OPINION OF ADVOCATE GENERAL SHARPSTON
delivered on 21 July 2011 [1]

1. By this reference for a preliminary ruling, the national court seeks an interpretation of Decision No 1/80 of the EEC-Turkey Association Council ('Decision No 1/80'). [2]

2. Article 6(1) of Decision No 1/80 ('Article 6(1)') entitles a duly registered Turkish worker, after one year's legal employment, to a renewal of his work permit for the same employer. The principal point at issue is whether, when the worker's original residence permit was granted on condition that he reside with his unmarried partner, that residence permit can be revoked, after the completion of one year's legal employment, on the ground that the relationship had come to an end before the completion of the one-year period and retroactively as from the date on which the relationship ended.

1 — Original language: English.

2 — Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council created under the Agreement establishing an Association between the European Economic Community and Turkey. An unofficial text of the decision is available at http://www.inis.gov.ie/en/INIS/DECISION_No_1_80_eng.pdf/Files/DECISION_No_1_80_eng.pdf.

Legislative framework

Decision No 1/80

3. Article 6(1) provides:

'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.'

Netherlands legislation

The Vreemdelingenwet 2000

4. Under Article 8(a) of the Vreemdelingenwet (Law on Foreign Nationals) 2000 ('the Vw 2000'), a foreign national is entitled lawfully to reside in the Netherlands on the basis of an ordinary fixed-term residence permit of the type referred to in Article 14 of that law.

5. Article 14(2) states, inter alia, that an ordinary fixed-term residence permit may be issued subject to restrictions relating to the purpose for which residence was granted.

6. Article 16(1)(g) provides that an application for an ordinary fixed-term residence permit may be refused if the foreign national fails to comply with the restriction which relates to the purpose for which he wishes to reside in the Netherlands.

7. Article 18(1)(f) states, inter alia, that an application for an extension of the period of validity of an ordinary fixed-term residence permit may be refused if there has not been compliance with the restriction subject to which the permit was issued.

8. Article 19 provides, inter alia, that an ordinary fixed-term residence permit may be withdrawn on the ground referred to in Article 18(1)(f).

The Vreemdelingenbesluit 2000

9. Under Article 4.43 of the Vreemdelingenbesluit (Decree on Foreign Nationals) 2000 ('the Vb 2000'), a foreign national who is lawfully resident within the meaning of Article 8(a) of the Vw 2000, but who no longer complies with the restriction subject to which the residence permit was issued must immediately notify the head of the regional police force for the municipality in which he resides.

Change of residence

10. It is not in dispute that Netherlands law requires a person – be he a national or otherwise – who changes his place of residence to notify that change of address to the authorities of both the municipality of his former address and that of his new one.

The main proceedings and the question referred for a preliminary ruling

11. Mr Ünal is a Turkish national. He entered the Netherlands on 24 February 2004 on the basis of a provisional residence permit. On 2 September 2004, he was issued with an ordinary fixed-term residence permit. The permit was valid from 29 March 2004 to 29 March 2005 and contained the restriction 'to reside with partner A.M. de Sousa van der Molen'. It appears that both Mr Ünal and Ms de Sousa van der Molen were registered in the community of 't Zandt.

12. On 21 April 2005, Mr Ünal submitted an application for extension of the period of validity of his residence permit. That application was granted by decision of 26 July 2005. The permit continued to carry the restriction as to residence with his partner.

13. By decision of 4 May 2006, the period of validity of the residence permit was extended to 1 March 2009.

14. The residence permits issued to Mr Ünal bore the entry 'permitted freely to work; work permit not required'.

15. On 8 May 2006, he entered into an employment contract with a temporary work agency in Groningen and began work for one of its clients, whose premises were situated at Nunspeet, some 150 kilometres from 't Zandt. His work thus required him to make a round trip of some 300 kilometres every working day. That contract was extended on 21 November 2007 and was valid until 21 November 2008. The period of one year's legal employment referred to in the first indent of Article 6(1) thus commenced on 8 May 2006 and ended on 7 May 2007.

16. On or around 2 April 2007, and, in any event, before the expiry of that one-year period, Mr Ünal moved from 't Zandt to Lelystad, which was only some 35 kilometres away from Nunspeet. He duly registered his change of address with the appropriate authorities. Ms de Sousa van der Molen, however, remained registered as a resident in the 't Zandt area, where she had worked for some 10 years. The fact that the parties had ceased

to be registered as living at the same address led the national authorities to conclude that the two were no longer cohabiting as from that date. Mr Ünal's contention that they lived together until early June 2007, with Ms de Sousa van der Molen retaining her registration in 't Zandt because her property there was not sold, was not accepted. [3]

17. On 4 June 2007, Mr Ünal submitted an application to have the restriction on his residence permit amended so that it no longer referred to residence with Ms de Sousa van der Molen but simply to 'continued residence'.

18. By decision of 28 December 2007, the Staatsecretaris van Justitie ('the State Secretary') rejected that application. He took the view that the relationship between Mr Ünal and Ms de Sousa van der Molen had effectively come to an end on 2 April 2007, inasmuch, from that date, they were no longer registered in the database for the municipality of 't Zandt ('the municipal database') as being resident at the same address. Accordingly, he concluded that Mr Ünal was no longer in compliance with the restriction attached to the residence permit which had been issued to him.

19. By separate decision of 7 February 2008, Mr Ünal's residence permit was withdrawn, with retroactive effect from 2 April 2007. Given the nature of his residence permit, that also implied withdrawal of his entitlement to work. The State Secretary took the position that the contents of the municipal database were of decisive significance and that the evidence adduced by Mr Ünal did not carry sufficient weight to override the information contained in the database.

20. Mr Ünal challenged the State Secretary's decisions. By decision of 31 July 2008, the State Secretary rejected that challenge. The decision records that Mr Ünal's narrative of the events surrounding the move to Lelystad was rejected, inasmuch as his statement in that regard was not supported by objectively verifiable evidence. A written declaration to similar effect provided by Ms de Sousa van der Molen was insufficient for that purpose. The entry in the municipal database had to be regarded as conclusive. Since, as of 2 April 2007, Mr Ünal had been in legal employment with the same employer for less than a year, he was not entitled to continued residence in the Netherlands on the basis of the EEC-Turkey Association Agreement.

3 — It is not disputed that Mr Ünal was required to notify the national authorities 'immediately' following any change in his situation. See Article 4.43 of the Vb 2000, referred to in point 9 above.

21. Mr Ünal brought a challenge against the State Secretary's decision of 31 July 2008 before the Rechtbank 's-Gravenhage (District Court, the Hague) ('the Rechtbank'). By decision of 6 July 2009, that court declared the challenge unfounded. It considered that Mr Ünal had failed adequately to demonstrate that the relationship had ended later than 2 April 2007. As a result, that court concurred with the State Secretary's finding that, since Mr Ünal had not been in legal employment with the same employer for more than one year on the date on which the relationship was deemed to have ended, he was not entitled to the benefit of any rights arising by virtue of Article 6(1).

22. Mr Ünal appealed to the Raad van State (Council of State). That court took the view that an interpretation of Article 6(1) was necessary in order for it to give a ruling in the main proceedings. In particular, it asked itself whether the *dicta* in the Court's judgment in *Altun*[4] relating to the principle of legal certainty might have an effect on how that article should be interpreted in relation to the case before it. It therefore stayed the proceedings and referred the following question to the Court of Justice for a preliminary ruling:

'Does the first indent of [Article 6(1)], read having particular regard to the principle of legal certainty, preclude the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the time at which there was no longer compliance with the ground on the basis of which the residence permit had been issued under national law, where no fraudulent conduct can be imputed to the Turkish worker in question and where such withdrawal takes place after the expiry of the one-year period referred to in the first indent of Article 6(1)?'

23. Written observations have been submitted by Mr Ünal, the Netherlands Government and the Commission. No hearing has been requested and none has been held.

Analysis

24. The primary issue raised by the question referred is whether Article 6(1) will allow the retroactive withdrawal of a right of residence where the person concerned has resided and worked in the host Member State for longer than the period of one year laid down in the first indent of Article 6(1), but ceased to comply with a condition attached to his residence permit before the end of that period. It is to be assumed, in that regard, that there is no question of fraudulent conduct on that person's part.

4 — Case C-337/07 [2008] ECR I-10323.

25. I shall deal with that issue first.

26. Next, I shall turn to the question whether, as the order for reference contemplates, the answer to that point is affected by the Court's *dicta* in *Altun*.

27. Lastly, I think it appropriate also to consider the application of the principles of equivalence and effectiveness in the context of the evidence which a person seeking to assert rights available to him under Article 6(1) may rely on in order to substantiate his entitlement to those rights.

Whether rights arising under Article 6(1) may be withdrawn retroactively

28. In order to answer the national court's question as to whether a residence permit may be withdrawn with retroactive effect in the circumstances described in the order for reference, it is necessary to begin with the objective of Article 6(1).

29. The Court has defined the purpose of that provision as being to 'consolidate progressively the position of Turkish workers in the host Member State'.[5] Such an objective gives specific embodiment, for Turkish workers, to the Court's definition of the objective of Decision No 1/80 itself, which is one of 'promot[ing] the gradual integration in the host Member State of Turkish nationals who satisfy the conditions laid down in one of the provisions of that decision and thus enjoy the rights conferred on them by the decision'.[6]

30. To that end, Article 6(1) provides for a Turkish worker's rights to be extended progressively in proportion to the duration of lawful paid employment in the host Member State.[7] Once he has completed four years of legal employment in that State, the worker is entitled to free access, in that Member State, to any paid employment of his choice. Prior to that stage, the protection afforded is less extensive. For example, the first indent of Article 6(1) provides that a worker who has completed only one year's legal employment is entitled to the renewal of his permit to work for the same employer, if a job is available.

31. Article 6(1) is, on its wording, concerned with the right of a Turkish national to work in

5 — See Case C-294/06 *Payir* [2008] ECR I-203, paragraph 37.

6 — See, inter alia, Case C-171/01 *Wählergruppe Gemeinsam* [2003] ECR I-4301, paragraph 79; Case C-325/05 *Derin* [2007] ECR I-6495, paragraph 53; and *Altun*, cited in footnote 4 above, paragraph 29.

7 — See Case C-230/03 *Sedef* [2006] ECR I-157, paragraph 34.

the host Member State. However, it is already quite clear that, since the right to take up employment and the right to reside are closely linked, that provision necessarily implies a concomitant right of residence for a person claiming employment rights. [8]

32. To claim rights under Article 6, a Turkish national must satisfy three conditions.

33. First, the person concerned must be a 'worker'. The Court has held that, in order to satisfy that condition, the Turkish national must perform activities which are real and genuine, to the exclusion of activities which are on such a small scale as to be regarded as purely marginal and ancillary. The essential requirement is that, for a certain period of time, a person performs services for and under the direction of another person, in return for which he receives remuneration. [9] There is nothing in the present case to suggest that Mr Ünal has not satisfied that condition.

34. Second, he must be 'duly registered as belonging to the labour force'. The Court has stated that 'this concept embraces all workers who have met the conditions laid down by law or regulation in the host Member State and who are thus entitled to pursue an occupation in its territory'. [10] Again, it seems clear that this requirement has been met.

35. Third, and most importantly from the point of view of the question referred, he must have been in 'legal employment' in the Member State concerned. The Court has held that the expression 'legal employment' means that there must be 'a stable and secure situation as a member of the labour force of the host Member State and, by virtue of that situation, an undisputed right of residence'. [11] Mr Ünal's employment contract appears to have been sufficiently stable and secure to meet that test; but is that sufficient to confer on him an 'undisputed right of residence'?

36. Lastly, I should recall that it is settled case-law that Decision No 1/80 does not encroach upon the competence retained by the Member States to regulate both the initial entry into their territory of Turkish nationals

8 — See, to that effect, Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 29.

9 — See *Payir*, cited in footnote 5 above, paragraph 28. In that respect, the approach is not dissimilar to that adopted in respect of an EU national seeking to exercise rights of free movement as a worker (see, for example, Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraph 17, and Case C-3/87 *Agegate* [1987] ECR 4459, paragraph 35), before the advent of more extensive rights following the introduction of the concept of citizenship of the Union by the Treaty of Maastricht in 1992.

10 — See *Payir*, cited in footnote 5 above, paragraph 29.

11 — See *Payir*, cited in footnote 5 above, paragraph 30.

and the conditions under which they may take up their first employment. [12]

37. In *Kus*, [13] the Court was asked to consider the extent to which a host Member State could continue to attach conditions to the residence of a Turkish worker who had completed a period of legal employment for the purposes of Article 6(1).

38. The case involved a Turkish national who was allowed entry to Germany in order to marry a German national. He took up employment and worked in that Member State for over four years, thereby gaining rights under the third indent of Article 6(1). He and his spouse then divorced. On his seeking to renew his residence permit, the national authorities refused his application, since the original reason for his stay had ceased to exist. The Court held that:

'20 … Article 6(1) of Decision No 1/80 is confined to regulating the situation of the Turkish worker with respect to employment, and makes no reference to his situation as far as the right of residence is concerned (see the judgment in *Sevince*, paragraph 28).

21 It should be noted that, according to its wording, Article 6(1) applies to Turkish workers duly registered as belonging to the labour force of a Member State and that, under the first indent, a Turkish worker needs only to have been in legal employment for more than one year in order to be entitled to the renewal of his permit to work for the same employer. That provision does not therefore make that right dependant on any other condition, such as the circumstances under which the right of entry and residence was obtained.

22 Accordingly, even though legal employment within the meaning of Article 6(1) presupposes a stable and secure situation as a member of the labour force and, by virtue of this, implies the existence of an undisputed right of residence and indeed, if necessary, possession of a lawful residence permit, the reasons for which that right was conferred, or for which the residence permit was granted, are not decisive for the purposes of their application.

23 It follows that once a Turkish worker has been employed for more than one year under a valid work permit, he must be regarded as fulfilling the conditions laid down in the first indent of Article 6(1) of Decision No 1/80,

12 — See, inter alia, *Payir*, cited in footnote 5 above, paragraph 36.
13 — Case C-237/91 [1992] ECR I-6781.

even though his residence permit was initially granted to him for a purpose other than that of engaging in paid employment.'

39. This means, I suggest, that the principle of legal certainty will apply to a Turkish worker who has completed one of the periods laid down in Article 6(1). He will know, for example, if he has completed a period of one year's legal employment for the same employer, that he may continue to work for the same employer, assuming always that a job is available. If he has been in legal employment for a period of four years, he will know that he may enjoy free access to any paid employment of his choice in the host Member State. Any restrictions which may have been attached to his right of residence on entry to that State will no longer apply. The process of integration, which Article 6(1) underpins, has begun; and any attempt to withdraw his residence permit on the ground that he had ceased to comply with one of those restrictions would be unlawful.

40. Applying the principles outlined above to the situation in the present case, I would observe as follows:

— Mr Ünal entered the Netherlands on 24 February 2004, on the basis of a provisional residence permit; an ordinary fixed-term residence permit was issued to him on 2 September 2004 (backdated, so as to have effect from 29 March 2004) and was extended so as to cover subsequent periods of residence in that Member State; during the initial period of residence, he was not in employment in that State;

— since Article 6(1) is concerned with the right of a Turkish national to work in the host Member State [14] and rights under it do not arise by virtue of residence alone, the period during which Mr Ünal was in residence, but not in employment, does not fall to be taken into account in computing his rights under that provision;

— it is not in dispute that, on 8 May 2006, the day on which Mr Ünal started work in the Netherlands, he had a 'lawful residence permit'; [15] a separate work permit was not required for him [16] and the requirement mentioned in paragraph 23 of *Kus* will therefore not arise;

— the one-year period laid down by the first indent of Article 6(1) commenced on 8 May 2006 and ended on 7 May 2007;

14 — See point 31 above.
15 — See paragraph 22 of *Kus*.
16 — See point 14 above.

— the 'questionable event', from the point of view of the Netherlands authorities, took place on 2 April 2007, that is to say, within the one-year period in question, but did not come to light until after that period had expired;

— in the absence of any 'questionable event', Mr Ünal's rights as regards his employment in the host Member State under the first indent of Article 6(1) would, applying the Court's *dicta* in *Kus*, have crystallised on 7 May 2007; he would thus have been entitled to a concomitant right of residence; [17]

— accordingly, the question which arises is whether Mr Ünal should, none the less, be considered to have satisfied the requirements of Article 6(1), notwithstanding that that questionable event took place.

41. There are certain qualifications to the general rule that restrictions attached to the right of residence on entry into a Member State fall away as rights as a worker under Decision No 1/80 crystallise. [18]

42. In order to satisfy the requirements of Article 6(1), the Turkish worker must have been in 'legal employment' during the relevant period. That, in turn, implies that the worker had a legal right of residence for the duration of that period. [19]

43. The Court has accordingly held that a Turkish worker did not satisfy that requirement for so long as he was resident in the host Member State by virtue of a provisional authorisation to reside there pending the outcome of an appeal he had lodged against a decision refusing him a residence permit. [20] It has also held that a Turkish worker who was resident in the host Member State by virtue only of national legislation permitting residence there pending completion of the procedure for the grant of a residence permit could not rely on the period concerned in calculating his rights under Article 6(1), since he had been given the right to remain and work in that country only on a provisional basis pending a final decision. [21] Here, however, it is plain that Mr Ünal's right of residence was not provisional or qualified in that way.

44. *Kol* [22] raised a different issue. There, the Court was required to address the position of

17 — See point 31 above.

18 — See point 39 above.

19 — See Case C-36/96 *Günaydin* [1997] ECR I-5143, paragraph 44.

20 — See *Sevince*, cited in footnote 8 above, paragraph 31.

21 — See *Kus*, cited in footnote 13 above, paragraph 18.

22 — Case C-285/95 [1997] ECR I-3069.

a Turkish national, who had entered Germany on fraudulent grounds. The case involved a residence right based on a sham marriage. The Court noted, inter alia, its judgment in *Kus* [23] and held, '*a fortiori*', that that reasoning must apply in the case before it. It went on to observe that periods of employment after a residence permit has been obtained only by means of fraudulent conduct cannot be regarded as legal for the purposes of Article 6(1), since the Turkish national did not fulfil the conditions for the grant of such a permit which was, accordingly, liable to be rescinded when the fraud was discovered. [24] The periods of employment completed by Mr Kol under a residence permit which was vitiated by fraud could give rise to no rights in his favour. [25]

45. Can the reasoning in *Kol* be applied to the present case?

46. I do not believe so.

47. *Kol* introduces a qualification to the general rule laid down in *Kus* that restrictions attached to the right of residence on entry into a Member State fall away as rights as a worker under Decision No 1/80 crystallise. [26] The reason for the qualification is clear. Where a person, by his acts or omissions, intentionally seeks to deceive the national authorities in order to gain a right of residence, and hence of access to the employment market, he should not be allowed to do so. Were the position to be otherwise, it would be possible to obtain those rights by means of fraudulent conduct.

48. Had it been established that Mr Ünal had acquired his right of residence in the host Member State on grounds which involved such an intention to deceive, it is clear that the national authorities would have been entitled to withdraw his residence permit notwithstanding his residence and employment there for more than one year. In the present case, however, the national court makes it quite clear that there is no suggestion that Mr Ünal's conduct was fraudulent. The Court's *dicta* in *Kol* therefore do not apply to him directly.

49. Nor, as mentioned above, is this a case where, under existing case-law, Mr Ünal's employment does not count as legal employment for a reason which does not involve fraudulent conduct. [27]

23 — Cited in footnote 13 above.
24 — See, to that effect, paragraph 26.
25 — See paragraph 28.
26 — See point 39 above.
27 — See point 43 above.

50. Should the qualification, in *Kol*, to the general rule as to residence rights nevertheless be extended so as to apply to persons in Mr Ünal's situation who have not acted with fraudulent intent?

51. The Netherlands Government argues that a person in his position must be presumed to know the law. The relevant provisions of the national legislation are available, inter alia, on the internet. Since Mr Ünal should be deemed to have been aware of those provisions, it was open to the national authorities to withdraw his residence permit with retroactive effect.

52. I can see no justification for extending the principle in that way. To do so would undermine what the Court has termed the 'general principle of respect for acquired rights',[28] and the corresponding legal certainty that forms an essential part of the general rule I have described.[29] The derogation from that general principle in cases involving fraudulent conduct recognised by the Court in *Kol* is sufficient to safeguard against deliberate abuse of rights.

53. It follows, in my view, that it was not open to the national authorities retroactively to invalidate Mr Ünal's right of residence as regards the period between 2 April 2007 and 7 May 2007, with the result that he lost the benefit of his rights under the first indent of Article 6(1).

54. I should add that, had a person, such as Mr Ünal, truly wished to subvert the system laid down under Article 6(1) with the intent to deceive the national authorities, nothing would have been easier than to delay the move to Lelystad by one month. Had he done so, he would have completed the one-year period of employment required by that provision without the authorities being alerted to any possible change in the nature of his relationship with his partner. The facts are, of course, a matter for the national court to determine, but Mr Ünal's failure to follow that course seems to me to make it less, rather than more, likely that there was any attempt to 'play the system', but simply a desire on his part to reduce the impact of his daily journey

28 — See Case C-303/08 *Bozkurt* [2010] ECR I-13445, paragraph 41.

29 — I might also observe that not only is the law familiar with the maxim *nemo censetur ignorare legem*; it also accepts the presumption *nemo praesumitur malus*.

to work which must, on any basis, have been very wearying.

55. I am therefore of the view that the answer to the question referred should be that the first indent of Article 6(1) must be interpreted as meaning that it precludes the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the time at which there was no longer compliance with the ground on the basis of which the residence permit had been issued under national law, where no fraudulent conduct can be imputed to the Turkish worker in question and where such withdrawal takes place after the expiry of the one-year period referred to in the first indent of Article 6(1).

The application of Altun to the case in the main proceedings

56. A substantial part of the order for reference is devoted to an analysis of the extent to which the Court's judgment in *Altun* [30] might be relevant to Mr Ünal's case. The national court wonders to what extent that judgment and, in particular, the observations it contains regarding the doctrine of legal certainty, may affect the outcome of the case in the main proceedings. It concludes, in essence, that that judgment is unlikely to apply in the circumstances at issue.

57. I agree.

58. *Altun* involved a Turkish national who had entered the host Member State as an asylum seeker. He was granted an indefinite residence permit in that State on the basis of representations which subsequent analysis suggested were likely to have been fraudulent. After being granted his right of residence, he initiated the procedure for family reunification with respect to certain of his family members. The question arose of the effect which any fraudulent conduct on his part might have on the rights of his family members under Article 7 of Decision No 1/80. The Court held that, where the rights of those family members had become autonomous under the procedure laid down by that article, those rights could no longer be called into question on account of irregularities which had, in the past, affected the Turkish worker's original right of residence. The Court reached that conclusion on the basis of the doctrine of legal certainty. [31] It noted that there were only two kinds of restriction on the rights conferred by the first paragraph of Article 7

30 — Cited in footnote 4 above.

31 — See paragraphs 51 to 60 of the judgment.

of Decision No 1/80. [32] To accept the proposition that family members who had acquired autonomous rights under that paragraph could be deprived of those rights by reason of the behaviour of the person whom they had come to join in the host Member State would mean that their certainty as to the existence of those rights could be fatally undermined by an element over which they might have no control whatsoever.

59. I have already referred to the principle of legal certainty in considering whether it was open to the national authorities retroactively to withdraw Mr Ünal's right of residence in the circumstances arising in the main proceedings. I do not see that his position is affected in any way by the Court's *dicta* in *Altun*. The essential issue there involved the nature of the derivative rights which are available to family members under Article 7 of Decision No 1/80. The position of the Turkish worker himself, claiming rights under Article 6(1), is not affected one way or the other by the Court's ruling in *Altun*. Accordingly, I draw no guidance from it in answering the question referred by the national court.

Further considerations: the principles of equivalence and effectiveness

60. I have referred above to the fact that the national authorities and the national courts did not accept the evidence adduced by Mr Ünal as establishing that he had continued to reside with Ms de Sousa van der Molen between 2 April 2007 and early June 2007. [33]

61. Although the national court has not asked the Court to consider this issue in the order for reference, the Commission asks whether the manner in which evidentiary issues were addressed at the national level complies with the principles of equivalence and effectiveness.

62. Essentially, as I understand the situation described in the order for reference and the case-file, the position is this:

— Mr Ünal claims that he moved from 't Zandt to Lelystad because he could no longer cope with a journey of some 300 kilometres to work and back each

32 — That is to say, a restriction based on the presence of the Turkish migrant in the host Member State where he constitutes, on account of his own conduct, a genuine and serious threat to public policy, public security or public health, in accordance with Article 14 of the decision, or a restriction based on the fact that the person concerned has left the territory of that State for a significant length of time without legitimate reason. See paragraph 62 of the judgment.

33 — See point 18 et seq. above.

day. He and Ms de Sousa van der Molen continued to live together following the move and did not cease doing so until early June 2007. Ms de Sousa van der Molen remained on the register for 't Zandt, because she had not sold her house there, whilst Mr Ünal duly registered his residence in Lelystad;

— in his decisions of 28 December 2007 and 7 February 2008, the State Secretary took the view that the fact that Mr Ünal and Ms de Sousa van der Molen were, following Mr Ünal's move to Lelystad, no longer entered on the same register was determinative as regards the termination of their relationship;

— in his decision of 31 July 2008, the State Secretary maintained his view, on the basis that Mr Ünal's position was not supported by objectively verifiable evidence and that a written declaration provided by Ms de Sousa van der Molen to the effect that the parties had continued to live together notwithstanding the move was not sufficient for that purpose;

— in the proceedings before the Rechtbank, Mr Ünal sought to introduce further evidence in support of his position. That comprised a declaration by a mutual friend of Mr Ünal and Ms de Sousa van der Molen, two congratulatory cards relating to the new home and a number of photographs. The Rechtbank took the view that those items also failed adequately to demonstrate that the relationship had continued beyond 2 April 2007.

63. The Commission observes that it is hard to see what evidence Mr Ünal could have led that might have persuaded the national decision-makers that his version of events was the correct one.

64. Although the national courts will naturally have a fuller understanding of why certain evidence was accepted and other evidence rejected, I have some sympathy with the Commission's point. I shall therefore summarise the essential principles under European Union (EU) law which I see as being relevant here.

65. It is clear that decisions of the Association Council such as Decision No 1/80 form an integral part, from their entry into force, of the legal system of the European Union. [34] Rights arising under that decision are thus derived from EU law.

34 — See *Sevince*, cited in footnote 8 above, paragraph 9.

66. It is also plain that, in the absence of EU rules governing the matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding such rights. [35]

67. The Member States, however, are responsible for ensuring that those rights are effectively protected in each case. [36] The detailed procedural rules governing those actions must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by EU law (principle of effectiveness). [37]

68. The principle of equivalence requires that the national rule in question be applied without distinction, whether the infringement alleged is of European law or national law, where the purpose and cause of action are similar. In order to establish whether the principle of equivalence has been complied with, it is for the national court, which alone has direct knowledge of the procedural rules governing actions in the field of domestic law, to determine whether the procedural rules intended to ensure that the rights derived by individuals from EU law are safeguarded under domestic law comply with that principle, and to consider both the purpose and the essential characteristics of allegedly similar domestic actions. In order to decide whether procedural rules are equivalent the national court must establish objectively, in the abstract, whether the rules at issue are similar taking into account the role played by those rules in the procedure as a whole, the conduct of that procedure and any special features of those rules. [38]

69. As regards the principle of effectiveness, it is apparent from the Court's case-law that cases which raise the question whether a national procedural provision renders the exercise of an individual's rights under the Community legal order practically impossible or excessively difficult must similarly be analysed by reference to the role of that provision in the procedure, its conduct and its special features, viewed as a whole, before the various national instances. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings. [39]

35 — See, inter alia, Case C-268/06 *Impact* [2008] ECR I-2483, paragraph 45 and the case-law cited.

36 — See, inter alia, *Impact*, cited in footnote 35 above, paragraph 44 and the case-law cited.

37 — See, inter alia, *Impact*, cited in footnote 35 above, paragraph 46 and the case-law cited. The principle of effective legal protection is a general principle of EU law, which is recognised in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). See, in that regard, Joined Cases C-444/09 and C-456/09 *Gavieiro Gavieiro and Iglesias Torres* [2010] ECR I-14031, paragraph 75.

38 — See Case C-63/08 *Pontin* [2009] ECR I-10467, paragraphs 45 and 46.

39 — See *Pontin*, cited in footnote 38 above, paragraph 47.

70. It is for the national court to determine whether those principles have been satisfied in the case in the main proceedings.

Concluding remarks

71. I noted above the general rule that a Turkish worker who satisfies the requirements of the first indent of Article 6(1) is entitled to treat rights arising thereunder as enshrined, subject only to the qualification that rights cannot arise under that provision where the worker's right of residence is purely a provisional one or where he has been involved in fraudulent conduct. In that regard, I have concluded that there is no justification for extending the qualification as regards fraudulent conduct so as to include other types of behaviour where no intention to deceive arises. [40]

72. I should like to add this.

73. The adoption by the EU legislature of an ever-increasing number of measures for harmonisation within the Union may make it easy to lose sight of the extent to which the EU remains, and will continue to be, founded in diversity. [41] Not only are the histories and cultures of the Member States many and varied; the same is true of their legal systems. What is well known or instinctively obvious to a national of one Member State may appear curious, difficult to understand or even incomprehensible, and perhaps not obvious at all to a national of another. That is *a fortiori* the case when one adds to that equation third countries having a relationship with the Union in the form of an association agreement, and their nationals.

74. It may be a relatively straightforward step for the authorities of a host Member State to form the view that, where a national of a third country does not abide by rules of that State or simply fails to apprehend consequences of a particular line of conduct which may seem obvious to nationals of that State, that person is seeking to abuse those rules and, from there, to conclude that such non-compliance is evidence of fraudulent conduct or something rather like it. It seems to me that such a conclusion should be reached with great caution. A third-country national may find those rules hard to understand and difficult, or even impossible, to access – particularly if he does not speak the language of the host Member State fluently. Unless he is financially well off, he is unlikely to be able to afford the lawyers' fees which he would need to pay in order to have every rule that is relevant to his situation explained to him. To argue, for example, as the Netherlands Government does in its observations, that, because the national rules are available, inter alia, on the internet, a third-country national, such as Mr Ünal, must automatically be presumed

40 — See, in particular, points 40, 43, 44 and 52 above.

41 — See, for example, Article 22 of the Charter: 'the Union shall respect cultural, religious and linguistic diversity'.

to have understood the rules, their implications and the presumptions that would arise under them as a result of one or other course of action, seems to me to be unduly simplistic. Such an argument risks assuming that all cultures and life styles are instantly assimilated into those of the host Member State when, self-evidently, they are not. It may also have dangerous consequences as regards the freedoms and rights of the person concerned.

Conclusion

75. In the light of the above, I propose that the Court answer the question referred by the Raad van State as follows:

The first indent of Article 6(1) of Decision No 1/80 of the EEC-Turkey Association Council of 19 September 1980 on the development of the Association must be interpreted as meaning that it precludes the competent national authorities from withdrawing the residence permit of a Turkish worker with retroactive effect from the time at which there was no longer compliance with the ground on the basis of which the residence permit had been issued under national law, where no fraudulent conduct can be imputed to the Turkish worker in question and where such withdrawal takes place after the expiry of the one-year period referred to in the first indent of Article 6(1).