquiring the right provided for by the Association Council decisions to undertake any activity of his choice as an employed person, could thereafter not be denied entitlement to residence.

58. Thus, the time taken by legal proceedings concerning the existence or otherwise of a right of residence is not 'neutral', since otherwise, if the period were sufficiently long, another right of residence could arise, negating the judicial decision denying the earlier right. In other words, a suspension of the effect of the expulsion order whose purpose is protective, being designed to ensure that the situation of the person concerned is not excessively impaired before it has been defined judicially, would then give rise to rights and could be relied on as against the national administration. On the one hand, the suspension measure temporarily neutralizes the expulsion order, in order to preserve the situation of the person concerned, and yet, on the other hand, it is active, since the work done during that period by the person concerned will ultimately give rise to a right of residence. I cannot think that the Association Council sought such a result.

59. Might the objection be raised that it is incumbent on the national courts hearing an appeal in proceedings which suspend the effect of the contested decision to give judgment with sufficient promptness to ensure that the period of employment lawfully completed during the suspension is not sufficient to confer the right to undertake any paid employment and the consequent right of residence? I do not think that such a consideration can be countenanced in determining the interpretation of the provisions at issue. Such a 'reversal of the burden of proof' is not conceivable here, since the reason for suspending the effects of a decision withholding a residence permit until a final judgment has been given on the validity thereof is to 'freeze' the situation until judgment. Such 'freezing' must operate in both directions. The position of the Turkish national is protected in so far as it is decided not to prejudge the issue before the court by immediately enforcing the expulsion order, but that cannot simultaneously have the effect of creating rights which definitively compel the Member State, regardless of the result of the proceedings, to keep the person concerned in its territory.

60. An interpretation taking account of this concept of 'freezing' also seems to me to be perfectly in conformity with the principle of the protection of legitimate expectations, since, by virtue of the fact that a refusal of a residence permit is, by definition, protective, it must be concluded that the person concerned is unequivocally prevented from acquiring, during the period of suspension, any right of residence deriving from the employment.

61. Moreover, an interpretation of the concept of legal employment in a purely 'independent' sense would certainly not fail, subject to compliance with the standstill clause referred to earlier, to encourage Member States not to grant, either under their legislation or regulations or by virtue of administrative practice, suspensive measures involving such 'costly' benevolence. The suspensive effect, before judgment, of decisions on matters as serious as expulsion seems to me to be extremely praiseworthy since it causes the law, which is to be laid down by the court, to prevail over the administrative intent initially expressed. The provisions at issue must not be endowed in that respect with a dissuasive effect as far as the Member States are concerned.

62. How, in such circumstances, can account be taken, in interpreting those provisions, of the protective or 'freezing' nature of the suspension of the effect of an expulsion order? The most obvious solution is that evoked by the very wording of the question from the national court. According to that approach, it would be appropriate to state essentially that legal employment, within the meaning of the provisions at issue, includes the requirement of legal residence and that a person benefiting from the suspension of the effects of a refusal to extend his residence permit until a definitive judgment has been given on his appeal against that decision is not thereby legally resident.

63. In case the Court adopts that solution, it is necessary to dwell for a moment on the arguments advanced by Mr Sevince who, referring to a number of international instruments, expresses the view that, whilst legal employment presupposes a legal situation as regards residence, a legal situation cannot, however, be taken to refer solely to residence by virtue of a residence permit. In fact, an examination of the instruments to which Mr Sevince refers and of the decisions of the European Commission of Human Rights provides only slight support for his point of view, as we shall see.

64. According to Article 11 of the European Convention on Social and Medical Assistance of 11 December 1953:

'(a) Residence by an alien in the territory of any of the Contracting Parties shall be considered lawful within the meaning of the Convention so long as there is in force in his case a permit or such other permission as is required by the laws and regulations of the country concerned to reside therein. Failure to renew any such permit, if due solely to the inadvertence of the person concerned, shall not cause him to cease to be entitled to assistance.

(b) Lawful residence shall become unlawful from the date of any deportation order made out against the person concerned, unless a stay of execution is granted.'

It is apparent from paragraph (b) of that provision that residence is not regarded as legal if the enforcement of an expulsion order is suspended. It must however be observed that the precise purpose of the convention may perhaps justify the solution adopted, without amounting to the specific application of a general principle. The other international instruments referred to by the plaintiff in the main proceedings confirm that view. Thus, Article 12(1) of the International Covenant on Civil and Political Rights, adopted on 19 December 1966, provides that: 'Everybody lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence' and Article 13 states that: 'An alien lawfully in the territory of a State party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion'. I do not see in that wording any embodiment of the idea that a distinction is to be drawn between legal residence and residence authorized by a permit.

65. Article 19 of the European Social Charter, also referred to by Mr Sevince, likewise does not uphold that distinction.

According to Article 19(4) (5) and (6), the Contracting Parties give an undertaking to 'workers lawfully within their territories' and Article 19(8) requires them to 'secure that such workers lawfully residing within their territories' are not expelled except in certain circumstances. Article 19(6) concerns a commitment to facilitate as far as possible the reunion of the family of a migrant worker 'permitted to establish himself in the territory'. I do not see anything to prevent a contracting party from taking the view that the various terms used must be interpreted as referring to residence authorized by a residence permit.

66. Finally, Article 2(1) of Additional Protocol No 4 to the Convention on the Protection of Human Rights and Fundamental Freedoms, which provides that: 'Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence', does not point to any different conclusion. Moreover, the case-law of the European Commission of Human Rights certainly does not provide any basis for the conclusions which the plaintiff in the main proceedings purports to draw from it. In Application 11825/85, in which two Sri Lankan nationals complained of an infringement of Article 2 of the abovementioned Protocol No 4 by the authorities of the Federal Republic of Germany which, pending a definitive decision on their application for asylum, granted them a temporary residence permit limited to the district of the City of Neuss and imposed a penalty for failure to comply with that geographical limitation, the Commission gave a ruling of inadmissibility, observing in particular that:

'Article 2 paragraph 1 of Protocol No 4 secures the freedom of movement to persons "lawfully within the territory of a State". This condition refers to the domestic law of the State concerned. It is for the domestic law and organs to lay down the conditions which must be fulfilled for a person's presence in the territory to be considered "lawful". The Commission, in this respect, recalls its constant case-law according to which there is no right of an alien to enter, reside or remain in a particular country, as such, guaranteed by the Convention (see No 9285/81, Dec. 6.7.1982, DR 29, p. 205). The Commission is of the opinion that aliens provisionally admitted to a certain district of the territory of a State, pending proceedings to determine whether or not they are entitled to a residence permit under the relevant provisions of domestic law, can only be regarded as "lawfully" in the territory as long as they comply with the conditions to which their admission and stay are subjected.'

Thus, far from upholding an interpretation of Article 2 of Protocol No 4 which would found the contention that a person's residential circumstances may be lawful even though he does not hold the residence permit required by the national legislation, the Commission, in that decision to which the plaintiff in the main proceedings expressly refers, formally stated that it is a matter for national legislation and the national authorities to lay down the conditions to be fulfilled for the presence of a person to be regarded as lawful under the provision in question. It is not possible therefore to rely on Article 2 of Protocol No 4 to support the view that residence without the residence permit required by national law is lawful.

67. Consequently, I consider that the international instruments to which Mr Sevince refers do not support the view that legal residence may be distinct from residence by

virtue of a permit required by national legislation, in the event of the Court's considering that legal employment, within the meaning of the provisions at issue of the Association Council decisions, presupposes legal residence. A private individual certainly cannot claim, on the basis of them, that residence which, though admittedly permitted, as it is in the circumstances at issue in the main proceedings, where it derives from the provisional suspension of an expulsion measure, produces the same effects as legal residence where the State concerned makes such legality conditional upon the issue of a residence permit.

68. However, there may be some hesitation about making a general pronouncement concerning such a close association of the concepts of legal residence and legal employment, even if it is even limited to the specific context of the provisions at issue. It is hardly possible to measure all the potential effects and all the consequences thereof in situations other than those at issue here, which cannot be envisaged in the abstract. Thus, an alternative solution might simply be to say that the concept of legal employment does not cover employment under an authorization granted where the effects of the refusal of a residence permit have been suspended by reason of legal proceedings instituted against that refusal, and the suspension is therefore necessarily uncertain. If that approach were adopted, it would be for the national court to decide whether the permission to undertake the employment in question, objectively provided for by legislation or resulting from an individual administrative authorization, is linked with the temporary suspension of the effects of the refusal of the residence permit brought about by an application to the Court and represents, in some degree, a concomitant or a 'conscious' modification of that situation, or whether it is independent from that situation. The latter hypothesis was not, it seems, a priori excluded from legal employment within the meaning of the provisions at issue. The somewhat unclear particulars of the dispute in the main proceedings give the impression that the Netherlands administration might have mistakenly issued Mr Sevince with a certificate whose effect appeared to exceed that of the work permits which, in the Netherlands, are normally granted to aliens during a period of suspension of the type concerned here. The reply which the Court should give to the third question should not, in my opinion, take account of that fact. It is for the Member States to ensure compliance with their own legal systems, having recourse if necessary to internal procedures which make it possible to eliminate decisions which are incorrect and, thereby, illegal. If they have not done so, Community law must not thereby be interpreted in such a manner as to safeguard them.

69. I propose that the Court reply in those somewhat more detailed terms to the last question submitted by the Raad van State.

70. In view of the foregoing, I propose that the Court rule as follows:

'(1) A question on the interpretation of Decision No 2/76 or Decision No 1/80 of the EEC-Turkey Association Council, raised before a Court of one of the Member States, falls within the jurisdiction for preliminary rulings conferred

on the Court of Justice of the European Communities by Article 177 of the EEC Treaty.

(2) Article 2(1)(b) of Decision No 2/76 and Article 6(1), third indent, of Decision No 1/80, and Article 7 of Decision No 2/76 and Article 13 of Decision No 1/80, are directly applicable and capable of conferring on individuals rights which the courts are obliged to safeguard.

(3) Legal employment within the meaning of Article 2(1)(b) of Decision No 2/76 and Article 6(1), third indent, of Decision No 1/80 does not cover a situation in which the authorities of a Member State have granted permission to a Turkish national to work only because of the suspensive effect, until final judgment, of the appeal lodged by him against a decision refusing to extend his residence permit.'