JUDGMENT OF THE COURT (Second Chamber)

16 February 2006 *

In Case C-502/04,

REFERENCE for a preliminary ruling under Article 234 EC, by the Bundesverwaltungsgericht (Germany), made by decision of 3 August 2004, received at the Court on 7 December 2004, in the proceedings

Ergün Torun

v

Stadt Augsburg,

intervening parties:

Vertreter des Bundesinteresses beim Bundesverwaltungsgericht,

Landesanwaltschaft Bayern,

* Language of the case: German.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, R. Schintgen (Rapporteur), R. Silva de Lapuerta, G. Arestis and J. Klučka, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Torun, by K. Lehner, Rechtsanwalt,

— the German Government, by M. Lumma and C. Schulze-Bahr, acting as Agents,

— the Slovak Government, by R. Procházka, acting as Agent,

— the Commission of the European Communities, by G. Rozet and B. Martenczuk, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the second paragraph of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association ('Decision No 1/80'). The Association Council was established by the Agreement establishing an Association between the European Economic Community and Turkey, which was signed on 12 September 1963 at Ankara by the Republic of Turkey, of the one part, and the Member States of the EEC and the Community, of the other part, and was concluded, approved and confirmed on behalf of the Community by Council Decision 64/732/EEC of 23 December 1963 (OJ 1973 C 113, p. 1).

2 The reference was made in the context of proceedings between Mr Torun, a Turkish national, and the Stadt Augsburg concerning proceedings to expel him from German territory.

Legal context

3 Under Article 6(1) and (2) of Decision No 1/80:

'1. 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.

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.'

4 Article 7 of Decision No 1/80 provides:

'The members of the family of a Turkish worker duly registered as belonging to the labour force of a Member State, who have been authorised to join him:

— shall be entitled subject to the priority to be given to workers of Member States of the Community to respond to any offer of employment after they have been legally resident for at least three years in that Member State;

— shall enjoy free access to any paid employment of their choice provided they have been legally resident there for at least five years.

Children of Turkish workers who have completed a course of vocational training in the host country may respond to any offer of employment there, irrespective of the length of time they have been resident in that Member State, provided one of their parents has been legally employed in the Member State concerned for at least three years.'

5 Article 14(1) of the same decision is worded as follows:

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

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

6 According to the decision of the national court, Mr Torun, a Turkish national, was born on 13 April 1976 in Germany where he has always resided. Since May 1992, he has been the holder of a residence permit of unlimited duration in that Member State.

7 Having lived in Germany since birth, Mr Torun, the son of a Turkish national who has himself been legally employed in that Member State since 1972, after finishing primary school and compulsory education, was apprenticed as an industrial

mechanic from 1 September 1991 to 28 February 1995. He successfully completed that apprenticeship, passing the final examination to qualify as an industrial mechanic.

8 After the end of his vocational training, he worked until the close of 1996 in various companies, mostly for periods of two to three months. Between those periods of work, he was unemployed and received allowances on that basis. From the beginning of 1997, Mr Torun developed a drug addiction and, given that he was unemployed, was entitled to support through a scheme for the unemployed, which was, however, withdrawn with retroactive effect from 23 February 1998 because he did not attend an interview in a temporary employment agency which was to have offered him a job as a mechanic.

9 After being imprisoned since May 1998, Mr Torun, who was first convicted of a criminal offence in 1997, was sentenced, in March 1999, to a term of imprisonment for a total of three years and three months for armed robbery and the illegal acquisition of narcotics.

10 By decision of 2 September 1999 the Stadt Augsburg ordered the expulsion of Mr Torun from German territory and threatened to deport him. The Regierung von Schwaben having rejected his challenge to that expulsion decision, he then brought an action against it before the Verwaltungsgericht Augsburg (Administrative Court, Augsburg), an action which was dismissed by a judgment of 10 October 2000.

11 Mr Torun then lodged an appeal against that judgment before the Bayerischer Verwaltungsgerichtshof (Bavarian Higher Administrative Court), an appeal that was rejected by the latter's judgment of 7 August 2002.

12 Although it considers the expulsion decision to comply with national law, under which a foreigner who has been sentenced to a term of imprisonment of at least three years, or to imprisonment for infringing the provisions of the law on narcotics, must compulsorily be expelled, the national court expresses doubts as to whether that expulsion measure is compatible with Decision No 1/80.

13 It was in those circumstances that the Bundesverwaltungsgericht (Federal Administrative Court), to which Mr Torun made an application for revision, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Where a Turkish worker has been legally employed in the Federal Republic of Germany for more than three years, does his child who has reached the age of majority and has completed a course of vocational training as an industrial mechanic by passing the final apprenticeship examination also forfeit his right of residence that is the corollary of the right under the second sentence of Article 7 of Decision No 1/80 ... to respond to any offer of employment — apart from cases under Article 14 of Decision No 1/80 or where the host Member State is left without legitimate reason for a significant period of time — where

(a) the child has been sentenced to a term of imprisonment totalling three years for armed robbery and drug offences, the sentence has not been suspended (even after the event) and the whole of the sentence has been served by offsetting the period spent on remand pending trial?

(b) the child has himself pursued employment as a worker within the legitimate labour force of the Federal Republic of Germany and has thereby acquired in his own right a right of residence that is the corollary of the right of free access to employment under the second or third paragraphs of Article 6(1) of Decision No 1/80, and has subsequently forfeited that right?

Is such forfeiture caused by

(i) the fact that he did not accept work offered him by the Arbeitsamt (Employment Office) — in this case, after being unemployed for over a year?

(ii) the fact that he was sentenced to a term of imprisonment of three years for armed robbery and drug offences, that the sentence was not suspended (even after the event), that the whole of the sentence was served by offsetting the period spent on remand pending trial and that for the entire duration of the sentence he was not available to the legitimate labour force but, approximately one month after his release, did find employment with a temporary employment agency, although without then having any right of residence in Germany?

2. If the answer to the first question is in the affirmative: does a Turkish national forfeit his right of residence that is the corollary of the right of free access to employment under the second or third paragraphs of Article 6(1) of Decision No 1/80 in the circumstances described above in Question 1(b)?'

Concerning the questions referred for a preliminary ruling

14 The first point to be noted is that the national court considers that the applicant in the main proceedings satisfies all the conditions set out in the second paragraph of Article 7 of Decision No 1/80 and that, as a person entitled to enjoy the rights which that provision confers on him, he has also acquired under it a right of residence.

15 Furthermore, it is apparent from the decision to refer that it is common ground that the conditions for the application of Article 14(1) of Decision No 1/80 are not satisfied in the present case.

Concerning the first question

16 By its first question, the national court essentially asks in what circumstances a Turkish national, such as Mr Torun, who enjoys in the host Member State the right of free access to any paid employment of his choice under the second paragraph of Article 7 of Decision No 1/80, may lose that right.

17 In order to reply to that question, it must be noted from the outset that, within the scheme established by Decision No 1/80, Chapter II, Section 1 thereof, which includes inter alia Articles 6, 7 and 14 of that decision, specifically regulates the rights of Turkish nationals as regards employment in the host Member State. That decision draws a distinction between the situation of Turkish workers who have been legally employed in the Member State concerned for a specified period (Article 6) and that of members of the families of such workers in the territory of the host Member State (Article 7).

18 Within the latter category, Decision No 1/80 distinguishes further between members of a worker's family who have been authorised to join him in the host Member State and who have been legally resident there for a specified period (the first paragraph of Article 7) and the children of such workers who have completed a course of vocational training in the Member State concerned (the second paragraph of Article 7) (see Case C-210/97 *Akman* [1998] ECR I-7519, paragraph 21).

19 With regard more particularly to the second paragraph of Article 7 of Decision No 1/80, the provision with which the national court's first question is concerned, it must first be noted that the Court has already held that, like Article 6(1) (see Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 26) and the first paragraph of Article 7 (Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 28), that provision has direct effect in the Member States, so that Turkish nationals fulfilling the conditions which it lays down may directly rely on the rights it confers on them (Case C-355/93 *Eroglu* [1994] ECR I-5113, paragraph 17, and *Akman*, paragraph 23).

20 Secondly, the rights granted by the second paragraph of Article 7 to the child of a Turkish worker with regard to employment in the Member State concerned necessarily imply the existence of a concomitant right of residence for that child, without which the right to have access to the employment market and actually to take up salaried employment would be rendered totally ineffective (*Eroglu*, paragraphs 20 and 23, and *Akman*, paragraph 24).

21 Thirdly, as regards the first paragraph of Article 7 of Decision No 1/80, it is settled case-law that the rights accorded by that provision to the members of a Turkish worker's family who satisfy the conditions set out in that paragraph cannot be restricted except in accordance with Article 14(1) of that decision, namely on grounds of public policy, public security or public health, or because of the fact that the party concerned has left the territory of the host Member State for a significant length of time without legitimate reason (Case C-329/97 *Ergat* [2000] ECR I-1487, paragraphs 45, 46 and 48; Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraphs 36 and 38; and Case C-373/03 *Aydinli* [2005] ECR I-6181, paragraph 27).

22 Fourthly, the conditions set out in the first paragraph of Article 7 of Decision No 1/80 are stricter than those laid down in the second paragraph of that article,

which are solely for the benefit of children of a Turkish worker who have completed a vocational training course in the host Member State (*Akman*, paragraph 35).

23 It thus follows from Court's case-law that the second paragraph of Article 7 of Decision 1/80 is a more favourable provision than the first and is intended to provide specific treatment for children, as opposed to other members of the family of a Turkish worker, with a view to facilitating their entry into the employment market following completion of a course of vocational training, the objective being the achievement by progressive stages of freedom of movement for workers, in accordance with the aims of that decision (*Akman*, paragraph 38).

24 Therefore, the second paragraph of that Article 7 cannot be interpreted more restrictively than the first paragraph of that same article, and that is all the more reason why the rights conferred by it on Turkish nationals who satisfy the conditions set out in that second paragraph cannot be restricted in situations other than those applicable in connection with the first paragraph of the same article.

25 As a result, there can be only two kinds of restrictions on the rights conferred by the second paragraph of Article 7 of Decision No 1/80: either the presence of a Turkish migrant worker in the host Member State 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(1) of that decision, or the person concerned has left the territory of that State for a significant length of time without legitimate reason (see, by analogy, *Cetinkaya*, paragraph 36, and *Aydinli*, paragraph 27).

26 In those circumstances, contrary to what the German Government contends in its written observations, the rights conferred by the second paragraph of Article 7 of Decision No 1/80 cannot be limited in the same situations as those conferred by Article 6 thereof. Thus, the Turkish national accorded such rights can be deprived of them neither because he was unemployed on account of being condemned to a three year prison sentence nor because of the fact that he lost his entitlement to the right of residence, which is corollary to the right to employment acquired earlier under Article 6(1) of that decision (see, to that effect, *Aydinli*, paragraph 31).

27 Lastly, the second paragraph of Article 7 of Decision No 1/80 cannot be interpreted as applying solely to the position of a person under the age of majority, who is the child of a Turkish worker duly registered as belonging to the labour force of the host Member State, while excluding the child of such a worker who has reached the age of majority.

28 First of all, Article 7, in its second paragraph, does not make any distinction to that effect. Next, such an interpretation would render that paragraph to a large extent meaningless. Finally, the first paragraph of Article 7 of Decision No 1/80 also applies to the position of a person who has reached the age of majority who is the child of a Turkish worker duly registered as belonging to the labour force of the host Member State (see, to that effect, *Cetinkaya*, paragraph 34, and *Aydinli*, paragraphs 22 and 23) and, in the scheme established by Decision No 1/80, the second paragraph of the aforementioned Article 7 cannot be interpreted more restrictively than the first paragraph of that same article (see paragraphs 22 and 24 of this judgment).

29 In the light of the preceding considerations, the answer to the first question referred must be that the child, who has reached the age of majority, of a Turkish migrant worker who has been legally employed in a Member State for more than three years and who has successfully completed a vocational training course in that State and

satisfies the conditions set out in the second paragraph of Article 7 of Decision No 1/80, does not lose the right of residence that is the corollary of the right to respond to any offer of employment conferred by that provision except in the circumstances laid down in Article 14(1) of that provision or when he leaves the territory of the host Member State for a significant length of time without legitimate reason.

Concerning the second question

30 According to the order for reference, the second question is asked only if the first question should be answered in the affirmative.

31 Having regard to the reply given to the first question, it is therefore not necessary to reply to the second question.

Costs

32 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

The child, who has reached the age of majority, of a Turkish migrant worker who has been legally employed in a Member State for more than three years, and who has successfully finished a vocational training course in that State and satisfies the conditions set out in the second paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Association Agreement between the European Economic Community and Turkey, does not lose the right of residence that is the corollary of the right to respond to any offer of employment conferred by that provision except in the circumstances laid down in Article 14(1) of that provision or when he leaves the territory of the host Member State for a significant length of time without legitimate reason.

[Signatures]