OPINION OF ADVOCATE GENERAL ELMER

delivered on 28 March 1995 *

Introduction

1. In this reference for a preliminary ruling the Court is asked to decide whether a Turkish national who has been employed as a driver in international transport with a Netherlands company but who has become permanently incapacitated for work as a result of an accident at work has a right of residence in the Netherlands in accordance with the Association Agreement between the EEC and Turkey [1] and Decisions No 2/76 and No 1/80 of the Association Council established by that Agreement.

Facts

2. Ahmet Bozkurt is a Turkish national and was from at least 1979 employed by Rynart Transport BV, a legal person, whose head office is in Klundert in the Netherlands. Bozkurt was employed as a driver in international transport on routes to the Middle East driving lorries registered in the Netherlands.

In the periods between his journeys and during his holidays and similar periods he resided in the Netherlands. According to Netherlands legislation on aliens a work permit is not required for work as a driver in international transport. Nationals of third countries in employment of that kind receive, according to information supplied by the Netherlands Government, a visa for one year at a time with a right of residence of up to three months at a time, with a maximum of nine months' total residence in a year, and subject to those restrictions of time they may spend their holiday and leisure periods in the Netherlands without a residence permit.

The contract of employment between Bozkurt and Rynart Transport BV was drawn up in Dutch and governed by Netherlands law. In addition Bozkurt was covered by the Netherlands social security system as a result of his employment. In 1988 following an accident at work he was declared perma-

* Original language: Danish.

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

nently incapable of work and has since then been receiving benefit under the Netherlands legislation on incapacity for work. That benefit is paid, according to the information supplied, irrespective of whether or not Bozkurt resides in the Netherlands.

On 6 March 1991, in view of his many years' work as a driver with Rynart Transport BV, Bozkurt applied to the Netherlands aliens authorities for an unlimited residence permit. On 6 March 1991 the Rotterdam police rejected the application, and following a complaint against that decision the Netherlands Staatssecretaris van Justitie (State Secretary for Justice) also rejected the application.

3. Subsequently, on 16 July 1991, Ahmet Bozkurt lodged an appeal with the Raad van State (Council of State), claiming that under Article 2 of Decision No 2/76 of the Association Council and/or Article 6 of Decision No 1/80 of the Association Council he was entitled to a residence permit.

Community law

4. The Association Agreement between the European Economic Community and Turkey was concluded on 12 September 1963, and according to Article 2(1) thereof, its aim 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'.

Under Article 12 the 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'.

Under Article 36 of an additional protocol to the Agreement of Association, dated 23 November 1970, [2] the Association Council decided on the necessary guidelines for the progressive implementation of freedom of movement of workers between Member States of the Community and Turkey in accordance with the principles set out in Article 12 of the Agreement of Association.

5. In pursuance thereof the Association Council adopted Decision No 2/76 of 20 December 1976, which came into force on that date, and Decision No 1/80 of 19 September 1980, which came into force on 1 July 1980. [3]

2 — OJ 1973 C 113 of 24 December 1973.

3 — The decisions have not been published.

Article 2(1)(b) and (c) of Decision No 2/76 provides as follows:

'(b) 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.

(c) Annual holidays and short absences for reasons of sickness, maternity or an accident at work shall be treated as periods of legal employment. Periods of involuntary unemployment duly certified by the relevant authorities and long absences on account of sickness shall not be treated as periods of legal employment, but shall not affect rights acquired as the result of the preceding period of employment.'

Article 6(1) and (2) of Decision No 1/80 provides as follows:

'1. Subject to ... a Turkish worker 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.

2. Annual holidays and absences for reasons of maternity or an accident at work or short periods of sickness shall be treated as periods of legal employment. Periods of involuntary unemployment duly certified by the relevant authorities and long absences on account of sickness shall not be treated as periods of legal employment, but shall not affect rights acquired as the result of the preceding period of employment.'

The questions referred to the Court for a preliminary ruling

6. As a decision in the case involves the interpretation of the above provisions, the Raad van State has stayed the proceedings and has referred the following questions to the Court for a preliminary ruling under Article 177 of the Treaty:

'1. Is the criterion laid down in the judgment of the Court of Justice in Case 9/88 *Lopes da Veiga* [1989] ECR 2989 also to be applied in resolving the question whether work carried out by a Turkish worker pursuant to an employment contract under Netherlands law as

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an international lorry-driver in the service of a Netherlands company established in the Netherlands can be regarded as (legal) employment in a Member State within the meaning of Article 2 of Decision No 2/76 and/or Article 6 of Decision No 1/80, and in that respect are the same circumstances to be taken into account *mutatis mutandis* by the national courts?

2. Is there a situation of legal employment in a Member State within the meaning of Article 2 of Decision No 2/76 and/or Article 6 of Decision No 1/80, where a Turkish worker does not need to hold a work permit or a residence permit in order to carry out his work as an international lorry-driver because of the usually short periods that he remains in the Netherlands between his journeys, but he cannot in principle acquire a right of — long-term-residence on the basis of that work under the Netherlands legislation and Netherlands policy with regard to the admission of foreign nationals?

3. If the answers to Questions 1 and 2 are in the affirmative:

   Does it follow from Article 2 of Decision No 2/76 and/or Article 6 of Decision No 1/80, that a Turkish worker has a right of residence at least for so long as he is in legal employment within the meaning of those decisions?

4. If the answer to Question 3 is in the affirmative:

   Does the Turkish worker retain that right of residence ensuing from Article 2 of Decision No 2/76 and/or Article 6 of Decision No 1/80 if he becomes permanently and completely incapable of working?'

Discussion

7. By Questions 1, 2 and 3 the court of reference is seeking clarification of whether Ahmet Bozkurt's previous employment as a driver in international transport may be regarded as legal employment in a Member State in pursuance of Article 2 of Decision No 2/76 and/or Article 6 of Decision No 1/80, and if so whether there is in consequence a right to reside in the Member State in question as long as the employment is continuing.

By Question 4 the court of reference is seeking a decision from the Court of Justice as to whether Ahmet Bozkurt, if it is established that purely as a matter of fact he must be regarded as having engaged in legal employment in the Netherlands, has a claim under Decisions No 2/76 and No 1/80 to be able to reside in the Netherlands after becoming permanently incapacitated for work as a result of an accident at work.

8. In its judgment in Case C-192/89 *Sevince* v *Staatssecretaris van Justitie* [4] the Court declared that the interpretation of Decisions No 2/76 and No 1/80 fell within the scope of Article 177 of the EEC Treaty. In the same case the Court stated that

'Article 2(1)(b) of Decision No 2/76 and/or Article 6(1) of Decision No 1/80 ... have direct effect in the Member States of the European Community'.

Those proceedings concerned a case in which there was a question whether a decision of 11 September 1980 by the Netherlands authorities refusing the extension of a residence permit granted on 22 February 1979 to a Turkish national, S. Z. Sevince, was lawful. By reason of the date on which Decision No 1/80 came into force, which, as previously mentioned, was 1 July 1980, the question of the right of residence of the Turkish national in question presumably had to be decided in that case on the basis both of the decision of 1980 and of Decision No 2/76. The Court decided the question of direct effect in relation to the provision in question in both texts without deciding the question of the date of application, hence the expression 'and/or'.

9. In the case now referred to the Court Bozkurt has also clearly had links with the Netherlands before Decision No 1/80 came into force on 1 July 1980. However, according to the information available, Bozkurt cannot prove a connection with the Netherlands for a period further back than 1979. Thus the connection with the Netherlands when Decision No 1/80 came into force on 1 July 1980 did not extend over the period of five years which, according to Article 2(1)(b) of Decision No 2/76, was determinative for the 'free access in that country to any paid employment of his choice' authorized thereby.

Accordingly it would in my view be most appropriate to decide the question of interpretation referred to the Court according to the rules of Decision No 1/80 which, when it came into force, must have replaced the corresponding rules in Decision No 2/76, provided that Bozkurt's connection with the Netherlands in 1979 and 1980 is, where appropriate, taken into consideration in relation to the decision.

It should, however, be emphasized that there is not a great deal of difference between the two sets of rules. The period of five years in Article 2(1)(b) of Decision No 2/76 has been reduced, in the corresponding provision in Article 6(1) of Decision No 1/80, to four years, but apart from that the differences between the two sets of provisions in question are a mere matter of wording, inasmuch as the provisions of Decision No 1/80 are more clearly drafted in a number of respects than the corresponding provisions of Decision No 2/76.

4 — [1990] ECR I-3461.

Question 1

That connection criterion must also apply in the case of a worker/national of a Member State who is permanently employed on board a ship flying the flag of another Member State.

10. The court of reference refers in its question to the Court's judgment in Case 9/88 *Lopes da Veiga* v *Staatssecretaris van Justitie*. [5] That case concerned the question whether a Portuguese national who, from a date prior to Portugal's accession to the European Communities, had been carrying on an activity as an employed person on a Netherlands ship should be regarded as a worker who was a national of one Member State employed in the territory of another Member State within the meaning of Articles 7, 8 and 9 of Regulation (EEC) No 1612/68 of the Council. [6] In paragraphs 15, 16 and 17 of the grounds of judgment the Court stated as follows:

'With regard to professional activities which are pursued, partially or temporarily, outside the territory of the Community, the Court has held, in its judgments ... in Case 36/74 ... and in Case 237/83 ... that persons pursuing such activities had the status of workers employed in the territory of a Member State if the legal relationship of employment could be located within the territory of the Community or retained a sufficiently close link with that territory.

It is for the national Court to decide whether the employment relationship of the applicant in the main proceedings has a sufficiently close connection with the territory of the Netherlands, taking into account in particular the following circumstances ...: the applicant works on board a vessel registered in the Netherlands in the employ of a shipping company incorporated under the law of the Netherlands and established in that State; he was hired in the Netherlands and the employment relationship between him and his employer is subject to Netherlands law; he is insured under the social security system of the Netherlands and pays income tax in the Netherlands.'

11. Ahmet Bozkurt has contended before the national court that the question whether he has been legally employed in the Netherlands must be decided according to the same criteria as those referred to in the *Lopes da Veiga* judgment.

12. The German Government, the Netherlands Government, the Greek Government and the United Kingdom have contended on

5 — [1989] ECR 2989.

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

the other hand that the judgment in the *Lopes da Veiga* case concerns the interpretation of a fundamental concept of Community law in the sphere of free movement of workers, namely the concept of 'a worker ... who is employed in the territory of another Member State' within the meaning of Articles 7, 8 and 9 of Regulation No 1612/68 of the Council and that it cannot therefore be applied in connection with the interpretation of rules which originate in an association agreement and which govern the circumstances of a national of a non-Member State on the labour market of a Member State.

13. According to the case-law of the Court [7] international agreements concluded by the Community must be interpreted in the light of their wording and regard being had to the object they pursue. The interpretation which the Court has given to similar provisions or concepts in the Treaty or secondary Community legislation cannot be directly transposed to an international agreement or to provisions issued in pursuance thereof, inasmuch as it must first be considered whether the wording and scope of the agreement in question prevent it.

14. For the implementation of Articles 48 and 49 of the Treaty on freedom of movement for workers Regulation No 1612/68 of the Council lays down more detailed rules for eligibility for employment in the other Member States to which nationals of the Member States are entitled. In the *Lopes da Veiga* judgment the Court interpreted the concept of 'a worker ... who is employed in the territory of another Member State' in that regulation and established a number of criteria to be applied in assessing it.

The Association Council established by the Agreement of Association between the EEC and Turkey adopted Decision No 1/80 (and No 2/76) in pursuance of Article 12 of the agreement from which it appears that the parties were agreed on progressively securing freedom of movement for workers between them on the basis of Articles 48, 49 and 50 of the EEC Treaty. The Agreement of Association and the decisions adopted in pursuance thereof thus refer to the rules of Community law in the field of free movement of workers.

Furthermore, since in Decision No 1/80 (and No 2/76) the expression 'employment ... in ... that Member State' is used and since that concept must correspond to the abovementioned concept 'a worker ... who is employed in the territory of another Member State' in Articles 7, 8 and 9 of Regulation No 1612/68, it must be obvious that these concepts should be interpreted in the same way and thus use the criteria laid down in the *Lopes da Veiga* judgment.

15. The Court has previously had occasion to give judgment on a related problem, inas-

7 — Cf. judgments in Case 270/80 *Polydor* v *Harlequin Record Shops* [1982] ECR 329 and in Case 104/82 *Hauptzollamt Mainz* v *Kupferberg* [1982] ECR 3641.

much as, in its judgment in Case C-18/90 *Kziber*, [8] it decided as to the scope of a provision in the part of the EEC-Morocco Cooperation Agreement relating to cooperation in the field of labour. The provision prescribed that as regards Moroccan workers employed in a Member State a social security scheme was to be applied excluding all discrimination on the basis of nationality as compared with nationals of Member States in which the persons concerned were employed. The Court declared with regard to that provision that:

'The concept of social security in Article 41(1) of the Agreement must be understood by means of an analogy with the identical concept in Regulation No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community ...'

16. The connection factor with regard to professional activities which are pursued, partially or temporarily, outside the territory of the Community — namely that 'the legal relationship of employment could be located within the territory of the Community or retained a sufficiently close link with that territory' — must moreover in my view be applied irrespective of whether the worker concerned, as in that judgment, has worked on board a ship flying the flag of another Member State or has, as in this case, worked as the driver of a motor vehicle registered in a Member State.

17. The first question must therefore be answered to the effect that the criteria laid down by the Court in the *Lopes da Veiga* judgment must be correspondingly applied as regards the interpretation of the concept of 'employment ... in that Member State' in Article 6(1) of Decision No 1/80 of the Association Council established by the Agreement of Association between the EEC and Turkey. It is for the national court to decide whether Ahmet Bozkurt's relationship of employment has a sufficiently close link with Netherlands territory, whereby the following circumstances *inter alia* should be regarded as the basis: Ahmet Bozkurt was employed by a Netherlands firm; the contract of employment was concluded in Dutch and governed by Netherlands law; he drove lorries registered in the Netherlands and was covered by the Netherlands social security system, and after becoming permanently incapacitated for work owing to an accident at work he now receives benefit from the Netherlands; he has resided in the Netherlands in the periods between his journeys and during his holidays.

Questions 2 and 3

18. By its second and third questions the court of reference seeks the decision of the

8 — [1991] ECR I-199.

Court of Justice as to whether a Turkish worker has 'legal' employment in a Member State within the meaning of Article 6(1) of Decision No 1/80, since the person concerned needs neither a work permit nor a residence permit to be employed as a lorry-driver in international transport and whether the provision gives a Turkish worker the right of residence in a Member State as long as he is pursuing legal employment.

19. The basis for the answer to these questions must be that Article 6(1) of the Association Council's Decision No 1/80 gives Turkish workers a right to continued employment in so far as they have had legal employment in a Member State for a specified length of time. That right to continued employment must imply that if those conditions are met the worker also has a right of residence, since otherwise the right to employment would be deprived of any effect.

The provision cannot however be assumed to govern the question of the right to employment and residence in the Member States for Turkish workers who do not meet these conditions as to time and thus do not have the right, granted in the provision, of continued employment (and residence). It is therefore the legislation of Member States which prescribes whether, and if so under what conditions, Turkish nationals have the right of entry and of residence in their territory and of pursuing employment there.

In keeping with that, the Court stated in its judgment in Case C-192/89 *Sevince*, [9] at paragraphs 28 and 29, that the provisions of Article 6(1) of Decision No 1/80 of the Association Council:

'... merely govern the circumstances of the Turkish worker as regards employment and make no reference to his circumstances concerning the right of residence.

The fact nevertheless remains that those two aspects of the personal situation of a Turkish worker are closely linked and that by granting to such a worker, after a specified period of legal employment in the Member State, access to any paid employment of his choice, the provisions in question necessarily imply — since otherwise the right granted by them to the Turkish worker would be deprived of any effect — the existence, at that time, of a right of residence for the person concerned.'

20. Article 6(1) of Decision No 1/80 lays down no independent conditions for the employment to be 'legal'. If the meaning had been that only employment pursued by virtue of an individual work permit or other special form of permit, for example residence

9 — [1990] ECR I-3461. See also the judgment in Case C-355/93 *Eroglu* [1994] ECR I-5113.

permit, was to be included in the period of four years' employment which, according to that provision, gives a right to any paid employment of the person's choice, that would have had to be expressly stated in the provision.

The Court accordingly stated as follows in the judgment in Case C-192/89 *Sevince*, previously cited, [10] regarding the interpretation of the expression 'legal employment' in Article 2(1)(b) of Decision No 2/76 and/or Article 6(1) of Decision No 1/80:

'The legality of the employment within the meaning of those provisions, even assuming that it is not necessarily conditional upon possession of a properly issued residence permit, nevertheless presupposes a stable and secure situation as a member of the labour force' paragraph 30.

21. By the expression 'legal' employment, Article 6(1) of Decision No 1/80 of the Association Council must therefore be assumed to refer to the rules of the Member States as to the conditions under which Turkish nationals have a right of entry and of residence in their territory and of pursuing employment there. As the provision does not make the legality of the employment conditional upon the existence of a formal residence permit or the like, the most obvious interpretation is that employment is 'legal' within the meaning of that provision if is not illegal under the legislation of the Member State in question for a Turkish national to pursue it.

22. Apart from the situations expressly governed by Article 6(1) it may thus be assumed that according to Decision No 1/80 of the Association Council there is nothing to prevent a Member State from allowing Turkish nationals to perform work only if they are in possession of a residence and/or work permit. Conversely the agreement cannot be assumed to prevent a Member State from giving Turkish nationals a right of entry without a visa and/or a right of residence and employment without a residence or work permit.

Correspondingly Article 6 — apart from the situations expressly governed by paragraph 1 thereof — does not preclude a scheme such as that in the Netherlands, according to which Turkish nationals employed as drivers in international transport are exempt from holding a work permit and may spend their holiday and leisure periods in the Netherlands without residence permit, but on the basis of a visa granted for one year at a time with a right of residence for a maximum of three months at a time and a maximum of nine months' total residence in a year.

10 — See footnote 9.

23. If according to Netherlands legislation a Turkish national may be employed as a driver in international transport without a special permit but may legally reside as circumstances require in the Netherlands on the basis of a visa, such employment must consequently be 'legal' employment within the meaning of Article 6(1) of Decision No 1/80 of the Association Council.

24. On those grounds I suggest that the Court should reply to the second and third questions together, to the effect that 'legal' employment in a Member State within the meaning of Article 6(1) of Decision No 1/80 refers to the individual Member State's legislation as to the conditions in which it is legal or, as the case may be, illegal to pursue such employment and consequently to be resident in the territory of the Member State in question, without laying down any requirement that the employment shall be pursued subject to a formal work and/or residence permit.

Question 4

25. By the fourth question the court of reference is seeking clarification as to whether a Turkish national retains the right of residence which follows from Article 6 of Decision No 1/80 of the Association Council if he becomes permanently totally incapacitated for work.

26. Ahmet Bozkurt and the Commission have contended that this question must be answered in the affirmative and in that connection have referred *inter alia* to Article 6(2) of the said decision.

27. The German Government, the Netherlands Government, the Greek Government and the United Kingdom have all claimed on the contrary that Article 6 of the Association Council's decision does not govern the question of the right of residence of a Turkish national who becomes permanently incapacitated for work after an accident at work, so that the question is a matter for the individual Member State's legislation.

28. As may be seen from the answer to the second and third questions, it is, to start with, the Member States' legislation which lays down whether, and if so in what conditions, Turkish nationals have a right of entry and of residence in their territory and of pursuing employment there.

A Turkish worker who has engaged in legal employment in a Member State for a period referred to in Article 6(1) has, however, a right, to the extent provided in that article, of continued employment in the Member State concerned, including — so that the right to employment shall not be deprived of any effect — the right of residence whilst the employment is being pursued.

29. The first sentence of Article 6(2) of the Association Council's Decision No 1/80 is linked to Article 6(1) inasmuch as it indicates a number of cases which are to be treated as periods of legal employment. Such cases may therefore be included in the calculation of the periods referred to in paragraph 1. Thus the worker's annual holidays or maternity leave are to be included in the calculation of the periods of legal employment on which the right to continued employment described in paragraph 1 depends. The same applies to short periods of absence on grounds of sickness.

As the first sentence of Article 6(2) is drafted in the various language versions it is not altogether clear whether absence due to accidents at work must also be of short duration to be included in the calculation of periods of legal employment within the meaning of Article 6(1). In my view however the most obvious interpretation of the provision is that in that case too the absence is required to be of short duration if it is to be counted towards the periods of legal employment. Moreover the expression 'absence' must assume that at some time the person concerned will return to work and can hardly include permanent incapacity for work.

But irrespective of how the statement of cases listed in the first sentence of Article 6(2) is to be interpreted, it must be stressed that the provision only goes further into the actual situations which under Article 6(1) entail a specified consequence but in no way alter that consequence. In other words, certain short periods of absence may be counted towards the calculation, for example of whether a Turkish worker has been in legal employment for four years in a Member State, but the consequence is the same as if the worker had not been absent, namely that there is 'free access ... to any paid employment of his choice' and — derived from that a right of residence whilst that employment is being pursued.

30. The second sentence of Article 6(2) of the Association Council's Decision No 1/80 provides that periods of involuntary unemployment and long absences on account of sickness shall not be treated as periods of legal employment. Thus in reckoning the period laid down in Article 6(1), periods of involuntary unemployment and long absences on account of sickness are excluded. That part of the second sentence of Article 6(2) is, like the first sentence, intended to clarify the substance of the conditions of time on which the rights established by Article 6(1) may take effect, but it adds nothing to the description therein of the substance of those rights.

31. The second sentence of Article 6(2), however, provides at the same time that periods of involuntary unemployment or long

absences on account of sickness are not to affect the rights acquired as a result of the preceding period of employment. This must imply that the Turkish worker will not lose, for example by being sick for a long period, the rights he has acquired under Article 6(1). However, in my view there is no basis for assuming that the expression 'long absences on account of sickness' includes permanent incapacity for work, as already suggested in section 29 with regard to the first sentence of Article 6(2).

But regardless of which situations are assumed to be covered by the second sentence of Article 6(2) it must be stressed that that part of the provision likewise adds nothing to the description in Article 6(1) as to the substance of the right. The right which the Turkish worker thus does not lose by a long absence on account of sickness after having legal employment for four years in a Member State thus remains only 'free access ... to any paid employment of his choice' and — derived from that — a right of residence whilst that employment is being pursued.

32. A worker who has become permanently incapacitated for work can however not avail himself of that right to employment and cannot therefore base any right of residence on it either.

33. The case shows that the Agreement of Association has certainly drawn its inspiration from Articles 48, 49 and 50 of the Treaty in laying down the rules of Decision No 1/80 (and No 2/76). However, it may be clearly seen from the recitals to the decision that the purpose of the provisions was that freedom of movement of workers between the EEC and Turkey was to be *gradually* introduced. The purpose of the decisions was therefore not to introduce complete freedom of movement of labour between the Member States of the Community and Turkey. The rules of Decision No 1/80 (and No 2/76) are thus only a step on the way towards the gradual realization of free movement of labour between the Community and Turkey. It thus seems appropriate to assume that the object of the Agreement of Association was to introduce free movement of labour by stages by first adopting rules governing Turkish nationals' access exclusively to employment, whereas it has not yet been found necessary to adopt rules corresponding to those in Regulation (EEC) No 1251/70 of the Commission [11] implementing Article 48(3)(d) of the Treaty on the right to remain resident in the territory of a Member State.

34. I shall therefore suggest that the Court answer the fourth question to the effect that Article 6 of Decision No 1/80 of the Association Council does not give Turkish nationals who have become permanently incapable of work the right of continued residence in a Member State.

11 — OJ, English Special Edition 1970 (II), p. 402.

Opinion

35. I shall accordingly recommend the Court to rule as follows:

— The criteria laid down by the Court in the *Lopes da Veiga* judgment must be correspondingly applied as regards the interpretation of the concept of 'employment ... in that Member State' in Article 6(1) of Decision No 1/80 of the Association Council established by the Agreement of Association between the EEC and Turkey. It is for the national court to decide whether Ahmet Bozkurt's relationship of employment has a sufficiently close link with Netherlands territory, whereby the following circumstances *inter alia* should be regarded as the basis: Ahmet Bozkurt was employed by a Netherlands firm; the contract of employment was concluded in Dutch and governed by Netherlands law; he drove lorries registered in the Netherlands and was covered by the Netherlands social security system, and after becoming permanently incapacitated for work he now receives benefit from the Netherlands; he has resided in the Netherlands in the periods between his journeys and during his holidays.

— The expression 'legal' employment in a Member State within the meaning of Article 6(1) of Decision No 1/80 refers to the individual Member State's legislation as to the conditions in which it is legal or, as the case may be, illegal to be thus employed and consequently to be resident in the territory of the Member State in question, without laying down any requirement that the employment shall be pursued subject to a formal work and/or residence permit.

— Article 6 of Decision No 1/80 of the Association Council does not give Turkish nationals who have become permanently incapacitated for work the right of continued residence in a Member State.