OPINION OF ADVOCATE GENERAL
BOT
delivered on 11 January 2007 [1]

1. This reference for a preliminary ruling concerns the interpretation of Article 7 of Decision No 1/80 of the Association Council [2] of 19 September 1980 on the development of the Association between the European Economic Community and Turkey. [3] That article sets out the conditions under which a member of the family of a Turkish worker who is or was duly registered as belonging to the labour force of a Member State has a right of access to employment in that State and, as a corollary of that right, a right of residence in that State.

2. The national court calls into question the case-law of the Court of Justice relating to the duration of the rights conferred by the said provision on the child of a Turkish worker and to the conditions under which those rights may be limited.

3. In *Aydinli* [4] the Court held that the right of access to employment and the right of residence do not end when the child of a Turkish worker is more than 21 years of age and lives independently. The Court also stated that those rights may be limited in only two situations: first, on grounds of public policy, public security or public health and, second, where the person concerned leaves the territory of the State for a significant length of time without legitimate reason.

4. As a result of the judgment in *Aydinli*, the Verwaltungsgericht Darmstadt (Administrative Court, Darmstadt, Germany) asks the Court principally whether, in so far as that case-law relates to a child aged over 21 years who is no longer dependent on his parents, it is compatible with Article 59 of the Additional Protocol, [5] by virtue of which, in the areas covered by the Protocol, the Republic of Turkey cannot be given more favourable treatment than that received by a Member State under the EC Treaty.

1 — Original language: French.

2 — The Association Council was set up by the Agreement establishing an Association between the European Economic Community and Turkey, signed at Ankara on 12 September 1963 by the Republic of Turkey and by the Member States of the EEC and the Community. The Agreement 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) ('the Association Agreement').

3 — The text of Decision No 1/80 is available in *EEC-Turkey Association Agreement and Protocols and Other Basic Texts*, Office for Official Publications of the European Communities, Brussels, 1992.

4 — Case C-373/03 [2005] ECR I-6181, paragraph 27.

5 — Protocol signed at Brussels on 23 November 1970, and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972 (OJ 1973 C 113, p. 17) ('the Additional Protocol').

5. In this Opinion I shall show why, in my view, the duration of the rights conferred by Article 7 of Decision No 1/80 on the child of a Turkish worker must not be determined only by reference to Articles 10 and 11 of Council Regulation (EEC) No 1612/68, [6] but must be assessed in accordance with the Treaty rules on freedom of movement for workers. I shall then explain why the case-law on the scope of the rights conferred by Article 7 of Decision No 1/80 on the child of a Turkish worker is not, in general, contrary to Article 59 of the Additional Protocol. Finally, we shall see why, in the particular circumstances of the main proceedings, the case-law relating to the conditions under which the rights deriving from Article 7 may be limited does not have the effect of conferring upon a Turkish national in Mr Derin's specific situation rights more extensive than those which a Community national would have.

I — The legal context

6. The questions referred by the Verwaltungsgericht Darmstadt call for consideration of the provisions specifying the rights of Turkish nationals within the European Union, which are relevant to the present case, and their scope as established by the case-law.

A — *Relevant provisions*

7. The relevant provisions appear in the Association Agreement, the Additional Protocol and Decision No 1/80.

1. The Association Agreement

8. As stated in Article 2(1) of the Association Agreement, the aim of the Agreement is to promote the continuous and balanced strengthening of trade and economic relations between the Community and the Republic of Turkey, while taking full account of the need to ensure the accelerated development of the Turkish economy and to improve the level of employment and the living conditions of the Turkish people.

9. To attain those aims, the Association Agreement provided for the progressive establishment of a customs union. Under Article 12, the parties also agreed on the progressive securing of freedom of move-

6 — Regulation of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475).

ment for workers between their respective territories, agreeing to be guided by Articles 48,[7] 49[8] and 50[9] of the EC Treaty. They also decided to abolish restrictions on the freedom of establishment and the freedom to provide services, agreeing to be guided by the corresponding provisions of the Treaty.

10. For that purpose the Association entails a preparatory stage to enable the Republic of Turkey to strengthen its economy with the aid of the Community (Article 3), a transitional stage, during which the customs union must be progressively established and economic policies aligned (Article 4), and a final stage based on the customs union, entailing closer coordination of the economic policies of the Contracting Parties (Article 5).

11. The measures necessary for attaining those aims are taken by an Association Council consisting of, on the one hand, members of the Governments of the Member States and of the Commission of the European Communities and, on the other, members of the Turkish Government. The Association Council may thus adopt decisions within the limits of the responsibilities conferred upon it and which bind the Contracting Parties.

7 — Now, after amendment, Article 39 EC.

8 — Now, after amendment, Article 40 EC.

9 — Now, after amendment, Article 41 EC.

12. According to the preamble to, and Article 28 of, the Association Agreement, the Agreement is to facilitate the ultimate accession of the Republic of Turkey to the Community.

2. The Additional Protocol

13. The Additional Protocol lays down the conditions, detailed rules and timetable of the transitional stage of the Association. Title II of the Protocol includes several articles relating to the movement of persons and services.

14. Accordingly Article 36 provides that the freedom of movement of workers between Member States and the Republic of Turkey is to be secured by progressive stages in accordance with the principles set out in Article 12 of the Association Agreement between the end of the 12th and the 22nd year after the entry into force of that Agreement, in accordance with the rules adopted by the Association Council.

15. Article 59 provides as follows:

'In the fields covered by this Protocol Turkey shall not receive more favourable treatment than that which Member States grant to one another pursuant to the Treaty establishing the Community.'

3. Decision No 1/80

16. The third recital in the preamble to Decision No 1/80 states that the decision is intended to improve the legal position of workers and their families in the social field in relation to the arrangements introduced by Decision No 2/76 of the Association Council of 20 December 1976.

17. Decision No 2/76 was presented as a first stage in the implementation of Article 12 of the Association Agreement and Article 36 of the Additional Protocol. It granted workers an increasing right of access to employment in the host State and also gave the children of such workers a right to take general education courses in that State. [10]

18. Article 6 of Decision No 1/80 sets out the rights of Turkish workers in the host Member State and Article 7 lays down the rights of members of the family of such workers in that State.

19. The rights conferred by Article 6 increase in accordance with the length of the period during which the worker has been legally employed in the host Member State. Article 6 provides as follows:

'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.

10 — Articles 2 and 3 of Decision No 2/76.

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.

...'

20. Article 7 of Decision No 1/80 distinguishes between, on the one hand, the family members of a worker who have been authorised to join him in the host Member State and who have resided there for a certain period and, on the other hand, the children of such a worker who have completed a course of vocational training in the Member State concerned. Article 7 reads as follows:

'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.'

21. Article 14 of Decision No 1/80 lays down the limitations which may be applied to the exercise of such rights. Article 14(1) provides as follows:

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

22. The Association Council has not yet taken any measures to abolish progressively restrictions on the freedom of establishment and the freedom to provide services.

B — *Case-law*

23. The scope of the rights conferred upon the members of a Turkish worker's family by Article 7 of Decision No 1/80 has given rise to several judgments, the most relevant case-law in which for the purpose of the present case may be summarised as follows.

24. First of all, it has consistently been held that the first and second paragraphs of Article 7 of Decision No 1/80, like Article 6(1), have direct effect in the Member States. Turkish nationals who fulfil the conditions required by those provisions may therefore rely directly on the rights thereby conferred upon them. [11]

11 — See, in relation to Article 6(1) of Decision No 1/80, Case C-192/89 *Sevince* [1990] ECR I-3461, paragraph 26, and Case C-188/00 *Kurz* [2002] ECR I-10691, paragraph 26; in relation to the first paragraph of Article 7 of Decision No 1/80, see Case C-351/95 *Kadiman* [1997] ECR I-2133, paragraph 28, and Case C-65/98 *Eyüp* [2000] ECR I-4747, paragraph 25; and, with regard to the second paragraph of Article 7, see Case C-355/93 *Eroglu* [1994] ECR I-5113, paragraph 17, and Case C-502/04 *Torun* [2006] ECR I-1563, paragraph 19. Decision No 1/80, like Decision No 2/76, was not published in the *Official Journal of the European Communities*. The Court has held that, although the non-publication of those decisions may prevent obligations from being imposed on a private individual, a private individual is not thereby deprived of the power to invoke, in dealings with a public authority, the rights which those decisions confer upon him (*Sevince*, paragraph 24).

25. Next, it is clear from this case-law that the rights of access to employment provided for in the two paragraphs of Article 7 of Decision No 1/80 comprise two aspects.

26. First, enjoyment of those rights is subject to various conditions.

27. To begin with, the person concerned must have the status of 'member of the family' of a Turkish worker. This term must be interpreted by reference to the interpretation of the same term in Article 10(1) of Regulation No 1612/68 in relation to workers who are nationals of Member States of the Community. [12]

28. Also, the rights of access to employment provided for in the first paragraph of Article 7 of Decision No 1/80 are subject to the condition that the member of the family of a Turkish worker has had a common residence with that worker for at least three years. This residence condition reflects the aim of enabling the worker's family to be reunited in the host State.

12 — Case C-275/02 *Ayaz* [2004] ECR I-8765, paragraph 45.

29. Likewise the right of access to employment conferred upon the child of a Turkish worker by the second paragraph of Article 7 of Decision No 1/80 is subject to the conditions that the worker has been legally employed in the host Member State for three years and that the child has completed a course of vocational training in the same State.

30. Second, once those conditions are fulfilled, the first and second paragraphs of Article 7 of Decision No 1/80 confer upon members of the family of a Turkish worker independent rights of access to employment in the host Member State which are intended to enable them to consolidate their own position there [13] and which do not depend on the continued fulfilment of those conditions.

31. Accordingly the Court has held that the right to respond in the host Member State to an offer of employment, as laid down in those provisions, does not end when the Turkish worker from whom that right is derived has ceased to be duly registered as belonging to the labour force of the host Member State. [14] That right subsists after the worker has returned to his country of origin. It follows that the benefit of those provisions is available not only for minor children or adult children of such a worker who are still dependent on him. It has consistently been held that the first and second paragraphs of Article 7 of Decision No 1/80 also apply to adult children of that worker who are living independently. [15]

32. In addition, the rights of access to employment in the host Member State conferred by those provisions imply the existence of a concomitant right of residence. [16] The Court has consistently held that otherwise the rights of access to employment would be deprived of all effect. [17] It follows that, where the member of the family of a Turkish worker fulfils the conditions laid down by the first or second paragraph of Article 7 of Decision No 1/80 for responding to an offer of employment in the host Member State, the authorities of that State no longer have power to take measures relating to the residence of the person concerned which may impede the exercise of rights directly conferred on him by the Community legal system.

33. Finally, the case-law has established the conditions in which such rights may be restricted. They may be limited, first, where

13 — Ibidem, paragraph 41, and the case-law cited.

14 — See, in relation to the first paragraph of Article 7 of Decision No 1/80, Case C-329/97 *Ergat* [2000] ECR I-1487, paragraph 40, Case C-467/02 *Cetinkaya* [2004] ECR I-10895, paragraph 31, and *Aydinli*, paragraphs 25 and 26. See, in relation to the second paragraph of Article 7, Case C-210/97 *Akman* [1998] ECR I-7519, paragraph 44.

15 — *Ergat*, paragraph 27, and *Torun*, paragraphs 27 and 28.

16 — See, in relation to the first paragraph of Article 7 of Decision No 1/80, *Cetinkaya*, paragraph 31, and, in relation to the second paragraph thereof, *Torun*, paragraph 20, and the case-law cited. See also, in relation to Article 6 of the decision, *Kurz*, paragraph 27.

17 — Idem.

the person concerned has left the territory of the host Member State for a significant length of time without legitimate reason. [18] In that situation, the person concerned loses in principle the legal status he acquired under either the first or the second paragraph of Article 7 of Decision No 1/80 because he has himself broken the links connecting him with that Member State.

34. Second, the rights may also be limited pursuant to Article 14 of Decision No 1/80 where the person concerned constitutes a genuine and serious threat to public policy, public security or public health. [19] The scope of the exception under that provision must be interpreted in the same way as the exception in Article 39(3) EC in relation to workers who are Community nationals, which is formulated in almost identical terms. It follows that the measures taken by reason of public policy or public security must be based on the personal conduct of the person concerned and that conduct must constitute a present threat to society. [20]

35. These two situations in which the person concerned may lose his rights under the first or second paragraph of Article 7 of Decision No 1/80 have been presented as exhaustive. That was so in *Ergat*. [21] It was expressly so in *Cetinkaya*, *Aydinli* and *Torun*, cases in which the question was asked whether the person concerned had lost his rights under the first or second paragraph of Article 7 as the result of a criminal conviction.

36. In *Cetinkaya*, the Court rejected the German Government's argument that the rights of access to employment and of residence could be lost as the result of receiving a term of imprisonment followed by detoxification, because the person concerned is no longer on the labour market of the host Member State while he is imprisoned and then undergoing detoxification.

37. The Court found that, in such a situation, if the person concerned has not left the host State for a significant length of time without legitimate reason, he may lose his rights under the first paragraph of Article 7 of Decision No 1/80 only on the basis of Article 14 of that decision. [22]

38. The exhaustive nature of the two conditions mentioned above was also confirmed in *Aydinli*, to which the national court makes particular reference.

18 — *Ergat*, paragraph 48, and the case-law cited.

19 — Ibidem, paragraph 46.

20 — *Cetinkaya*, paragraphs 43 and 44.

21 — Paragraphs 46 to 49.

22 — *Cetinkaya*, paragraph 38.

39. Mr Aydinli was a Turkish national who was authorised to join his parents in Germany when he was 15. He completed a course of vocational training in that Member State and was in paid employment with the same employer for five years. He held a German residence permit of indefinite duration.

40. Having engaged in illegal trafficking of a significant quantity of drugs, he was arrested, detained in custody pending trial and sentenced to three years' imprisonment, which included the time he had already spent in custody.

41. After serving part of his sentence, the remainder was deferred to enable him to undergo long-term drug therapy which he completed successfully. The period spent undergoing therapy was set off against the term of the prison sentence and the remainder was suspended. After the end of his treatment, he worked for his father in Germany.

42. The German authorities ordered his immediate expulsion in accordance with national law pursuant to which an alien who was finally sentenced to imprisonment of at least three years, not conditionally suspended, for an offence under the Law on narcotics had to be expelled.

43. On an appeal by Mr Aydinli against the expulsion decision, the national court concerned referred a number of questions for a preliminary ruling to enable it to determine whether that decision was compatible with Decision No 1/80.

44. In *Aydinli*, the Court of Justice began by observing that, although Mr Aydinli had worked for the same employer for five years in the host Member State, he had to be regarded as covered by the first paragraph of Article 7 of Decision No 1/80, which constitutes a *lex specialis* in relation to the members of a Turkish worker's family.

45. The Court confirmed that the rights of access to employment and of residence conferred by that provision are independent of the fact that, at the relevant time, the person concerned is an adult no longer living with his parents, but living independently in the Member State concerned. [23]

23 — Paragraph 22, and the case-law cited.

46. The Court also confirmed that those rights can be called into question by the authorities of the host Member State in only two situations, that is to say, where the Turkish migrant's presence in national territory constitutes a threat to public policy, public security or public health, or where the person concerned has left the territory of that State for a significant length of time without legitimate reason. [24]

47. The Court concluded that the first paragraph of Article 7 of Decision No 1/80 does not permit the rights conferred by that provision on a Turkish national in Mr Aydinli's position to be limited following the imposition of a custodial sentence, even a sentence of several years which is initially unconditional, followed by long-term drug therapy, on the ground of his prolonged absence from the labour market.

48. In that connection the Court noted that the first and second indents of the first paragraph of Article 7 of Decision No 1/80 grant family members of a Turkish worker a right to employment, but do not impose any obligation on them to work, such as that set out in Article 6(1) of the same decision. [25]

24 — Paragraph 27, and the case-law cited.

25 — Paragraph 29.

49. In *Torun*, the Court held that the case-law stating that, in the event of a conviction, the rights of access to employment and of residence conferred by the first paragraph of Article 7 of Decision No 1/80 may be restricted only in the two situations mentioned above could also be transposed to the situation of the children of Turkish workers covered by the second paragraph of Article 7 of the decision. [26]

50. None of the judgments cited above makes any express reference to Article 59 of the Additional Protocol.

II — Facts and procedure in the main proceedings

51. The dispute in the main proceedings, which leads the national court to question the case-law set out above in the light of the limit laid down by Article 59 of the Additional Protocol, is as follows.

26 — *Torun*, paragraphs 24 to 26. Mr Torun, a Turkish national born in Germany, the son of a Turkish worker who had worked in Germany for more than three years, received training there as a mechanic and was given a custodial sentence of three years and three months for armed robbery and illegally obtaining drugs.

52. Mr Derin is a Turkish national born on 30 September 1973. In 1982 he joined his parents in Germany where they were in paid employment, his father from 1980 to 1986 and his mother from 1971 to 1995.

53. He was educated in Germany, first in a primary school from 1982 to 1988, then in a vocational college from August 1988 to July 1990. He completed his schooling by passing the Mittlere-Reife-Prüfung (lower secondary examination). In September 2001 he began retraining as a professional goods and passenger vehicle driver.

54. Between 1991 and 2005 he had several jobs either as an employee with different employers or on a self-employed basis. His periods of employment with the same employer never exceeded one year at a time. In January 2005 he was taken on once again as an employee.

55. In 1990 he was granted a permit of indefinite duration to reside in Germany. In autumn 1994 he left his parents' home and set up his own household. His wife, who is also a Turkish national, joined him in February 2002.

56. Mr Derin committed a number of offences. He was ordered to pay daily-rate fines in 1994, 1996, 1998 and February and August 2002. On 13 December 2002 he was sentenced to imprisonment for two years, eight months and two weeks for commercial smuggling of foreign nationals, committed as part of an organised group.

57. An order for his expulsion for an unlimited period was made on 24 November 2003. His objection to the order was rejected by the Regierungspräsidium Darmstadt (Darmstadt Regional Administration) by decision of 15 September 2004. On 5 October 2004 he brought an action against the decision before the Verwaltungsgericht Darmstadt.

58. That court decided to stay proceedings and to seek a preliminary ruling from the Court of Justice by decision of 17 August 2005, received by the Court Registry on 26 August 2005.

III — The questions referred

59. In the order for reference of 17 August 2005, the national court finds that the expulsion order complied with national law.

However, it questions whether the order conforms with the provisions of Decision No 1/80.

60. The national court stated that Mr Derin, who fell within the scope of the first paragraph of Article 7 of Decision No 1/80, could not have lost the rights conferred upon him on the basis of either of the two grounds taken into account by case-law. On this point, the national court observed that he did not leave Germany for a long period without legitimate reason and that he did not represent a present threat to public policy within the meaning of Article 14 of Decision No 1/80. However, the national court was uncertain as to whether those were the only grounds.

61. Consequently the national court asked, in its order for reference of 17 August 2005, first, whether a Turkish national who has joined his parents in Germany loses his right of residence under the first paragraph of Article 7 of Decision No 1/80 where, after the age of 21, he no longer lives with or is dependent on his parents, apart from the case referred to by Article 14 of the decision and the situation where he leaves the host Member State without a legitimate reason for a significant period of time.

62. Second, the national court put the following question if the answer to the first were to be in the affirmative:

'Notwithstanding the loss of his legal status under the second indent of the first paragraph of Article 7 of Decision No 1/80, does that Turkish national enjoy special protection against expulsion under Article 14 of Decision No 1/80 where, after having ceased to live with his parents as a family, he was employed from time to time but has not acquired in his own right the legal status conferred by Article 6(1) of Decision No 1/80 by virtue of being a worker and for a number of years has worked exclusively on a self-employed basis?'

63. On 21 September 2005 the national court, after the judgment in *Aydinli* came to its notice, replaced the first question with the following question:

'Is it compatible with Article 59 of the Additional Protocol ... for a Turkish national who, as a child, joined his parents who were employed as workers in the Federal Republic of Germany, and lived with them as a family, not to lose his right of residence derived from the right under the second indent of the first paragraph of Article 7 of Decision No 1/80 ... to free access to any paid employment — apart from in cases under

Article 14 of Decision No 1/80 or where he leaves the host Member State without legitimate reason for a significant period of time — also where he has attained the age of 21 and no longer lives with or is maintained by his parents?'

64. The national court also asked the Court of Justice to reply, if necessary, to the second question in the order for reference of 17 August 2005.

65. In the rectifying order of 21 September 2005, the national court states that it is unclear whether the case-law confirmed in *Aydinli* is compatible with Article 59 of the Additional Protocol for the following reasons.

66. According to the national court, Article 59 of the Additional Protocol means that Turkish workers are not to have, by virtue of Decision No 1/80, rights more extensive than those conferred upon Community nationals by the Treaty. However, to accept that the right of residence in the host Member State on the basis of the first paragraph of Article 7 of Decision No 1/80 may be lost only for the two reasons referred to in *Aydinli* would amount to granting the members of a Turkish national's family treatment more favourable than that laid down by the Treaty for the family members of a worker who is a Community national.

67. In that connection the national court observes that, under Article 10 of Regulation No 1612/68, the right of the children of a worker who is a Community national to install themselves with him is limited in time.[27] Therefore to allow Mr Derin the right to avail himself of the rights conferred by the first paragraph of Article 7 of Decision No 1/80 although he is 31 years old, no longer lives with his parents and is no longer dependent on them would amount to according him greater rights than the child of a Community national has as such.

68. According to the national court, when assessing the scope of Article 7 of Decision No 1/80, no account should be taken of the fact that children of Community nationals have the right to remain in the host Member State by virtue of the Treaty provisions relating to the freedom of movement of persons or other rights derived from the Treaty. The two situations in question should be compared exclusively by reference to the rights conferred by the status of family member.

27 — Article 10 of Regulation No 1612/68 provides:
'1. The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State:
(a) his spouse and their descendants who are under the age of 21 years or are dependants;
(b) dependent relatives in the ascending line of the worker and his spouse.
2. Member States shall facilitate the admission of any member of the family not coming within the provisions of paragraph 1 if dependent on the worker referred to above or living under his roof in the country whence he comes.
3. For the purposes of paragraphs 1 and 2, the worker must have available for his family housing considered as normal for national workers in the region where he is employed; this provision, however, must not give rise to discrimination between national workers and workers from the other Member States.'

IV — Legal analysis

A — *Preliminary observations*

69. The Italian and United Kingdom Governments are uncertain as to whether Mr Derin's situation is covered by the first paragraph of Article 7 of Decision No 1/80, as assumed by the national court, or by the second paragraph thereof.

70. It is true that Mr Derin's situation may be described as that of a Turkish national who, as the child of two migrant Turkish workers duly registered as belonging to the labour force of a Member State, is authorised to join them there to live with them as a family. It is likewise common ground that Mr Derin has lived legally with his parents for at least five years.

71. Consequently Mr Derin fulfils all the conditions for enjoying the rights of free access to employment and of residence conferred by the second indent of the first paragraph of Article 7 of Decision No 1/80.

72. However, the Italian and United Kingdom Governments ask whether Mr Derin's situation is not rather covered by the second paragraph of Article 7 of Decision No 1/80, which refers to the situation of children of Turkish workers who have completed a course of vocational training in the host Member State, because, according to the information provided by the national court, first, Mr Derin attended a vocational college from 6 August 1988 to 15 July 1990 and, second, he began training as a lorry driver in September 2001.

73. The term 'vocational training' in the second paragraph of Article 7 of Decision No 1/80 is not defined in the decision, nor has it been explained by the Court of Justice. However, the Court has stated the aim of the provision of which the term forms part. According to the Court, the second paragraph of Article 7 of Decision No 1/80 is intended to provide specific treatment for children of a Turkish worker in that it seeks to facilitate 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. [28]

74. In view of that aim, I consider that the term 'vocational training' in the second paragraph of Article 7 of Decision No 1/80 should be interpreted in a similar way to the same term in Article 150 EC because the two provisions have similar aims. Article 150 EC

28 — *Torun*, paragraph 23, and the case-law cited.

gives the Community the task of supplementing the action of the Member States in the matter of vocational training in order to facilitate vocational integration and reintegration into the labour market.

75. The Court has given a broad interpretation to the term 'vocational training' in the Treaty. According to the case-law, any form of education which prepares for a qualification for a particular profession, trade or employment or which provides the necessary skills for such a profession, trade or employment is vocational training, whatever the age and the level of training of the pupils or students, even if the training programme includes an element of general education. [29]

76. It is for the national court, which alone has jurisdiction to appraise the facts in the main proceedings, to determine whether Mr Derin must be deemed to have completed a course of vocational training in the host Member State within the meaning of the second paragraph of Article 7 of Decision No 1/80 on the basis of having attended a vocational college from 6 August 1988 to 15 July 1990 or of his training as a lorry driver from September 2001.

29 — Case 242/87 *Commission* v *Council* [1989] ECR 1425, paragraph 24.

77. However, the question whether the person concerned is covered by the first or the second paragraph of Article 7 of Decision No 1/80 is irrelevant to the first question from the national court.

78. I have shown that, although the two paragraphs of Article 7 partly differ in the conditions for their application, the rights which they confer on the child of a Turkish worker, in essence, and the conditions under which those rights may be lost are the same. In both cases the rights are independent rights of access to employment and of residence which, according to the case-law, subsist after the person concerned has reached the age of 21 and is living independently and which may be lost only on the basis of Article 14 of Decision No 1/80 or if the person concerned leaves the host Member State for a significant length of time without a legitimate reason.

79. In so far as the national court asks whether the scope of the rights thus conferred by Article 7 of Decision No 1/80 is compatible with Article 59 of the Additional Protocol, the reply to that question cannot differ according to whether the person concerned is covered by the first or the second paragraph of Article 7 of Decision No 1/80.

80. I shall therefore examine the questions from the national court on the basis of that court's assumption that Mr Derin's situation is covered by the second indent of the first paragraph of Article 7 of Decision No 1/80.

B — *The first question*

81. The first question on which the national court requests a preliminary ruling seeks to establish whether the case-law concerning the conditions under which the rights conferred upon an adult child of a Turkish worker by the second indent of the first paragraph of Article 7 of Decision No 1/80 may be restricted oversteps the limitation imposed by the Additional Protocol. In substance, the national court asks whether the case-law which states that a Turkish national who, when a child, entered a Member State to live with his family loses the right of residence in that State, a corollary of the right of free access to any paid employment of his choice which he derives from the second indent of the first paragraph of Article 7 of Decision No 1/80, in only two situations, that is to say, in the cases provided for in Article 14 of the decision or if he leaves the host Member State for a significant length of time without legitimate reason, even if he is 21 years old or over and is no longer dependent on his parents, is compatible with Article 59 of the Additional Protocol.

82. The German, Italian and United Kingdom Governments submit that the above-mentioned case-law conflicts with Article 59 because the scope of the rights conferred by the second indent of the first paragraph of Article 7 of Decision No 1/80 upon the child of a Turkish worker should be the same as the scope of the rights of the child of a Community worker on the basis of Articles 10 and 11 of Regulation No 1612/68.[30] According to these governments, since those provisions relate only to children under 21 or dependent children, a Turkish child who is over 21 and is no longer dependent on his parents in the host Member State no longer has the rights of access to employment and of residence provided for by Decision No 1/80.

83. In that connection the abovementioned governments refer to the position taken by Advocate General Geelhoed in his Opinion in *Ayaz*,[31] in which he proposed that the rights conferred on the child of a Turkish worker by the first paragraph of Article 7 of Decision No 1/80 should be interpreted in the following manner. According to the Advocate General, three situations should be distinguished:

— after reaching the age of majority the child continues to be dependent on the

30 — Article 11 of Regulation No 1612/68 provides as follows: 'Where a national of a Member State is pursuing an activity as an employed or self-employed person in the territory of another Member State, his spouse and those of the children who are under the age of 21 years or dependent on him shall have the right to take up any activity as an employed person throughout the territory of that same State, even if they are not nationals of any Member State.'

31 — Point 52 of the Opinion.

worker, for example he studies at the expense of his parents: he then continues to fall within the scope of the first paragraph of Article 7 of Decision No 1/80;

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

— the child is not (yet) employed and is not dependent on the worker: in this situation, after the expiry of a reasonable period for seeking employment, the child in principle loses his rights under Decision No 1/80 and national law governs his access to the labour market.

84. According to this argument, Article 7 confers on the child of a Turkish worker only the rights derived from his position as a member of the worker's family, which end when he reaches 21 and is no longer dependent on the worker.

85. The same governments also cite *Ayaz*, where the Court held that 'member of the family' in Article 7 of Decision No 1/80 has a meaning identical to that of the same concept in Article 10(1) of Regulation No 1612/68.

86. The United Kingdom Government submits that the case-law also conflicts with Article 59 of the Additional Protocol for the following reason.

87. It observes that in *Aydinli* the Court interpreted the first and second indents of the first paragraph of Article 7 of Decision No 1/80 as granting the members of the family of a Turkish worker a right to employment, but not imposing any obligation on them to work as laid down by Article 6(1) of the decision. According to the United Kingdom Government, this case-law, in conjunction with that relating to the two conditions under which the rights derived from Article 7 may be restricted, grants the members of the family of a Turkish worker rights which are more advantageous than those of a member of the family of a Community worker and Community workers themselves.

88. It states that the members of the family of a Community worker have no general right to remain indefinitely in the host Member State.

89. The United Kingdom Government observes in this regard that they may obtain a right to continue to reside permanently in that State under the conditions laid down in

Articles 2 and 3 of Commission Regulation (EEC) No 1251/70 [32] and that similar conditions are laid down where the Community national was self-employed.

90. The United Kingdom Government states that Directive 2004/38 does not create a general right of that kind either.

91. It submits that Article 6 of that directive provides for a right of residence for citizens of the Union and the members of their families for a period of three months only and that thereafter the right is subject to the condition of being a member of the family of a worker or self-employed person [33] or to the other conditions laid down in Article 7(1)(b) to (d) of the directive. [34]

92. The United Kingdom Government adds that a family member of a Community national may enjoy a personal right of residence after the departure or death of a Community national pursuant to Article 12 of Directive 2004/38, if he himself satisfies the conditions in Article 7(1)(a) to (d) or if he has acquired a permanent right of residence. It states that a right of permanent residence is available, except in special cases, to Union citizens who have resided legally for a continuous period of five years in the host Member State in question and to their family members who have resided with them for that same period. [35]

93. With regard to a Community worker's right of residence, the United Kingdom Government observes that it is subject to being in paid employment. If the employment relationship ends, the right of residence can subsist only under certain condi-

32 — Regulation of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State (OJ, English Special Edition 1970 (II), p. 402). This regulation was repealed with effect from 30 April 2006 by Commission Regulation (EC) No 635/2006 of 25 April 2006 (OJ 2006 L 112, p. 9). The repeal was justified by the fact that Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77), consolidated in a single text the legislation on the freedom of movement of citizens of the Union. Article 17 of this directive repeats in essence the provisions of Regulation No 1251/70 and amends them by giving persons with the right to remain a more privileged status, namely a right of permanent residence.

33 — Article 7(1)(a) and (d) of Directive 2004/38.

34 — Article 7(1) of Directive 2004/38 also confers on all Union citizens the right to reside in another Member State for more than three months if they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State and have comprehensive sickness insurance cover in that State (Article 7(1)(b)), or if they are following a course of study or vocational training in that State and have the resources and insurance cover referred to previously (Article 7(1)(c)). Article 7(1)(d) extends this right to family members accompanying or joining a Union citizen who himself satisfies the conditions in Article 7(1)(a), (b) or (c).

35 — Article 16 of Directive 2004/38.

tions, such as seeking other employment, when it subsists for a limited period. Consequently a Community national likewise has no general right to remain indefinitely in another Member State for the purpose of employment at a later date, at his convenience. [36]

94. Contrary to the German, Italian and United Kingdom Governments, the Commission submits that the Court's case-law on the scope of the rights conferred on the child of a Turkish worker by the first paragraph of Article 7 of Decision No 1/80 does not conflict with the requirements of Article 59 of the Additional Protocol.

95. I agree with the Commission. To justify my position, first, I shall explain why the duration of the rights conferred by Article 7 of Decision No 1/80 on the child of a Turkish worker must be determined, in my view, not only by reference to Articles 10 and 11 of Regulation No 1612/68, but also by taking into account the Treaty rules on the freedom of movement of workers.

96. Second, I shall show that the case-law relating to the scope of those rights does not generally place the child in question in a situation which is more advantageous than that of a Community worker.

97. Third, it will be seen that, in the particular circumstances of the main proceedings, the case-law relating to the conditions under which the rights deriving from Article 7 of Decision No 1/80 may be restricted does not have the effect of conferring on a Turkish national in Mr Derin's specific situation rights which are more extensive than those of a Community worker.

1. The scope of the rights conferred by Article 7 of Decision No 1/80 must be determined not only by reference to Articles 10 and 11 of Regulation No 1612/68, but also by taking into account the Treaty rules on the freedom of movement of workers

98. I consider that the position of the German, Italian and United Kingdom Governments, namely, that the duration of the rights conferred on the child of a Turkish worker by Article 7 of Decision No 1/80 should be the same as that of the rights of a

36 — In this connection the United Kingdom Government refers to Case C-292/89 *Antonissen* [1991] ECR I-745, paragraph 21; Case C-344/95 *Commission* v *Belgium* [1997] ECR I-1035, paragraph 17; and Case C-138/02 *Collins* [2004] ECR I-2703, paragraph 37.

Community worker's child under Articles 10 and 11 of Regulation No 1612/68, cannot be accepted for the following reasons.

99. First of all, this very restrictive interpretation of the rights conferred by the first paragraph of Article 7 of Decision No 1/80 has no basis in the wording of the relevant provisions.

100. It is common ground that there is nothing in Article 7 of Decision No 1/80 to indicate that it confers on the child of a Turkish worker only rights deriving from his position as a member of that worker's family and that those rights should end when the child reaches 21 and lives independently.

101. The same applies with regard to Article 59 of the Additional Protocol, which merely states in very general terms that in the fields covered by the Protocol 'the Republic of Turkey' is not to receive treatment more favourable than that which Member States grant to one another pursuant to the Treaty establishing the Community.

102. Admittedly, it can hardly be disputed that, although this provision refers only to the 'Republic of Turkey', it must be understood as laying down a limit to the scope of the rights that may be conferred on Turkish nationals by virtue of the Additional Protocol. The movement of persons between the Member States and Turkey is covered by the Protocol since that topic is the subject of the provisions of Title II of the Protocol, particularly Article 36.

103. I would also observe that Decision No 1/80 is intended to secure the gradual implementation of freedom of movement for workers between the Member States and Turkey, as provided by Article 12 of the Association Agreement and Article 36 of the Additional Protocol, that is to say, with the guidance of the Treaty rules relating to that fundamental freedom. It is also clear that the decision-making power of the Association Council must be exercised within the limits of the powers conferred upon it.

104. It may therefore be concluded that, by virtue of Article 59 of the Additional Protocol, the rights conferred by Decision No 1/80 on Turkish nationals taken as a whole, that is to say, workers and the members of their families, cannot be more favourable than those enjoyed by nationals of the Member States and their family members on the basis of the Treaty provisions on the freedom of movement of workers, by which the parties to the Association agreed to be guided.

105. However, I do not think it can be concluded from the general wording of Article 59 of the Additional Protocol that the duration of the rights conferred on a child of a Turkish worker by Article 7 of Decision No 1/80 should be determined by reference only to Articles 10 and 11 of Regulation No 1612/68, so that such rights would have to end when the child reaches the age of 21 and lives independently.

106. Second, such an interpretation of the effect of Article 7 of Decision No 1/80 would be inconsistent with the system established by the decision as Article 6(1) thereof expressly states that Article 6(1) applies '[s]ubject to Article 7'.

107. As the Court found in *Aydinli*,[37] it is clear from those words that Article 7 constitutes a *lex specialis* for the members of a Turkish worker's family. Article 6 of Decision No 1/80 is therefore applicable only where the person concerned is not in a position to avail himself of the rights conferred by the first or the second paragraph of Article 7.

37 — Paragraph 19.

108. The conclusion that the child of a Turkish worker ceases to be covered by Article 7 of Decision No 1/80 as soon as he reaches the age of 21 and lives independently and can only fall within the scope of Article 6, where appropriate, is inconsistent with the subsidiary nature of Article 6.

109. Finally, I consider that the argument of the German, Italian and United Kingdom Governments is inconsistent with the aims of the Additional Protocol of which Article 59 forms part.

110. As I have said, Article 36 of the Additional Protocol provides that freedom of movement of workers between the Member States and Turkey must be secured by progressive stages between the 12th and 22nd year after the Association Agreement enters into force, taking account of the Treaty articles relating to freedom of movement. It is also clear that the Association Agreement is intended to make the accession of the Republic of Turkey to the European Union actually attainable.

111. Examination of Regulation No 1612/68, adopted in order to apply the Treaty rules on freedom of movement for workers, shows that the Community legislature foresaw that the actual exercise of freedom of movement

by Community nationals made it necessary to guarantee them not only a right to family reunification in the host Member State, but also the integration of their family members in that State.

112. In accordance with the fifth recital in the preamble to Regulation No 1612/68 and as the Court has observed on a number of occasions, in order for freedom of movement for workers as enshrined in the Treaty to be exercised, by objective standards, in freedom and dignity, the best possible integration of the Community worker's family in the host Member State is required. [38]

113. Accordingly Article 10 of Regulation No 1612/68 guarantees the right of the worker's spouse and their descendants who are under the age of 21 years or are their dependants to install themselves with the worker. Article 11 also gives those family members the right to take up any paid employment in the host Member State in which the worker is himself employed. Finally, Article 12 gives the worker's children the right to a general education and further studies in the host Member State under the same conditions as those enjoyed by the nationals of that State.

38 — See, in particular, Case C-413/99 *Baumbast and R* [2002] ECR I-7091, paragraph 50, and the case-law cited.

114. The right of the family members of a Community worker to integration in the host Member State therefore entails not only the right to install themselves with him in that State and to study there, but also to take up employment freely.

115. It is true that the rights conferred by Regulation No 1612/68 on the worker's family members are derived from the worker's exercise of the freedom of movement provided for by Article 39 EC. In principle, such rights come to an end when the conditions set out in Article 10 of the regulation are no longer satisfied, that is to say, so far as a child is concerned, when the child reaches 21 and is no longer dependent on his parents.

116. However, as the Commission points out, those limits on the duration of the rights conferred upon the child of a Community worker by Regulation No 1612/68 must be understood in the light of the fact that, after reaching the age of 21 and ceasing to be dependent on his parents, the child himself has the independent rights provided for by the Treaty and the secondary legislation implementing it.

117. In particular, the child of a Community worker may avail himself of the fundamental

freedom of movement enshrined in Article 39 EC, by virtue of which he may reside in the host Member State for the purpose of employment or to seek work there. He may also remain after having been employed there.

118. In view of the existence of these independent rights, the Community legislature was thus able simply to set out, in Regulation No 1612/68, the rights derived solely from the status of family member of a worker who is a Community national. The best possible integration of a Community worker's child in the host Member State, which is secured in the regulation by the grant of rights derived from his status as a family member, can be continued through the child exercising the independent rights conferred by the Treaty rules.

119. Consequently I consider that the aim of integrating Turkish nationals and members of their families, which underlies the Association between the Member States and the Republic of Turkey, means that the duration of the rights conferred on the child of a Turkish worker by the first paragraph of Article 7 of Decision No 1/80 cannot be limited to that of the rights conferred by Articles 10 and 11 of Regulation No 1612/68 on the child of a Community worker.

120. If it were accepted that, when a Turkish worker's child reaches the age of 21 and is no longer dependent on his parents, he loses his rights under the first paragraph of Article 7 of Decision No 1/80, and can claim only the gradual rights in Article 6 of the decision, the effect would be that, irrespective of generation and how long they have been in the host Member State, the rights of Turkish nationals in that State would be no more favourable than those of the first generation of migrants.

121. This would have the consequence that the right of residence, based on Decision No 1/80, of a Turkish worker's child in the host Member State would always be uncertain and temporary even if he had been born there and had spent all his working life there because the right of residence would end if he suffered an accident rendering him permanently incapacitated for work or if he were to claim a retirement pension. [39]

39 — A Turkish national can no longer claim a right of residence in the host Member State on the basis of Article 6 of Decision No 1/80 when he has reached retirement age or has an accident at work and becomes totally and permanently incapacitated for work. According to the Court, in that situation, the person concerned must be considered to have finally ceased to belong to the labour force of that Member State, so that the right of residence which he claims has no connection with any paid employment, even a future one (Case C-434/93 *Bozkurt* [1995] ECR I-1475, paragraphs 39 and 40). In Case C-171/95 *Tetik* [1997] ECR I-329, paragraphs 40 to 42 and 46, the Court held that a Turkish worker would lose his rights under Article 6 if he decided to leave his employment and did not take the necessary steps within a reasonable period to enter into a new employment relationship. This reasoning was followed in Case C-340/97 *Nazli* [2000] ECR I-957, paragraphs 44 and 49.

122. The uncertainty and the temporary nature of the rights which would thus be conferred on Turkish nationals by Decision No 1/80, regardless of their generation and their connections with the host Member State, would not enable them to integrate in the best possible way in that State.

123. Consequently, in my view, the Court was right to find that Article 7 of Decision No 1/80 confers on the child of a Turkish worker independent rights which are to apply even if that child is more than 21 years of age and lives independently.

124. This conclusion is not called into question by *Ayaz*, which is relied upon by the German, Italian and United Kingdom Governments.

125. In that judgment the Court ruled on the question whether the stepson of a Turkish worker was to be regarded as a member of the worker's family for the purpose of the first paragraph of Article 7 of Decision No 1/80, so that he could claim the rights conferred by that provision. In replying to that question, the Court stated that reference should be made to the concept of 'member of the family' under Article 10(1) of Regulation No 1612/68. [40]

40 — *Ayaz*, paragraph 45.

126. This reference to the scope of that provision must therefore, in my opinion, be understood as seeking to transpose, to the context of the Association between the Member States and the Republic of Turkey, the ambit of the concept of 'member of the family' in Regulation No 1612/68 with regard to the relationship which is necessary and sufficient to belong to that category. The reference was not intended to question the case-law concerning the independent nature of the rights conferred by the first and second paragraphs of Article 7 of Decision No 1/80 on a member of the family fulfilling the conditions set out in those provisions.

127. This is substantiated by the fact that the case-law in question was expressly followed in *Cetinkaya, Aydinli* and *Torun*, which were delivered after *Ayaz*.

128. Finally, restricting the scope of the rights conferred by the first paragraph of Article 7 of Decision No 1/80 to the rights conferred by Article 10 of Regulation No 1612/68 would, in my view, be inconsistent with the aim, stated in the preamble to the Association Agreement and taken up in Article 28 thereof, of facilitating the Republic of Turkey's accession to the European Union when it is in a position to accept fully the obligations arising from the Treaty.

129. I have already said that, to make accession actually attainable, the parties to the Association Agreement agreed to establish gradually freedom of movement for workers between the parties and, for that purpose, they agreed to be guided by the Treaty rules relating to that fundamental freedom.

130. It may be inferred from that aim and from the express reference to the Treaty provisions on freedom of movement that, when determining the scope of the rights conferred by Decision No 1/80 on Turkish workers and their family members, account must be taken of the development of the rights of Community nationals. This appears necessary in order to enable Turkish nationals who have exercised the rights provided for in the framework of the Association to enjoy under the best possible conditions, at the time of accession, those conferred on Community nationals.

131. In other words, preparation for the Republic of Turkey's accession to the European Union should prevent the gap between the rights conferred on Turkish nationals who have exercised freedom of movement in the framework of the Association and the rights of Community nationals from becoming wider.

132. It is not disputed that the right to move and reside freely, which the Treaty originally laid down for employed and self-employed persons, was gradually detached from the pursuit of economic activities and made generally available to all nationals of a Member State. This change took place at first by means of directives. [41] It then continued with the Treaty on European Union, which came into force on 1 November 1993; this Treaty introduced the status of citizen of the Union and made the right to move and reside freely in all the Member States of the Community into a right conferred directly by the Treaty on every citizen. [42]

133. A further development was Directive 2004/38, the period for the implementation of which expired on 30 April 2006. This confers an unconditional right of permanent residence on Union citizens who have resided legally for an uninterrupted period of five years in the host Member State. [43]

134. In view of these developments, it would not be consistent with the aim of facilitating

41 — See Council Directive 90/364/EEC of 28 June 1990 on the right of residence (OJ 1990 L 180, p. 26), Council Directive 90/365/EEC of 28 June 1990 on the right of residence for employees and self-employed persons who have ceased their occupational activity (OJ 1990 L 180, p. 28) and Council Directive 93/96/EEC of 29 October 1993 on the right of residence for students (OJ 1993 L 317, p. 59).

42 — Article 18(1) EC and, for the interpretation of this article, see *Baumbast and R*, paragraph 81.

43 — Article 16 of Directive 2004/38.

the Republic of Turkey's accession to the European Union to deny children of a Turkish worker who fulfil the conditions laid down in Article 7 of Decision No 1/80 the rights derived from that provision when they reach the age of 21 and are no longer dependent on their parents, and to put them on the same footing as first-generation migrants.

135. To return the children of Turkish workers systematically to the starting point of integration in the host Member State seems to me all the more unjustified in that the situation of nationals of non-member countries with which the Community has not concluded an agreement has also undergone a very considerable improvement.

136. Council Directive 2003/109/EC, [44] adopted in accordance with the statement of the European Council at Tampere on 15 and 16 October 1999, [45] introduces for third-country nationals who have legally resided in a Member State for five years the status of long-term resident which is permanent in nature and by virtue of which they are to enjoy equal treatment with nationals in several fields. These include access to employment and self-employed activity, education and vocational training, social security, social assistance and social protection, tax benefits, access to goods and services made available to the public and access to procedures for obtaining housing. [46]

137. It would thus not be consistent with this development if the rights conferred on a Turkish worker's child by the Association Agreement concluded more than 40 years ago were not more advantageous than those which may now be enjoyed by the nationals of any third country who have legally resided in a host Member State for five years. The fact that the Association Agreement is earlier and the aim of facilitating the Republic of Turkey's accession to the European Union should mean that Turkish nationals who have exercised the rights provided for in the framework of the Association Agreement enjoy an intermediate position between that of Union citizens and that of nationals of third countries.

44 — Directive of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44). This directive applies without prejudice to more favourable provisions of bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other (Article 3(3)(a)). The Member States must take the measures necessary to comply with this directive by 26 January 2006 at the latest (first paragraph of Article 26).

45 — This states that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the Union (second recital in the preamble to Directive 2003/109).

46 — Article 11(1) of Directive 2003/109.

138. That is why I think that the rights conferred by the first paragraph of Article 7 of Decision No 1/80 on a Turkish worker's child must be determined not only by reference to the rights specifically granted to a Community worker's child by Articles 10 and 11 of Regulation No 1612/68, but also in the light of the Treaty rules relating to the freedom of movement for workers, which the parties to the Association Agreement agreed would give them guidance, and in the light of the secondary legislation adopted to implement those rules.

2. The case-law relating to the scope of the rights arising from Article 7 of Decision No 1/80 does not have the general effect of granting a Turkish worker's child more favourable treatment than that of a Community worker by virtue of the Treaty

139. A general examination of the scope of the independent rights conferred by Article 7 of Decision No 1/80 on a Turkish worker's child shows that those rights display significant disadvantages compared with the rights of a Community national under the Treaty rules on freedom of movement for workers and the secondary legislation for implementing them.

140. Those disadvantages relate, first, to the geographical extent of the rights of access to employment and of residence, second, to the right to family reunification in the host Member State and, third, to the conditions under which the rights in that State may be limited.

141. On the first point, the case-law shows that the rights of access to employment and of residence, conferred by Article 7 of Decision No 1/80, are limited to the host Member State. Unlike a Community worker, a member of a Turkish worker's family does not have the right to move freely within the Union to respond to an offer of employment, and to reside in the Member State of his choice. [47]

142. A Turkish worker's child seeking employment in another Member State would be placed, under Decision No 1/80, in the position of a first-generation migrant and in that State would be able to claim only the gradual rights provided for in Article 6 of the decision. His entry into that other State is subject to its national law. It has consistently been held that the provisions concerning the Association between the Community and the Republic of Turkey do not encroach upon the competence retained by the Member

47 — See, to that effect, *Tetik*, paragraph 29.

States to regulate both the entry into their territories of Turkish nationals and the conditions under which they may take up their first employment. [48]

143. It is true that this disadvantage has now been mitigated in Directive 2003/109, which grants third-country nationals who have the status of long-term residents in a Member State the right to reside in another Member State, in particular for the purpose of work in an employed or self-employed capacity, or for other purposes. [49] However, the rights granted in this way to third-country nationals remain less extensive than those of Union nationals. [50]

144. Likewise it would appear that the child of a Turkish worker does not derive from Article 7 of Decision No 1/80 a right to family reunification in the host Member State. Access to the territory of that Member State on the part of his wife, children and other members of his family, if they are third-country nationals, remains subject to national law.

145. The host Member State must admittedly exercise its powers in the matter in accordance with fundamental rights as laid down by the European Convention for the Protection of Human Rights and Fundamental Freedoms and with other international commitments which it has entered into. However, the protection for the family provided by such commitments, particularly Article 8 of the Convention, does not guarantee a right to family reunification comparable to that laid down in Regulation No 1612/68 and Directive 2004/38. [51]

146. The same is true of Council Directive 2003/86/EC. [52] Although the right of third-country nationals to family reunification now carries additional guarantees in so far as the directive requires the Member States to authorise, without being able to exercise their discretion, reunification in respect of family members of such nationals in several situations, [53] those guarantees accorded to

48 — *Ergat*, paragraph 35; Case C-37/98 *Savas* [2000] ECR I-2927, paragraphs 58 and 65; and Joined Cases C-317/01 and C-369/01 *Abatay and Others* [2003] ECR I-12301, paragraphs 63 and 65.

49 — Article 14 of Directive 2003/109.

50 — See, in this connection, the conditions laid down in Articles 14 and 15 of Directive 2003/109.

51 — See, in particular, European Court of Human Rights, *Gül v. Switzerland*, judgment of 19 February 1996, *Reports of Judgments and Decisions* 1996-I, p. 174, § 38; *Ahmut v. the Netherlands*, judgment of 28 November 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2031, § 63; and *Sen v. the Netherlands*, No. 31465/96, § 31, 21 December 2001.

52 — Directive of 22 September 2003 on the right to family reunification (OJ 2003 L 251, p. 12). The period within which the Member States were to implement this directive expired on 3 October 2005.

53 — See Article 4(1) of Directive 2003/86.

third-country nationals do not place them on an equal footing with Union citizens.

147. Finally, the Court's case-law relating to the conditions under which the rights derived from Article 7 of Decision No 1/80 may be limited has the effect of laying down a ground of restriction additional to the ground which can be raised against a Community national. In addition to the situation in which the residence of the person concerned may be terminated on grounds of public policy, public security and public health, which are common to both situations, a Turkish national loses his rights of access to employment and of residence in the host Member State if he leaves it for a significant length of time without a legitimate reason.

148. In that case, if the person concerned wishes to take up residence once again in the Member State where he has lived, he must submit an application to the authorities of that State to be allowed either to join the Turkish worker to whose family he belongs, if he still satisfies the requirements of the first paragraph of Article 7 of Decision No 1/80, or to take up employment there pursuant to Article 6 thereof. [54]

54 — *Ergat*, paragraph 49.

149. Consequently, in my view, the Court's interpretation of the first and second paragraphs of Article 7, to the effect that they confer on the child of a Turkish worker independent rights of access to employment and of residence which subsist when that child is over 21 and is living independently, is not contrary to Article 59 of the Additional Protocol. Therefore Article 59 does not justify reconsideration of the case-law relating to the duration of the rights conferred by Article 7 of Decision No 1/80 on the child of a Turkish worker.

150. The arguments of the United Kingdom Government do not seem to me to justify taking the contrary view.

151. The United Kingdom Government observes that in *Aydinli* it was held that the first paragraph of Article 7 of Decision No 1/80 grants members of a Turkish worker's family a right to employment but does not impose on them any obligation to work. According to the United Kingdom Government's argument, this interpretation, in conjunction with the case-law which states that the right of residence based on that provision may be lost only in the cases provided for by Article 14 of Decision No 1/80 or if the person concerned leaves for a significant length of time without a

legitimate reason, may result in placing a Turkish worker's child in a more advantageous situation than that of a Community national.

152. The United Kingdom Government appears to be alluding to the case, for example, of a Turkish worker's child who is able to work but refrains from seeking employment and may become a burden on the social protection schemes of the host Member State.

153. However, the fact that, in particular cases, the case-law in question may result in a Turkish national being placed in a more favourable situation than that of a Community national cannot justify calling generally into question the duration of the rights given to a Turkish worker's child by Article 7. If such a situation were found to exist, it is the conditions under which those rights may be limited that Article 59 of the Additional Protocol might require to be amended by the addition, if necessary, of a further restriction.

154. Consequently, in order to satisfy Article 59 of the Additional Protocol, it might be necessary to reconsider whether the two conditions under which, according to case-law, the rights conferred by Article 7 of Decision No 1/80 may be limited should be exhaustive, rather than to reconsider the duration of those rights.

155. In any case, I find that no such obligation arises in the circumstances of the main proceedings.

3. The case-law concerning the conditions under which the rights derived from Article 7 of Decision No 1/80 may be limited does not have the effect of conferring upon a Turkish national in Mr Derin's specific situation rights more extensive than those of a Community worker

156. In conformity with the case-law in question, Mr Derin, who did not leave the host Member State for a significant length of time without legitimate reason, can lose his rights under the second indent of the first paragraph of Article 7 of Decision No 1/80 only by virtue of Article 14 of the decision.

157. In addition, I note that, according to the information provided by the national court, Mr Derin worked legally in Germany and was re-employed after imprisonment. Therefore he is not in the situation contemplated by the United Kingdom Government of a person who is not seeking employment and might become a burden on the social assistance system of the host Member State.

158. A Community national in a situation comparable to that of Mr Derin could be expelled from the host Member State concerned only on the basis of Article 39(3) EC.

159. We have seen that the conditions for the application of Article 14 of Decision No 1/80 are almost the same as those of Article 39(3) EC. [55] Therefore Mr Derin does not have, in that connection, rights more extensive than those of a Community national under the Treaty.

160. Accordingly I propose that the reply to the first question referred should be that the case-law which states that a Turkish national who entered a Member State when he was a child to live with his family loses the right to reside in that State — a corollary of the right of free access to any paid employment of his choice which he derives from the second indent of the first paragraph of Article 7 of Decision No 1/80 — in only two situations, namely, first, in the cases provided for by Article 14 of the decision or, second, if he leaves the host Member State for a significant length of time without legitimate reason, even if he is 21 years old or over and is no longer dependent on his parents, is compatible with Article 59 of the Additional Protocol.

C — *The second question*

161. The second question from the Verwaltungsgericht Darmstadt is whether a child of a Turkish worker may still enjoy the special protection under Article 14 of Decision No 1/80 if the reply to the first question is that such a child no longer falls within the scope of the first paragraph of Article 7 of the decision when he reaches the age of 21 and is no longer maintained by his parents, in circumstances where he cannot avail himself of Article 6 of the decision either.

162. As I have proposed that the case-law which states that a child of a Turkish worker does not lose his rights under the first paragraph of Article 7 of Decision No 1/80 when he reaches the age of 21 and is no longer maintained by his parents should be followed, it appears to me to be unnecessary to consider the second question from the national court.

55 — *Cetinkaya*, paragraphs 43 and 44.

V — Conclusion

163. Consequently I propose that the following reply be given to the questions from the Verwaltungsgericht Darmstadt:

The case-law which states that a Turkish national who entered a Member State when he was a child to live with his family loses the right to reside in that State — a corollary of the right of free access to any paid employment of his choice which he derives from the second indent of the first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council set up by the Association Agreement between the European Economic Community and Turkey — in only two situations, namely, first, in the cases provided for by Article 14 of the decision or, second, if he leaves the host Member State for a significant length of time without legitimate reason, even if he is 21 years old or over and is no longer dependent on his parents, is compatible with Article 59 of the Additional Protocol signed at Brussels on 23 November 1970, and concluded, approved and confirmed on behalf of the Community by Council Regulation (EEC) No 2760/72 of 19 December 1972.